DIRECTORS’ ORGANIZATIONAL MEETING
Monday, August 6, 2018
555 S. 10TH STREET
BILL LUXFORD STUDIO

I. MINUTES
   1. Approval of Directors’ minutes from July 23, 2018

II. ADJUSTMENTS TO AGENDA

III. CITY CLERK

IV. MAYOR’S OFFICE
   1. Chief Bliemeister - Application of the Edward Byrne Justice Assistant Grant
   2. Pat Leach - Applications for the Library Board vacancy

V. DIRECTORS CORRESPONDENCE
   PLANNING
   1. Action dated August 1, 2018
   2. Final Action dated August 2, 2018

VI. BOARDS/COMMITTEES/COMMISSION REPORTS
   Carried over from the week of July 9, 2018
   1. Funders Group - Gaylor Baird (07.12.18)
   2. ISPC - Gaylor Baird (07.12.18)
   3. Parks & Rec - Gaylor Baird (07.12.18)
   4. JBC - Lamm, Gaylor Baird (07.13.18)
   5. PBC - Camp, Raybould (07.10.18)

   From the week of July 23, 2018
   1. WHJPA - Eskridge (07.26.18)
   2. PRT - Lamm (07.26.18)

VII. CONSTITUENT CORRESPONDENCE
   1. Proposed PACE - Eric Bostrom
   2. Support for Water Rate Increase - Shawn Ryba
   3. Budget Testimony - Justin Carlson
   4. Water Rate Increase, opposition - Russell Miller
   5. Proposed Chicken Production Facility, opposition - Sally J Herrin
   6. Proposed PACE - Matthew Gregory
   7. Rail Yard Agreement - Timothy S. Sieh
   8. Maintenance of the NRD’s Salt Creek Levee Project - Sean Yates
      Response provided by Paul Zillig, General Manager, Lower Platte South NRD
   9. Proposed PACE - Bryan Hermsen

VIII. MEETINGS/INVITATIONS
   See invitation list.

IX. ADJOURNMENT
**ACTION BY PLANNING COMMISSION**

NOTICE: The Lincoln/Lancaster County Planning Commission will hold a public hearing on Wednesday, August 1, 2018, at 1:00 p.m. in Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th St., Lincoln, Nebraska. For more information, call the Planning Department, (402) 441-7491.

**PLEASE NOTE:** The Planning Commission action is final action on any item with a notation of “FINAL ACTION”. Any aggrieved person may appeal Final Action of the Planning Commission to the City Council or County Board by filing a Notice of Appeal with the City Clerk or County Clerk within 14 days following the action of the Planning Commission.

The Planning Commission action on all other items is a recommendation to the City Council or County Board.

AGENDA

WEDNESDAY, AUGUST 1, 2018

[Commissioners Harris and Washington absent; Commissioner Scheer left at 4:13 p.m.]

Approval of minutes of the regular meeting held July 18, 2018. **APPROVED: 7-0; (Harris and Washington absent)**

1. **CONSENT AGENDA**
   (Public Hearing and Administrative Action):

   **CHANGES OF ZONE:**

   1.1a Change of Zone No. 18020, from O-1 (Office District) to B-4 (Lincoln Center Business District), with landmark overlay, on property generally located at 332 Centennial Mall South.

   **Staff recommendation: Approval**
   **Staff Planner: Ed Zimmer, 402-441-6360, ezimmer@lincoln.ne.gov**
   **Planning Commission recommendation: APPROVAL; 7-0 (Harris and Washington absent). Public hearing before the City Council is tentatively scheduled for Monday, August 20, 2018, 3:00 p.m.**

   1.1b Change of Zone No. 18021, from O-1 (Office District) to B-4 (Lincoln Center Business District), on property generally located at South 16th Street and L Street.

   **Staff recommendation: Approval**
   **Staff Planner: George Wesselhoft, 402-441-6366, gwesselhoft@lincoln.ne.gov**
Planning Commission recommendation: APPROVAL; 7-0 (Harris and Washington absent). Public hearing before the City Council is tentatively scheduled for Monday, August 20, 2018, 3:00 p.m.

WAIVER:

1.2 Waiver No. 18003, to waive the 90-foot minimum lot-depth requirement per Section 26.23.140(a) of the Subdivision Ordinance, on property generally located at 2036 N. 63rd Street. **FINAL ACTION**
Staff recommendation: Conditional Approval
Staff Planner: Rachel Jones, 402-441-7603, rjones@lincoln.ne.gov
This application was removed from the Consent Agenda and had separate public hearing. Planning Commission ‘final action’: CONDITIONAL APPROVAL, as set forth in the staff report dated July 24, 2018: 7-0 (Harris and Washington absent). Resolution No. PC-01611.

2. REQUESTS AND FOR DEFERRAL: See Items 4.1a and 4.1b.

3. ITEMS REMOVED FROM CONSENT AGENDA – See Item 1.2.

4. PUBLIC HEARING AND ADMINISTRATIVE ACTION:

CHANGE OF ZONE AND RELATED USE PERMIT:

4.1a Change of Zone No. 18013, from AGR (Agricultural Residential) to O-3 (Office Park District) and R-3 (Residential), on property generally located at 8435 Firethorn Lane.
Staff recommendation: Approval
Staff Planner: Brian Will, 402-441-6362, bwill@lincoln.ne.gov
Planning Commission granted the applicant’s request for a 2-week deferral with PUBLIC HEARING AND ACTION scheduled for August 15, 2018.

4.1b Use Permit No. 18005, for an approximately 2.74 acre use permit for up to 26,400 square feet of commercial floor area, with waivers to setbacks, lighting design standards, and access off the end of a private roadway, on property generally located at 8435 Firethorn Lane.
Staff recommendation: Conditional Approval
Staff Planner: Brian Will, 402-441-6362, bwill@lincoln.ne.gov
Planning Commission granted the applicant’s request for a 2-week deferral with PUBLIC HEARING AND ACTION scheduled for August 15, 2018.
5. **CONTINUED PUBLIC HEARING AND ADMINISTRATIVE ACTION:**

**COUNTY SPECIAL PERMIT:**

5.1 Special Permit No. 18025, for the construction of a commercial feedlot, on property generally located at 13350 West Wittstruck Road. **FINAL ACTION**

Staff recommendation: Conditional Approval
Staff Planner: Tom Cajka, 402-441-5662, tcajka@lincoln.ne.gov
Planning Commission “Final Action”: CONDITIONAL APPROVAL, as set forth in the revised conditions of the staff report dated June 8, 2018, and amended by the Planning Commission: 4-2 (Edgerton and Hove dissenting; Harris, Scheer and Washington absent). The motion failed due to the lack of 5 affirmative votes; therefore, the Planning Commission will take action on this application at the August 15, 2018, hearing. The public hearing on this application was closed.

AT THIS TIME, ANYONE WISHING TO SPEAK ON AN ITEM NOT ON THE AGENDA, MAY DO SO

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Adjournment: 6:10 p.m.
TO: Mayor Chris Beutler  
Lincoln City Council

FROM: Geri Rorabaugh, Planning

DATE: August 2, 2018

RE: Notice of final action by Planning Commission: August 1, 2018

Please be advised that on August 1, 2018, the Lincoln City-Lancaster County Planning Commission adopted the following resolution:

Resolution No. PC-01611, approving WAIVER 18003, to waive the 90-foot minimum lot-depth requirement per Section 26.23.140(a) of the Subdivision Ordinance, on property legally described as Lots 6-7, Block 35, Bethany Heights, located in the SE 1/4 of Section 16-10-7, Lincoln, Lancaster County, Nebraska, generally located at 2036 N. 63rd Street; and

The Planning Commission action on this application is final, unless appealed to the City Council by filing a notice of appeal with the Planning Department within 14 days of the action by the Planning Commission.

The Planning Commission Resolution may be accessed on the internet at www.lincoln.ne.gov (Keyword = PATS). Use the “Search Selection” screen and search by application number (i.e. WVR18003). The Resolution and Planning Department staff report are in the “Related Documents” under the application number.
Dear Lincoln City Council members,

I'm writing you to express my excitement for PACE (Property Assessed Clean Energy). It is my hope that you as city council members will approve PACE at your Aug 6th meeting. My understanding is that this is a commercial PACE program so that businesses have easier access to financing for energy efficiency and renewable energy. I also hope that down the road a residential PACE program will be available for someone like me to invest in renewable energy. My interest in PACE is economic because it helps overcome the large short-term financial investment for that long-term financial savings can be achieved. Second, my interest is reducing the amount of carbon we as society are throwing up into our atmosphere and oceans. I believe in being a good steward of our land, water, air, and planet and too much carbon in the atmosphere and ocean is harmful to these natural resources and to us who depend on our environment for a good life.

Respectfully,
Rev. Eric Bostrom
Greetings All,

Please find my letter of support (and map of water lines) requesting that the City Council and Mayor's Office support the budget package that includes the city's plans to replace all of the service lines that are lead and/or galvanized (over the next 20 years). Thank you!

Best,
Shawn

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Shawn Ryba, MSW, MPA
Executive Director
South of Downtown CDO
1111 Lincoln Mall, Suite 350
PO Box 85330
Lincoln, NE 68508
402.416.8686
www.lincolnsouthdowntown.org
July 30, 2018

Dear City Council members,

The South of Downtown Community Development Organization (SDCDO) is requesting that the City Council and Mayor’s Office support the budget package that includes the city’s plans to replace all of the service lines that are shown to be lead and/or galvanized over the next 20 years. It is our understanding that the cost will be $20 million and will be paid by fee increases. These fees are necessary for addressing water and sewer needs in Lincoln and more specifically, South of Downtown. The fee increases for water will pay for this important initiative to help us to replace aging water mains, secure a reliable water source, and will provide a safe source of water for all residents.

The SDCDO was recently established in January 2017 to help coordinate and offer on-going framework for community development activities in a geographically defined area south of the state capitol building. The SDCDO is a not-for-profit 501(c) (3) corporation that is working to promote and support comprehensive community development efforts, which will include economic, environment, social, health, and policy initiatives with the leadership of residents living in the Near South and Everett neighborhoods in Lincoln, NE. The South of Downtown CDO seeks to improve the quality of life for all residents through engagement and activities representative of the residents that live in our neighborhoods.

SDCDO’s focus area spans from roughly 9th Street on the West, 17th Street on the East, K Street on the North, and A Street on the South. The 2014 and 2015 Vital Signs reports identified this area as an extreme poverty area where there are higher unemployment rates, school turnover, poverty, decreased household incomes, lower educational attainment, declining housing conditions and continued disinvestment by the City of Lincoln and property owners. Furthermore, the Community Health Endowments Place Matters Report shows this area as having the greatest health disparities in the City of Lincoln. For example, the life expectancy of residents is 28 years less than those in other areas of the City of Lincoln. Please do not add insult to injury. Please address the alarmingly high concentration of lead and galvanized water lines in the South of Downtown.
I have attached a heat map showing the locations of water service lines that are shown in the city of Lincoln’s Public Works records to be lead, galvanized, or unknown. Historically, approximately one third of the “unknowns” may be lead or galvanized. This map shows how important this equity issue is to residents in the Near South and Everett neighborhoods.

SDCDO urges the City of Lincoln to support fee increases to make the desperately needed improvements to water and sewer lines in the South of Downtown. It is your responsibility as a City Council representative to provide access to healthy, clean water for all residents in Lincoln. It is a basic human right!

Again, the SDCDO is asking you to support fee increases that are necessary for addressing water and sewer needs in Lincoln and more specifically, South of Downtown. The fee increases for water will pay to replace aging water mains, secure a reliable water source, and will provide a safe source of water for all residents. Thank you

Best,

Shawn Ryba, Executive Director
Dear Council Members-

I had planned to testify tonight and waited for several hours but had to leave at the dinner break. I am Chair of the Fees and Facilities Committee of the Parks and Rec Advisory Board.

Over the past several years our city has been gradually working to fully fund the repair and replacement program for Parks equipment, buildings and other structures. The proposed Capital Improvement Plan comes closer to narrowing the funding gap by providing a greater amount of funding for repair and replacement as things age and wear out.

As a matter of context we have gone from having less than 50% for repair and replacement needs funded in previous CIPs to closer to 80% in the proposed budget. This will allow our city to make significant progress in assuring that we're taking care of what we have. Maintaining our current investment in parks and equipment makes good sense. We absolutely need to protect the valuable past investments we have made in our parks system. This budget comes closer to doing this.

Parks offer much more than just a free and safe place for our families to enjoy and recreate. Parks also have an economic value in attracting employees and businesses to locate in Lincoln. I've seen this first hand.

Thank you in advance for your support of the Mayor's proposed budget for parks.

Sincerely,

Justin Carlson
3039 Stratford Ave
Lincoln, NE 68502
402-770-7188
jpcliz@msn.com
Hello,

Last night the first two testifiers at the budget hearing requested that the water rates be increased 5% as suggested in the City budget. They needed that increase to make sure there would be water for their new, proposed developments.

Established Lincoln does not need any rate increases because our water sources are bought and paid for. Not completely true because we are still paying off the bonds for the Ashland well fields and the mains bringing the water to the City. However, our current rates will cover that plus the 7 mile main replacement that is a major necessity.

Lincoln is at the point where new developments will require a new water source from the Missouri River. That is what the 5% rate increase is funding or making possible in the near future.

HOWEVER, impact fees were supposed to provide that money. Just like streets, water impact fees have not kept up with inflation.

From time to time various persons and politicians have stated that persons on a fixed income need tax relief. In the last ten years everyone’s water monthly service charge has increased from $2.93 (2007/08) to $6.56 (2017/18) or a 123% increase. The service charge is assessed regardless of the amount of water that you use.

These new developments are coming on the backs of fixed income persons because IMPACT FEES have not been adjusted for inflation as measured by the construction industry and not the CPI.

Today, Lincoln’s impact fee for a 3/4 inch water line is $2,008. I do not know what the inflation rate is for water and sewer construction would be. But if inflation for street construction for the last 15 years is 100%, I would guess that water and sewer would be about the same.

Kicking the impact fee can down the road is not going to make it any easier.

Thank you,
Russell Miller 402-499-2611
I am writing in opposition to permission for large scale chicken production facilities to be built in Lancaster County.

In civic life, silence equals acceptance, and the reverse is likewise true: outspoken opposition MUST give elected officials pause. Eye witness reports from the last Planning Commission hearing on the matter of industrial poultry production in Lancaster County indicate that the process was flawed. Supporters were given preferential treatment, and most opposing voices were sent home unheard. For this reason, the Planning Commission must now in fairness give careful attention to the opposing voices.

Property values are high on the list of concerns by citizens who live near proposed sites and are best detailed by them. But people who live near poultry feeding operation suffer a range of other problems. The stench, the plagues of flies and rodents and huge volumes of constant dust are not simply a nuisance. Nearby residents find it impossible to hang laundry, just sit or let children play outside.

In nature chickens and turkeys range in small flocks over wide areas, contributing to the health and fertility of the land. In poultry factory farming, thousands of birds are crammed unnaturally into extremely small areas. Filth and disease result from unwholesome and unnatural confinement of animals. The poultry industry is a major cause of environmental degradation in the United States. U.S. slaughterhouses kill more than 30 million birds every day, 10 billion birds a year (NASS). This industry pollutes land, air, and water with diseased carcasses, feces, heavy metals, chemicals, bacteria, parasites, pathogen cysts, and viruses.

Large scale chicken farms are in fact industrial sites, but do not come under the same scrutiny as other industries. Just how much waste is produced is often unknown. In Nebraska, dry litter systems are ONLY tracked by the DEQ where they have been determined to have the potential to track the waters of the state. Federal regulators don't monitor air emissions from poultry confinements. Dry-litter poultry operations are not regulated by NDEQ as to odor. That leaves counties entirely responsible for oversight.

Airborne contaminants in poultry confinement units include a mixture of agents comprising organic poultry dust--skin debris, broken feather barbules, insect parts, aerosolized feed, and poultry excreta--and
a variety of immunogenic agents, such as viable bacteria and Gram-negative bacterial endotoxins. Industrial hygiene surveys in the chicken processing industry show that poultry confinement workers are exposed to high concentrations of such respiratory toxicants. Excretory ammonia fumes from the nitrogen in decomposing droppings damage the systems of both humans and birds.

In poultry operations, the daily production of wastes is essentially equal to the amount of feed used. This means for every truckload of feed that is brought onto the farm, a similar load of waste must be removed. A one hundred thousand hen complex produces 12.5 tons of manure a day.

Poultry manure contains large amounts of nitrogen, phosphorous, and potassium. High levels of nitrate in groundwater used as drinking water can cause methemoglobinemia, a blood disorder in infants, known also as “blue baby disease.”

Though hog and dairy operations produce more manure than a chicken or turkey operation, poultry litter-the mixture of fecal droppings, antibiotic residues, heavy metals, cysts, larvae, decaying carcasses, and sawdust the birds are forced to bed in--has 4 times the nitrogen and 24 times the phosphorous. The annual litter from a broiler chicken operation of 110,000 birds contains as much phosphorous as in the sewage from a community of 30,000 people. In the 1990s, poultry production in five West Virginia counties at the headwaters of the Potomac River, which nourishes the Chesapeake Bay, grew from 7 million birds a year to 100 million birds, now producing enough manure to cover all 160 miles of Los Angeles freeways ankle deep.

Dry litter operations pose significant threats to water. Each year, millions of chickens, turkeys, and ducks die of heat suffocation, drug reactions, crowding, stress, and disease before going to slaughter. An operation with 100,000 broiler chickens produces 1,000 lbs of dead birds—250 birds—a day. The decomposing bodies of these birds are stuffed in trash cans inside, and piled outside, the poultry sheds. Eventually the carcasses are buried, burned, dropped down feed shoots, and dumped in unlined pits which become cesspools of bacteria, leaching into groundwater and local streams.

Water pollution from dry poultry litter is greatest after it is spread on crop land. Dry litter is sometimes fed to cattle as well. U.S. chicken producers use a total of 2.2 million pounds of the antibiotic arsenic compound roxarsone each year. More than 95 percent of the roxarsone fed to chickens is excreted in chicken waste which is regularly applied as fertilizer. The arsenic from these applications can leach into surface and ground water supplies and be transformed into inorganic arsenic, a known carcinogen.

Factory poultry manure exposes fish, humans, and wildlife to diseases not normally found in the environment. When earthworms ingest soil containing chicken droppings infected with the cecal worm larvae that carry blackhead disease, wild turkeys, grouse, quail and other wild birds who eat these worms get sick and die.

Pfiesteria piscicida is a one-celled microbe inked to the abundant excess of poultry and hog manure on the eastern United States seacoast, eating holes in flounder and in menhaden, a fish that is used in farm animal feedstuffs and as fertilizer. Humans exposed to the toxic aerosol released by pfiesteria experience neurological injury, headaches, skin sores, memory loss, stomach cramps, respiratory restriction, and violent moods.

When large CAFOs (confined animal feeding operations) pollute groundwater, the problem tends to go undetected until it is too late—until people are ill, and aquifers are irrevocably contaminated and remediation is largely impossible and always costly beyond the resources of communities and even states.

If large poultry CAFOs are permitted to be built in Lancaster County, however problematic, they will be here to stay. Courts and legislators almost always allow “grandfather” exceptions, allowing CAFOs to
continue to operate, even when they are shown to pollute. Across this country, CAFO operators have a
long disgraceful record as bad actors (North Carolina, Delaware, Maryland and Arkansas are prime
examples, as is Iowa, closer to home), and when allowed to operate as limited liability corporations, they
walk away from their environmental disasters, losing nothing but their original investments (which they
have long since recouped many thousands and millions of times over) leaving the clean up to devastated
communities.

Projections of economic development by these CAFOs NEVER pan out, as even big producers operate on
very small margins—all the REAL money to be made in animal production is in processing and retail sales,
and that money goes almost entirely to owners and investors in other states.

It is your responsibility to protect Lancaster County and Lincoln from the enormous harm to people, and
to the environment we all depend upon, which these operations will inevitably bring. The buck stops with
you.

Sincerely and deeply concerned,
Sally Herrin, Ph.D.
Lincoln
Dear Lincoln City Council members,

I would have liked to deliver these comments in person at the August 6th meeting but I will be out of town so I’m submitting them earlier.

I’m a clean energy advocate and consultant, and I have spent much of the past year promoting a clean energy plan for Nebraska known as the Husker Power Plan. While much of my work involves engaging with electric utilities, including LES, we are always looking to promote and support programs and initiatives that progress energy efficiency and Property Assessed Clean Energy – better known as PACE – is certainly that.

There are many reasons that Lincoln should participate in PACE. Nationwide, PACE has been an important financing tool for energy efficiency upgrades and renewable energy projects. It is sometimes the case that Nebraska falls behind in embracing clean energy trends and programs, and this is one such area where that’s happening as PACE is authorized in 33 states north and south, east and west.

It’s a great program because it can provide up to 100% of the upfront costs of the project and it increases a building’s value. It also increases a commercial building owner’s bottom line by lowering energy costs. The repayment fee on monthly bills will be more than offset by the energy savings. Upgrades in energy efficiency for heating, cooling, lighting, water pumps, insulation and even solar panels fall under the purview of PACE so there are many different avenues for projects.

PACE programs have been successfully administered in various states over many years. Missouri has a statewide program and Omaha has a commercial PACE program which is the model for this ordinance and can provide advice. If you would like to see how PACE is working in other places and some of the projects it has involved, here is an article on PACE in Michigan: energynews.us/2018/07/27/midwest/clean-energy-financing-tool-having-game-changing-year-in-michigan/

Lastly, in this day of political divisions with opinions and beliefs split more than ever before, PACE is a financing tool with bipartisan support. You have many contentious issues before you every week and thankfully for you, PACE is not one of them, because saving money and energy while improving buildings in Lincoln is something we all want, regardless of political party.
I strongly urge you to pass the PACE ordinance.

Thank you for your time and considering my comments.

Sincerely,

Matthew Gregory  
Nebraska Wildlife Federation  
Nebraska Interfaith Power & Light
Members of the City Council:

Attached you will find a proposed substitute agreement for the settlement agreement previously discussed at the July 9, 2018 City Council Meeting. The revised language is shown in red, and it can be found in Section 2. The intent of the language is to make clear that the use restrictions in the redevelopment agreement will continue to apply throughout the project area, specifically including the Public Market area. I would ask that you consider this as part of a Motion to Amend to substitute this version for the one originally presented.

I cannot represent to you that this substitute agreement represents a resolution of all outstanding issues between the landlord and tenants.

As always, if you would like to discuss this matter further, I would be more than happy to do so.

Thank you for your time and consideration in this matter.

Sincerely,

Timothy S. Sieh
Assistant City Attorney
555 S. 10th Street, Suite 300
Lincoln, Nebraska 68508
(402) 441-7281
tsieh@lincoln.ne.gov
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made effective as of the _____ day of _____________, 2018 ("Effective Date"), by and between the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska ("City"), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska ("JPA"), and TDP Phase One, LLC, a Nebraska limited liability company (the "Company"). The City and Company shall sometimes hereinafter be referred to collectively as the “Parties” and individually as a “Party”.

Recitals

A. The City, the JPA, and the Company entered into that certain West Haymarket Redevelopment Agreement approved as City Council Resolution A-86740 and dated March 28, 2012, as amended ("Redevelopment Agreement"), for the redevelopment of Lot 1, Block 5 and Lot 2, Block 4, West Haymarket Addition, City of Lincoln, Nebraska including the development and construction of the Railyard and related improvements ("Project").

B. The Project included an area within the Railyard called the Public Market, as described in the Redevelopment Agreement. The stated purpose of the Public Market was to serve as a community gathering space and a venue for the sale and consumption of local or Nebraska-based products or goods in small commercial retail spaces.

C. In order to assist with this goal, the City provided the Company with a grant in the amount of $400,000.00 from TIF funding for the purpose of assisting with the construction cost of the Public Market. In consideration for the use of TIF, certain conditions were placed on the Public Market. The City and the Company recognize and acknowledge that the TIF funds were intended to allow the Company to offer commercial leases in the Public Market to small business owners for a lower rental rate than would otherwise be financially feasible.

D. In consideration for the use of TIF, certain conditions were placed on the Public Market, including the terms and conditions set forth in:

   a. The Amended and Restated Plaza/Cube License Agreement dated August 20, 2015, approved by Resolution No. A-89189 in
connection with Amendment No. 1 to the West Haymarket Redevelopment Agreement ("License Agreement"). Notice of said resolution and Amendment No. 1 was filed with the Lancaster County Register of Deeds on September 29, 2015, as Instrument No. 2015041255 ("Notice").

b. The Memorandum of Redevelopment Agreement and Use Restrictions dated December 14, 2012, recorded as Instrument No. 2012064871 ("Memorandum").

E. Notwithstanding the use of TIF, and despite best efforts by the Company, the Company has and continues to operate the Public Market at a significant and unsustainable loss, and the Company has significant concerns about the long-term viability of the Public Market as currently structured.

F. The Company believes the area occupied by the Public Market can be operated in a sustainable manner if the restrictions set forth in the Redevelopment Agreement and the License Agreement relevant to the Public Market are removed.

G. The City recognizes that the Public Market as described in the Redevelopment Agreement has not proven to be a sustainable business model over the past five years. The City, however, desires that the Railyard continue to successfully operate in the West Haymarket area. Therefore, the City is willing to remove the restrictions related to the space occupied by the Public Market in exchange for the Company reimbursing the City for a portion of the TIF funds originally allocated to the Public Market.

H. Currently, the Project is five years into the 15-year TIF period, and, therefore, the Project has been generating tax increment for the last five years (2013 through 2017). Additionally, the Company has provided public benefits in the space occupied by the Public Market. Based on the foregoing, and in consideration for the removal of the use restrictions on the space occupied by the Public Market, the Company shall reimburse the City for two-thirds (10 remaining years of the 15-year TIF period) of the $400,000.00 of TIF Proceeds originally allocated to the Public Market in the amount of $266,666.67 (the "TIF Reimbursement").
NOW THEREFORE, in consideration of the covenants and agreements hereafter set forth and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereby agree, as follows:

1. Payment of TIF Reimbursement. The Company shall pay to the City the TIF Reimbursement in a single payment simultaneously with execution of this Agreement and the documents set forth in the Exhibits attached hereto.

2. Use of Public Market. The restrictions on the use of the Public Market set forth in the Redevelopment Agreement and License Agreement are hereby terminated, as of the Effective Date, and the Company shall have the right to use the space previously occupied by the Public Market for any purpose permitted under all applicable zoning regulations and laws. This Agreement is not intended to and shall not affect any obligations subject to the restrictions of the Company set forth in the Redevelopment Agreement, except with respect to the Public Market. Specifically, the use restrictions described in Section 404, Use Restrictions of the Property found in the Redevelopment Agreement shall remain in full force and effect throughout the Project Area including, but not limited to, the space originally identified as the Public Market notwithstanding any language to the contrary contained herein.

3. Amendment of the License Agreement. In connection with the termination of the use restrictions set forth in section 2, above, Section B of the License Agreement is hereby deleted in its entirety. The Parties shall execute the Amendment to the License Agreement attached hereto as Exhibit “A” and incorporated herein by this reference. The City shall file a notice of the Amendment to the License Agreement with the Lancaster County Register of Deeds in a similar form to the Notice.

4. Time of Essence. Time is of the essence of this Agreement and each provision of this Agreement.

5. Entire Agreement. This Agreement constitutes the entire and final agreement among the Parties solely with respect to the matters set forth in this Agreement.

6. Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the Parties.

7. Severability. If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of
this Agreement will not be affected thereby. The Parties intend that if any such provision is held to be illegal, invalid or unenforceable, there shall be added in lieu thereof a provision as similar in terms to such provision as is possible which will be legal, valid and enforceable.

8. **Counterpart Execution.** This Agreement and any exhibits hereto may be executed in counterparts, each of which shall be deemed an original document, but all of which shall constitute a single document. This Agreement will not be binding on or constitute evidence of a contract between the Parties until such time as a counterpart of this Agreement has been executed by each Party and a copy thereof delivered to the other Party.

9. **Governing Law.** This Agreement will be interpreted and construed under the internal laws of the State of Nebraska.

10. **Cooperation; Further Documents.** Prior to and at all times following the Effective Date, the Company and the City agree to execute and deliver, or to cause to be executed and delivered, such documents and to do, or cause to be done, such other acts and things as might reasonably be requested by the other Party to assure the benefits of this Agreement are realized by the Parties.

11. **Amendment.** Neither this Agreement nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

*(Signature Page Follows)*
IN WITNESS WHEREOF, this Agreement hereby is executed and delivered, as of the Effective Date.

“CITY”

ATTEST: CITY OF LINCOLN, NEBRASKA

__________________  __________________________________
City Clerk    Chris Beutler, Mayor

“COMPANY”

TDP Phase One, LLC, a Nebraska limited liability company

By: WRK Management, LLC, Manager of TDP Phase One, LLC

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

By: _________________________________
   William D. Scott, Manager

By: _________________________________
   Robert E. Scott, Manager

“WEST HAYMARKET JOINT PUBLIC AGENCY”

_______________________________________________
Chris Beutler, Chairperson of the West Haymarket Joint Public Agency Board of Representatives
Exhibit “A”

First Amendment to the Amended and Restated Plaza/Cube License Agreement

This First Amendment to the Amended and Restated Plaza/Cube License Agreement (“Amendment”) is made and entered into this ___ day of __________, 2018 (“Effective Date”), by and between the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska (“Grantee”) and TDP Phase One, LLC, a Nebraska limited liability company (“Grantor”).

Recitals

A. Grantor and Grantee entered into that certain Amended and Restated Plaza/Cube License Agreement dated August 20, 2015 (“License Agreement”).

B. Pursuant to that certain Settlement Agreement between Grantor and Grantee dated as of even date herewith, the parties have agreed to modify the terms of the License Agreement.

C. The parties hereby amend the License Agreement pursuant to the terms of this Amendment.

NOW THEREFORE, in consideration of the covenants and agreements hereafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, it is agreed as follows:

1. Public Market Restrictions Terminated. Section B of the License Agreement and all the terms and conditions related to the Public Market provided therein are hereby deleted in their entirety.

2. Reconfirm other Terms. Grantor and Grantee hereby reconfirm all other terms and conditions of the License Agreement, except as expressly modified by the terms of this Amendment.

(Signature Page Follows)
IN WITNESS WHEREOF, this Agreement is hereby executed and delivered, as of the Effective Date.

“Grantee”

ATTEST: CITY OF LINCOLN, NEBRASKA

__________________  ____________________________
City Clerk    Chris Beutler, Mayor

“Grantor”

TDP Phase One, LLC, a Nebraska limited liability company

By:  WRK Management, LLC, Manager of TDP Phase One, LLC

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

By:  _________________________________
    William D. Scott, Manager

By:  _________________________________
    Robert E. Scott, Manager
These men were driving along the Salt Creek Levy below the West A bridge distributing herbicides in a rainbow ark towards the creek and targeting maple tree saplings. I asked them about it, and they confirmed that they had been instructed to target the trees at the creekside by their boss. This poisons both our soils and our waterways. This puts our levy and infrastructure at extreme risk to seasonal erosion as well. We have almost no trees older than five years along Salt Creek in most locations. Mature trees clean the air, the water, and hold infrastructure like our drainage ditches and bridges in place. Considering the major waterways that Salt Creek feeds, this activity is dangerous and illegal at the local, state, and federal level. I reported this company's activity to Carl Eskridge via e-mail in the past. I'd like to know what is being done to stop the poisoning of our waterways and natural resources. I'd also like to know if this company is receiving even one penny of funding from the city of Lincoln. I have been in the hospital six times in past 15 months with asthma issues that affect me nowhere near as bad anywhere else in the country. Of course, no where else in the country have the birch trees less 5 feet from where I sleep been wilting due to the herbicides being sprayed in the air on windy days.

Sean Yates
Listed below is my response to the inquiry you received from Sean Yates.

Sean:

I’ve been forwarded your email concerning the maintenance of the NRD’s Salt Creek Levee Project. The NRD’s crews maintain a lot of areas and have been trained in the use of herbicides. Listed below is an email from Al Langdale, NRD Operation & Maintenance Coordinator on the recent work on the Salt Creek Levee Project (Salt Creek from Calvert Street/Wilderness Park to Superior Street near N. 40th). The NRD is very concerned about our environment. I appreciate your comments and interest in the work done by the NRD!

Thanks

Paul Zillig
General Manager

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Paul:

The Salt Creek Levee system was built by the United States Army Corp of Engineers (USACE) and then turned over to the local sponsor (Lower Platte South NRD) to operate and maintain the levee system. The levee system is 13.5 miles and approximately 1,000 acres. The USACE inspects the levee system yearly to determine repairs that need to be completed. In the annual inspection report unwanted vegetation (tree growth, noxious weeds, etc.) are always a big concern to the USACE and noted as a deficiency. The NRD works throughout the year on deficiency’s that the USACE has made comments on. The NRD sprays sapling trees with an approved herbicide which is the most effective and cost efficient way to control unwanted tree growth. The creek banks are very steep which makes hand cutting a safety concern, very difficult and time consuming. If you have any others questions and/or concerns please let me know. Thanks.
Good morning,

I am writing in support of the PACE ordinance that you will be considering this Monday.

I believe that PACE represents a great opportunity for supporting renewable energy and water and energy efficiency projects as well as encouraging development and creating jobs.

PACE is already working well in many cities. Omaha has such an ordinance in place and I believe it's already been used to convert and upgrade the Peregrine Hotel.

Please give this program your support next week. It encourages clean energy development without introducing new taxes or regulations, it creates jobs, and it's a program that already has a great track record in the cities where it's been implemented.

Thank you,

Bryan Hermsen