

**STATE OF NEBRASKA
ATTESTATION REVIEW
OF THE
JOINT ANTELOPE VALLEY AUTHORITY
AND
THE ANTELOPE VALLEY PROJECT
SEPTEMBER 1, 2004 THROUGH AUGUST 31, 2009**

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the Auditor of Public Accounts.**

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Issued on April 26, 2010

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Independent Accountant's Report

Citizens of the State of Nebraska:

We have reviewed the financial information, procurement procedures, and contractual agreements of the Joint Antelope Valley Authority (JAVA) and the Antelope Valley Project for the period September 1, 2004, through August 31, 2009. JAVA is responsible for the financial information, procurement procedures, and contractual agreements. We did not obtain a written assertion regarding such matters from management.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the financial information, procurement procedures, and contractual agreements. Accordingly, we do not express such an opinion.

Based on our review, the items noted in the Summary of Results section of the report came to our attention that caused us to believe that the financial information, procurement procedures, and contractual agreements are not presented, in all material respects, in conformity with the criteria set forth in the Criteria section.

In accordance with *Government Auditing Standards*, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to JAVA's and the Antelope Valley Project's financial information, procurement procedures, and contractual agreements and any fraud and illegal acts that are more than inconsequential that come to our attention during our review. We are also required to obtain the views of management on those matters. We did not perform our review for the purpose of expressing an opinion on the internal control over JAVA's and the Antelope Valley Project's financial information, procurement procedures, and contractual agreements or on compliance and other matters; accordingly, we express no such opinions.

Our review disclosed certain findings that are required to be reported under *Government Auditing Standards* and certain other matters. Those findings, along with the views of management and the identification of a material weakness and significant deficiencies, are described below in the Summary of Results. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A material weakness is a deficiency or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the subject matter will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

This report is intended solely for the information and use of the Citizens of the State of Nebraska, management of JAVA and the Antelope Valley Project, others within JAVA and the Antelope Valley Project, and the appropriate Federal and regulatory agencies. Although it should not be used by anyone other than these specified parties, this report is a matter of public record and its distribution is not limited.

Signed Original on File

Mike Foley
Auditor of Public Accounts

Mary Avery
Special Audits and
Finance Manager

Cindy Janssen
Audit Manager

April 26, 2010

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Background

Antelope Creek is a tributary of Salt Creek that rises near Cheney, Nebraska, southeast of Lincoln and flows north-westerly to join Salt Creek at the former State Fairgrounds in Lincoln, Nebraska. The upper portion drains into Holmes Lake, a reservoir designed to store flood waters in excess of a 500-year event. Prior to the initiation of the Antelope Valley project, which will be described in greater detail below, the lower portion of the basin, downstream from Holmes Lake, continued as a partially improved natural channel to N Street, where it entered an underground conduit. After exiting the conduit just downstream of Vine Street, Antelope Creek continued as a concrete channel to its convergence with Salt Creek. The capacity of the underground conduit was less than a 5-year flood event. The channel upstream and downstream of the conduit had a capacity that exceeded a 25-year flood event; however, the conveyance capacity of several bridges was less than that of the channel, which resulted in flooding problems. In 1993, the voters of the City of Lincoln approved a \$4 million bond issue to repair the conduit, which had been built in the early 1900's. The repairs were completed in 1996 at a cost of \$3.6 million. The repairs, including a new liner, reduced the capacity of the conduit by approximately 16 percent.

Project Beginnings

The present Antelope Valley project had its beginnings in the early 1990's with the completion of an Antelope Creek Reconnaissance Study in April 1991 by the United States Army Corps of Engineers (USACE). At that time, the study recommended a detention storage project that would provide 50-year protection along Antelope Creek downstream of the conduit entrance. The plan was determined to be economically feasible based on the USACE's criteria, which allowed the opportunity for a feasibility study. The City of Lincoln, Nebraska (City), the Board of Regents of the University of Nebraska-Lincoln (UNL), and the Lower Platte South Natural Resources District (LPSNRD) were the local sponsors and pursued a cost-shared feasibility study with the USACE. During preparation of the feasibility scope of the study, the local sponsors realized that the plan recommended in the reconnaissance report was not consistent with the long-term planning goals of the City, UNL, or the LPSNRD. The local sponsors decided all of the planning issues should be addressed together before seeking further assistance from the USACE or other external agencies. As a result, the local sponsors formed a Partnering Group in October 1992 to develop a problem statement and to recommend a conceptual framework for development of a transportation/flood protection plan for the Antelope Creek Basin from Holmes Lake to Salt Creek. The *Antelope Creek Basin Development Plan Problem Statement* was completed in June 1993 and defined the goals and objectives for incorporating a flood protection project into a proposed major north-south roadway located along the lower reach of Antelope Creek. The entire roadway project was initially called the Holdrege Street Bypass and Antelope Valley Roadways Project.

In early 1995, the City, UNL, and the LPSNRD decided to continue the partnership arrangement that began in October 1992 for further studies of the Antelope Creek Basin by the City and the USACE to address a coordinated solution to the transportation, flooding, and land use issues. In pursuing such a solution, the parties concurred that any flood protection plan selected must also be compatible with the City and UNL's land use patterns, both existing and planned. The

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agreement included provisions for the sharing of costs between the LPSNRD and the USACE for the Feasibility Study Phase expenses, estimated at \$986,000. The local agreement also provided for the City and UNL to share with the LPSNRD in the costs of the Feasibility Study Phase. The Antelope Creek Feasibility Study was initiated on March 1, 1995. The feasibility study incorporated the objectives and goals set forth in the problem statement prepared by the partners. The primary study objectives were as follows:

- Design an Antelope Creek floodway to prevent future flood problems;
- Provide additional drainage capacity to reduce the floodway and the 100-year flood plain area;
- Provide a safe level of flood protection for the area susceptible to flooding;
- Combine the flood protection project with a proposed north-south road project;
- Restore and maintain the existing Antelope Creek underground conduit;
- Use natural waterways and open channels wherever possible;
- Follow the historic flow path as closely as possible;
- Consider recreational and sociological factors; and
- Major drainage-way improvements should accommodate the city's primary stormwater collection system.

The sponsors also decided upon the need for a Major Investment Study (MIS) of the transportation, drainage, and development situation in the core of Lincoln. A major investment study is a comprehensive study of alternatives in a sub-area of a metropolitan area where use of Federal capital funds is contemplated. The MIS was a planning study to improve transportation systems, taking into account surrounding land uses, environment, transportation systems, and community resources. A major investment study includes four phases, as follows:

- Phase I:** Study initiation, purpose and need, consensus building, and initial development of conceptual alternatives for stormwater management, transportation, and community revitalization activities.
- Phase II:** Analysis and screening of conceptual alternatives.
- Phase III:** Further alternatives evaluation and selection.
- Phase IV:** Preliminary design and engineering. At the end of Phase IV, the decision whether or not to build a project would be made by all parties.

In January 1995, the sponsors issued a request for proposals to contract with a professional engineering firm to provide coordination of the MIS, preliminary design, and environmental studies for the Holdrege Street Bypass and Antelope Valley Roadways Project. Per the City's Executive Order 48053, dated January 25, 1995, a selection committee was appointed, consisting of representatives from the City, LPSNRD, RTSD, NDOR, and UNL. Based on letters sent from the City, three engineering firms were chosen to be interviewed by the selection committee. Ultimately Parsons Brinckerhoff Quade & Douglas, Inc. was selected.

In October 1995, the City entered into an agreement with Parsons Brinckerhoff Quade & Douglas, Inc., with Olsson Associates and Cline Williams included as subconsultants in the original contract. The original contract between the City and Parsons Brinckerhoff Quade & Douglas, Inc. included a scope of services for all four phases of the MIS, which were not to

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exceed \$2,900,000 without prior consent of the City. Subsequently, twelve amendments were made to the contract, bringing the total contract amount to \$32,764,764, including work which was outside the original scope of services, as noted below:

Engineering Contract	Date	Total Contract Amount	Explanation
Original Contract	10/13/1995	\$ 740,115	Original agreement for Phases I through IV; authorization to begin Phase I at \$740,115. Total of all Phases not to exceed \$2,900,000.
Amendment 1	2/3/1997	\$ 2,440,115	Combine Phase I & II at no additional costs; increase study area, which increased costs (specific increase not stated); authorization for Phase III at \$1,700,000. Total of all phases not to exceed \$4,100,000
Amendment 2	6/25/1998	\$ 4,641,000	Amend Phase III, as mutually agreed upon for additional work; authorize Phase IV at \$2,200,885.
Amendment 3	2/3/1999	\$ 5,439,000	Increase scope and cost of Phase IV by \$798,000.
Amendment 4	7/17/2000	\$ 7,213,000	Original Phase IV services completed; increase scope and cost of additional Phase IV services by \$1,774,000.
Amendment 5	11/14/2001	\$ 9,676,664	Increase scope and cost of additional Phase IV services by \$2,463,664.
Amendment 6	3/4/2002	\$ 13,251,664	Approval of Phase V Planning, Final Design, Management, and Construction Services without a new solicitation for \$3,575,000.
Amendment 7	9/20/2002	\$ 18,152,324	Amendment to Phase V for additional services for \$4,900,660.
Amendment 8	9/24/2003	\$ 21,923,987	Amendment to Phase V for additional services for \$3,771,663, this amendment clarified that Construction Services in Amendment 6 only applied to the Northeast Community Park.
Amendment 9	10/1/2004	\$ 24,471,436	Amendment to Phase V for additional services for \$2,547,449.
Amendment 10	8/25/2005	\$ 28,515,211	Amendment to Phase V for additional services for \$4,043,775.
Amendment 11	8/28/2006	\$ 31,168,959	Amendment to Phase V for additional services for \$2,653,748.
Amendment 12	12/3/2007	\$ 32,764,764	Amendment to Phase V for additional services for \$1,595,805.

Note: Final contract amount of \$32,764,764 included \$1,526,669 for a fixed fee for profit and \$31,238,095 for actual costs.

In April 2007, amendments indicated Parsons Brinckerhoff Construction Services, Inc. had merged with Parsons Brinckerhoff Quade & Douglas, Inc. The surviving entity changed its name to PB Americas - except in Nebraska, where its name has been approved as Parsons Brinckerhoff Americas, Inc. For the purposes of this report, we will refer to and reflect all the entities and names changes related to Parsons Brinckerhoff Quade & Douglas, Inc. as Parsons Brinckerhoff.

During the course of this audit, the APA periodically consulted the May 2009 edition of the "LPA Guidelines Manual for Federal Aid Projects," which was published by the Nebraska Department of Roads (NDOR). As a result, that manual is sometimes referenced in this report to

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support or explain certain audit findings. It is important to note that the content of NDOR’s manual does not, in and of itself, constitute a body of substantive laws or regulations. Rather, it serves merely as a guideline for implementing the numerous and sometimes complex requirements contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), which establishes minimum standards for federally funded ventures, like the Antelope Valley Project, requiring the acquisition of real property or displacement of persons from their homes, businesses, or farms. Though having occurred prior to 2009, the activity addressed in this audit report may be examined in accordance with the provisions of the current NDOR manual because the Uniform Act to which that manual applies has remained – except where otherwise noted – essentially unchanged over the period tested. It should also be noted that NDOR reviewed the acquisition of properties related to the transportation portion of the Antelope Valley Project, while the USACE reviewed the acquisition of properties related to the flood reduction portion of the Project.

According to Chapter 1 of the May 2009 edition of the “LPA Guidelines Manual for Federal Aid Projects”, , Nebraska Department of Roads (NDOR) defines preliminary engineering as all engineering, design, and environmental studies work prior to letting of construction bids, including preparation of construction plans, specifications, and costs estimates to be used for bidding and building the project.

The table above includes the total preliminary engineering contract amount. See **Exhibit A** for the total payments to Parsons Brinckerhoff and its subconsultants under this engineering contract. As of August 2009, payments totaled \$30,011,580 for this preliminary engineering contract.

The MIS sponsors and consultants met with the USACE in December 1995 to discuss coordination efforts between the MIS and the Antelope Creek Feasibility Study. The two studies would be conducted concurrently and would integrate the work efforts of both the roadway and the flood protection studies.

A kickoff meeting for the MIS was held in January 1996, at which time it was decided the Antelope Valley Major Investment Study (AVMIS) would become the official title of the study, replacing the Holdrege Street Bypass and Antelope Valley Roadways Project Major Investment Study. During February 1996, the AVMIS held two open house meetings, which gave the public the opportunity to obtain more information and understanding about the study. The USACE also provided a fact sheet regarding the Antelope Creek Feasibility Study. A two-day town hall meeting was held by the AVMIS in September 1996 to focus on the purpose, need, opportunities and constraints of the study and to allow for intensive citizen comment on findings of Phase I and Phase II work. The USACE also actively participated in the town hall meetings.

The top eight major purposes and needs of the Antelope Valley Study were established, as follows:

- | | |
|------------------------|---------------------------|
| Neighborhood Vitality | Land Use Patterns |
| Stormwater Management | Trail Continuity |
| Downtown Area Vitality | Recreation |
| Traffic Operations | Health and Human Services |

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In November 1996, an official meeting of elected officials and senior administrators of the local partners, called the Super Commons, reviewed and accepted the results of Phase I/II and directed Phase III to begin. The AVMIS published a *Phase I & II Summary Report* in December 1996.

Phase III of the AVMIS was conducted from January 1997 to December 1997 to assess alternative means of solving the purpose and needs. From March 1997 through July 1997, the most feasible and publicly acceptable options from a list of over 100 possible actions were combined into four “packages of alternatives.” Each package highlighted major differences in approach to solving problems and integrated different roadway systems with the stormwater approach. All packages had similar community revitalization actions. These packages (A, B, C, D) allowed for more thorough analyses on a more focused set of actions. The Draft Single Package was created from the best elements of each of the four packages. In December 1997, the Super Commons met and endorsed the Draft Single Package for partner adoption into their legal planning process, and Phase IV of the study was authorized. The AVMIS Phase III was completed, and the *Phase III Report: Draft Single Package* was prepared.

Phase IV began in January 1998. In April 1998, the Lincoln-Lancaster County Planning Commission and City Council of Lincoln adopted the AVMIS (Phase III) report and the Draft Single Package into the Comprehensive Plan. AVMIS Phase IV would provide Functional Design and Environmental Impact Statement development.

From April 1998 to October 1999, UNL developed a new Campus Master Plan for the City Campus in Lincoln, utilizing the Draft Single Package as a basis for definition of the campus area and for access types and locations.

In August 1998, the Super Commons met and formally recommended amendment of the Draft Single Package for the 33rd Street underpass, changing its name to the Amended Draft Single Package. The Amended Draft Single Package was approved by the Planning Commission and City Council in September through November 1998. The Amended Draft Single Package included a stormwater conveyance system that would fully accommodate the 100-year storm within its banks, ease development restrictions on land within the floodplain, and provide an opportunity for a continuous bike trail around downtown. A north-south roadway would be provided in the 19th Street corridor from K Street along the east side of the UNL City Campus, continuing north and west to and over the Burlington Northern Santa Fe (BNSF) mainline railroad, and connecting to 14th Street near Military Avenue. It would intersect a new east-west roadway on a structure at a signalized intersection near the BNSF mainline railroad. See **Exhibit R** for a map of the Amended Draft Single Package.

Phase I or Priority Projects

The Amended Draft Single Package included ten proposed projects, known as Phase I projects, as follows:

- Construct a landscaped Antelope Creek waterway from J Street to Salt Creek designed to reduce and confine the designated 100-year flood plain within the channel banks;
- Reduce flood damages and remove up to 1,000 structures and up to 50-acres of the UNL City Campus from the designated 100-year flood plain;
- Develop new park and recreation facilities, including the expansion of Trago Park;

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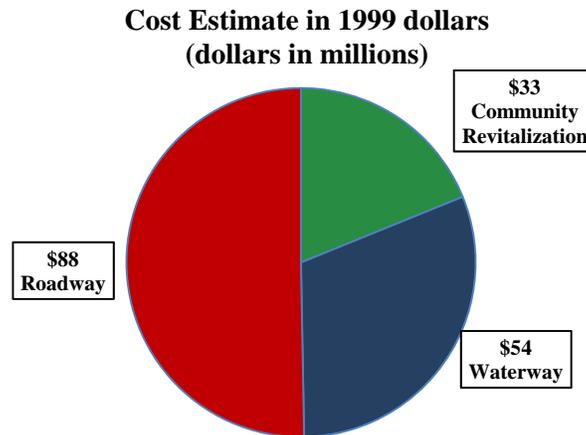
- Create a downtown/UNL bike trail loop connecting six existing and proposed trails to provide direct access to downtown and the UNL City Campus;
- New north-south roadway;
- New east-west roadway;
- Eliminate dangerous railroad/street intersection with BNSF mainline;
- Proposed downtown supermarket, potential expansion of the downtown area east of 17th Street to the new waterway;
- “Closer to Home” strategies to improve the core neighborhoods; and
- Expand wrap-around community centers.

See **Exhibit T** for a map of the Phase I or Priority Projects.

The proposed Phase I Projects were estimated to take six to ten years to construct at an approximate cost of \$175 million in 1999 dollars. Preliminary cost estimates included:

Component of Phase I	Amount (in millions)
Waterway, Bridges, Trails and Landscape (Waterway)	\$ 54
Railroad Grade Separation Road Improvements (Roadway)	\$ 52
North-South and East-West Roadways with Trail and Landscape (Roadway)	\$ 36
East Downtown Redevelopment (Community Revitalization)	\$ 13
Neighborhood Development and “Closer to Home” Strategies (Community Revitalization)	\$ 9
Northeast Park and Trago Park (Community Revitalization)	\$ 7
Community Wrap-Around Community Centers (Community Revitalization)	\$ 3
Balance of Bike Trail Loop (Community Revitalization)	\$ 1
Total	\$ 175

Source: Lincoln Journal Star insert, *The Antelope Valley Study – The Big Picture* (July 2000)



Source: Lincoln Journal Star insert, *The Antelope Valley Study, - The Big Picture* (July 2000)

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The Phase I proposed project funding was as follows, over the six to ten year period:

Source of Funds	Amount (in millions)
Federal Government	\$ 49
State of Nebraska	\$ 28
City of Lincoln (State gas tax monies/ State Roads Funds)	\$ 18
City of Lincoln (Federal gas tax monies/ Federal TEA-21 Road Funds)	\$ 7
City of Lincoln (Highway Allocation Funds, Urban Development Funds, Park Development Funds)	\$ 10
City bonded Tax Increment, generated by additional real estate taxes paid by the private sector based on new development and rehabilitation efforts	\$ 10
State and UNL land transfers	\$ 11
Burlington Northern Santa Fe Railroad	\$ 12
Private investors, corporations and foundations	\$ 12
Lower Platte South Natural Resources District	\$ 10
Railroad Transportation Safety District	\$ 8
Total Sources of Funds	\$ 175

Source: Lincoln Journal Star insert, *The Antelope Valley Study – The Big Picture* (July 2000)

During 1999, the USACE study team prepared preliminary channel design details, hydraulic models, flood damage analysis risk model computer runs, and detailed cost estimates for various flood control alternative plans and levels of protections. A preliminary methodology was developed for cost sharing of flood control and transportation project features. This preliminary cost sharing methodology was presented and reviewed with the Federal Highway Administration (FHWA) in March 1999 and also in a meeting with the USACE, Northwestern Division and Missouri River Region, in June 1999.

Detailed real estate information and mapping were obtained for estimating the lands and damages costs. The USACE study team determined the location and extent of utility relocations and alterations required for the alternative projects. Initial conceptual bridge, retaining wall, and pilot channel designs were developed for the project.

In April 2000, the Joint Antelope Valley Authority (JAVA) Interlocal Cooperation Agreement between UNL, the City, and the LPSNRD was signed to coordinate planning and implementation of a public project involving community revitalization, transportation, and drainage/flood control improvements. This administrative entity was formed under the Interlocal Cooperation Act, which is found at Neb. Rev. Stat. §§ 13-801 to 13-827 (Reissue 2007, Cum. Supp. 2008). Current members of the JAVA Board are:

Greg MacLean – Director of City of Lincoln Public Works and Utilities Department
Glenn Johnson – General Manager of LPSNRD
Christine Jackson – Vice Chancellor for Business and Finance at UNL

The execution of the April 2000 agreement initiated the “Preparation Period,” which included the creation of JAVA as an independent administrative government entity to continue or complete: a) the planning, design, and approval of the project; b) coordination and dissemination of public information and review; and c) review and update of the funding and financing plan with the State of Nebraska and other funding sources for the “Implementation Period.” The “Preparation Period” commenced in the spring of 2000 and would take six months to two years to complete.

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At the end of June 2000, the Draft Feasibility Report and Draft Environmental Assessment were released for public review. These reports concluded that a proposed flood control project was economically feasible. The flood control project recommended for cost sharing provides maximum annual economic benefits in excess of annual costs with annual net benefits of \$4,534,000 and a benefit-cost ratio of 1.32. This meant the new Antelope Valley waterway was eligible to be cost shared with the Federal government. These reports were completed in October 2000.

From January 1999 to June 2000, the Draft Environmental Impact Statement was prepared. This was also released for public review at the end of June 2000. The Final Environmental Impact Statement was available for public comment between September 2001 and October 2001.

On October 31, 2001, the FHWA rendered its Record of Decision on the Final Environmental Impact Statement, indicating the Amended Draft Single Package best satisfied the purposes and needs of the project with the least adverse environmental impact. The FHWA adopted the Antelope Valley Amended Draft Single Package as the proposed action for the project, opening the way for its implementation.

Upon receipt of the FHWA Record of Decision, the City, UNL, and the LPSNRD all signed Exhibit B of the JAVA Interlocal Cooperation Agreement, initiating the "Implementation Period" on December 21, 2001. The "Implementation Period" authorized JAVA to implement property acquisition, including condemnation, relocation assistance programs, and the completion of the design, funding, construction and implementation of Phase I components. The "Implementation Period" was estimated to take six to ten years to complete.

Implementation of Project

After formal Federal approval of the project, Phase V of the MIS shifted from planning, preliminary engineering, and environmental services to project implementation through final design and construction engineering services. The City modified the October 1995 original agreement with Parsons Brinckerhoff in March 2002 in amendment 6, without new requests for proposals. The goal of this phase was to bring priority elements (Phase 1 projects) of the Amended Draft Single Package to a sufficient level of design so that viable redevelopment projects could be identified, priorities and the rights-of-way could be assembled, property owners and tenants could be relocated, utilities could be abandoned or relocated, and public improvement construction contracts could be let for bidding. Continued planning and design services were also provided for the City's Urban Development Department for the development of the East Downtown Redevelopment Plan and Neighborhood Redevelopment Plan. The new tasks under amendment 6 include:

- *Planning and Communication Services* – included Urban Development planning services, public review and liaison components, and line and grade roadway planning;
- *Final Design Documentation Services* – included survey services, roadway design services, channel design services, structural design services, trail design services, right-of-way design services, Northeast Community Park design services, East Downtown and Trago Park design services, geotechnical design services, utility design and coordination services, and reviews and submittals;

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- *Program Coordination Services* – included design administration and coordination, quality assurance/quality control, constructability review and value engineering, program control, cost estimating, financial plan updates, strategic planning, administrative services, project oversight and control, special public involvement and partner services, environmental mitigation implementation, and master or special agreements; and
- *Construction Phase Services* – included construction engineering (Amendment 8 clarified that construction services were only for the Northeast Community Park, currently named Fleming Fields).

Additional services under the contract were agreed upon in September 2002 under amendment number 7 and approximately every year thereafter, through amendment number 12 in December 2007.

Construction Management Contract

In May 2003, the City and JAVA issued a request for proposals for program management and construction phase services for various infrastructure projects. The City and JAVA intended to retain a professional engineering firm to provide normal and customary program management and construction phase services for several projects, as follows:

- Y Street Bridge and Roadway – bid and construction to start in fall of 2003;
- Vine Street Bridge and Roadway – bid and construction to start in fall of 2003;
- Military Road Bridge and Roadway – bid and construction to start in fall of 2003;
- O Street Bridge and Roadway – bid and construction to start during the spring of 2005;
- N, P, & Q Street Bridges and Associated Roadways – bid and construction to start in the fall of 2004; and
- J Street Bridge and Roadway – bid and construction to start in the spring of 2007.

The request for proposals also included language for additional construction phases and other services: “Based on the firm(s) performance and at the sole option of JAVA, additional services during the construction phase or additional projects may be negotiated at a later time.” (Section 8.1 of Request for Proposals Specification No. 03-153.)

The JAVA Chairman appointed a selection committee in May 2003, consisting of representatives from the City, LPSNRD, and UNL, to select the consultant to perform the program management and construction phase services for the Antelope Valley projects. Based on a letter sent by the City, four engineering firms were selected to be interviewed, and ultimately Parsons Brinckerhoff was selected as the consultant. JAVA entered into a construction management agreement in September 2003 with Parsons Brinckerhoff. The scope of services for the first three projects described above included:

- *Program management services* – setting up and utilizing a cost accounting system that will provide the necessary detail to allow cost allocations between the multiple funding entities, as well as monitor and report budget information to JAVA, coordinate the individual consultant efforts providing program management and construction phase services (the Antelope Valley Construction Consortium – AVCC – comprised of Parsons Brinckerhoff, Olsson Associates, the Schemmer Associates and HWS Consulting Group), act as the single

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point of contact between JAVA and the AVCC, and monitor and maintain an overall Antelope Valley construction schedule reflecting individual contracts and contractors' milestones. As needed, technical support in the areas of environmental, traffic operations, utilities coordination, structures, and geotechnical will also be required; and

- *Construction Phase Services* – includes meetings, distributing shop drawing submittals, generating contractor payments, conducting continual inspections, preparing contract modification/work orders, maintaining project files, performing construction materials testing, maintaining documentation, conducting Davis-Bacon wage interviews, providing correspondence to JAVA, coordinating field record plans, providing public notifications, providing utility coordination, surveying, and other technical support, and performing project closeout.

The original construction management contract was for just over \$2.3 million dollars for the first three projects. The contract includes a fixed fee for profit as well as a maximum amount for actual expenses. Staff from the consultant, comprised of a program manager, office engineer, administrative assistant, and technical support, make up the “core team,” whose costs are shown separately in the contract. Individual project teams working on the project are made up of other consultant staff. Through amendment 6, entered in May 2009, the total cost of this contract is in excess of \$13 million. See **Exhibit B** for details of the projects and contract costs.

After the September 2003 original contract with Parsons Brinckerhoff, the contract was assigned to Parsons Brinckerhoff Construction Services, Inc. in November 2003 to streamline the administration of the contract and to clarify the respective roles of the companies as they serve JAVA. Amendment 3 to the contract, approved in April 2007, indicated Parsons Brinckerhoff Construction Services, Inc. had merged with Parsons Brinckerhoff.

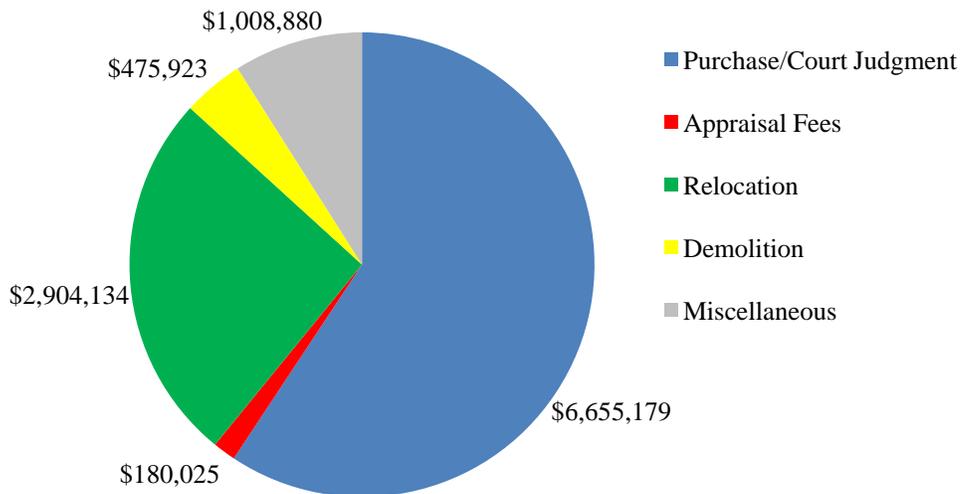
See **Exhibit C** for the total of \$9,903,678 payments made through August 2009 to Parsons Brinckerhoff and its subcontractors under this construction management contract.

Land Acquisition/Relocation Information

According to Chapter 7 of the May 2009 edition of NDOR's “LPA Guidelines Manual for Federal Aid Projects: “Right-of-Way (ROW) is a general term denoting land or property acquired for or devoted to a public use. If ROW is not already owned for your public project, it must be acquired by purchase, donation or eminent domain. Fee simple title, permanent easements, and temporary easements are all means of conveying ROW.”

Between September 1, 2004, and August 31, 2009, the City recorded \$11,224,141 for land acquisitions and associated expenses of JAVA. These expenditures were broken down as follows:

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Chapter 7 of NDOR’s May 2009 edition of the “LPA Guidelines Manual for Federal Aid Projects” states further: “All ROW acquired must conform to the rules and regulations under Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The Uniform Act applies whenever federal dollars are used in any phase of a project.”

The Uniform Act’s main objectives under 49 CFR 24.1 are: “(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; (b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole...”

Under the Uniform Act at 49 CFR 24.9(b), “Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.” To maintain this confidentiality, the APA does not disclose the names or locations of the property acquired by JAVA. Throughout our report, we have referred to these properties in general terms.

Land Acquisitions

The acquisition of property by JAVA can be done by several methods: direct purchase, eminent domain, and donations. The acquisition process begins with a resolution from the JAVA Board to begin the right-of-way process. Upon approval of the resolution, the request for acquisitions, whatever the type, is sent to the City of Lincoln’s Real Estate Division, which prepares the necessary documentation to acquire the property, and coordinates with the appropriate professionals to handle titles, appraisals, reviews, negotiations, relocation assistance, and condemnation proceedings, when required.

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According to Real Estate Division staff, an appraisal is always done on each property followed by a review of the appraisal. When an offer made to an owner for the purchase of a property, that offer must be equal to or greater than the just compensation amount which is based on review appraisal amount, even if the valuations disagree between the appraisal and the review appraisal. 49 CFR 24.102(i) indicates, “The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves an administrative settlement as being reasonable, prudent, and in the public interest.”

JAVA’s Administrative Regulation, Acquisition Regulations, Sections (D)(11) and (12) (January 15, 2002) indicate, when negotiations fail and condemnation is authorized, the Real Estate Division sends a final letter to the property owner along with a written explanation of the eminent domain proceedings, including relocation assistance information. When the condemnation award is determined, a certificate, or Return of Appraisers, is executed and forwarded by the County Judge to the Register of Deeds for recording. Title to the property is vested in JAVA when the condemnation award is paid to the County Court, regardless of any appeals.

JAVA’s Administrative Regulation, Acquisition Regulations, Section (E) (January 15, 2002) also states, when real property acquisitions and relocation payments are undertaken on projects financed in whole or in part by Housing and Urban Development (HUD), Department of Transportation (DOT), or any other Federal agency, the following are required at a minimum:

- Official determination to acquire
- Notice of intent to property owner and tenants to acquire the property
- Notice of land acquisition procedures
- Invitation to owner to accompany appraiser
- Appraisal reports, including reviewer’s report
- Determination of just compensation
- Statement of the basis of determination of Just Compensation
- Written purchase offer
- Notice to tenant of the date of initiation of negotiations
- The purchase agreement, deeds, declaration of taking, or tenant waiver
- Disclosure statement of settlement costs
- 90 days notice to surrender possession of premises

Relocation Assistance

Relocation assistance may include the following:

Residential Properties

Moving Expenses – actual, reasonable moving costs by a commercial mover and related expenses (transportation, temporary quarters, storage of personal property, insurance costs while personal property is in storage or transit, reconnection of utilities and other related costs) all of which must be supported by receipted bills, or a fixed moving cost payment for a self-move.

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Replacement Housing Payments – these payments are to compensate the displaced person for increases in housing costs associated with the acquisition of his or her dwelling. The payment represents the difference between the acquisition cost of the acquired dwelling and the purchase price of a comparable dwelling chosen by the City, or the replacement cost of the new occupied dwelling, whichever is less. A comparable dwelling means the replacement dwelling and the acquired dwelling are substantially the same, and the replacement dwelling is decent, safe, and sanitary. There are different kinds of replacement housing payments, as follows:

- Owner occupants of 180 days or more – may be eligible for a purchase supplement up to \$22,500 in addition to the acquisition price of the property. For example, assume the City purchases a dwelling for \$35,000 and makes the determination that a comparable replacement property will cost \$40,000. The City will pay a maximum replacement housing payment of \$5,000 if the owner purchases a replacement property costing \$40,000 or more. The owner may also be reimbursed for other costs involved in the purchase of the replacement dwelling; however, the total payment, including the purchase supplement, may not exceed \$22,500. These payments may include increased interest costs and other incidental expenses, such as inspection fees, notary fees, legal fees, title fees, appraisal fees, etc. (49 CFR § 24.401)
- Owner occupants and tenants of 90 days or more – may be eligible for a rent supplement to enable a person to rent a decent, safe, and sanitary replacement dwelling for 42 months. If the individual chooses to rent a replacement dwelling with rental payments higher than what he or she has been paying, the eligible payments may not exceed \$5,250. (49 CFR § 24.402)
- Owner occupants of 90 to 179 days and tenants of 90 days or more – if a replacement dwelling is purchased, these individuals are entitled to down payment assistance in the amount the person would receive as a rent supplement as described above. (49 CFR § 24.402(c))
- Replacement Housing of last resort – When a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, alternative assistance shall be provided. These payments must be adequately justified either:
 - On a case-by-case basis, for good cause in which appropriate consideration has been given to the availability of comparable replacement housing in the project area, the resources available to provide comparable replacement housing, and the individual circumstances of the displaced person.
 - By a determination that there is little, if any, comparable replacement housing within the project area; and therefore, last resort housing is necessary for the area as a whole, a project cannot be advanced to completion in a timely manner without last resort housing assistance, and the method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total project costs. (49 CFR § 24.404)

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Non-residential Moving Costs (Businesses, Farms, and Non-Profit Organizations)

Owners or tenants are eligible for payments designed to reimburse them for costs of moving personal property, time in searching for a new location, actual loss of tangible property, expenses in establishing a new site, or a fixed payment in lieu of other relocation benefits. Not all businesses, farms, and non-profit organizations will qualify for all payments. A relocation study will determine the extent of eligibility. An online “Relocation Assistance” document issued by the City of Lincoln’s - Urban Development Department - Housing Rehabilitation and Real Estate Division, which can be found at: <http://lincoln.ne.gov/city/urban/real/reloc.pdf>, provides the following information.

Moving Expenses – businesses must first provide an inventory of the items to be moved. City staff will prepare a moving estimate or will secure two bids from commercial movers, with the reimbursement amount not exceeding the low bid. The owner or tenant will be reimbursed the actual reasonable costs of the move by commercial movers, or for a self move, will be paid an amount not to exceed the low bid of the commercial movers.

Searching expenses – may be reimbursed for actual reasonable expenses related to searching for a replacement property, not to exceed \$2,500. Expenses may include costs such as transportation, meals, lodging when away from home, and the reasonable value of time actually spent in search. All expenses must be supported by receipted bills.

Actual direct losses of tangible property – displaced businesses may choose not to move certain items of personal property, or to discontinue the operation. If so, this payment is designed to compensate for some of that loss.

Reestablishment expenses – businesses may be eligible for reimbursement of expenses actually incurred in relocating and reestablishing at a replacement site. Expenses must be reasonable and necessary, and the payment will not exceed \$10,000. Some of these expenses may include, but are not limited to:

1. Repairs or improvements to the replacement real property, as required by law or code.
2. Modifications to the property to adapt it to the business’s needs.
3. Construction and installation costs for exterior advertising signing.
4. Provision of utilities from right-of-way to improvements.
5. Necessary redecoration or replacement of worn surfaces, such as paint or carpeting.
6. Feasibility surveys, soil testing, and market studies.
7. Advertisement of new replacement location.
8. Professional fees in connection with the purchase or lease of a new site.
9. Impact fees or one-time assessments for anticipated heavy utility usage.
10. Estimated increased costs of operation during the first two years at the new site for such items as:
 - a. lease or rental charges
 - b. personal or real property taxes
 - c. insurance premiums
 - d. increased utility charges, excluding impact fees.

The following is a nonexclusive list of reestablishment expenses not eligible for reimbursement:

1. Purchase of capital assets, such as office furniture, machinery, or trade fixtures.
2. Purchase of materials, supplies, or other items used in the course of normal operations.

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3. Interest on money borrowed to make the move or purchase the replacement site.
4. Payment to a part-time business in the home which does not contribute substantial income.

Fixed Payment – businesses may be eligible for a fixed payment in lieu of actual moving expenses, reestablishment expenses, actual direct loss of tangible personal property, and searching expenses. Such payment may not be less than \$1,000 nor more than \$20,000.

Federal Involvement

As mentioned already, both the waterway and transportation projects were Federally-funded projects and, as such, were required to follow specific Federal regulations.

The USACE was responsible for most phases of the waterway project, including the environmental studies, preliminary design, preparation of plans, specifications and estimates, preparation of the bid proposal package, advertisement for letting, contract administration, and inspection. Therefore, the APA felt there was little risk that Federal guidelines were not complied with and did minimal testing of the work performed by the USACE.

The Intermodal Surface Transportation Efficiency Act of 1991, the Transportation Equity Act for the 21st Century of 1998 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 all changed FHWA's role in the majority of Federal-aid highway projects from that of direct approval to a stewardship and oversight basis. These laws increased the roles of State Transportation Agencies (STA) in project oversight. However, FHWA is ultimately accountable for ensuring that the Federal-aid Highway Program is delivered consistent with established requirements. Nebraska's STA – the Nebraska Department of Roads (NDOR) – has a Stewardship & Oversight Agreement with the FHWA dated October 2006 that clarifies the roles and responsibilities of both FHWA and NDOR. Similar agreements have been in place since 1992. NDOR assumes the FHWA's responsibility for the oversight and approval for the design, plans, specifications, estimates, contract awards, and construction inspection.

Local entities are not recognized by Federal law as direct recipients of Federal-aid funds. Although NDOR cannot delegate responsibility, activities can be delegated and the local entities held accountable to NDOR. The following activities may be delegated to local agencies:

- Environmental studies
- Procurement of consultant services
- Preliminary design
- Surveying
- Right-of-Way acquisition
- Work by local forces or utility companies
- Preparation of plans, specifications, and estimates
- Preparation of bid proposal package
- Advertisement for letting
- Contract administration
- Construction inspection

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The following activities cannot be delegated to local entities:

- National Environmental Policies Act (NEPA) review and approval
- Design exception approval
- Sole source justification approval
- Right-of-Way certification
- Plan, specification, and estimate approval
- Disadvantaged Business Enterprises (DBE) goals
- Labor compliance enforcement
- Final inspection and acceptance

To help local entities in their administration and management of these activities, NDOR has published a manual of guidelines. The most current manual, "LPA Guidelines Manual for Federal-Aid Projects" is dated May 2009. This manual superseded the "Guidelines for Transportation Program Funds for Eligible Local Projects" dated July 2005.

For every project let, the NDOR and City sign a written agreement detailing the responsibilities of each party. Among other things, the agreement indicates, "For construction engineering to be eligible for State or Federal participation, a selection process must be completed. The City's Design Consultant under contract for design services will not be eligible to do construction engineering under their existing contract . . . but will be eligible to be considered under the approved FHWA selection process for selection of a consultant for construction engineering services."

Federal aid projects are developed by completing work in the following work phases:

- 1) Preliminary Engineering (NEPA)
- 2) Design
- 3) Right-of-way
- 4) Utilities
- 5) Construction Engineering
- 6) Construction

The City requests funds from NDOR. It is then NDOR's responsibility to request obligation of funds from FHWA. It is FHWA's responsibility to authorize the reimbursement of eligible expenses. When a Federal authorization date for a specific phase is given, a notice-to-proceed is issued by NDOR to the LPA. This authorization date is the day on which eligible work phase expenses can begin to be incurred.

In March 2010, NDOR contacted the APA, requesting access to the working papers related to this attestation review. Pursuant to Neb. Rev. Stat. § 84-311(1) (Reissue 2008), access to the APA's audit working papers is restricted to, among others specifically designated, the entity being audited. Because JAVA, rather than NDOR, was the audited entity, the APA could not release the requested working papers without JAVA's prior written permission to do so. When asked, however, JAVA declined to provide such authorization and directed the APA to advise NDOR to submit a request directly to JAVA. On April 6, 2010, subsequent to the exit

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conference, JAVA granted NDOR access to the APA workpapers only after the final report has been issued and NDOR has provided JAVA the general scope and description of the review to be done by NDOR.

Roadway Construction Contracts

The roadway of the Antelope Valley project is the component with the highest estimated costs. Once the individual roadways were planned, designed, and any necessary right-of-ways acquired, the projects were ready for a public letting. The City, as the local sponsor, handled the request for proposal process and awarded the contract. The awarded bid was sent to NDOR for acceptance. The following is a list of contractors and expenditures for each roadway project, as accounted for in the City's accounting system through August 31, 2009:

Project	Contractor	Contract Amount	Expenditures as recorded by City
Y Street Bridge and Roadway	Hawkins Construction	\$ 4,942,799	\$ 4,901,902
Vine Street Bridge and Roadway	Constructors	\$ 4,399,272	\$ 4,315,222
Military Bridge and Roadway	Hawkins Construction	\$ 5,295,792	\$ 5,295,267
O Street Bridge and Roadway	United Construction	\$ 3,233,216	\$ 3,161,642
P and Q Street Bridge and Roadway	Hawkins Construction	\$ 5,435,684	\$ 5,435,813
Big Tee	Hawkins Construction	\$ 21,495,100	\$ 21,495,100
East Leg Bridge and Roadway	Hawkins Construction	\$ 24,463,323	\$ 23,630,051
North/South Road Vine to Y Street	Hawkins Construction	\$ 1,143,989	\$ 1,097,315
J Street Bridge and Roadway	Christensen Brothers	\$ 1,976,271	\$ 1,848,558
North/South Road from P to Vine Street (Note 1)	Constructors	\$ 3,699,679	\$ 989,416
N Street Bridge (Note 2)	USACE	\$ 3,012,037	\$ 3,012,037
Totals		\$ 79,097,162	\$ 75,182,323

Note 1: Contract date was March 15, 2009, so this project had just started.

Note 2: USACE contracted with Park Construction

Costs and Contributions

All entities reported their costs/contributions on their own fiscal year. Since JAVA's fiscal year is September through August, APA converted all financial information to the September through August fiscal year, with the exception of the USACE, which is reported on the Federal fiscal year, October through September.

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Antelope Valley costs, contributions, and direct payments from inception through August 31, 2009:

Antelope Valley Project Costs

Entity	Prior to FY 05	FY 05	FY 06	FY 07	FY 08	FY 09	Total
JAVA	\$36,346,932	\$28,737,330	\$15,716,630	\$13,116,180	\$32,910,113	\$22,698,292	\$ 149,525,477
City	\$23,416,459	\$ 1,615,703	\$ 1,448,960	\$ 1,119,000	\$ 1,200,136	\$ 386,018	\$ 29,186,276
LPSNRD	\$ 1,338,287	\$ 370,687	\$ 1,535,778	\$ 1,253,422	\$ 2,453,586	\$ 106,155	\$ 7,057,915
USACE	\$ 5,590,319	\$ 444,874	\$ 2,193,095	\$ 3,569,434	\$ 5,626,419	\$10,987,454*	\$ 28,411,595
Total Antelope Valley Costs	\$66,691,997	\$31,168,594	\$20,894,463	\$19,058,036	\$42,190,254	\$34,177,919	\$ 214,181,263

* Over \$5.7 million of these costs were incurred in September 2009.

Antelope Valley Project Contributions and Direct Payments

Entity Contributions /Direct Payments	Prior to FY 05	FY 05	FY 06	FY 07	FY 08	FY 09	Total
Contributions							
LPSNRD	\$ 8,345,112	\$ 5,290,181	\$ 1,471,555	\$ 827,775	\$ 444,589	\$ 515,468	\$ 16,894,680
City	\$21,739,424	\$ 1,317,711	\$ 2,620,199	\$ 5,375,100	\$11,144,200	\$10,346,564	\$ 52,543,198
UNL	\$ 735,000	\$ 40,500	\$ 0	\$ 40,500	\$ 44,996	\$ 40,339	\$ 901,335
NDOR	\$ 8,756,531	\$12,441,309	\$ 6,307,603	\$ 6,427,623	\$10,991,322	\$15,725,091	\$ 60,649,479
RTSD	\$ 8,380,000	\$ 1,800,000	\$ 1,200,000	\$ 1,300,000	\$ 500,000	\$ 500,000	\$ 13,680,000
COPS	\$ 0	\$ 0	\$ 0	\$ 0	\$ 1,693,178	\$ 2,190,783	\$ 3,883,961
Bond Proceeds	\$11,223,658	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 11,223,658
Bond Costs	\$ 808,195	\$ 388,500	\$ 341,588	\$ 314,169	\$ 288,999	\$ 267,599	\$ 2,409,050
State Cigarette Tax	\$ 500,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 500,000
Private Contributions	\$ 0	\$ 64,936	\$ 154,000	\$ 400,000	\$ 0	\$ 155,000	\$ 773,936
Transfers from City Funds:							
<i>General</i>	\$ 0	\$ 0	\$ 1,111,806	\$ 1,264,122	\$ 304,886	\$ 243,963	\$ 2,924,777
<i>Parks & Recreation</i>	\$ 466,359	\$ 215,352	\$ 350,116	\$ 5,082	\$ 499,615	\$ 51,406	\$ 1,587,930
<i>Utility</i>	\$ 695,374	\$ 964,597	\$ 273,636	\$ 1,063,178	\$ 990,339	\$ 437,114	\$ 4,424,238
<i>Urban Development</i>	\$ 3,934,832	\$ 782,362	\$ 543,635	\$ 188,150	\$ 599,616	\$ 73,403	\$ 6,121,998
Interest	\$ 232,885	\$ 168,669	\$ 38,792	\$ 16,600	\$ 254	\$ 720	\$ 457,920
Rental Income	\$ 55,348	\$ 19,519	\$ 9,550	\$ 13,650	\$ 4,690	\$ 550	\$ 103,307
Miscellaneous	\$ 0	\$ 32,734	\$ 35,822	\$ 19,940	\$ 177,693	\$ 245	\$ 266,434
Direct Payments							
USACE	\$ 5,590,319	\$ 444,874	\$ 2,193,095	\$ 3,569,434	\$ 5,626,419	\$10,987,454	\$ 28,411,595
LPSNRD	\$ 1,338,287	\$ 370,687	\$ 1,535,778	\$ 1,253,422	\$ 2,453,586	\$ 106,155	\$ 7,057,915
Total Contributions/ Direct Payments	\$72,801,324	\$24,341,931	\$18,187,175	\$22,078,745	\$35,764,382	\$41,641,854	\$214,815,411

Antelope Valley Project Contributions/Direct Payment over Costs

Entity Contributions /Direct Payments	Prior to FY 05	FY 05	FY 06	FY 07	FY 08	FY 09	Total
Contributions/ Direct Payments over Costs	\$ 6,109,327	\$ (6,826,663)	\$ (2,707,288)	\$ 3,020,709	\$ (6,425,872)	\$ 7,463,935	\$ 634,148

The majority of JAVA's financial information is recorded in Fund 406 in the City's accounting system, with two other funds being used to record other financial information associated with the Antelope Valley project. The APA accumulated the costs of the Antelope Valley project since inception and identified the funding sources or contributions received to pay for the Antelope

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Valley project. The funding for the Antelope Valley project was not all recorded through JAVA. The City, LPSNRD, UNL, and USACE also had direct expenditures related to the Antelope Valley project. The Antelope Valley Project Contributions/Direct Payments over Costs table, above, represents the APA's calculation of the balance on hand of the Antelope Valley project. The fund balance in JAVA fund 406 at August 31, 2009, was \$7,485,540. The APA figures shown above include other costs and contributions that are not included in fund 406, which accounts for the small variance between the APA calculated balance of \$7,463,935 and the actual balance of \$7,485,540.

The following is a brief explanation of each line item in the Antelope Valley Cost table, above:

- **JAVA:** The costs recorded in the main JAVA fund (fund 406 in the City's accounting system). This fund was created in early 2002, when the partner's entered into the interlocal agreement creating JAVA.
- **City:** City costs were comprised from several different sources, including City Street Construction and Cigarette Tax monies, Urban Development Department, Parks and Recreation Department, bond costs, and costs incurred by UNL but reimbursed by the City. See table below for a breakdown of these costs:

Entity	Prior to FY 05	FY 05	FY 06	FY 07	FY 08	FY 09	Total
City Street Construction and Cigarette Tax	\$ 10,953,962	\$ 22,654	\$ 18,528	\$ 4,209	\$ 11,179	\$ 28,580	\$11,039,112
Urban Development	\$ 4,610,028	\$ 622,396	\$ 586,131	\$ 396,470	\$ 579,619	\$ 73,441	\$ 6,868,085
Parks & Recreation Dept.	\$ 7,050	\$ 8,920	\$ 41	\$ 5,082	\$ 320,339	\$ 16,398	\$ 357,830
Bond Costs	\$ 808,195	\$ 388,500	\$ 341,588	\$ 314,169	\$ 288,999	\$ 267,599	\$ 2,409,050
UNL Parking Garage and other UNL/Costs	\$ 7,037,224	\$ 573,233	\$ 502,672	\$ 399,070	\$ 0	\$ 0	\$ 8,512,199
Total City Costs	\$ 23,416,459	\$ 1,615,703	\$ 1,448,960	\$1,119,000	\$1,200,136	\$ 386,018	\$29,186,276

- *City Street Construction and Cigarette Tax:* Costs recorded by the City in the Cigarette Tax fund and the Street Construction fund. The Street Construction fund was primarily used for recording Antelope Valley project costs prior to the creation of JAVA. Currently, the fund is used to record minor costs, such as the annual audit. The Cigarette Tax fund was used to record the proceeds from the bonds (see below for further information regarding the bonds).
- *Urban Development:* The costs incurred by the City's Urban Development Department in association with the Antelope Valley project. These costs were not recorded by JAVA.
- *Parks & Recreation:* The costs incurred by the City's Parks and Recreation Department in association with the Antelope Valley project. These costs were not recorded by JAVA.
- *Bond Costs:* The costs associated with the issuance of the bonds for the Antelope Valley project (see below for further information regarding the bonds). The APA considered bond costs to include service charges and interest paid less the interest earned by the City for the balance of the fund.

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- *UNL*: As UNL incurs costs for the Antelope Valley project, they are recorded in the University's accounting system. UNL then sends an invoice to JAVA to request reimbursement of those costs. UNL is reimbursed from the Cigarette Tax fund. Therefore, the City actually pays for all of these costs. The majority of the costs - \$5.1 million – were for a parking garage. Other miscellaneous projects made up the remaining amounts. The APA also noted additional costs in the University's accounting system designated as being related to the Antelope Valley project, which were not reimbursed by JAVA. Despite being so designated, these costs are not included in the schedule above because, according to UNL staff, they were actually not for Antelope Valley project costs, as indicated in their own system. These additional costs, not reflected in the schedule above, amounted to \$528,782. Subsequent to the exit conference, UNL indicated that \$284,814 of this amount was related to subconsultant work done under Parsons Brinckerhoff, who billed the City for the majority of this work. These payments are included as JAVA costs to Parsons Brinckerhoff; however, the APA did not verify all payments were made from Parsons Brinckerhoff to UNL.
- **LPSNRD**: The LPSNRD incurs costs related to the Antelope Valley project in two ways. First, the LPSNRD incurs costs with outside vendors for Antelope Valley project costs. These costs are paid directly to the vendors from the LPSNRD and are not recorded with JAVA; therefore, these costs were shown as the LPSNRD costs. Second, JAVA requests reimbursement from the LPSNRD for costs already incurred and recorded in the City's accounting system. In the table above, these costs were included as JAVA costs and not those of the LPSNRD. These reimbursements have been accounted for within the LPSNRD's contributions.
- **USACE**: The USACE incurs costs related to the work it performs on the Channel phase of the Antelope Valley project. The USACE's work is paid for by sponsor and Federal sources. The sponsor share of costs is paid for by the City and the LPSNRD. The sponsor share of costs is already accounted for as either a JAVA cost or an LPSNRD costs. Only the Federal share is shown as a USACE cost. The USACE costs are shown on a Federal fiscal year – October through September, rather than the City's and JAVA's fiscal year, September through August – like all the other costs.

The following is a brief explanation of each line item in the Antelope Valley Contributions and Direct Payments table, above:

- **LPSNRD**: The LPSNRD contributions are payments the LPSNRD makes to JAVA for reimbursement of costs JAVA has already incurred and recorded in the main JAVA fund in the City's accounting system. The LPSNRD contributions also include its portion of JAVA's annual operating budget used for JAVA's administrative costs.
- **City**: Contributions received from the City appropriations to fund the Antelope Valley project. The majority of these contributions are from the Capital Improvement Program (CIP) budget. The CIP budget comes from a variety of funding sources, such as General fund revenues, gas taxes, Keno funds, City wheel taxes, and highway allocation funds.
- **UNL**: Contributions received from UNL. Other than the initial transfer of real property, the contributions from UNL are mainly its portion of JAVA's annual operating budget used for JAVA's administrative costs.

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- **NDOR:** Contributions received from the NDOR in the form of both State and Federal funds. State funds included state railroad excise taxes paid from the Grade Crossing Protection Fund. The majority of Federal contributions were FHWA funds. FHWA funds came from various congressionally-authorized programs, such as the Surface Transportation Program.
- **RTSD:** Contributions from the City of Lincoln and Lancaster County Railroad Transportation Safety District (RTSD). The RTSD entered into an agreement with the City to aid in funding for the final design, right-of-way acquisitions, and construction activities of the Antelope Valley projects involving railroads. Annually, the RTSD allots a portion of its budget for those Antelope Valley projects.
- **COPS:** In 2008, the City issued certificates of participation (COPS) from Union Bank to pay for the costs of improvements to basic park elements and infrastructure that were constructed with the USACE construction of the new channel in order to be more cost effective. This is a lease purchase with proceeds held by the bank until the City incurs costs for the designated project. Once costs have been incurred, the City requests reimbursement from the bank. The COPS are being repaid over a four-year period.
- **Bond Proceeds & State Cigarette Tax:** The City issued tax-supported Antelope Valley Project Bonds in March 2002. The bonds were issued pursuant to City Ordinance No. 17969 for an aggregate amount not to exceed \$12 million. The bonds were issued for \$11,080,000, with a premium of \$143,658; therefore, JAVA received total bond proceeds of \$11,223,658. Legislative Bill 657 from the 2001 Legislative Session established the City of the Primary Class Development Fund, currently codified at Neb. Rev. Stat. § 19-102 (Reissue 2007), and, pursuant to Neb. Rev. Stat. § 77-2602(3)(f) (Reissue 2009), provides for the State to distribute annual appropriations of \$1 million from July 1, 2001, through June 30, 2016, from the State’s cigarette tax revenues. These appropriations are to support the design and development of the Antelope Valley project and related financing costs. The funds are distributed quarterly on January 1, April 1, July 1, and October 1 of each year. The first two installments (a total of \$500,000) were used by JAVA to pay a portion of the costs of the Antelope Valley project. The APA did not consider this to be part of the bond proceeds, but an aid payment from the State. The remaining installments will be used to redeem the bonds.
- **Private:** Contributions received from private entities to help fund the Antelope Valley project. The contributions include:

Alltel (Required Obligation)	\$ 64,936
BNSF (Required Obligation)	\$ 554,000
NE Trails	\$ 75,000
Clark Enerson Partners	\$ 30,000
Lincoln Chamber Grant	\$ 50,000
Total	\$ 773,936

- **Transfers from other City Funds:** Some of the costs incurred by JAVA were actually the responsibility of other City departments. Upon incurring these costs, JAVA would request reimbursement from the other City funds involved to cover its portion of costs. Thus, it is reflected in contributions and direct payments table, above, from the actual department it was incurred.

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- **Interest:** Interest earned by the City for the balance in the fund.
- **Rental Income:** The City acquired a few properties as part of the Antelope Valley project that would not be needed for many years. The City rents these properties to individuals until they are needed.
- **Miscellaneous:** These contributions are from a variety of sources, such as the sale of acquired personal property (signs) and reimbursements.

Union Plaza: JAVA, the City, and Union Bank and Trust concurrently entered into three agreements on April 29, 2008, to assist in the financing of street light equipment and other park improvements made along a portion of the Antelope Creek channel for the development of an urban park facility called Union Plaza. Union Plaza is a new three-block urban park located north of 'O' Street between 21st and 22nd Streets that will be constructed as part of the Antelope Valley flood and roadway project.

Union Bank and Trust agreed to lease for \$1 the aforementioned real property and improvements, which became known as the Site Lease, from JAVA and the City. Union Bank and Trust then entered into a Declaration of Trust to issue \$7.5 million certificates of participation (COPS) to be used for the purchase and installation of light poles and related equipment and the construction of other park improvements. The COPS are reflected as a contribution in the table above.

The City then entered into a Lease Purchase Agreement with Union Bank and Trust to lease the real property and improvements back and to repay the COPS issued by Union Bank and Trust. The City agreed to make semi-annual lease purchase payments to Union Bank and Trust starting September 15, 2008, through March 15, 2018. See **Exhibit D** for the breakdown of the lease purchase payments. The City is responsible for the lease purchase payments to Union Bank and Trust, not JAVA. However, according to the City, some of the light poles and equipment were for City projects, and some were for JAVA projects. The costs related to the JAVA projects will eventually be capitalized by the City when the JAVA assets are turned over to the City.

JAVA Expenses

The following represents the JAVA expenses and transfers out, as maintained and provided by the City.

Prior to FY 05	FY 05	FY 06	FY 07	FY 08	FY 09	Total
\$ 36,346,932	\$ 28,737,330	\$ 15,716,630	\$ 13,116,180	\$ 32,910,113	\$ 22,698,292	\$149,525,477

The following vendors, which may include payments for subcontractors, received over \$1 million from JAVA between September 1, 2004, and August 31, 2009, as follows:

Entity/Payee	Amount
Hawkins Construction	\$ 54,744,988
Parsons Brinckerhoff	\$ 17,615,942
Corps of Engineers - Omaha District	\$ 11,359,266
Constructors Inc	\$ 4,651,741

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Entity/Payee	Amount
United Contractors	\$ 3,161,642
BNSF Railway Company	\$ 3,129,280
City of Lincoln (salaries and other expenses)	\$ 1,977,442
Christensen Brothers Inc	\$ 1,848,558
Property #1	\$ 1,648,600
University of Nebraska	\$ 1,596,439
Lincoln Electric System	\$ 1,042,084

Note: Under the Uniform Act, 49 CFR 24.9(b), "Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise." To maintain this confidentiality, the APA does not disclose the payments for property acquired by JAVA.

Exhibit E reflects all vendors paid more than \$5,000 only for the period September 1, 2004, through August 31, 2009.

Exhibit F reflects the total expenses by project only for the period September 1, 2004, through August 31, 2009.

Exhibit G is a summary of the City-let construction contracts for JAVA, which does not include channel work or USACE contracts.

Exhibit H is a summary of the approved subcontractors for the construction contracts.

Criteria

The criteria used in this attestation review were Federal regulations, State statutes, local laws, regulations, or guidelines, internal policies and procedures and good internal control procedures.

Summary of Procedures

Pursuant to Neb. Rev. Stat. § 84-304 (Reissue 2008), the Auditor of Public Accounts (APA) conducted an attestation review of the financial information, procurement procedures, and contractual agreements for September 1, 2004, through August 31, 2009, in accordance with standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. In order to determine completeness and to obtain contractual information related to the financial information subject to detail testing for the period of September 1, 2004, through August 31, 2009, the APA had to look at the entire Antelope Valley Project financial information, as made available to us, which included activity that occurred since inception. The APA's attestation review consisted of the following procedures:

- Reviewed background and history of the Antelope Valley project and JAVA.
- Obtained and accumulated financial information from JAVA, the City, LPSNRD, UNL, USACE, City Parks and Recreation Department and City Urban Development Department to determine total cost of the Antelope Valley project to date.
- Reviewed audits or agreed-upon procedures of JAVA by independent certified public accountants, as provided to the APA.

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- Tested land acquisition and relocation procedures in accordance with the Federal Uniform Act, and State and local laws or regulations.
- Selected 21 expenditures greater than \$10,000, for the period September 1, 2004, through August 31, 2009, to determine if expenditures were proper and reasonable, contained adequate documentation, and were properly processed and approved.
- Randomly selected 50 expenditures, for the period September 1, 2004, through August 31, 2009, to determine if expenditures were proper and reasonable and contained adequate documentation.
- Selected 10 payroll expenditures, for the period September 1, 2004, through August 31, 2009, to ensure employees were actual employees, and work charged to the project was adequately documented and approved. Tested calculation of overhead charged by other City departments.
- Documented and tested procurement process for the selection of consultants and contractors in accordance with the Federal regulations.
- Reviewed consultant and contractor contracts and amendments for the following:
 1. Adequate documentation was on file to support payment to consultant or contractor.
 2. Payment made to consultant or contractor was reasonable for the project.
 3. Terms of the contract were specific and enforceable.
 4. Contracts were approved by JAVA Board.
 5. Change order/contract amendments were properly approved.
 6. Subconsultants and subcontractors were approved to work on the projects.
 7. Invoices or progress reports were approved by someone with direct knowledge of work that was provided.
 8. Liquidating damages or incentives/disincentives were properly assessed, if applicable.
 9. Charges were not incurred prior to the date the project was approved or after the project completion date.
- Tested detail payment requests from the construction management consultant, as follows:
 1. Payroll costs agreed to pay period reports.
 2. No overlapping of payroll costs occurred.
 3. Hours paid agreed to timesheets.
 4. Hourly rates agree to contract rates and payroll records.
 5. Overhead rate or profit rate was properly calculated and documented.
 6. Travel costs were supported by reimbursement claims, agreed to contracts rates, and were reasonable.
 7. Equipment costs were supported by usage reports, were reasonable for the hours worked, and were billed at the contract rates.
- Documented and accumulated information for all subconsultants of the consultants and all subcontractors of the construction contractors. See **Exhibits A, C, and H**.
- Tested journal entries from the City's accounting system, which is used to record JAVA's financial transactions.
- Obtained assistance from FHWA to review change orders on construction contracts. See **Exhibit S**.
- Documented NDOR involvement in the project and tested City reimbursement claims.
- Obtained and reviewed information regarding Union Plaza and Assurity leases.

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- Held an exit conference on March 26, 2010, to discuss the results of this attestation review. In addition to the APA staff, those in attendance were:
 - Glenn Johnson LPSNRD General Manager, JAVA Chair
 - Mary LaGrange UNL Controller
 - Greg MacLean Lincoln Public Works and Utilities Director
 - Roger Figard Lincoln Public Works and Utilities Antelope Valley Project Administrator
 - Kris Humphrey Lincoln Public Works and Utilities Antelope Valley Project Manager
 - Fran Mejer Lincoln Public Works and Utilities Business Manager
 - Steve Werthmann Lincoln Housing and Real Estate Manager
 - Michelle Backemeyer Lincoln Real Estate and Relocation Assistance Agent
 - Clint Thomas Lincoln Real Estate and Relocation Assistance Agent
 - Wynn Hjermstad Lincoln Community Development Manager
 - Randy Peters NDOR Deputy Director
 - Raitis Tigeris NDOR Local Project Coordinator
 - Joe Werning FHWA Division Administrator
 - Kirk Fredrichs FHWA- OPS Team Leader
 - Bob Mattson USACE Project Manager

Summary of Results

The summary of our attestation review noted the following findings and recommendations:

1. Antelope Valley Financial Information

As noted previously, the proposed Phase I Projects were estimated to take six to ten years to construct at an approximate cost of \$175,000,000 in 1999 dollars. This information was provided to the public through a newspaper insert entitled the “Antelope Valley Study – The Big Picture” during 2000.

JAVA provided several cost estimates for the project ranging from \$136,000,000 in 1998 to \$276,000,000 in 2001. Design modifications, design and construction services (work orders) and the AVMIS and Environmental Studies all added costs to the project totalling \$223,000,000. An escalation of cost for the year of construction also added \$53,000,000, for the new 2001 total of \$276,000,000.

As of August 31, 2009, the total cost of the Antelope Valley project was \$214,181,263. The City has estimated the total future costs expected for the completion of the project to be \$32,535,103, based on information that was provided to the APA as of August 31, 2009. The estimated future costs include \$25,973,000 for transportation, \$2,319,486 for storm water, and \$4,242,617 for community revitalization. These estimated future costs were not reviewed or analyzed by the APA.

Costs as of August 31, 2009	\$ 214,181,263
Estimated Future Costs	\$ 32,535,103
Total Expected Costs	\$ 246,716,366

The April 2000 Joint Antelope Valley Authority Interlocal Cooperation Agreement, Section 4.01 indicates, “Each Partner believes that a joint entity offers the best joint administrative decision-

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making and accountability model to insure successful project review and implementation within budget and fiscal constraints.” Additionally, the agreement between JAVA and the City dated September 22, 2000, indicated the City shall provide to JAVA certain administrative and professional services as needed by JAVA, including, “Provision of necessary bookkeeping and administrative services for JAVA including the maintenance of accurate minutes of meetings of JAVA’s Administrative Board and accurate records and books of account, conforming to approved methods of bookkeeping, setting out and reflecting the operation, management, and business of JAVA.”

The APA determined that no one entity was responsible for the accumulation of all the expenditures related to the Antelope Valley Project. Total cost information was obtained by the APA from the City, LPSNRD, UNL, USACE, and the City’s Urban Development and Parks and Recreation departments.

JAVA indicated that a legal challenge questioned the creation and status of JAVA, which could have impacted the accounting of the financial transactions. However, in March 2003, the Nebraska Supreme Court upheld that the City properly authorized the creation of JAVA, and since that time, no changes were made to the method of accounting for Antelope Valley transactions by a single entity.

The APA determined the audited financial statements of JAVA through August 31, 2008, did not contain all expenditures related to JAVA. The JAVA total assets and equity interest were incorrectly reported in the fiscal year ending August 31, 2008, and prior audit reports, which were completed by Micek & Crouch, P.C. JAVA had not provided the correct total of expenditures to Micek & Crouch, P.C. At August 31, 2008, the total assets and equity interest were understated by the City’s Urban Development and Parks and Recreation Expenses of \$6,794,644 and \$341,432, respectively, as reflected in the City’s portion of costs in the Antelope Valley Project Costs Table found in the Background above. The total assets and equity interest should be adjusted for these prior year corrections.

Furthermore, the APA was not given access to the City’s entire accounting system, rather only certain funds or business units were made available. Likewise, the LPSNRD presented their financial information in an excel spreadsheet. Without a more exhaustive and comprehensive review of all of the accounting transactions of the various local entities, the APA cannot be certain all relevant financial information has been provided and included in this report.

According to Neb. Rev. Stat. § 13-802 (Reissue 2007), the purpose of the Interlocal Cooperation Act, under which JAVA was formed, is “to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby 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.” As described below, the APA had difficulty accumulating the total Antelope Valley costs from the several entities involved. Additionally, information provided by each of the entities was incorrect.

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Reporting Errors

The following are just examples of some of the amounts provided to the APA that were incorrect:

Source of Original Information	Source of Correct Amounts	Correct Amounts Obtained From	Amount Originally Reported	Correct Amount	Variance
LPSNRD	JAVA	Check 19616, Dated 12-10-07	\$ 0	\$ 44,996	\$ 44,996
LPSNRD	JAVA	Check 14801, Dated 8-1-05	\$ 431,443	\$ 4,314	\$ (427,129)
LPSNRD	JAVA	Check 22496, Dated 4-13-09	\$ 0	\$ 39,659	\$ 39,659
LPSNRD	JAVA	Check 8739, Dated 10-18-00	\$ 0	\$ 180,000	\$ 180,000
LPSNRD	JAVA	Check 12452, Dated 8-11-04	\$ 0	\$ 40,500	\$ 40,500
LPSNRD	JAVA	Check 17156, Dated 8-16-06	\$ 0	\$ 40,000	\$ 40,000
LPSNRD	USACE	Feasibility Study payments March '95-Jan-03	\$ 0	\$ 440,917	\$ 440,917
LPSNRD	USACE	3-10-06 LPSNRD did not reduce for City reimbursement of betterments.	\$ 972,000	\$ 950,000	\$ (22,000)
LPSNRD	USACE	6-26-06 LPSNRD did not reduce for City reimbursement of betterments.	\$ 160,000	\$ 90,000	\$ (70,000)
Parks		The Parks Department did not originally include all Antelope Valley project costs in the information provided to the City. These are the amounts that were not originally provided.	\$ 0	\$ 92,754	\$ 92,754
UNL	JAVA	Annual Operating Expenses were not originally provided.	\$ 0	\$ 226,335	\$ 226,335
UNL	JAVA	Fleming Field Project Amounts were not originally provided.	\$ 0	\$ 675,000	\$ 675,000
Example	Totals	(This in only a few of the incorrect amount provided and not total of all incorrect dollars.)	\$ 1,563,443	\$ 2,824,475	\$ 1,261,032

Again, these few examples indicate that no one person or entity is truly accumulating all the expenditures related to Antelope Valley. Even when asked, the entities did not supply the correct information. Without adequate accounting procedures, accurate information will not be provided to anyone inquiring about the total expenses.

Coding Errors

The APA also noted instances of coding errors were made in recording the financial information recorded by JAVA. Similar to the reporting errors noted above, coding errors give rise to inaccurate financial information. Some of the coding errors are as follows:

- JAVA received a payment from the LPSNRD that was recorded incorrectly as “LES Share of Projects” rather than “NRD Share of Project.”

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Date	Object Description	Payee/Description	Amount
2/27/2006	LES Share of Projects	Proj Reimb-Lower Platte S NRD	\$ 4,708
2/27/2006	LES Share of Projects	Proj Reimb-Lower Platte S NRD	\$ 42,223
2/27/2006	LES Share of Projects	Proj Reimb-Lower Platte S NRD	\$ 172,672
2/27/2006	LES Share of Projects	Proj Reimb-Lower Platte S NRD	\$ 44,733
2/27/2006	LES Share of Projects	Proj Reimb-Lower Platte S NRD	\$ 7,482
			\$ 271,818

- JAVA received a payment from the State of Nebraska, Department of Environmental Quality for the reimbursement of costs relating to soil contamination testing. The deposit was incorrectly recorded to the “NRD Share of Project.”

Date	Object Description	Payee/Description	Amount
2/23/2007	NRD Share of Project	Proj Reimb-Frmr Texaco S Linc	\$ 15,178

- JAVA received a payment from the LPSNRD that was recorded incorrectly as “UNL Share of Project” rather than “NRD Share of Project.”

Date	Object Description	Payee/Description	Amount
9/25/2006	UNL Share of Project	JAVA Operating Budget FY 06-07	\$ 40,000

LPSNRD Payment

The USACE performed work primarily related to the construction of the channel for the Antelope Valley project. As part of the channel projects, the USACE also performed work that was not considered federally eligible and performed work considered “betterments,” which were the responsibility of the local government. As the USACE incurred these costs, an invoice was sent to the JAVA chair, who is the general manager of the LPSNRD. The invoice included two parts: the non-Federal portion (the LPSNRD’s responsibility) and the betterment portion (JAVA’s responsibility). Generally, the LPSNRD paid the entire invoice to the USACE and then requested payment from JAVA for the betterment portion of the project.

On June 26, 2006, the LPSNRD made a payment to the USACE for \$160,000, which included JAVA’s portion of the invoice for \$70,000. The LPSNRD never requested payment from JAVA of the \$70,000. After the APA pointed this out, JAVA requested an invoice from the LPSNRD on March 4, 2010.

Without a centralized reporting of Antelope Valley project costs, JAVA, or any other entity, is unable to provide a complete and accurate detail of costs associated with the Antelope Valley project to the taxpayers or other governing bodies. The risk for errors between the various entities also increases. These issues, along with the uncertainty over whether all Antelope Valley expenses have been reported and presented, raise the level of this finding to a material weakness.

We recommend JAVA implement procedures to ensure one central entity is responsible for the maintenance of all of the accounting functions related to the Antelope Valley project. We also recommend JAVA implement procedures to ensure all transactions

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are properly recorded to the correct accounts in the City's accounting system. Finally, we recommend JAVA ensure all monies owed to other entities are paid.

JAVA's Response:

Reporting Errors: There was no requirement that one central entity be responsible for the maintenance of all the accounting functions related to the Antelope Valley project. All Antelope Valley project expenditures were properly accounted for. The APA did not find any wrong doing, fraud, abuse or misappropriation of funds. Furthermore, the APA was given access to all the accounting records related to the Antelope Valley project.

Coding Errors: The revenues (deposits) were posted to the correct project but to an incorrect revenue code within the project. This has been corrected.

LPSNRD Payment: JAVA has requested and received the invoice from NRD and payment has been made.

APA Response: For a project of this magnitude, involving a quarter of a billion in taxpayer dollars, public accountability is required. Such accountability necessitates that one central entity maintains accounting functions of JAVA and coordinates the accumulation of financial data for the Antelope Valley Project. The public was led to believe the City was accumulating the cost of the Antelope Valley Project. As noted in the body of this comment, the City agreed to provide the necessary bookkeeping and administrative services for JAVA, including maintaining accurate records and books of account. The APA disagrees with JAVA's response that all Antelope Valley Project expenditures were properly accounted for. Since one entity did not accumulate all project costs, it took frequent requests from numerous entities to gather project costs, and we were not provided full inquiry access to the City's accounting system. Moreover, other entities only provided the APA with spreadsheets or reports from their accounting systems. Therefore, despite our best efforts, the APA lacks full assurance that all project costs have been provided.

2. Engineering and Construction Management Contracts

The City and JAVA contracted separately with Parsons Brinckerhoff to provide both the preliminary engineering services and construction management services for the Antelope Valley project. The City signed the preliminary engineering agreement in October 1995 for just under \$3 million; however, the value of the contract and subsequent amendments are in excess of \$32 million through August 2009. JAVA signed the construction management agreement in September 2003 for just over \$2 million, and the value of the contract and subsequent amendments are in excess of \$13 million through August 2009.

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The APA noted the following issues related to the engineering and construction management contracts:

One Firm Provided Both Services

The same firm, Parsons Brinckerhoff, was hired by both the City and JAVA to provide preliminary engineering and construction management services.

Through a series of program reviews, the FHWA documented substantial deficiencies and violations of Federal law and regulations involving various local public agency projects. Among these was the failure of NDOR to adequately address potential conflicts of interest between preliminary engineering services and construction management services providers. As a result, in March 2009, NDOR requested from FHWA a two-year evaluation period to allow them to continue to use the same consulting firm for both engineering services. The FHWA responded in September 2009, stating they could not support the approach at that time. See **Exhibit I** for a copy of both letters. NDOR then amended its LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 12.5, to state, “Costs for Construction Engineering (CE) are eligible for Federal-aid providing Federal requirements have been followed. The LPA may select a consultant...to perform this function if they lack staff or the expertise needed to perform the engineering and management duties during construction. **A consulting firm cannot perform both the preliminary engineering and construction engineering services on the same project.**” Although the above guidelines were issued subsequent to the contracts in question, the APA believes different companies should be contracted with to provide these two engineering services in the spirit of public accountability and to prevent conflicts of interest.

As a result of the new LPA guidelines, the City/JAVA has requested the FHWA approve a waiver to this requirement for all projects not yet started. As of August 2009, the end of the period reviewed, there were two projects that had not been started – the South Street Bridge and the North/South Road, K to P Streets. This waiver request is currently under review by the FHWA.

Without a separation of providers for the preliminary and construction management services, there is an increased risk that the City and JAVA did not get fair and reasonable prices for these services. Failure to comply with these guidelines could jeopardize Federal funding. We believe this finding is a significant deficiency.

We recommend the City and JAVA comply with the FHWA’s decision on the waiver request allowing the same consulting firm to perform both the preliminary engineering and construction management services on Antelope Valley projects that have not yet been started.

JAVA’s Response: JAVA strongly disagrees. APA opinion is based solely on local FHWA-Nebraska opinion. JAVA, the City of Lincoln, and NDOR all support the use of a consultant from the beginning to the end of the project as is the customary and best practice in part because of the high value of knowledge and efficiency it brings to a project. Furthermore, the National FHWA rules and guidelines allow this practice.

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APA Response: FHWA-Nebraska is the local controlling authority of Federal transportation funds for this State, which makes that agency the appropriate authority for interpreting relevant Federal rules and guidelines. The APA has a responsibility to disclose possible noncompliance with Federal rules and guidelines. In doing so, we have relied upon the FHWA-Nebraska's interpretation. While Federal law and regulations do not explicitly prohibit the same firm from conducting preliminary engineering and construction management services on the same Federal-Aid highway project the allowance of such arrangement assumes proper oversight controls are in place at both the State and local levels. Per the September 8, 2009, letter included in **Exhibit I**, FHWA found a lack of State and local controls to adequately address consultant engineering contracting and mitigate potential conflicts of interest. As noted in this report, NDOR has included in the May 2009 LPA Guidelines Manual for Federal-Aid Projects a prohibition against the same consulting firm providing both the preliminary engineering and construction management services on the same project.

Solicitation of Services

The Brooks Architect-Engineers Act of 1972 (Brooks Act), codified at 40 U.S.C. § 1101 et seq., requires any department, agency, or bureau of the Federal government to utilize a qualifications-based selection method in soliciting and evaluating proposals for architectural or engineering services. According to 40 U.S.C. § 1101, "The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices." 40 U.S.C. § 1103(c) states, "For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussion with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services." 40 U.S.C. § 1103(d) indicates, "From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head." Finally, 40 U.S.C. § 1104(a) provides, "The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered."

Under 23 U.S.C. §§ 112(a) and (b)(2)(A), contracts for, among other things, preliminary engineering services and construction management services involving a Federally-funded project "performed by the State transportation department or under its supervision," are required to be awarded pursuant to the provisions of the Brooks Act. Prior to 2005, however, State and local agencies were permitted to procure such service contracts using "equivalent State qualification-based requirements." Though entered into in 1995 and 2003, respectively, the preliminary engineering services and construction management services contracts were, according to both the City and JAVA, negotiated in strict compliance with the Brooks Act.

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The APA noted the following:

- The APA could not determine if the most highly qualified firms were selected in accordance with the Brooks Act, as claimed, because the City and JAVA did not maintain adequate documentation to support the qualifications, evaluations, and selection of the providers. The following information was not on file:
 1. The statements of qualifications and performance data (proposals) for all potential service providers;
 2. The evaluations of the service providers by the selection committee;
 3. The selection committee's ranking factors;
 4. The selection committee's final rankings for each provider, including the selection of Parsons Brinckerhoff as the most qualified; and
 5. The contract negotiation documentation, including basis for the final contract price and amendment amounts.

49 CFR § 18.42(b)(1) and (c)(1) require agencies to maintain records for at least 3 years after the last expenditure report. Specifically, 49 CFR § 18.42(b)(1) states, "Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section." 49 CFR § 18.42(c)(1) adds, "... the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period... In all other cases, the retention period starts on the day the grantee submits its final expenditure report." Since the contracts in question are still active, and the final reports have not been submitted, this documentation should have been retained.

- Neither the City nor JAVA were able to provide a draft request for proposal (RFP) approved by NDOR prior to advertisement/solicitation of services. 49 CFR § 18.36(g)(1) states, "Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements ..."
- Independent cost estimates were not provided by the City or JAVA prior to issuance of an RFP. 49 CFR 18.36(f)(1) states: "Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals."

When records retention requirements are not followed, no documentation is available to determine whether Federal procurement regulations have been followed. Without adequate procedures to ensure all Federal requirements are met, there is an increased risk for noncompliance with these regulations, which could mean Federal funds already received may have to be paid back and could jeopardize future Federal funding. Moreover, when a cost analysis for a project is not prepared by the City or JAVA prior to negotiations with a consultant or contractor; there is little assurance that the outcome of negotiations will benefit the City and JAVA financially.

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We recommend the City and JAVA comply with the applicable records retention requirements and maintain all required documents. Additionally, we recommend the City and JAVA establish cost estimates for projects before proposals are solicited.

JAVA's Response: As agents of FHWA, NDOR approved the selection process. Sufficient documentation exists to conclude the Brooks Act was followed.

APA Response: As noted above, the APA received insufficient documentation from JAVA or NDOR to conclude the Brooks Act was followed completely. Some elements exist, but records retained cannot clearly demonstrate the contract procurement process. Adequate supporting documentation was not retained.

Contract Amendments

Both contracts with Parsons Brinckerhoff included amendments that resulted in material deviations from the original RFPs. New solicitations for the additional services were not performed by the City or JAVA.

Good business practices require a new RFP to be issued when additional work is required that causes the scope of the original RFP to be exceeded. Question # 16 in the U.S. Department of Transportation's *Administration of Engineering and Design Related Services Contracts – Questions and Answers* publication, dated April 20, 2009, asks: "Can a contract be modified to add work that was not included in the qualification based selection criteria used to evaluate proposals?" The answer provided states: "No. Any modification of the contract to add work beyond the scope of work the contractor was qualified for would in effect circumvent the Brooks Act qualification based evaluation and selections procedures[.]"

Preliminary engineering services

The preliminary engineering services RFP's general scope of the project indicated, "The City of Lincoln, Nebraska is seeking proposals for consulting engineering services for Major Investment Studies, Environmental Impact Studies and reports, and preliminary engineering for the "Holdrege Street Bypass and Antelope Valley Roadway Project." The RFP also states, "In general, the required services include normal and customary 'Project Development' tasks: preliminary overpass, roadway, and Antelope Creek channel/box designs for the various alternatives, coordination of the major investment study, preparation and distribution of Environmental Reports, and presentations to agencies and at the various information meetings and public hearings."

The original contract appears to cover the major investment study. As noted previously, the major investment study includes four phases, as follows:

- Phase I:** Study initiation, purpose and need, consensus building, and initial development of conceptual alternatives for stormwater management, transportation, and community revitalization activities.
- Phase II:** Analysis and screening of conceptual alternatives.
- Phase III:** Further alternatives evaluation and selection.
- Phase IV:** Preliminary design and engineering. At the end of Phase IV, the decision whether or not to build a project would be made by all parties.

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Amendments 1 through 4 were signed for subsequent phases of the major investment study, while amendment 5 added preliminary engineering, environmental services, and the other services requested in the original RFP. The original engineering contract and amendments 1 through 5 had total contract amounts of \$9,676,664.

Final Design and Construction Phase Services (Phase V) were not part of the original scope of the work and were not included in the RFP. Amendments 6 through 12 were for project phase V for an additional cost of \$23,088,100. These services were added without a new solicitation for services. The total contract to-date amounts are \$32,764,764.

Engineering Contract	Date	Total Contract Amount	Increase to Original Contract	Explanation
Original Contract	10/13/1995	\$ 740,115		Original agreement for Phases I through IV; authorization to begin Phase I at \$740,115. Total of all Phases not to exceed \$2,900,000.
Amendment 1	2/3/1997	\$ 2,440,115	\$ 1,700,000	Combine Phase I & II at no additional costs; increase study area, which increased costs (specific increase not stated); authorization for Phase III. Total of all phases not to exceed \$4,100,000.
Amendment 2	6/25/1998	\$ 4,641,000	\$ 2,200,885	Amend Phase III, as mutually agreed upon for additional work; authorize Phase IV.
Amendment 3	2/3/1999	\$ 5,439,000	\$ 798,000	Increase scope and cost of Phase IV.
Amendment 4	7/17/2000	\$ 7,213,000	\$ 1,774,000	Original Phase IV services completed; increase scope and cost of additional Phase IV services.
Amendment 5	11/14/2001	\$ 9,676,664	\$ 2,463,664	Increase scope and cost of additional Phase IV services.
Amendment 6	3/4/2002	\$ 13,251,664	\$ 3,575,000	Approval of Phase V Planning, Final Design, Management, and Construction Services without a new solicitation.
Amendment 7	9/20/2002	\$ 18,152,324	\$ 4,900,660	Amendment to Phase V for additional services.
Amendment 8	9/24/2003	\$ 21,923,987	\$ 3,771,663	Amendment to Phase V for additional services, this amendment clarified that Construction Services in Amendment 6 only applied to the Northeast Community Park.
Amendment 9	10/1/2004	\$ 24,471,436	\$ 2,547,449	Amendment to Phase V for additional services.
Amendment 10	8/25/2005	\$ 28,515,211	\$ 4,043,775	Amendment to Phase V for additional services.
Amendment 11	8/28/2006	\$ 31,168,959	\$ 2,653,748	Amendment to Phase V for additional services.
Amendment 12	12/3/2007	\$ 32,764,764	\$ 1,595,805	Amendment to Phase V for additional services.
Total Contract		\$ 32,764,764	\$ 32,024,649	Total Original Contract Increase

Contract Amounts for Services Included in the RFP	\$ 9,676,664	29.5%
Contract Amounts for Additional Services not Included in RFP	\$ 23,088,100	70.5%
Total Contract Amounts	\$ 32,764,764	100%

Note: Final contract amount of \$32,764,764 included \$1,526,669 for a fixed fee for profit and \$31,238,095 for actual costs.

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Construction Management Services

The construction management services RFP listed the following projects:

- Project #880101 Y Street Bridge and Roadway
- Project #880102 Vine Street Bridge and Roadway
- Project #880103 Military Road Bridge and Roadway
- Project #880104 O Street Bridge and Roadway
- Project #880105 N, P, & Q Street Bridges and Associated Roadways
- Project #880110 J Street Bridge and Roadway
- Based on the firm(s) performance and at the sole option of JAVA, additional services during the construction phase or additional projects may be negotiated at a later time

The table below describes which projects were included in the original RFP and which projects were added and have been paid for under the construction management services contract.

Project #	Project Title	Included in RFP	Amount Paid to Parsons Brinckerhoff during Testing Period	Amount Paid to Parsons Brinckerhoff to date
880101	Y Street Bridge & Roadway	Yes	\$ 289,671	\$ 756,579
880102	Vine Street Bridge & Roadway	Yes	\$ 336,379	\$ 498,769
880103	Military Road Bridge & Roadway	Yes	\$ 195,492	\$ 663,595
880104	O Street Bridge & Roadway	Yes	\$ 423,788	\$ 423,788
880105	P & Q Street Bridges	Yes	\$ 845,920	\$ 845,920
880110	J Street Bridge	Yes	\$ 252,313	\$ 252,313
880112	N Street Bridge	Yes	\$ 9,681	\$ 9,681
Subtotal of RFP Projects			\$ 2,353,244	\$ 3,450,645
880106	Big T	No	\$ 2,789,483	\$ 2,789,483
880107	East Leg	No	\$ 2,378,176	\$ 2,378,176
880108	N/S Road, Vine to Y Streets	No	\$ 136,980	\$ 136,980
880109	N/S Road, K to Q Streets	No	\$ 52,087	\$ 52,087
880111	South Street Bridge	No	\$ 588	\$ 588
880113	N/S Road, P to Vine Streets	No	\$ 121,850	\$ 121,850
880114	P to Vine Street, Assurity	No	\$ 11,300	\$ 11,300
880203	Channel Phase 3	No	\$ 104,031	\$ 104,031
880302	Downtown Community Park/ Union Plaza	No	\$ 198,146	\$ 198,146
880305	Other Community Revitalization	No	\$ 908	\$ 908
880307	Lewis Ball field Parking	No	\$ 16,444	\$ 16,444
79950	Administration	No	\$ 95,142	\$ 95,142
780102	City – Vine	No	\$ 413,309	\$ 547,898
Subtotal of Non-RFP Projects			\$ 6,318,444	\$ 6,453,033
Total Payments			\$ 8,671,688	\$ 9,903,678
Projects from RFP out of Total Payment (%)			27%	35%

As a result of not soliciting bids for the new projects, only 35 percent of the payments made to date under the original construction management contract and amendments thereto were for projects listed in the original RFP.

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Additionally, the RFP for construction management services included other services, such as “normal and customary program management and construction phase services.” Amendments to the contract appear also to have added services outside of construction management services, including:

- Amendment 5 added \$295,694 for Union Plaza preliminary engineering services and \$50,000 for JAVA Program Platting planning and coordination services.
- Amendment 6 added \$897,425 in preliminary engineering services and \$355,514 in planning and coordination services.

Preliminary engineering services included final design, final design bid phase services, construction documents, and construction administration. Planning and coordination services included general support, public involvement, and replatting.

Contract amounts included in RFP	\$ 6,941,745	52.0%
Contract amounts for new projects not in RFP	\$ 4,807,248	36.0%
Contract Amounts for new services not in RFP	\$ 1,598,633	12.0%
Total Contract Amounts	\$ 13,347,626	100%

It appears 36 percent of the projects under this contract were not included in the original RFP and 12 percent of the services under this contract were not included in the original RFP.

It does not appear to be the best use of public funds when contracts are entered into for only a small portion of the total work expected to be completed and are continually amended, resulting in the consultant receiving millions of dollars more than the amount of compensation specified in the original contract. Without adequate procedures to ensure all Federal requirements are met, there is an increased risk for noncompliance with these regulations, which could mean Federal funds already received may have to be paid back and could jeopardize future Federal funding. We believe this finding is a significant deficiency.

We recommend the City and JAVA consider issuing new RFPs when additional preliminary engineering and construction management services are contracted for that were not included in the original RFPs.

JAVA's Response: As agents of FHWA, NDOR approved these amendments.

APA Response: As noted above, it does not appear to be the best use of public funds when contracts are entered into for only a small portion of the total work expected to be completed and are continually amended. Regardless of whether NDOR approved the amendments, the amendments were still outside the scope of work described in the original RFP. As such, substantial portions of the overall contracts were not subject to a competitive procurement process.

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Construction Management Audit Procedures

NDOR requested the City contract with a private CPA firm to carry out agreed-upon audit procedures for the Antelope Valley project's \$32 million preliminary engineering services consultant. NDOR provided the procedures to be used by the CPA. At the time of our report, however, NDOR had neither formally requested JAVA contract with a private CPA firm to carry out similar auditing procedures for the Antelope Valley project's \$13 million construction management consultant nor provided JAVA with suggested audit procedures to be performed on this consultant.

One of NDOR's responsibilities over local projects, as documented in the LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 3.2, includes auditing and closing out the project. Good internal control procedures require NDOR to have procedures in place to ensure those responsibilities are accomplished.

Without a financial review of the construction management consultant prior to the completion of all projects, there is an increased risk that charges made by the consultant may not be allowable under Federal regulations.

We recommend NDOR formally advise JAVA to contract with a private CPA firm to carry out agreed-upon audit procedures for the construction management consultant. We also recommend NDOR provide JAVA with suggested audit procedures similar to those provided for the preliminary engineering contract review.

JAVA's Response: JAVA will complete the "Agreed Upon Procedures Engagement" for the construction management consultant.

3. Determination of Federal Highway Administration Eligible Costs

The Antelope Valley project involves numerous funding sources due to the nature of the projects. The flood control channel included several existing roadway bridges. While the roadway portion of the projects included funding from the FHWA, the flood control channel portion of the projects included funding only from the USACE. The reconstruction of the bridges over the channel involved both the local share of USACE costs and FHWA costs. During the USACE's Feasibility Study, estimated costs on the roadways and bridges were determined. In 2004, using these cost estimates, a subconsultant under the City's Engineering contract determined which portion of the roadway and bridge costs were FHWA eligible, which were USACE flood control eligible, and which were city betterments to be funded through local sources. The City used these percentage estimates to bill NDOR for FHWA's share of costs. See **Exhibit J**. The following issues were noted based on our review of these estimates:

- The City has not reviewed completed projects to compare FHWA reimbursements, which were based on cost estimates, to the actual costs. NDOR's Guidelines for Transportation Program Funds for Eligible Local Projects (July 2005), Section 110.10, indicates that "federal funding for LPA projects is not disbursed as a grant. Instead, all project expenses are paid directly by the LPA. The LPA then submits a request for

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reimbursement of eligible expenses to the NDOR Urban Engineer.” The section continues, “The LPA is responsible for ensuring that all expenses submitted for reimbursement are eligible for federal participation.” Without a comparison of the FHWA-eligible cost estimates to the actual costs of the projects, there is a risk Federal funds were reimbursed for non-eligible expenses.

- The 2004 estimated construction costs for the “J” Street Bridge project were significantly lower than the amount awarded to the construction contractor for the project due to multiple design changes, as follows:

2004 FHWA eligible costs	2004 Estimated Project Cost	2004 Percent of FHWA eligible costs to Total	2008 Actual Contract Amount	Dollar Difference
\$ 588,010	\$ 969,166	60.67%	\$ 1,956,368	\$ 987,202

The construction contractor was paid \$1,820,295 during the period tested. The understatement of the estimated project costs may have impacted the FHWA eligible costs percentage, which could have an effect on the total costs eligible for FHWA funding. In addition, detailed calculations of the original FHWA eligible and non-eligible costs could not be provided.

- Construction cost estimates for the “O” Street Bridge projects included a mathematical error. The cost estimates used included 130 “truncated domes,” at an estimated unit cost of \$30, for a total of \$3,900, and was determined by the subconsultant to be a FHWA cost. The total amount for these domes was listed as \$16,900 on the cost estimates, rather than \$3,900. It appears the FHWA eligible portion was overstated by approximately \$13,000, resulting in the FHWA eligible percentage being overstated by .23%. See **Exhibit K**.
- The construction cost estimates determined 7.76 percent of Big T project costs to be non-FHWA eligible. When submitting reimbursement requests to NDOR for FHWA reimbursement, the City reduced the amount requested by this 7.76 percent, or the non-FHWA eligible portion. However, the reimbursement requests for the reimbursement of \$4,000,000 in Highway Safety Improvement Program funds and Elimination of Hazards Relating to Railway-Highway Crossings funds did not include the reduction for the non-FHWA eligible portion. See **Exhibit L**.
- Reimbursement requests from the City to NDOR generally included a summary of previously requested amounts, the type of work performed, such as construction, utility relocation, construction engineering services, etc., and the general nature of the expense, including consultant payment, City staff payroll, right of way, etc. Three reimbursement requests for the Big T project did not include the general nature of requested costs, did not include the amount of previous requests, or requested reimbursement for the wrong type of work. For example, one request of over \$7 million was noted as consultant payments for construction engineering services. The expenses were actually construction costs. Although the City’s reimbursement request was incorrectly documented, it appears NDOR appropriately classified the transaction. See **Exhibit M**.

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- The City provided a reimbursement request to NDOR that included both construction engineering costs and construction costs; however, NDOR paid for the reimbursement request with funds obligated for construction costs. The construction engineering costs were over \$1 million.
- We also noted a lack of communication between NDOR and the City concerning FHWA obligations. The funding source, amount obligated, availability, and city match were not always communicated in a timely manner. The City did not maintain a balance of obligated FHWA funds for each project.

When total project costs are not accurately estimated, there is an increased risk that the City has requested an incorrect amount of Federal funding. Furthermore, when Federal aid eligible costs and reimbursement requests are not accurately calculated and tracked, there is an increased risk the City will request more FHWA funding than it has in eligible costs, or will not request the full amount of obligated funds. The City may be required to supply additional eligible documentation to support the actual reimbursement received. Failure to provide such documentation may result in the return of Federal funds. We consider this finding to be a significant deficiency.

We recommend the City determine the amount of actual costs for each project for each funding entity and amend the FHWA reimbursements to report the final actual costs for each project. We also recommend the City compare estimated project construction costs with construction contract awards to ensure estimated costs and eligible cost percentages are reasonable. We recommend calculations of estimated costs and reimbursement requests be reviewed for accuracy. Finally, we recommend the City and NDOR ensure amounts spent and paid are recorded properly.

JAVA's Response:

1st Bullet: The actual accounting to balance the financial responsibilities between JAVA and the USACE can't occur until the end of the entire project. The activity will be carried out in accordance with the Project Cooperation Agreement (PCA) with the USACE.

2nd Bullet: The Contractor was only paid for the work actually completed. The original estimate did not affect FHWA eligible expenditures.

3rd Bullet: Estimates are not the same as a final payment. The error referenced will be adjusted at the project's completion according to the Project Cooperation Agreement (PCA). The estimate did not affect FHWA eligible expenditures.

4th Bullet: JAVA disagrees. The \$4M reimbursement was a lump sum contribution and was not subject to the 7.76% reduction. The Nebraska Department of Roads provided a set or maximum dollar contribution for this project in the form of Train Mile Tax or Federal Rail Safety money.

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5th Bullet: JAVA disagrees. JAVA and NDOR discussed and agreed how to bill these costs and the invoices were prepared and billed accordingly. NDOR's LPA Guideline Manual for Federal Aid Projects (July 2005) that was in effect at the time the invoice was prepared does not require that cumulative costs be shown on an invoice.

7th Bullet: JAVA agrees. Communication regarding obligated FHWA funds should be improved. Since November 19, 2009, monthly coordination meetings have been held with all parties to address this issue. JAVA did maintain a balance of obligated FHWA funds.

NDOR's Response:

5th Bullet: Exhibit M "Reimbursement Request" pertains to Construction related cost only, not Construction Engineering costs. Payments due the Contractor (Hawkins) were misidentified as Construction Engineering Consultant Payments, rather than as Construction Contractor payments, on JAVA's reimbursement request.

APA Response:

1st Bullet: JAVA should reconcile with USACE; however, more is required. As noted in the bullet, we were discussing FHWA and, therefore, we strongly recommend JAVA reconcile with FHWA. Based on Comment and Recommendation Number 11, regarding the work performed by FHWA, the APA has serious reservations as to whether this reconciliation can be completed. Because the actual costs of eligible and ineligible items can vary from project to project, these costs must be tracked as they occur. Trying to capture and estimate those costs at the end of the multiple project phases can prove to be very difficult if not impossible.

2nd and 3rd Bullet: JAVA needs to reconcile with FHWA in order to ensure FHWA eligible costs are correct. Currently, FHWA eligible costs available for funding may not be correct.

4th Bullet: JAVA provided no supporting documentation to indicate why the \$4 million would not be subject to the 7.76% reduction and could be used for non-FHWA project costs. This request for payment may include work activities not eligible for Federal-aid reimbursement. The APA feels these funds should only be used for Federal highway costs.

5th Bullet: JAVA prepared the invoices inconsistently for the Big T project, including the cumulative costs on some and not on others.

4. NDOR Responsibilities

In certain situations, and specifically for most of the Antelope Valley projects, NDOR accepts the responsibility for project oversight and assumes and acts in the role of FHWA. A Stewardship Agreement between NDOR and the FHWA dated October 2006 is intended to result in the efficient and effective management of public funds and to ensure that the Federal-aid Highway Program is delivered consistent with laws, regulations, and policies. According to NDOR's LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 1.5, NDOR is responsible for establishing State policy, developing procedures, and providing oversight to the

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LPA on their Federal-aid transportation projects. NDOR will also provide project coordination, quality assurance, and adequate supervision of the program for reimbursing LPAs for planning, project development, environmental studies, design, right-of-way acquisition, construction of transportation facilities, and transportation enhancement activities.

NDOR reimbursed the City \$51,892,948 between September 1, 2004, and August 31, 2009. The APA noted the following issues related to NDOR's responsibilities for Federal reimbursements, monitoring, change orders, and utility and railroad agreements:

- NDOR drew down an excess of \$532,929 in FHWA funds obligated for the Big T project compared to what was reimbursed to the City. The FHWA accounting system showed \$15,134,118 was paid to NDOR for the Big T project. State accounting records showed NDOR paid the City of Lincoln \$14,601,189 for the Big T project. According to NDOR, the variety of funding types, local match percentages, and system limitations led to the errors that caused the excess draw downs. NDOR was unable to identify the specific transactions that caused the error. The last date NDOR reimbursed the City for Big T costs was April 10, 2008. Based on those NDOR accounting records, the errors occurred on FHWA draw downs prior to that date. When the NDOR draws down more Federal funds than it reimburses, the NDOR inappropriately retains Federal funds as part of its fund balance, which may be inappropriately used to fund other state projects.
- NDOR does not require the City to provide a comparison of the estimated costs of the projects to the actual costs to determine whether all actual costs were eligible for reimbursement; therefore, NDOR does not have adequate monitoring procedures to ensure all LPA costs are eligible for Federal reimbursement. As noted previously, NDOR is responsible for providing project oversight and supervision. Additionally, NDOR's LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 14.6, requires a cost audit review "to provide reasonable assurances that the submitted amounts are accurate; are supported by adequate accounting records; resulted from accomplished and duly authorized work; and, are allowable in accordance with laws, regulations, policies and procedures applicable to the project." The section continues, "Based on the results of the cost audit review process, final reimbursement to the LPA will be adjusted to exclude ineligible costs and include any additional costs that NDOR determines are Federal-aid eligible." The City submits reimbursement requests to NDOR that include an estimated non-FHWA eligible portion that is deducted from the reimbursement request. The estimates were determined by a consultant in 2004 based on the estimated costs of the projects at that time. In discussions with NDOR, it is not unusual for NDOR to pay construction costs on these types of estimates. These estimates are more fully explained in Comment and Recommendation Number 3.
- The State representative is an individual from NDOR assigned to the project to perform quality assurance activities during construction. For the Antelope Valley projects, the State representative did not document his approval of construction contract change orders until approximately September 2008. The APA tested NDOR reimbursements to the City for three projects and identified 39 contract modifications totaling \$2,167,750 and noted the following:

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Project	Total Modifications Tested	Modifications Not Approved	Amount Not Approved
East Leg	13	4	\$ 313,807
J Street Bridge	1	1	\$ 19,902
Big T	25	25	\$ 1,543,227
Total	39	30	\$ 1,876,936

Title 23 CFR 635.120(a) states, “Following authorization to proceed with a project, all major changes in the plan and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates.” Additionally, NDOR’s Guidelines for Transportation Program Funds for Eligible Local Projects (July 2005), Section 100.70, states, “To be eligible for FHWA cost participation, all change orders must be approved by the NDOR State representative. Change orders must include an explanation of the work so that everyone involved will understand the need for the change.”

When those charged with Federal oversight of road construction projects do not approve contract modifications, there is an increased risk incurred costs may be disallowed.

- For certain projects, railroads or utility companies may provide services to relocate utilities or communication lines. NDOR did not have required written agreements on file for the East Leg project. The reimbursement request tested from the City to NDOR for the East Leg project included \$9,165 for utility relocation and \$29,412 paid to a railroad for “other expenses.” There was no written agreement between NDOR and the railroad or the utility company for work performed and reimbursed with FHWA funds.

Title 23 CFR 645.113(a) states, “On Federal-aid and direct Federal projects involving utility relocations, the utility and the TD shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work.” The TD, or Transportation Department, is defined in Title 23 CFR 645.105 as “that department, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration” – which is NDOR.

Title 23 CFR 646.216(d) states, “Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the State highway agency and the railroad company.”

When the NDOR does not enter into written agreements with utilities and railroads for work to be paid for with Federal funds, there is a risk ineligible costs will be paid by the FHWA due to a lack of a detail regarding the work to be performed, no agreed-upon share of cost, and no itemized estimate of the costs of work to be performed.

- One of three Federal reimbursements tested was not properly reimbursed by NDOR, resulting in an additional \$536 being reimbursed to the City. The East Leg project was previously reimbursed for preliminary engineering services in the amount of \$3,096, which was later identified by the City as having been incorrectly allocated. The City provided

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NDOR supporting documentation to credit the \$3,096; however, the credit was netted against city payroll charges and consulting services invoices submitted for reimbursement totaling \$2,560. The remaining credit of \$536 was disregarded when NDOR paid the reimbursement.

When NDOR reimburses too much for a Federal-aid project and does not correct an identified error, there is an increased risk the error will go unresolved, causing too much Federal aid to be paid on the project. The City may be required to supply additional eligible documentation to support the actual reimbursement received. Failure to provide such documentation may result in the return of Federal funds. We consider this finding to be a significant deficiency.

We recommend NDOR implement procedures to:

- Adequately review Federal aid reimbursement requests and only draw down amounts actually needed to pay claims. NDOR should immediately return the excess amounts drawn from FHWA.
- Ensure LPAs compare actual project costs to estimated project costs to determine if only eligible costs are reimbursed.
- Ensure all approvals of contract modifications are adequately documented.
- Identify utility and railroad work stated in project specifications and enter into written agreements with utility companies and railroads to reduce the risk of reimbursing ineligible costs.

NDOR's Response:

1st Bullet: While NDOR agrees that it may appear that \$532,929 has been underpaid to the City; we believe that when the required retention and any other reconciling payments generated as a result of the final audit are made, the final payments will be correct. Those funds are dedicated to the Lincoln/Lancaster County MPO and cannot be expended on other state projects.

2nd Bullet: NDOR agrees. The actual accounting and resolution to balance the financial responsibilities among the parties cannot occur until the end of the entire project and will be carried out in accordance with the Project Cooperation Agreement (PCA).

3rd Bullet: During the subject time period, NDOR reviewed change orders and contract modifications but did not have in place a policy requiring that they be signed by NDOR's Project Representative. Beginning in September 2008, NDOR established the policy of having the change orders and contract modifications reviewed and signed by the NDOR representative.

4th Bullet: The agreement between NDOR and the City of Lincoln spell out that the City is responsible for establishing the agreement with the railroad, and it is contained in the bid proposal. The records of any utility agreements are kept by the City of Lincoln.

5th Bullet: Lacking reference to specific documents tested, we are unable to respond to the \$536 discrepancy.

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JAVA's Response:

1st Bullet: JAVA has previously requested reimbursement for this money.

APA Response:

1st Bullet: NDOR drew down this excess money approximately two years ago and, as stated in the comment, has inappropriately retained these Federal funds. If JAVA has requested reimbursement for this money, NDOR should reimburse it, if eligible.

4th Bullet: In December 2009, a Project Manager in the Local Projects Division of NDOR indicated the railroad expenses were part of a change order. The APA reviewed the change orders and could not find supporting documentation regarding the railroad agreement. NDOR did not indicate at that time the City would have the agreement; therefore, the APA had not requested the agreement from NDOR.

5th Bullet: In December 2009, the APA provided the specific information to the Project Manager in the Local Projects Division of NDOR via email, who responded, "This credit will most likely be handled at the close out time of the project when NDOR Audit office performs a finance audit."

5. Land Acquisition Overpayment

From inception to August 31, 2004, \$10,245,901 was coded for land acquisitions and associated expenses. Between September 1, 2004, and August 31, 2009, JAVA recorded an additional \$11,224,141 for land acquisitions and associated expenses; of this amount, \$6,655,179 was for land acquisitions or court judgments.

From this period, the APA tested expenses related to the acquisition of eleven properties, including the six largest payments to owners and the five largest court judgments, as follows:

Property (Note 1)	Date of Purchase Agreement/Court Order	Purchase Price/Court Judgment	Assessed Value	Total Review Appraised Value	Administrative Settlement (Included in Purchase Price)
Property #1	12/18/2007	\$ 1,200,000	\$ 941,330	\$ 987,170	\$ 212,830
Property #2	6/25/2009	\$ 800,000	\$ 359,700	\$ 757,800	\$ 42,200
Property #3 (Note 2)	7/1/2009	\$ 802,780	\$ 322,100	\$ 534,800	\$ 53,480
Property #4	9/21/2004	\$ 545,000	\$ 330,500	\$ 500,000	\$ 45,000
Property #5 (Note 3)	3/4/2009	\$ 597,927	\$ 449,300	\$ 399,040	\$ 81,000
Property #6	6/14/2005	\$ 212,500	\$ 118,800	\$ 200,000	\$ 12,500
Property #7 (Note 4)	4/22/2009	\$ 342,000	\$ 77,051	\$ 342,000	n/a
Property #8	4/11/2006	\$ 696,491	\$ 330,556	\$ 435,000	n/a

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Property (Note 1)	Date of Purchase Agreement/Court Order	Purchase Price/Court Judgment	Assessed Value	Total Review Appraised Value	Administrative Settlement (Included in Purchase Price)
Property #9 (Note 5)	7/13/2005	\$ 111,250	\$ 104,324	\$ 108,000	n/a
Property #10	11/15/2004	\$ 105,000	\$ 30,600	\$ 81,000	n/a
Property #11	12/3/2004	\$ 79,000	\$ 72,400	\$ 72,000	n/a

Note 1: Properties #7-11 are court judgments, which are lump sum payments determined by the court.

Note 2: Review appraisal included \$214,500 in fixtures, which were also included a second time in the purchase price.

Note 3: This property was a partial acquisition. The appraised value includes the land, part of the building, and fixtures, while the assessed value reflects the entire property owned by the property owner prior to the sale to JAVA, not just for the partial amount purchased. The review appraisal consisted of \$353,000 for land, \$27,040 for severance damages, and \$19,000 for a temporary easement. The final purchase agreement included \$353,000 for land, \$38,000 for severance damages, \$19,000 for a temporary easement, \$1,927 for fixtures, \$81,000 for administrative settlement, and \$105,000 for demolition of part of the building.

Note 4: This was a partial acquisition.

Note 5: Court order for multiple properties was \$128,750. City determined split between the properties.

We noted the following issues related to these 11 properties tested:

Overpayments

- JAVA erred in overpaying \$214,500 for Property #3. The appraisal for this property included \$119,300 for land, \$306,700 for building and site improvements, and \$214,500 for fixtures. The total of \$640,500 was reduced by a lessee's interest in the property of \$105,700, for a total appraised value of \$534,800. The purchase agreement included compensation of \$588,280 (consisting of the \$534,800 appraised value and an administrative settlement of \$53,480), and an additional \$214,500 for fixtures. The purchase agreement included an amount for fixtures that was already included in the appraised value of the property.
- JAVA erred in overpaying \$1,927 for Property #5. This acquisition was a partial taking, with the owner retaining a portion of the property. The review appraisal for this property consisted of \$353,000 for the value of the part taken, including \$2,400 for fixtures, \$27,040 for severance damages, and \$19,000 for a temporary easement. The purchase agreement included compensation of \$491,000 (consisting of \$353,000 fee taking, \$38,000 severance damages, \$19,000 for a temporary easement, and \$81,000 for administrative settlement), an additional \$1,927 for fixtures, and \$105,000 for demolition costs. The owner removed some of the fixtures prior to demolition of the property, so the purchase agreement was revised to include only \$1,927 worth of fixtures. These fixtures were already included in the \$353,000 fee taking.

Without adequate procedures to ensure payments to owners are accurate, there is an increased risk for overpayments to property owners, increasing the overall cost of the project. We consider this finding to be a significant deficiency.

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Noncompliance with Regulations

- Title 49 CFR 24.102(c) states, “*Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102(c)(2), and the owner, or the owner’s designated representative, shall be given an opportunity to accompany the appraiser during the appraiser’s inspection of the property.” An appraisal report was not on file for property #8. An unsigned, emailed copy was sent to the Real Estate Division upon APA inquiry. The appraisal report for Property #1 did not include a statement that the owner was given the opportunity to accompany the appraiser. After APA inquiry, the Real Estate Division received an email from the appraiser indicating the appraiser contacted the owner by phone to arrange a meeting. This was not included in the appraisal report.
- The JAVA Administrative Regulation – Acquisition Regulations (D)(11), dated January 2002, states, “When negotiations fail and condemnation is authorized, the Real Estate Division sends a final letter to the property owner/s along with a written explanation of the eminent domain proceedings including relocation assistance information where applicable.” A final letter to the property owner explaining the eminent domain proceedings was not on file for Property #7. The APA found no other documentation to indicate that the Real Estate Division explained the proceedings to the property owner.

Without adequate procedures to ensure all Federal requirements are met, there is an increased risk for noncompliance with these regulations, which could mean Federal funds already received may have to be paid back and could jeopardize future Federal funding.

Surplus Property

JAVA’s Administrative Regulations, Acquisition Regulations (September 13, 2007) Section G, indicates, when properties originally acquired by JAVA for use in the Antelope Valley project are no longer needed, JAVA has the authority to deem them surplus and dispose of them. Once deemed surplus, those properties can be purchased by the general public. JAVA sold three properties as surplus and received \$165,142 for them between September 1, 2004, and August 31, 2009. The APA noted the following issues related to the sale of these properties:

- For all three properties tested, adequate documentation of the valuation of the property and the surplus property sales processes was not maintained.
- Due to lack of documentation, the APA was unable to determine how the City’s Real Estate Division designated the properties to be surplus, as well as whether JAVA Regulations were followed regarding the subsequent sale of those properties.
- For two of the three properties tested, no documentation was on file showing how the City’s Real Estate Division valued the partial portions of property deemed surplus. For one of the properties, the APA calculated a value of approximately \$127,325, but the property was sold for \$76,783. Per the City’s Real Estate Division, the property’s value was diminished due to easements; however, the APA could not verify this reduction in value, as no documentation was maintained.

Without documentation of compliance with JAVA regulations, there is no way to evaluate whether proper procedures were followed during the sale of surplus property, and parties required to be notified of the surplus property were actually made aware of it. Additionally,

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without adequate documentation, there is no way to determine how the City's Real Estate Division valued the property, which makes it impossible to determine whether such valuation was proper and reasonable. There is an increased risk for loss of funds on the sale of the property if the valuation cannot be found proper and reasonable.

We recommend JAVA implement procedures to ensure amounts paid to property owners by the City's Real Estate Division are accurate. JAVA should take whatever action necessary to recoup from the City the amount of any overpayments for property purchases. We also recommend JAVA implement procedures to ensure the City's Real Estate Division is in compliance with all Federal regulations, so that Federal funding for projects is not jeopardized. Finally, JAVA should ensure adequate documentation is maintained regarding the sale of surplus properties.

JAVA's Response:

Overpayments, 1st Bullet: JAVA disagrees. This is not an overpayment. Offer was based on reviewed amount as required by federal and state regulations. Review appraiser indicated fixtures were not included in the value of the real property; and therefore, needed to be added to the final cost.

Overpayments, 2nd Bullet: JAVA disagrees. This is not an overpayment. Offer was based on reviewed amount as required by federal and state regulations. Review appraiser indicated fixtures were not included in the value of the real property; and therefore, were needed to be added to the final cost.

Noncompliance with Regulations, 1st Bullet: JAVA disagrees. The appraisal in question (Property #8) by APA was an appraisal requested by the City Attorney's office for use in litigation and not the appraisal utilized for negotiations as that appraisal was in the files of the Real Estate Division. In regards to Property #1, an opportunity was given to the owner to accompany the appraiser on his inspection. The appraiser failed to note it in his appraisal.

Noncompliance with Regulations, 2nd Bullet: The owner was provided with an acquisition brochure which explains the eminent domain proceedings. All negotiations were done with owner's attorney present. Owner's attorney stated they were well aware of the eminent domain process, and owner requested the matter be taken to court.

Surplus Property, 1st Bullet: JAVA disagrees. Surplus property designations were done in accordance with JAVA resolutions. The value of the property was determined from the appraisals used when the property was acquired. The plans indicated only a portion of the property was needed for the project thus the remainder was surplus.

Surplus Property, 2nd Bullet: JAVA disagrees. Surplus property designations were done in accordance with JAVA resolutions. JAVA Resolution 06-1109-04 and Resolution 07-0913-07 allowed it to be conveyed outside the surplus process. The plans indicated only a portion of the property was needed for the project thus the remainder was surplus.

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Surplus Property, 3rd Bullet: JAVA disagrees. The property sold for \$90,500, not \$76,783. The value was based on the appraisals of the land when acquired with a reduction for the value of easements retained for the City, NRD and other utilities.

APA Response:

Overpayments, 1st Bullet: The APA is unclear why JAVA now disagrees with this finding. As indicated in the email below from the City's Real Estate Relocation Assistance Agent, acting on behalf of JAVA, the City confirmed an error was made. The \$214,500 for fixtures was already included in the appraisal; however, the City included that same amount again in the purchase agreement. Thus, the property owner was paid twice for the value of the fixtures.

From: [name deleted – City's Real Estate Relocation Assistance Agent]
Sent: Friday, January 08, 2010 3:40 PM
To: Janssen, Cindy
Cc: Avery, Mary; Smith, Julie C; Crist, Acacia; Pope, Erin; [name deleted]; [name deleted]
Subject: RE: Land Acquisition testing question

It really hate to tell you this but, you are correct. :-) We flat goofed and none of us caught the fact that the market value appraisal of the property included the fixtures. It was not added in at a later date, it was included in the very first offer we made to [name deleted]. The initial purchase agreement we gave to him was for \$534,800 + fixtures.

For what it's worth, I went back and looked at the other 4 acquisitions that included fixture appraisals ([names deleted]) and all of them were handled correctly. The only reason I can give is that in each of the other 4 the fixtures were treated separately in the review appraisers summary and in this one they were included. We just didn't catch the difference. As I said, we did miss it and apparently did make an overpayment.

As for Tract 72, the reason there were no fixtures included was because there were none; it was a vacant parking lot. [name deleted]

Overpayments, 2nd Bullet: The APA is unclear why JAVA now disagrees with this finding. Again, as disclosed above, the value of fixtures was included in the appraisal; however, the City included a value for the fixtures again in the purchase agreement. Thus, the property owner was paid twice for the \$1,927 value of the fixtures.

Noncompliance with Regulations, 1st Bullet: For Property #8, as noted above, the APA was not provided with a signed copy of the appraisal report, and no such document was observed during the APA's review of the Real Estate Division files. For Property #1, the APA is unsure why JAVA disagrees, as its own response indicates there was not proper documentation on file.

Noncompliance with Regulations, 2nd Bullet: Again, no documentation was observed in the files indicating the proceedings were explained.

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Surplus Property, 1st, 2nd, and 3rd Bullets: JAVA should consider whether the original purchase appraisals are current and relevant to document the value of the property for surplus purposes. The process for selling surplus property is designated in JAVA’s Administrative Regulations, Acquisition Regulations, Section G, Sale of Surplus Property and does not provide a mechanism for disposing of such property outside of the surplus process. As noted above, there was inadequate documentation for the APA to verify whether JAVA’s regulations were followed. The resolutions referenced by JAVA do not indicate the property was to be conveyed outside the surplus process. Additionally, there was inadequate documentation for the value of the easements indicated in JAVA’s response. For the 3rd bullet, the \$76,783 is a portion of the \$90,500 noted by JAVA. The \$90,500 included a second property, with a sale price of \$13,717.

6. Relocation Assistance Payments

As noted in a chart above, JAVA recorded \$2,904,134 in expenses for relocation assistance between September 1, 2004, and August 31, 2009. The APA selected the five properties with the largest payments to test, as follows:

Property	Relocation Assistance Paid	Questionable Payments
Property #1	\$ 873,658	\$ 41,228
Property #13	\$ 647,473	\$ 234,663
Property #14	\$ 455,618	\$ 328,475
Property #11	\$ 175,996	\$ 53,698
Property #12	\$ 136,508	\$ 35,846
Totals	\$ 2,289,253	\$ 693,910

The questionable payments represent payments to the property owners that may not have been in compliance with Federal regulations, may have been unreasonable or excessive, or may not have had adequate documentation to support the payments to the owners. See **Exhibit N** for a detailed breakdown of these questioned payments. We consider this finding to be a significant deficiency.

Other Issues

- The owner of Property #11 signed one “Relocation Assistance Payment Claim” form, which the City copied and used for 38 subsequent claims by the same owner, so the City would not have to obtain a separate signature for each claim. The 38 subsequent claims included \$31,295 in reimbursements to the owner. The claims were for monthly storage costs for both business and residential personal property and for emergency lodging expenses. A claimant certification is included on the “Relocation Assistance Payment Claim” form, indicating the claimant believes the information to be true, correct, and complete. The certification also states that no other reimbursement for the claim from any source has been received for the claims included on the form, with a space for the signature of the claimant. The form also documents the City’s approval of the claim. The claimant should have signed a separate form for each claim.

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- One of five properties tested did not properly pay property taxes in accordance with a signed lease agreement. After acquiring Property #14, JAVA leased the property back to the prior owner for a period of one year at \$1 per month. This was to allow the owner to secure a replacement site for the business. The lease agreement required the tenant to pay real property taxes on the leased property. In December 2005, JAVA paid the 2005 real estate taxes in the amount of \$4,897. The APA found no evidence in the City’s accounting system or in the relocation files to indicate the former owner paid for these taxes. The former owner owes JAVA \$4,897.
- The owner of Property #11 received \$75,821 for non-residential (business) relocation assistance as follows:

Assistance	Amount
Commercial Moving Costs	\$ 47,624
Storage Costs	\$ 23,984
Reestablishment Expenses	\$ 4,213
Total	\$ 75,821

On June 10, 2005, the City’s Relocation Assistance Appeals Board, consisting of Marvin Kraut, Don Herz, Dana Roper, Ron Brester, and Robert Hans, reconvened a hearing in a matter related to this property. The minutes of that meeting reflect a discussion on the inability to include a garage as part of the residential housing calculation and at the same time also consider the garage as a business premise with separate business eligibility. The Board voted unanimously to recommend to the Mayor that the property is eligible for relocation as a business. However, upon APA inquiry, the City could not provide adequate evidence to show that the business, which was run out of the owner’s home, contributed materially to the household income. Without such evidence, it does not appear the owner was eligible to receive assistance as a business. The commercial moving and storage costs would still be eligible under a residential move; however, the \$4,213 in reestablishment expenses should not have been paid.

49 CFR 24.2(a)(4) defines business as any lawful activity, except a farm operation, that is conducted: (ii) primarily for the sale of services to the public. 49 CFR 24.304(b)(4) defines an ineligible, nonresidential, reestablishment expense as payment to a part-time business in the home which does not contribute materially to the household income. 49 CFR 24.2(a)(7) defines contributing materially to mean that, during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business: (i) had average annual gross receipts of at least \$5,000; or (ii) had average annual net earnings of at least \$1,000; or (iii) contributed at least 33 1/3 percent of the owner’s annual gross income from all sources. (iv) If the application of any of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria, as determined appropriate.

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- Two of five properties tested did not have the City’s approval on the “Relocation Assistance Payment Claim” forms. Therefore, the City’s approval of the claims was not documented.
 - Claims totaling \$11,308 for Property #11 were paid without a documented approval of the claim by the City.
 - A claim totaling \$161,868 for Property #13 was paid without a documented approval of the claim by the City.

- Two of five properties tested did not have a “Final Relocation Report” on file. This report is used to provide an overall total for the relocation payment requested and is approved by both the relocation agent under contract with the City and the City – and, for FHWA projects, also by NDOR. The relocation agent certifies on this report that he has no direct or indirect interest in the transaction, and has received no benefit from the replacement housing payment or any other payment included on the document. Both the “Final Relocation Report” and the “Relocation Assistance Payment Claim” forms are filed together with the accompanying documentation to support the expenses.
 - Claims totaling \$4,063 for Property #11 were paid without a “Final Relocation Report” on file.
 - Claims totaling \$4,000 for Property #14 were paid without a “Final Relocation Report” on file.

- Two of five properties tested did not have a properly approved “Final Relocation Report” on file.
 - Claims totaling \$1,965 for Property #11 were paid without approval by the City on the “Final Relocation Report.”
 - Claims totaling \$83,130 for Property # 1 were paid without approval of NDOR on file with the City. Upon APA inquiry, NDOR indicated forms signed by NDOR had been misplaced, so NDOR subsequently signed the forms.

- One of five properties tested did not have the “Relocation Assistance Payment Claim” form on file for expenses claimed for reimbursement. Claims totaling \$4,063 for Property #11 were paid without the “Relocation Assistance Payment Claim” form on file with the City.

Without adequate procedures and internal controls to ensure all Federal requirements are met, there is an increased risk for noncompliance with these regulations, which could jeopardize the availability of Federal funds for a project and could result in unreasonable and unnecessary payments by JAVA.

We again recommend JAVA implement procedures to ensure amounts paid to property owners by the City’s Real Estate Division are accurate. JAVA should also take whatever action necessary to recoup duplicate payments and other errors from the City. We also recommend JAVA implement procedures to ensure the City’s Real Estate Division is in compliance with all Federal regulations, so that Federal funding for projects is not jeopardized.

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JAVA's Response:

Questionable Payments: JAVA disagrees with APA's interpretation of the Regulations. Most of the payments are eligible under the regulations. The remaining payments were deemed eligible at JAVA's discretion to minimize hardships on the persons/businesses being relocated.

Other Issues, 1st Bullet: Claimant was uncooperative in signing claim forms so this was the only way JAVA could ensure timely payments to the vendors. Claimant needed lodging and storage. Payments were approved to avoid inconvenience to the claimant.

Other Issues, 2nd Bullet: JAVA agrees. Owner owes for the 2005 real estate taxes. JAVA could not withhold the back taxes from a subsequent relocation payment due to a change in the interpretation of the regulations. JAVA's only recourse to recover the monies owed is by going to court.

Other Issues, 3rd Bullet: Owner appealed determination of business eligibility under Federal Reg. 24.10(b). Appeal board determined the owner was entitled to business relocation which was approved under E.O. 73559. At that point, JAVA was required to consider the property as a business and reimburse any business reestablishment expenses.

Other Issues, 4th Bullet: JAVA did approve the claims and documentation was available in the files of the consultant.

Other Issues, 5th Bullet: JAVA did approve the claims and final relocation report was available in the files of the consultant.

Other Issues, 6th Bullet: JAVA did approve the claim and documentation was available in the files of the consultant. On the other claim, JAVA received verbal approval from the NDOR.

Other Issues, 7th Bullet: JAVA did approve the claims and documentation was available in the files of the consultant.

APA Response:

Questionable Payments: For each questionable payment included in Exhibit N, the APA has referenced specific Federal regulations. JAVA has made only a general response, which contains no reference to specific regulations to counter our interpretation of the Uniform Act. Furthermore, JAVA maintains it has broad discretion to apply and interpret Federal regulations as it sees fit; however the Uniform Act does not permit the exercise of such broad discretion by an Agency.

Other Issues, 1st Bullet: Reusing the same claim form for dozens of different claims, in order to avoid inconveniencing an uncooperative claimant does not allow for the proper certification of the claim by the claimant.

Other Issues, 3rd Bullet: As noted above, the APA feels the Appeals Board did not have or maintain adequate documentation to support the determination the owner was entitled to business relocation assistance under Federal regulations.

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Other Issues, 4th, 5th, 6th, and 7th Bullet: In these instances, claims have been paid and all required documentation was not maintained by the City or JAVA to adequately support the payments. This is an illustration of how neither the City nor JAVA has complied with Federal regulations for the maintenance of records.

7. Value of Donated Land

The City received donated land from UNL, the State of Nebraska, and the LPSNRD, which was used by JAVA as part of the Antelope Valley project. The value of the donated land was simply an estimate from the Antelope Valley Project’s previous project manager on a hand-written spreadsheet with no documentation to support the figures. See **Exhibit O**. The value of this donated land was used to determine the City’s initial investment, or equity interest, in the Antelope Valley project.

The audited financial statements indicate, “Equity interests represent contributions from JAVA partners net of their respective share of revenues over (under) expenses and reduced by any distributions.” Once the beginning equity interest balance is determined from the above information, the equity contribution (annual increase in the equity interest) for each subsequent year is based on the Antelope Valley project costs incurred by each partner. The following table identifies the equity interest balance of each partner for each year of the period tested:

Fiscal Year	Equity Interest Balance			
	City	UNL	LPSNRD	Total
August 31, 2005	\$ 72,495,337	\$ 703,785	\$ 14,252,532	\$ 87,451,654
August 31, 2006	\$ 87,141,756	\$ 676,541	\$ 15,696,842	\$103,515,139
August 31, 2007	\$ 99,435,221	\$ 694,873	\$ 16,502,450	\$116,632,544
August 31, 2008	\$ 131,840,994	\$ 693,487	\$ 16,900,657	\$149,435,138
August 31, 2009	Note			

Note: The Fiscal Year 2009 Audited Financial Statements from JAVA’s independent auditor have not yet been issued; therefore, the APA was not able to disclose the equity interest balance as of August 31, 2009.

The APA obtained support for the value of the donated land from the City’s Real Estate Division. After the initial estimate of the value of the donated land was made by the project manager, the Real Estate Division obtained appraisals of the land received from UNL and the State of Nebraska. The APA obtained these appraisals to compare the appraised values to the estimated values of the donated land. The appraised values obtained from the Real Estate Division did not agree to the estimated values.

A summary of values is as follows:

	State of Nebraska	UNL	Total
Estimated Values	\$ 3,919,469	\$ 9,144,449	\$ 13,063,918
Appraised Values	\$ 2,500,342	\$ 6,707,947	\$ 9,208,289
Variance	\$ 1,419,127	\$ 2,436,502	\$ 3,855,629

Note: An additional \$90,980 was donated from the LPSNRD. The Real Estate Division did not obtain an appraisal on the land donated by LPSNRD, so this was not verified by the APA.

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JAVA’s independent auditor used the original estimates to determine the City’s initial equity interest in JAVA. Neither JAVA nor the City informed the independent auditor of these appraisals or provided him a copy of the appraised values. JAVA’s independent auditor will determine if an adjustment is needed in the fiscal year 2009 audited financial statements, as the City’s equity interest appears to be overstated by just under \$4 million.

Without providing the independent auditor the changes to the valuation of the City’s initial investment, or equity interest, in JAVA, the audited financial statements of JAVA will not accurately reflect each entity’s equity interest.

We believe this finding to be a significant deficiency.

We recommend JAVA ensure equity interest amounts reported in the audited financial statements are properly supported and reported to the independent auditor to ensure the accuracy of information included in the audit.

JAVA’s Response: The original estimate included other associated costs. The appraised values were certified land appraisals. If necessary, adjustments will be made in the FY 08/09 financial statements prior to their issuance.

APA Response: The APA feels a \$3.8 million variance necessitates an adjustment to the financial statements.

8. Wages and Overhead Charged to JAVA

Certain City departments, including the Engineering Department and Urban Development, provide services to JAVA and consequently bill JAVA for payroll and overhead expenses. The APA reviewed the payroll expenses and overhead charged by these departments and determined the Engineering Department overbilled or lacked supporting documentation for \$19,227 in overhead charged to JAVA. Additionally, errors in the fiscal year 2009 overhead rate calculation for Engineering Department caused the City to underbill JAVA by \$10,880. Finally, the Housing Rehabilitation and Real Estate division of the Urban Development Department also overbilled JAVA \$138,512 in overhead. The overhead rate used by the Housing Rehabilitation and Real Estate division was also calculated inconsistently during the APA’s testing period and did not include some expenses normally classified as overhead, like employee benefits.

City Department	Total Overhead Charged to JAVA	APA Calculated Overhead Total	Amount Overbilled
Engineering	\$ 1,133,578	\$ 1,125,231	\$ 8,347
Urban Development	\$ 214,261	\$ 75,749	\$ 138,512
Total	\$ 1,347,839	\$ 1,200,980	\$ 146,859

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Engineering Department

- For fiscal years 2006 and 2008, the Engineering Department charged overhead rates in excess of the normal rates calculated based on the annual budget. The City indicated the increased rates were verbally agreed upon due to low cash balances on hand; however, there was no documentation to support or approve this increased rate. The amount of the overbilling was \$14,778.
- Overhead rates are based on budgets or estimates prepared each fiscal year. At the end of a fiscal year, the actual expenditures are compared to the budget. When actual expenditures exceed the budgeted amounts, the overhead rate charged did not adequately cover costs. Conversely, when budgeted amounts exceed actual expenditures, the overhead rate charged was higher than necessary to cover actual costs. To account for the variance between budgeted and actual expenditures, the City performs adjustments to the subsequent year's budgeted figures used in the calculation of overhead rates. The City incorrectly reduced the fiscal year 2009 budgeted expenditures by \$242,080, when performing the budget to actual adjustments for fiscal year 2008. The City reduced the budgeted expenditures to \$4,535,382, when the budgeted expenditures should have been \$4,777,642. This error reduced the overhead rate charged to JAVA during the year, resulting in errors in the amounts billed. JAVA was underbilled by \$10,880 for services provided by City employees.
- In fiscal year 2008, the Engineering Department billed 13 hours of overtime for community revitalization projects, in which the overhead was incorrectly calculated using a rate of 999%. The Department could have charged up to 19% overhead (the City's calculated overtime rate) for these overtime hours. This caused an overbilling of \$4,377 to JAVA.
- A minor error in the fiscal year 2009 overhead rate calculation caused an overbilling of \$72 to JAVA.
- Regular wages and overhead were not accurately charged to JAVA because employees in the City Engineering Department did not record overtime hours correctly on their timesheets. The employees recorded overtime on timesheets when over 8 hours were worked per day. The City's agreement with the Lincoln City Employees Association, effective August 20, 2009, through August 31, 2010, states in part, "Work performed by non-exempt employees in excess of forty (40) hours per work week (Thursday through the following Wednesday) shall be compensated at the rate of one and one-half (1 ½) times the hourly rate of the employee." Therefore, City employees should not record overtime hours until more than 40 hours are worked from Thursday through the following Wednesday. See **Exhibit P** for examples of these timesheets.
- One city employee responsible for oversight of JAVA projects allocated 25 percent of his time across active JAVA projects, which did not reflect the actual hours worked on JAVA projects. Office of Management and Budget, Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (05/10/2004), Attachment B, Section 8(h)(4) states, "Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5)." Section 8(h)(5) states, "Personnel activity reports or equivalent documentation must meet the following standards: (a) They must reflect an after-the-fact distribution of the actual activity of each employee."

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Urban Development Department

JAVA and the City entered an agreement in January 2002, in which the City agreed to provide “complete right-of-way acquisition and relocation services.” The agreement called for JAVA to “reimburse the City on an as billed ‘actual cost’ basis including 100% of the cost of salary and fringe benefits for the actual hours worked on JAVA business plus the reasonable cost of all supplies and expenses required by City personnel in performance of the services provided.” For fiscal years 2005 through 2009, the Urban Development Department overbilled JAVA \$138,512, as follows:

- The overhead rate was created as an hourly rate. The department accumulated the total overhead expenses each year and divided the overhead total by the number of hours worked for each individual responsible for Antelope Valley projects. See below for the Department’s calculation of the rate:

Housing Rehab & Real Estate Division Overhead Calculation

	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	
	Budget	Budget	Budget	Budget	Budget	
Salaries	218,205	237,555	237,457	252,745	261,531	
Overhead	<u>32,664</u>	<u>29,787</u>	<u>29,001</u>	<u>26,725</u>	<u>31,961</u>	
Total	250,869	267,342	266,458	279,470	293,492	← Budgeted overhead divided by total hours equals overhead rate.
FTE's	4.5	4.5	4.5	4.5	4.5	
Hours	9360	9360	9360	9360	9360	
Overhead Rate	3.49	3.18	3.10	2.86	3.41	

Source: Urban Development

Instead of entering this amount into the system as an hourly rate, the department entered this rate as a percentage, significantly overcharging the overhead billed by the department. See **Exhibit Q** for an example of a billing document from the department.

When overhead amounts are not correctly calculated or adequately reviewed, there is an increased risk of improper billings, which result in a loss of JAVA funds. When city employees do not record actual hours worked on JAVA projects, there is a risk JAVA will not be billed the correct amount for both wages and overhead. We consider this finding to be a significant deficiency.

We recommend the City of Lincoln refund JAVA the amounts overbilled by the Engineering and Urban Development departments. We also recommend the departments periodically review the overhead rates to ensure the rates both reflect all true overhead costs and are being billed correctly. We also recommend the City ensure employees are properly recording overtime, only after 40 hours have been worked. We also recommend all City employees record actual time worked on JAVA projects. Finally, we recommend both departments approve and document any decisions to adjust overhead rates beyond those normally calculated.

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JAVA's Response:

Engineering Department, 1st Bullet: JAVA disagrees that it was overbilled. The appropriate overhead rate was used.

Engineering Department, 2nd Bullet: Since the City is part of JAVA, resolving this miscalculation would produce no financial impact to the City or JAVA.

Engineering Department, 3rd Bullet: A system error caused the overbilling, but JAVA has been reimbursed.

Engineering Department, 5th Bullet: The City will comply with the appropriate Federal Acquisition Regulations (FAR).

Engineering Department, 6th Bullet: The overall cost to the project is the same regardless of how time was recorded. The current project manager charges actual time worked to each project.

Urban Development Department: The City's Urban Development Department has completed a review of the annual overhead rate calculation and has revised the overhead rate to reflect actual costs including fringe benefits. Credit will be given during the current fiscal year to correct the past charges.

APA Response:

Engineering Department, 1st Bullet: As noted above, the Engineering Department overhead rate used was not documented or approved.

Engineering Department, 2nd Bullet: There is a financial impact to the City, as the \$10,880 of engineering expenses incurred by City employees for JAVA's projects should have been reimbursed by JAVA and not paid for with City funds. Thus, JAVA's accounting records do not reflect the \$10,880 expense.

Engineering Department, 6th Bullet: OMB Circular A-87 sets out specific requirements regarding how time is to be recorded, and JAVA failed to comply with those requirements.

9. Internal Control Issues

The APA identified the following internal control issues during our review:

FHWA Reimbursement Requests

The Antelope Valley bridge and roadway projects were partially funded by Federal funds from FHWA. When receiving Federal funds, local agencies must follow Federal and State regulations. The APA tested three reimbursement requests submitted to NDOR for FHWA funds. There was one request from each of three different projects - the Big T, J Street Bridge, and the East Leg. See below for the total amount of reimbursement requests tested:

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Project	Reimbursement Request Tested
Big T	\$ 2,000,000
J Street Bridge	\$ 53,292
East Leg	\$ 4,674,206
Total Tested	\$ 6,727,498

- The reimbursement request for the East Leg included a \$29,412 invoice for telecommunication costs to relocate cable. The invoice did not include a date to document when the work was performed. The J Street Bridge reimbursement request for \$53,292 included two contractor construction estimates that did not identify the contractor’s name. The NDOR Guidelines for Transportation Program Funds for Eligible Local Projects (July 2005), Section 110.10, and the current LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 13.3, both state, “All reimbursement requests must contain proper documentation supporting the payment of eligible expenses.” When invoices do not indicate the date(s) the work was performed, there is an increased risk work performed prior to the obligation of Federal funds will be reimbursed.

- Each project was obligated Federal funds for various types of work, including preliminary engineering, construction engineering, and construction. The obligation date serves as the Federal authorization date, or the first date work can be performed and reimbursed. None of the three reimbursement requests tested included the Federal authorization date for each type of work. According to the NDOR Guidelines for Transportation Program Funds for Eligible Local Projects (July 2005), Section 20.50, “A Federal Authorization Date is the first date from which expenses incurred from any particular workphase can be eligible for reimbursement. Project obligation triggers the Federal Authorization Date for each workphase.” The LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 13.3.3, indicates consideration for processing requests may include whether authorization dates are referenced on invoices. When the Federal authorization date for the phase of work is not documented with reimbursement requests, there is an increased risk expenses incurred prior to that date will be inappropriately reimbursed.

- The East Leg reimbursement tested included several different internal control issues. One invoice included \$18,829 in City payroll expenses for seven Engineering Department employees. The APA tested 7 of 58 employee timesheets covering the reimbursement period of December 2007 through March 2008. None of the timesheets were approved by the responsible charge. Another invoice tested included preliminary engineering services and was not approved by the responsible charge. Two other invoices, one for construction costs and one for construction engineering services, were signed and approved by someone other than the responsible charge. The LPA Guidelines Manual for Federal-Aid Projects (May 2009), Section 13.3, states, “The reimbursement request may vary, but the following information must be included...A formal letter requesting reimbursement of eligible expenses including a certification statement. The LPA RC [Local Public Agency Responsible Charge] will certify that the work shown on

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the invoice has been performed; completed in accordance with terms of agreement or approved plans and specifications; has verified the cost(s) shown are true and correct; and in no way represents any degree of duplication of payments that have or will be received. This letter must be signed by the LPA RC.” Section 13.4.5 of the manual states, “Charges should be supported by time charges (time and attendance records or summary documents), and receipts for miscellaneous charges. All costs must be broken down into eligible direct and/or indirect cost components. Claims should be reasonable, allowable and approved by the LPA RC.” When invoices or payroll charges are not properly approved, there is an increased risk of duplicate payments or incorrect reimbursement requests.

Expenditure Testing

The APA tested 71 JAVA expenditures and noted the following internal control issues:

- No documentation was on file to support that rates charged were reasonable or proper for one expenditure tested. The \$724,253 construction expenditure included six different labor surcharges, indirect costs, and equipment additives rates. JAVA lacked documentation to show that the contractor charged the correct and current rates.
- For one expenditure tested, there was no documented approval from the Antelope Valley Project Manager, and there was no documentation on the invoice to support charging the costs to the JAVA project. The \$1,483 expenditure was for traffic signals and was charged to the Military Road Bridge and Roadway; however, nothing on the invoice indicates that the charge related to this project.
- For one preliminary engineering contract billing tested, an incorrect overhead rate was used, resulting in an overbilling of \$5. Further review of these billings indicated similar errors on other billings totaling \$206.
- For one construction management contract billing tested, \$589 in expenses were either not included in the contract’s cost proposal or billed at rates exceeding the contracted rates.
- For one construction management invoice tested, one of four subconsultants used an old overhead rate, resulting in an initial JAVA overpayment of \$185. The consultant stated the overhead charged will be reviewed and adjustments made based on actual costs and overhead rates at the conclusion of the project.
- For one construction management invoice tested, one of four subconsultants charged an incorrect fee-for-profit of twelve percent, instead of the contracted ten percent profit, resulting in an overpayment by JAVA of \$2.

Without a complete review and approval of expenditures, there is an increased risk unallowable or incorrect expenses will be paid by JAVA.

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We recommend JAVA:

- Obtain adequate supporting documentation prior to paying Antelope Valley expenses and requesting Federal reimbursement.
- Document the Federal authorization date for each phase of work on Federal reimbursement requests.
- Establish procedures to ensure invoices and claims for reimbursement are approved by the responsible charge for accuracy and eligibility prior to requesting reimbursement.
- Ensure all project expenditures are adequately approved.

JAVA's Response:

FHWA Reimbursement Requests, 1st Bullet:

(1) BNSF was paid only for work they completed.

(2) The contractor pay applications did not identify the contractor's name; however, the cover sheet attached to the invoice did contain the name.

FHWA Reimbursement Requests, 2nd Bullet: LPA Guidelines Manual in effect at the time did not require the work authorization date be included on the invoice. In the future, the requirements of the LPA Guidelines Manual in place at the time of invoicing will be followed.

FHWA Reimbursement Requests, 3rd Bullet:

(1) JAVA disagrees. The timesheets were signed by the employee's Supervisor. Responsible Charge certification is a new requirement and did not exist in this time period. Furthermore, there is no current requirement that the Responsible Charge has to sign timesheets.

(2) The date of the invoice being referred to is unknown. If the invoice was dated prior to May 2009, the Responsible Charge certification did not exist. In the future, the requirements of the LPA Guidelines Manual in place at the time of invoicing will be followed.

(3) JAVA disagrees. The invoices were approved by the City Engineer. Responsible Charge certification did not exist at that time.

Expenditure Testing, 1st Bullet: The Antelope Valley Project Manager reviewed the labor charges and they were usual and customary for BNSF. The invoiced charges related to this finding accounted for \$84,034.54 of the \$724,253.00.

Expenditure Testing, 2nd Bullet: This expenditure was requisitioned through purchasing. The actual purchase order identified the project to be charged and had the proper approvals.

Expenditure Testing, 3rd Bullet: Parsons Brinckerhoff has made corrections and will reimburse JAVA \$205.69.

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Expenditure Testing, 4th Bullet: JAVA disagrees. Of the \$589.00, \$587.06 were direct expenses not specifically identified in the cost proposal but are eligible expenses. The remaining \$1.94 that exceeded contract rates is being reimbursed by Parsons Brinckerhoff.

Expenditure Testing, 5th Bullet: JAVA will be reimbursed \$185.00 by the subconsultant.

Expenditure Testing, 6th Bullet: JAVA disagrees. The \$2 fee for profit is correct but the subconsultant incorrectly charged to the wrong task. The subconsultant is revising the invoice to show the correct task.

APA Response:

FHWA Reimbursement Requests, 1st Bullet: Without adequate documentation reflecting the contractor's name or the dates the work was performed, the APA was unable to determine the eligibility of payment from FHWA.

FHWA Reimbursement Requests, 2nd Bullet: Sound accounting practice would require a work authorization date to ensure the eligibility of payments from the FHWA.

FHWA Reimbursement Requests, 3rd Bullet: Again, FHWA-Nebraska is the authority for highway transportation projects, and the APA is testing compliance with that Agency's interpretation of Federal requirements. The LPA Manual is NDOR's policy manual for assisting LPA's to administer local Federal-aid projects. Although the LPA Manual is "new", it is based on requirements – such as requiring a responsible charge – that have been in existence for decades.

Expenditure Testing, 1st and 2nd Bullet: JAVA did not maintain adequate documentation to support the rates charged or the charging of costs to a project.

10. UNL Accounting of Transactions

The APA requested from UNL financial information related to the Antelope Valley project. UNL provided a spreadsheet of financial information from which the APA attempted to verify the amounts contained therein to information in the University's accounting system. UNL reported \$1.95 million received from JAVA's bond proceeds, but the APA could not find any information in the University's accounting system regarding this transaction. The \$1.95 million was requested by UNL in June 2003 to help fund the purchase of property that would serve as UNL's facilities and parking space displaced by the Antelope Valley project. UNL also received funds from the UNL Foundation and other UNL sources for the purchase of this property. The funds from JAVA and the additional funds received by UNL were deposited into the University Cash Fund (Fund). Established by Neb. Rev. Stat. § 85-125 (Reissue 2008), the Fund is comprised of various fees collected from students by the authority of the Board of Regents for university purposes. This fund is to be used in a manner somewhat analogous to that of a petty cash fund, as follows:

[A]t least fifty thousand dollars shall be available during the first two weeks of each term to make advances to students who have financial aid in excess of tuition and fees, and the

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remainder of which money shall be available to make settlement and equitable adjustments with students entitled thereto, to carry on university activities contributing to this fund, and to provide for contingencies.

A payment was made by UNL from this Fund to the title company for the actual purchase of the property.

While UNL did record the asset via a journal entry in the University's accounting system after the purchase, the deposit and subsequent payment related to the purchase of this property were not recorded in the accounting system as revenues or expenditures. The \$1,950,000 transaction was not reflected as expenditures in the State of Nebraska Annual Budgetary Report for fiscal year ending June 30, 2003, for the University; therefore, this amount was not included in determining if the University expenditures were within their budgeted authority. This revenue and expenditure also would not have been included in the University audit report for fiscal year 2003. Moreover, the purpose of the Fund, established by State Statute, does not appear to be to cover large property transactions such as this.

Additionally, the \$1.95 million from JAVA, as well as \$2 million from the UNL Foundation, were not deposited with the Nebraska State Treasurer as required by Neb. Rev. Stat. § 84-710 (Reissue 2008). This statute provides, in relevant part:

"It shall be unlawful for any executive department, state institution, board, or officer acting under or by virtue of any statute or authority of the state, including the State Racing Commission, to receive any fees, proceeds from the sale of any public property, or any money belonging to the state or due for any service rendered by virtue of state authority without paying the same into the state treasury within three business days of the receipt thereof when the aggregate amount is five hundred dollars or more and within seven days of the receipt thereof when the aggregate amount is less than five hundred dollars."

All activity of UNL is not properly reflected if all transactions are not recorded in the University's accounting system. Furthermore, UNL is not in compliance with § 84-710.

We recommend UNL ensure all transactions are properly recorded in the University accounting system, deposited with the Nebraska State Treasurer, and the funds are used as intended.

UNL's Response: UNL properly recorded the purchase of the Textron property in the University's financial accounting system. It was recorded as a capitalized asset.

APA Response: While we agree the asset was capitalized, the related revenues and expenditures were not properly reflected in UNL's accounting system. A summary of the acquisition of the property follows. There was \$3,950,000, of the \$4,925,000, which was never recorded as revenues and expenditures in the accounting system at UNL:

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**University of Nebraska - Lincoln
Summary of Property Acquisition**

Foundation check	\$ 1,426,582.61
Foundation deposit	\$ 577,801.14
Less: closing costs	\$ 4,383.75
Foundation portion of purchase	\$ 2,000,000.00
JAVA funds	\$ 1,950,000.00
UNL funds	\$ 975,000.00
Purchase price	\$ 4,925,000.00
 SAP Fixed Asset Module:	
Property Main Plant Bldg, asset #900000022068	\$ 977,366.00
Property Warehouse Bldg, asset #900000022069	\$ 3,011,884.00
Land, asset #900000022912	\$ 761,046.22
Land, asset #900000022913	\$ 110,759.92
Land, 1.12 acres disposed in FY05	\$ 63,943.86
Fixed Asset price	\$ 4,925,000.00
Foundation and JAVA funds not reflected in the accounting system as revenues and expenditures	\$ 3,950,000.00
UNL funds reflected in the accounting system as revenues and expenditures	\$ 975,000.00
Total Purchase price	\$ 4,925,000.00

We will be referring this issue to the Nebraska State Treasurer for action they deem appropriate.

11. FHWA Construction Change Order Review

In September and October 2009, the APA met with the FHWA to discuss the Federal requirements applicable to the Antelope Valley Projects. Subsequently, the APA requested assistance from the FHWA in reviewing the technical change orders. As a result, the FHWA conducted a limited review of the construction contract change orders to determine if Federal requirements for change order documentation and justification were satisfied.

FHWA reviewed only the four projects with all vouchers submitted and closed out. There are a total of 13 transportation projects with original contract amounts of \$72,340,611; therefore, FHWA reviewed 46% of the original contract amounts:

Project Number	Project Title	Original Contract Amount	Number of Change Orders	Percent Increase to Project
880101	Y Street Bridge/Roadway	\$ 4,212,295.79	19	17.30%
880102	Vine Street Bridge/Roadway	\$ 4,201,141.21	9	4.70%
880103	Military Road Bridge/Roadway	\$ 4,698,213.12	16	12.70%
880106	Big "T" Project	\$ 19,951,873.51	25	7.70%
Totals		\$ 33,063,523.63		\$ 3,069,438.53

Note: There were 13 construction contracts involving FHWA funds with a total of 98 change orders currently. Since the projects are not completed more change orders are possible. See **Exhibit G**.

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Substantial deficiencies and areas of non-compliance were identified which could jeopardize Federal funding. From this review alone, the eligibility of \$2,859,873.73 may be in question for Federal funding. Deficiencies were noted on all four of the sample projects and are possible on the remaining projects. An in-depth evaluation is needed to determine the extent of non-compliance and to determine the appropriate corrective actions.

The FHWA review indicates the following:

- Compliance with Federal-aid laws, regulations and policies is not being accomplished in all cases when processing change orders to amend contract documents,
- Project documentation provided is not always adequate to substantiate Federal-aid reimbursement,
- It appears that numerous work items are not eligible for Federal-aid reimbursement,
- Adequate oversight and proper controls by the grantee (NDOR) are lacking, and
- The City of Lincoln and NDOR must provide justification to FHWA that all Federal-aid eligible work performed on the Antelope Valley Projects was performed after the funds were authorized by FHWA in their Fiscal Management Information System (FMIS). When Federal-aid funding is requested by NDOR for a construction project, NDOR is responsible for ensuring that no work activities occur prior to that FMIS authorization. Any work that occurs prior to the FMIS authorization for that specific work scope is not eligible for Federal-aid funding.

NDOR, as the grantee recipient of Federal funds, will need to work with the subgrantee (City of Lincoln) to respond to FHWA regarding the findings and observations included in this report.

See **Exhibit S** for a copy of the entire FHWA review report.

The APA feels that without adequate procedures to ensure all Federal requirements are met, there is an increased risk for noncompliance with these regulations, which could mean Federal funds already received may have to be paid back and could jeopardize future Federal funding. We believe this finding is a significant deficiency.

We recommend the City and NDOR review the findings contained in the FHWA review report and take appropriate action immediately.

NDOR's and JAVA's Response: During the subject time period, NDOR reviewed change order and contract modifications but did not have in place a policy requiring that they be signed by NDOR's Project Representative. Beginning in September 2008, NDOR established the policy of having the change order and contract modifications reviewed and signed by the NDOR representative. NDOR audited 3 of the 4 projects noted, and no deficiencies were found. JAVA and NDOR will review the FHWA findings and continue to work with FHWA to ensure correct procedures and Federal regulations are followed for future projects.

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Overall Conclusion

In 1999, the estimated costs of the six-to-ten-year Antelope Valley project were \$175 million. However, JAVA provided several cost estimates for the project ranging from \$136,000,000 in 1998 to \$276,000,000 in 2001. From its inception through August 31, 2009, the Antelope Valley project has incurred costs in excess of \$214 million. As of August 31, 2009, future costs under the original plans are estimated to be over \$32 million, for total projected costs in excess of \$246 million. The APA found serious problems relating to the management of the Antelope Valley project, including the lack of a complete, centralized accounting of the entire project as a whole. Numerous entities individually tracked their own costs related to the project.

The APA has serious concerns related to the consulting contracts signed by the City and JAVA. The City signed the preliminary engineering agreement in October 1995 for just under \$3 million; however, the value of that contract, along with amendments thereto, is in excess of \$32 million through August 2009. JAVA signed the construction management agreement in September 2003 for just over \$2 million, and the value of the contract and subsequent amendments is in excess of \$13 million through August 2009. The original contracts were amended for work that was not described in the original RFPs.

The APA noted the City has not reviewed completed projects to compare FHWA reimbursements, which were based on cost estimates, to the actual costs. Similarly, NDOR did not normally require LPAs to compare the estimates to the actual costs. The APA also found that NDOR had drawn down in excess of \$532,000 in error from FHWA.

During the land acquisition process for properties, the APA determined JAVA erred in overpaying one property owner \$214,500 for the value of the property. The APA also determined over \$693,000 in relocation assistance payments to property owners to be questionable.

The value of land donated to the Antelope Valley project was approximately \$3.8 million more than the market value of the donated land after appraisals were performed. The City did not provide the revised figure to the independent certified public accountant for use in the JAVA audit. Therefore, the equity interests shown in the audited financial statements are not accurate.

Finally, the City overcharged JAVA in excess of \$146,000 for overhead related to payroll expenses of employees in the City's engineering and urban development departments.

The APA obtained assistance from FHWA to review change orders for construction contracts. Subsequently, the FHWA issued a review report, included as **Exhibit S**, discussing substantial deficiencies and area of noncompliance, which could jeopardize Federal funding. From the limited review they conducted, \$2,859,873 of Federal funds may be in question.

In light of the serious nature of these findings and their possible implications upon Federal funding, we recommend JAVA take every action to recoup funds owed to it and implement procedures to account more accurately for the total costs of the Antelope Valley project. We further recommend JAVA, the City, and NDOR follow all applicable regulations, laws, and guidelines and work with FHWA to appropriately address all related issues.

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The APA staff members involved in this attestation review were:

Cindy Janssen, Audit Manager	Tom Bliemeister, Auditor-In-Charge
Philip Olsen, CPA, CISA, Auditor-In-Charge	Julie Smith, CPA, CFE, Auditor-In-Charge
Acacia Crist, CFE, ACDA, Auditor II	Erin Pope, CFE, Auditor II
Mary Avery, Special Audits and Finance Manager	Lance Lambdin, JD, Legal Counsel

If you have any questions regarding the above information, please contact our office.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
**PAYMENTS MADE TO PARSONS BRINCKERHOFF AND
SUBCONSULTANTS UNDER THE PRELIMINARY ENGINEERING CONTRACT
INCEPTION OF PROJECT THROUGH AUGUST 2009**

EXHIBIT A

Contractors and Subconsultants	Payments Made from Inception through August 2004	Payments Made from September 2004 through August 2009	Total Preliminary Engineering Contract Payments Since Inception
Parsons Brinckerhoff (Note)	\$8,448,012	\$3,903,412	\$12,351,424
Subconsultants:			
Olsson Associates	\$9,533,434	\$3,830,389	\$13,363,823
Seacrest & Kalkowski	\$1,521,531	\$515,737	\$2,037,268
Erickson & Sullivan, P.C.	\$386,908	\$153,771	\$540,679
RTKL	\$307,725	\$9,575	\$317,300
The Clark Enerson Partners	\$0	\$305,404	\$305,404
University Nebraska Research	\$212,785	\$67,731	\$280,516
Wallace Consulting	\$191,345	\$74,331	\$265,676
Janssen & Spaans Engineering	\$0	\$231,949	\$231,949
Tadros Associates	\$0	\$132,650	\$132,650
Crandall Arambala	\$0	\$128,797	\$128,797
Cline, Williams	\$46,798	\$0	\$46,798
Kim Todd	\$5,480	\$2,600	\$8,080
Anthropology Research UNL	\$0	\$1,216	\$1,216
Total Paid all Subcontractors	\$12,206,006	\$5,454,150	\$17,660,156
Total Paid Preliminary Engineering Contract	\$20,654,018	\$9,357,562	\$30,011,580

Note: Parsons Brinckerhoff Quade & Douglas, Inc. was the name under the original preliminary engineering contract. The City makes payments to PB Americas Inc., the current company's name.

Source: Information was accumulated from the JAVA financial records maintained in the City's accounting system.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
PARSONS BRINCKERHOFF CONSTRUCTION MANAGEMENT CONTRACT AND AMENDMENTS
INCEPTION OF PROJECT THROUGH AUGUST 2009

EXHIBIT B

Project	Type (4)	Original Agreement	Amend. 1 (1)	Amend. 2 (2)	Amend.3	Amend. 4 (3)	Amend. 5	Amend. 6 (5)	Totals
		Sept 2003	Oct 2004	Aug 2006	April 2007	Febr 2008	June 2008	May 2009	
Core Team	CE&I	\$906,034	\$1,496,910	\$0	\$630,596	\$0	\$0	\$743,353	\$3,776,893
Y Street Bridge and Roadway	CE&I	\$348,240	\$130,823	\$0	\$191,957	\$0	\$0	(\$18)	\$671,002
Vine Street Bridge and Roadway	CE&I	\$604,888	\$79,047	\$0	\$107,412	\$0	\$0	(\$962)	\$790,385
Military Road Bridge and Roadway	CE&I	\$442,157	(\$35,040)	\$0	\$177,095	\$0	\$0	\$0	\$584,212
Big T	CE&I	\$0	\$2,162,942	\$0	(\$420,565)	\$0	\$0	\$31,130	\$1,773,507
P and Q Street Bridges and Roadway	CE&I	\$0	\$0	\$0	\$587,835	\$0	\$0	(\$26,615)	\$561,220
North Bottoms Landscaping	CE&I	\$0	\$0	\$0	\$3,593	\$0	\$0	(\$586)	\$3,007
O Street Bridge and Roadway	CE&I	\$0	\$0	\$0	\$606,875	\$0	\$0	(\$251,816)	\$355,059
East Leg Bridge and Roadway	CE&I	\$0	\$0	\$0	\$3,221,241	\$0	\$0	(\$932,492)	\$2,288,749
North/South Road Vine to Y Street	CE&I	\$0	\$0	\$0	\$221,267	\$0	\$0	(\$89,902)	\$131,365
North/South Road P to Vine Street Landscaping	CE&I	\$0	\$0	\$0	\$0	\$0	\$0	\$269,394	\$269,394
J Street Bridge and Roadway	CE&I	\$0	\$0	\$0	\$269,441	\$0	\$0	(\$66,467)	\$202,974
N Street Utilities/USACE Phase III Bridge and Roadway	CE&I	\$0	\$0	\$0	\$104,311	\$0	\$31,851	\$127,943	\$264,105
Lewis Fields Parking Lot	CE&I	\$0	\$0	\$0	\$0	\$0	\$40,686	(\$18,254)	\$22,432
JAVA Program (Replating)	P&C	\$0	\$0	\$0	\$0	\$0	\$50,000	\$196,777	\$246,777
USACE Phase III and East Downtown Park	CE&I	\$0	\$0	\$0	\$0	\$0	\$50,069	\$4,620	\$54,689
Union Plaza Phase II, III, IV	ENG	\$0	\$0	\$0	\$0	\$0	\$295,694	\$15,198	\$310,892
P to Vine Landscaping	ENG	\$0	\$0	\$0	\$0	\$0	\$0	\$20,241	\$20,241
K to Q Roadway	ENG	\$0	\$0	\$0	\$0	\$0	\$0	\$195,151	\$195,151
K to Q Landscaping	ENG	\$0	\$0	\$0	\$0	\$0	\$0	\$20,550	\$20,550
East Leg Landscaping	ENG	\$0	\$0	\$0	\$0	\$0	\$0	\$20,241	\$20,241
South Street Bridge	ENG	\$0	\$0	\$0	\$0	\$0	\$0	\$84,133	\$84,133
Community Revitalization - General Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$32,644	\$32,644
Transportation Planning and Coordination	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$54,232	\$54,232
Public Involvement	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$58,503	\$58,503
JAVA Partnership - General Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$100,491	\$100,491
JAVA Partnership - APA Audit Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$23,962	\$23,962
AV Program - General Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$334,505	\$334,505
Antelope Creek Flood Control - General Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$58,526	\$58,526
Transportation and Utility Elements - General Support	P&C	\$0	\$0	\$0	\$0	\$0	\$0	\$37,785	\$37,785
Total		\$2,301,319	\$3,834,682	\$0	\$5,701,058	\$0	\$468,300	\$1,042,267	\$13,347,626
Fixed Fee For Profit		\$154,697	\$328,729	\$0	\$221,141	\$0	\$9,836	\$230,308	\$944,711
Actual Costs		\$2,146,622	\$3,505,953	\$0	\$5,479,917	\$0	\$458,464	\$811,959	\$12,402,915
Total		\$2,301,319	\$3,834,682	\$0	\$5,701,058	\$0	\$468,300	\$1,042,267	\$13,347,626

- (1) In addition to the costs for the Big T project in amendment 1, this amendment also included additional costs for the projects under the original agreement.
- (2) Amendment 2 added work for the P and Q Street Bridges and Roadways. No amount for this amendment was provided. Unused funds from prior work would initially fund the work of Amendment 2 and the details of the amount required to increase the maximum limiting amount for this amendment would be included in a future amendment.
- (3) Amendment 4 added work for the restructuring of the Lewis Fields Parking Lot. No amount for this amendment was provided. Unused funds from prior work would initially fund the work of Amendment 4 and the details of the amount required to increase the maximum limiting amount for this amendment would be included in a future amendment.
- (4) CE&I - Construction Engineering & Inspection ENG - Engineering P&C - Planning & Coordination
- (5) Amendment 6 added \$4,379,588 in new services and new estimated costs. This amount was offset by \$3,337,321 in reallocated costs for a net increase in costs of \$1,042,267. The \$230,308 in fixed fee for profit was based on the \$4,379,588 in total new services and costs.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
**PAYMENTS MADE TO PARSONS BRINCKERHOFF AND
SUBCONSULTANTS UNDER THE CONSTRUCTION MANAGEMENT CONTRACT
INCEPTION OF PROJECT THROUGH AUGUST 2009**

EXHIBIT C

Contractors and Subconsultants	Payments Made from Inception through August 2004	Payments Made from September 2004 through August 2009	Total Construction Management Contract Payments Since Inception
Parsons Brinckerhoff (Note 1)	\$652,485	\$4,305,188	\$4,957,673
Subconsultants:			
Olsson Associates	\$258,982	\$2,205,021	\$2,464,003
Schemmer Associates	\$225,535	\$1,065,280	\$1,290,815
HWS	\$94,988	\$899,361	\$994,349
The Clark Enerson Partners	\$0	\$177,286	\$177,286
Erickson & Sullivan	\$0	\$10,925	\$10,925
DBI, Inc	\$0	\$4,471	\$4,471
Seacrest & Kalkowski	\$0	\$4,156	\$4,156
Total Paid all Subconsultants	\$579,505	\$4,366,500	\$4,946,005
Total Paid for Construction Management Contract	\$1,231,990	\$8,671,688	\$9,903,678

Note 1: Parsons Brinckerhoff Quade & Douglas, Inc. was the name under the original construction management contract. The City makes payments to Parsons Brinckerhoff Construction, the company name prior to the merger to form PB Americas, Inc.

Note 2: Included in the payments made September 2004 through August 2009 was \$413,309 in costs related to City projects that were not paid by JAVA.

Source: Information accumulated from the City's accounting system and consultant invoices.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
UNION PLAZA SCHEDULE OF BASIC RENT PAYMENTS

EXHIBIT D

EXHIBIT A

TO LEASE PURCHASE AGREEMENT DATED APRIL 29, 2008, BETWEEN THE
CITY OF LINCOLN, NEBRASKA, AND UNION BANK AND TRUST COMPANY.

SCHEDULE OF BASIC RENT PAYMENTS

<u>Lease Payment Date</u>	<u>Principal Installment Due</u>	<u>Interest Installment Due</u>	<u>Total Amount Due</u>
September 15, 2008	\$ 0.00	\$ 92,612.22	\$ 92,612.22
March 15, 2009	1,230,000.00	122,575.00	1,352,575.00
September 15, 2009	0.00	101,050.00	101,050.00
March 15, 2010	1,230,000.00	101,050.00	1,331,050.00
September 15, 2010	0.00	82,600.00	82,600.00
March 15, 2011	1,255,000.00	82,600.00	1,337,600.00
September 15, 2011	0.00	63,775.00	63,775.00
March 15, 2012	1,625,000.00	63,775.00	1,688,775.00
September 15, 2012	0.00	39,400.00	39,400.00
March 15, 2013	335,000.00	39,400.00	374,400.00
September 15, 2013	0.00	33,537.50	33,537.50
March 15, 2014	340,000.00	33,537.50	373,537.50
September 15, 2014	0.00	28,437.50	28,437.50
March 15, 2015	355,000.00	28,437.50	383,437.50
September 15, 2015	0.00	19,562.50	19,562.50
March 15, 2016	365,000.00	19,562.50	384,562.50
September 15, 2016	0.00	13,631.25	13,631.25
March 15, 2017	375,000.00	13,631.25	388,631.25
September 15, 2017	0.00	7,068.75	7,068.75
March 15, 2018	<u>390,000.00</u>	<u>7,068.75</u>	<u>397,068.75</u>
TOTAL	<u>\$7,500,000.00</u>	<u>\$993,312.22</u>	<u>\$8,493,312.22</u>

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
PAYMENTS GREATER THAN \$5,000 MADE TO VENDORS
ONLY FOR THE PERIOD SEPTEMBER 1, 2004 THROUGH AUGUST 31, 2009**

EXHIBIT E

Entity/Payee	Amount
Hawkins Construction	\$ 54,744,988
Parsons Brinckerhoff	\$ 17,615,942
Corps of Engineers - Omaha District	\$ 11,359,266
Constructors Inc	\$ 4,651,741
United Contractors	\$ 3,161,642
BNSF Railway Company	\$ 3,129,280
City of Lincoln	\$ 1,977,442
Christensen Brothers Inc	\$ 1,848,558
Property #1	\$ 1,648,600
University of Nebraska Antelope Valley	\$ 1,596,439
Lincoln Electric System	\$ 1,042,084
County Court	\$ 987,128
Property #2	\$ 805,949
Property #3	\$ 802,627
Property #15	\$ 647,473
Property #5	\$ 617,670
Lower Platte S Natural Resource District	\$ 565,425
Property #4	\$ 552,097
Property #14	\$ 451,618
US Bank - Urban Development	\$ 406,780
Property #25	\$ 258,183
Property #26	\$ 253,280
Property #28	\$ 232,392
Mid Nebraska Grading & Demolition	\$ 198,210
Roberts Lawn & Landscaping LLC	\$ 192,870
County Treasurer	\$ 191,941
Midwest Right of Way Services	\$ 191,416
Property #29	\$ 191,030
Judds Brothers Construction Co	\$ 185,760
Qwest Wireless	\$ 178,946
Natural Resources District	\$ 152,000
MCI Telecommunications International	\$ 140,472
Property #6	\$ 134,882
Property #30	\$ 130,603
Property #31	\$ 128,106
Property #32	\$ 123,242
Electrical Products	\$ 117,909
County/City Property Management	\$ 106,523
Hansen Construction Co	\$ 105,700
Property #33	\$ 105,700
LeGrande Excavating Inc	\$ 103,580
Micek & Crouch P.C. CPA	\$ 100,715
Brown Traffic Products Inc	\$ 96,324
Property #34	\$ 92,735
Cattle National Bank & Trust Company	\$ 89,000
Property #35	\$ 85,074
Sprint	\$ 83,816
Property #36	\$ 79,324
Great Plains Appraisal Inc	\$ 77,130
Koch Co/The Harry A	\$ 74,118
Select Van & Storage	\$ 74,045
Property #12	\$ 73,908
West Gate Bank	\$ 73,845
Property #37	\$ 73,450
Fry & Associates Inc	\$ 68,182
Bockmann Inc	\$ 65,680
Property #38	\$ 54,900
Property #39	\$ 51,291
Schipper Construction	\$ 51,000

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
PAYMENTS GREATER THAN \$5,000 MADE TO VENDORS
ONLY FOR THE PERIOD SEPTEMBER 1, 2004 THROUGH AUGUST 31, 2009**

EXHIBIT E

Entity/Payee	Amount
Nebraska Title Company	\$ 49,772
Property #9	\$ 49,524
Property #41	\$ 48,365
Control Technologies	\$ 44,078
EMC Insurance Companies	\$ 43,752
Property #42	\$ 41,690
Property #27	\$ 41,590
Thomas E Stevens & Associates	\$ 40,100
Briggs Real Estate PC, Fred W	\$ 33,325
Property #16	\$ 31,500
Nebraska State Fair	\$ 31,489
Eagle Nursery	\$ 30,932
Security Federal	\$ 30,800
Property #43	\$ 29,938
Big Red Self-Storage North	\$ 28,544
JB Trucking & Grading	\$ 26,734
Lincoln Habitat for Humanity	\$ 25,846
Allen & Company	\$ 25,800
Property #17	\$ 25,000
Jensen Gardens Inc	\$ 22,101
Nebraska Department of Roads	\$ 21,462
Property #18	\$ 20,810
Property #44	\$ 20,000
Property #19	\$ 18,865
Property #20	\$ 17,187
Bahr Vermeer & Haecker Architects	\$ 16,920
Qwest Comm. Corp-Wholesale	\$ 14,997
Traffic & Transportation Products	\$ 13,363
Property #45	\$ 12,660
Property #46	\$ 11,919
Walton Construction Inc	\$ 11,668
Property #47	\$ 11,600
Black Hills Energy	\$ 11,487
Urban Development	\$ 10,778
Erickson & Sederstrom PC	\$ 10,232
Property #21	\$ 10,211
White Electric Supply	\$ 9,900
Amoto Lawn & Tree Service, Mr	\$ 9,500
American Fence Company Inc	\$ 9,351
Property #40	\$ 8,665
Lincoln Water System	\$ 8,367
Property #48	\$ 8,273
Johnson Appraisal LLC	\$ 8,100
White Star Equipment Company	\$ 7,950
Wesco	\$ 7,756
Leotek Electronics USA Corp.	\$ 7,685
Property #49	\$ 7,557
Staybridge Suites	\$ 7,370
Woods & Aitken	\$ 7,366
Copy Services	\$ 6,848
Property #22	\$ 6,732
Bioenvironmental Svcs & Technology	\$ 6,257
Commonwealth Electric Co	\$ 6,256
Property #23	\$ 5,409
Property #24	\$ 5,292
Cornerstone Printing & Imaging	\$ 5,264

Note: Information obtained from JAVA financial records. Under the Uniform Act, 49 CFR 24.9(b), "Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise." As such, the APA is not able to disclose the payments for property acquired by JAVA.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
**EXPENSES BY PROJECT ONLY FOR THE PERIOD OF
SEPTEMBER 1, 2004 THROUGH AUGUST 31, 2009**

EXHIBIT F

City Assigned Project Number	Project Description	Amount
880107	East Leg Bridge and Roadway	\$ 29,167,979
880106	Big Tee	\$ 25,902,325
880203	USACE Phase III	\$ 7,065,657
880105	P and Q Street Bridges and Roadway	\$ 6,803,772
880108	North/South Road Vine to Y Street	\$ 5,879,626
880302	Downtown Community Park/Union Plaza	\$ 5,109,831
880104	O Street Bridge and Roadway	\$ 4,154,914
880102	Vine Street Bridge and Roadway	\$ 3,641,814
880112	N Street Bridge and Roadway	\$ 3,626,405
880202	USACE Phase II	\$ 3,602,615
880204	BNSF Railroad Bridge over the Channel	\$ 2,980,296
880109	North/South Roadway K to Q Street	\$ 2,780,216
880110	J Street Bridge and Roadway	\$ 2,742,759
880101	Y Street Bridge and Roadway	\$ 2,488,817
880103	Military Road Bridge and Roadway	\$ 1,868,279
701545	UNL Buildings and Parking	\$ 1,474,975
880113	North/South Roadway P to Vine Street	\$ 1,161,180
880305	Other Community Revitalization	\$ 767,251
880307	Lewis Fields Parking	\$ 628,990
880111	South Street Bridge	\$ 475,310
880304	Trails Connection	\$ 413,954
880303	Trago Park	\$ 374,354
880205	Channel Landscaping	\$ 369,791
79950	Operating	\$ 365,518
880301	Northeast Community Park	\$ 256,574
880100	Transportation	\$ 193,875
880000	Administration	\$ 158,630
702178	Electric Substation	\$ 119,833
880201	Channel Phase I	\$ 72,320
542320	Antelope Valley MIS	\$ 43,127
880114	P to Vine Street, Assurity	\$ 35,728
702179	Perimeter Landscaping	\$ 21,086
542321	Antelope Valley - Northeast Radial Property Rent	\$ 10,583
880306	Northeast Community Park/Future Development	\$ 6,954
701548	DAS Building (JE to correct prior period coding error)	\$ (109,480)
Total		\$ 114,655,858

Note: These totals do not include transfers out, only expenses charged to these projects. They include JAVA Fund 406, and other City Funds (405, 480), where project expenses were coded.

Source: Information accumulated from City's accounting system.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
SUMMARY OF CITY-LET CONSTRUCTION CONTRACTS
INCEPTION THROUGH AUGUST 31, 2009

EXHIBIT G

Project	Contractor	Contract Date	Contract Completion Date	Original Contract Amount	Change Order Amounts	Total Contract Amount	Number of Change Orders	Percentage of Change Order Amounts to Original Contract	Total Amount Paid as of 8/31/09
Northeast Community Park	Judd's Brothers	5/15/2002	8/29/2003	\$ 3,278,902	\$(247,576)	\$ 3,031,326	10	-7.55%	\$ 3,031,326
Y Street Bridge & Roadway*	Hawkins Construction	9/9/2003	10/15/2004	\$ 4,212,296	\$ 730,503	\$ 4,942,799	19	17.34%	\$ 4,901,902
Military Road Bridge and Roadway*	Hawkins Construction	9/9/2003	10/15/2004	\$ 4,698,213	\$ 597,579	\$ 5,295,792	16	12.72%	\$ 5,295,267
Vine Street Bridge and Roadway*	Constructors	2/17/2004	11/1/2005	\$ 4,201,141	\$ 198,131	\$ 4,399,272	9	4.72%	\$ 4,315,222
Big T*	Hawkins Construction	9/24/2004	6/1/2007	\$19,951,873	\$1,543,227	\$21,495,100	25	7.73%	\$21,495,100
Military Road Bridge and Roadway	Roberts Lawn LLC	7/1/2005	8/19/2005	\$ 78,243	\$ (1,879)	\$ 76,364	4	-2.40%	\$ 76,364
Y Street Bridge & Roadway	Jensen Gardens	8/8/2005	6/1/2006	\$ 71,984	\$ (6,378)	\$ 65,606	2	-8.86%	\$ 65,606
P and Q Street Bridges and Roadway*	Hawkins Construction	8/22/2006	11/3/2007	\$ 5,481,771	\$ (46,087)	\$ 5,435,684	8	-0.84%	\$ 5,435,813
Big T	Roberts Lawn LLC	2/6/2007	6/1/2007	\$ 112,073	\$ 4,433	\$ 116,506	3	3.96%	\$ 116,506
Trails Connection & Trago Park	Judd's Brothers	3/2/2007	9/30/2007	\$ 169,411	\$ (4,395)	\$ 165,016	1	-2.59%	\$ 165,016
East Leg Bridge and Roadway*	Hawkins Construction	8/7/2007	11/15/2010	\$23,858,703	\$ 604,620	\$ 24,463,323	13	2.53%	\$23,630,051
O Street Bridge and Roadway*	United Contractors	8/29/2007	10/31/2008	\$ 3,182,138	\$ 51,078	\$ 3,233,216	4	1.61%	\$ 3,161,642
North/South Road Vine to Y*	Hawkins Construction	2/25/2008	6/30/2009	\$ 1,098,429	\$ 45,560	\$ 1,143,989	3	4.15%	\$ 1,097,315
Lewis Ballfields Parking	Constructors	2/25/2008	9/15/2008	\$ 612,940	\$ 25,891	\$ 638,831	2	4.22%	\$ 592,260
J Street Bridge and Roadway*	Christensen Brothers	5/7/2008	12/5/2008	\$ 1,956,368	\$ 19,903	\$ 1,976,271	1	1.02%	\$ 1,848,558
North/South Road Vine to Y	Eagle Nursery	1/12/2009	9/1/2009	\$ 33,456	\$ 0	\$ 33,456	0	0.00%	\$ 30,931
North/South Road P to Vine*	Constructors	3/15/2009	6/30/2010	\$ 3,699,679	\$ 0	\$ 3,699,679	0	0.00%	\$ 989,416
Totals				\$76,697,620	\$3,514,610	\$80,212,230	120		\$76,248,295

Note: Information gathered from contracts, change orders, and City's accounting system.

Note *: These 10 contracts are transportation projects involving FHWA funds with original contract amounts of \$72,340,611. There are 13 total FHWA construction projects. The N Street Bridge was contracted by the USACE and is not included in this exhibit. The North/South Road K to P Streets and South Street Bridge contracts have not been awarded.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
SUBCONTRACTORS UNDER CONSTRUCTION CONTRACTS
INCEPTION THROUGH AUGUST 31, 2009

EXHIBIT H

PROJECTS	Big T	P & Q Street Bridges and Roadway	Military Road Bridge and Roadway	Vine Street Bridge and Roadway	TOTAL
SUBCONTRACTORS CONTRACTOR	Hawkins Construction	Hawkins Construction	Hawkins Construction	Constructors	
Hawkins Construction Company				\$ 1,929,017	\$ 1,929,017
Negus & Sons	\$ 1,822,799				\$ 1,822,799
TCW Construction	\$ 1,170,382		\$ 646,111		\$ 1,816,493
Constructors, Inc.	\$ 443,825	\$ 608,314	\$ 211,737		\$ 1,263,876
ABC Electric	\$ 1,090,008				\$ 1,090,008
Watts Electric Co.		\$ 359,143	\$ 490,064	\$ 238,738	\$ 1,087,945
Brandt Excavating	\$ 844,394	\$ 76,061			\$ 920,455
M.E. Collins Construction		\$ 399,443	\$ 403,806		\$ 803,249
General Excavating				\$ 572,572	\$ 572,572
Trafcon Inc.	\$ 260,406		\$ 42,950	\$ 60,901	\$ 364,257
Iron Works, Inc.		\$ 271,518	\$ 52,796		\$ 324,314
LeGrande Excavating			\$ 150,779	\$ 133,034	\$ 283,813
Nebraska Hydro-Seeding	\$ 231,156				\$ 231,156
Speece Lewis Engineering	\$ 159,903		\$ 39,348	\$ 27,929	\$ 227,180
K2 Construction Services		\$ 198,854			\$ 198,854
J.D. Steel Co.			\$ 152,882		\$ 152,882
S & W Fence Co.	\$ 73,618		\$ 77,285		\$ 150,903
DSI USA, Inc.		\$ 144,280			\$ 144,280
Bender Ornamental		\$ 138,812			\$ 138,812
American Fence	\$ 101,040			\$ 11,984	\$ 113,024
Scott Derr Painting	\$ 69,053		\$ 41,961		\$ 111,014
Uleman Irrigation	\$ 106,360				\$ 106,360
Nemaha Nursery			\$ 76,151	\$ 7,822	\$ 83,973
DPLM Inc.	\$ 70,823				\$ 70,823
Longfellow Foundations, Inc.		\$ 65,840			\$ 65,840
Miner Landscape				\$ 64,634	\$ 64,634
Rupert Construction Company				\$ 63,918	\$ 63,918
Valley Corporation			\$ 50,551		\$ 50,551
ABC Coating			\$ 37,832		\$ 37,832
Spickelmier Irrigation			\$ 33,886		\$ 33,886

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
SUBCONTRACTORS UNDER CONSTRUCTION CONTRACTS
INCEPTION THROUGH AUGUST 31, 2009

EXHIBIT H

PROJECTS	Big T	P & Q Street Bridges and Roadway	Military Road Bridge and Roadway	Vine Street Bridge and Roadway	
SUBCONTRACTORS CONTRACTOR	Hawkins Construction	Hawkins Construction	Hawkins Construction	Constructors	TOTAL
Terracon Consulting Engineers				\$ 27,294	\$ 27,294
Truelsen Blumenthal, LLC		\$ 26,690			\$ 26,690
Hunt Irrigation				\$ 23,834	\$ 23,834
McGill Restoration		\$ 23,730			\$ 23,730
JEO Consulting		\$ 23,696			\$ 23,696
Todd Valley Farms		\$ 9,525	\$ 10,472		\$ 19,997
Woerner Wire Works			\$ 19,974		\$ 19,974
Midwest Masonary			\$ 19,807		\$ 19,807
ART Stone Co.			\$ 12,181		\$ 12,181
Midwest Steelworks			\$ 12,175		\$ 12,175
Hi-Way Products, Inc.		\$ 11,842			\$ 11,842
Stonco, Inc.		\$ 11,797			\$ 11,797
Arrow Striping, Inc.		\$ 6,868			\$ 6,868
Carter			\$ 5,119		\$ 5,119
Weathercraft Ent.			\$ 4,660		\$ 4,660
Greenscreen			\$ 4,547		\$ 4,547
Garcia Chicoine			\$ 4,538		\$ 4,538
Tobi Engineering			\$ 3,780		\$ 3,780
Kaser Painting			\$ 2,441		\$ 2,441
Midwest Door Hdw			\$ 1,006		\$ 1,006
TOTAL SUBCONTRACTORS	\$ 6,443,767	\$ 2,376,413	\$ 2,608,839	\$ 3,161,677	\$ 14,590,696
CONTRACTOR AMOUNTS	\$ 21,495,100	\$ 5,435,684	\$ 5,295,792	\$ 4,399,272	\$ 36,625,848
Percentage of Subcontractor Amounts to Contract Amount	30.0%	43.7%	49.3%	71.9%	39.8%

Note: Subcontractor listing does not include suppliers of material or 2nd and 3rd tier subcontractors. The dollars paid to contractors are made available after the project has been closed out. These are the only projects that have been closed out to date. The following pages indicate contractors, by X, that have been approved by JAVA for each contract, but the dollars paid to the subcontractors are not available.

Information obtained from contractor's invoices and information prepared by contractors.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
SUBCONTRACTORS UNDER CONSTRUCTION CONTRACTS
INCEPTION THROUGH AUGUST 31, 2009

EXHIBIT H

PROJECTS	Y Street Bridge and Roadway	East Leg Bridge and Roadway	North/South Road Vine to Y	J Street Bridge and Roadway	North/South Road P to Vine	Lewis Ballfield Parking	Trails Connection & Trago Park	Northeast Community Park	O Street Bridge and Roadway
CONTRACTOR NAME	Hawkins Construction	Hawkins Construction	Hawkins Construction	Christensen Brothers	Constructors	Constructors	Judd's Brothers	Judd's Brothers	United Contractors
Subcontractor:									
ABC Electric								X	
American Fence		X						X	X
Bender Ornamental		X							X
Brandt Excavating	X	X	X	X	X			X	X
Cather and Sons	X								
Commonwealth Electric	X			X					
Constructors, Inc.								X	
Elish Construction	X								
General Excavating	X	X			X				
HDS Construction	X								
H.R. Bookstrom						X			
Iron Works, Inc.	X	X		X					X
J.D. Steel Co.	X								
JED Masonry								X	
JEO Consulting		X							X
John Henry Plumbing								X	
K2 Construction Services				X					
Land Construction						X			
Layne Western								X	
Leich Landscaping				X					
Linhart Construction Co., Inc.		X							
McGill Asbestos	X								
McGill Restoration		X							X
M.E. Collins Construction	X								
Miner Landscape								X	
Nebraska Nursery & Color Gardens						X			

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
**SUBCONTRACTORS UNDER CONSTRUCTION CONTRACTS
INCEPTION THROUGH AUGUST 31, 2009**

EXHIBIT H

PROJECTS	Y Street Bridge and Roadway	East Leg Bridge and Roadway	North/South Road Vine to Y	J Street Bridge and Roadway	North/South Road P to Vine	Lewis Ballfield Parking	Trails Connection & Trago Park	Northeast Community Park	O Street Bridge and Roadway
CONTRACTOR NAME	Hawkins Construction	Hawkins Construction	Hawkins Construction	Christensen Brothers	Constructors	Constructors	Judd's Brothers	Judd's Brothers	United Contractors
Subcontractor:									
Nebraska Painting & Sealing						X			
Nemaha Nursery	X								
Pavers, Inc.		X							X
Rod's Roofing								X	
S & W Fence Co.	X								
Scott Derr Painting	X								
Settje Surveying & Engineering						X			
Soil-Tek		X	X	X	X	X			X
Speece Lewis Engineering	X		X		X				
Spickelmier Irrigation	X								
Steven & Smith								X	
TCW Construction				X					
Terracon Consulting Engineers					X				
Todd Rose Decorative Concrete, Inc.				X	X				
Todd Valley Farms	X								
Trafcon Inc.	X	X	X	X	X	X			X
Uleman Irrigation		X	X		X				
Valley Corporation	X								
Watts Electric Co.	X	X	X		X				X

Note: Subcontractor listing does not include suppliers of material or 2nd and 3rd tier subcontractors. The dollars paid to contractors are made available after the project has been closed out. These pages indicate contractors, by X, that have been approved by JAVA for each contract, but the dollars paid to the subcontractors are not available.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
FHWA/NDOR LETTERS

EXHIBIT I



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ROADS

John L. Craig, Director

1500 Highway 2 • PO Box 94759 • Lincoln NE 68509-4759

Phone (402) 471-4567 • FAX (402) 479-4325 • www.transportation.nebraska.gov

March 27, 2009

Joseph Werning
Division Administrator
Federal Highway Administration
100 Centennial Mall N Rm 220
Lincoln NE 68508-3851

Dear Mr. Werning:

The Nebraska Department of Roads (NDOR) and Federal Highway Administration (FHWA) have spent much of the past year developing procedures for improved oversight of Local Public Agency (LPA) projects due to an FHWA finding of material weaknesses in this program. As a part of this development, we have discussed the past practice of consultant use on LPA projects and the potential for conflict of interest. I believe we both agree that the soon to be released LPA manual should dictate that the same, or a financially related, engineering or architectural consulting firm cannot serve as City Engineer/County Highway Superintendent or other City/County official of record and also provide engineering services (preliminary engineering (PE) or construction engineering (CE)) for a transportation project.

Regarding the same consulting firm providing both PE and CE for a project, NDOR requests this be allowed for a two-year evaluation period. Past reviews have not uncovered fraud, waste, or abuse when the same firm performs both services on projects. There are many advantages to this practice that have been brought forward, and many states allow it. It is especially helpful to our smaller counties and cities. We feel that the new LPA manual QC/QA procedures, that are almost final, will assure us that conflicts of interest issues will be prevented. By having certified LPA responsible charge representatives and detailed NDOR oversight procedure (to which we are committed), we believe we can prove during this two-year evaluation that conflicts of interest involving consulting firms will not occur.

Along with you and your staff, we stand ready to work out the details of the evaluation procedures at the end of the two-year period should you agree to our request.

Sincerely,

John L. Craig
Director

JLC:MWF:z

cc: Larry Bare
Larry Dix
Lash Chaffin

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
FHWA/NDOR LETTERS

EXHIBIT I



U.S. Department
of Transportation
Federal Highway
Administration

NEBRASKA DIVISION

September 8, 2009

100 Centennial Mall North
Room 220
Lincoln, NE 68508
(402)437-5765

In Reply Refer To:
HDA-NE

Monty Fredrickson
Director
Nebraska Department of Roads
P.O. Box 94759
Lincoln, NE 68509-4759

Dear Mr. Fredrickson:

Thank you for the Nebraska Department of Roads' (NDOR) March 27 letter proposing to allow the same consulting firm to provide both design and construction engineering services on the same Federal-aid project for a 2-year evaluation period.

After careful review and consideration of your request, the Federal Highway Administration (FHWA) is unable to approve NDOR's proposal at this time. We can support and would reconsider this approach once NDOR has in place additional oversight mechanisms to mitigate the potential for conflict of interest and ensure the public interest is protected. At a minimum, NDOR needs to establish and fully implement policies, procedures, and practices that provide the necessary controls to ensure State and local procurement practices comply with State and Federal law.

Through a series of program reviews, FHWA documented substantial deficiencies and violations of Federal law and regulations involving projects administered by local public agencies (LPAs). Additionally, we found a lack of State and local controls to adequately address consultant engineering contracting and mitigate potential conflicts of interest.

At the same time, FHWA recognizes that NDOR is making important changes to procedures and practices that will significantly improve the administration of Federal-aid highway program funding on local projects. Much effort continues to be expended in implementing the newly developed LPA manual and training program for individuals who will serve as responsible charge. Currently, efforts remain ongoing in developing a comprehensive quality assurance and quality control program to monitor the local projects.



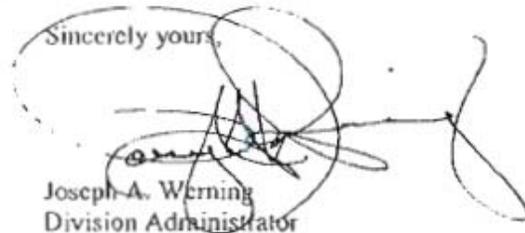
JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
FHWA/NDOR LETTERS

EXHIBIT I

In the enclosed table, FHWA has outlined several conditions that NDOR must establish and implement to ensure compliance with State and Federal law and regulations. Specifically, NDOR should be prepared to evaluate and demonstrate that the procurement, management, and administration of specific contracts for consultant services and LPA oversight are being conducted in a manner that complies.

We look forward to working with you to implement the enclosed compliance conditions to move beyond the cited material weakness and put conflict of interest controls in place. At such time as NDOR satisfactorily meets the compliance conditions, FHWA will reconsider allowing the same consulting firm to provide engineering services in both the design, construction management and/or inspection services on the same Federal-aid project. The FHWA stands ready to work in partnership with NDOR and other pertinent parties to fully implement these compliance conditions and develop an interim transition plan for consultant procurement.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Joseph A. Werning', is written over the typed name. The signature is somewhat stylized and overlaps the typed text.

Joseph A. Werning
Division Administrator

Enclosure

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
FHWA/NDOR LETTERS

EXHIBIT I

Compliance Conditions

1. Development of a comprehensive State procurement manual. Manual will meet the requirements of 23 USC 112, 23 CFR 1.9, 1.11, 1.33, 172, and 49 CFR 18.
2. NDOR must develop and fully demonstrate the execution of a state monitoring program that provides continuing assurance that Federal and state laws and regulations are being met.
3. Review and approve all sub-grantee written procurement procedures prior to authorizing funds on a Federal-aid project.
4. Full implementation of NDOR policy prohibiting a consulting firm from serving as city/county/highway superintendent "engineer of record" and also performing subsequent work phases.
5. Develop and implement annual ethics training module for all personnel (state and local) responsible for contract management/monitoring. This module should include a section on recognizing and addressing organizational conflict of interest.
6. Develop and implement training for NDOR, local authorities, and consultants on conflict of interest, LPA program administration requirements, LPA project management requirements, and consultant services procurement, management, and administration requirements.
7. Develop a NDOR staffing plan detailing how NDOR will accomplish items 1-6 above in addition to its current program delivery responsibilities. The plan should identify the number of staff dedicated to establishing, monitoring and revising procurement policies and procedures and individuals roles and responsibilities.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
SUMMARY OF FHWA ELIGIBLE COSTS

EXHIBIT J

1/17/04

SUMMARY OF FHWA ELIGIBLE COSTS FOR ANTELOPE VALLEY PROJECTS

Project	FHWA Eligible Costs	Non-FHWA Eligible Costs	Total Project Cost	FHWA Eligible Cost as a Percentage of Total Cost	CITY + NROTLES / CORP 50/50
Military Road and Bridge 880103	4,078,197.52	620,015.60	4,698,213.12	86.80%	13.20%
Y Street Road and Bridge 880101	1,443,312.69	2,768,983.10	4,212,295.79	34.26%	65.74%
Vine Street Road and Bridge 880102	1,947,439.07	2,256,419.67	4,203,858.74	46.33%	53.67%
Big "T" Project 880106	18,349,529.90	1,544,396.90	19,893,926.80	92.24%	7.76%
"P" and "Q" Street Bridges 880105(B)	1,996,046.16	3,177,080.04	5,173,126.20	38.58%	61.42%
"O" Street Bridge 880104	1,223,551.22	2,488,394.38	3,711,945.60	32.96%	67.04%
"N" Street Bridge 880105(A)	845,807.45	1,581,971.85	2,427,779.30	34.84%	65.16%
"J" Street Bridge 880110	588,009.68	381,156.64	969,166.32	60.67%	39.33%
East Leg Project 880107	34,918,956.63	0.00	34,918,956.63	100.00%	--0--
South Street Bridge 880111	1,381,469.13	0.00	1,381,469.13	100.00%	--0--
North-South Roadway, "K" to "Q" 880109	10,767,387.65	0.00	10,767,387.65	100.00%	--0--
North-South Roadway, "Q" to "Y" 880108	6,592,299.85	0.00	6,592,299.85	100.00%	--0--
Totals	84,132,006.95	14,818,418.18	98,950,425.13		

Comp Method

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
O STREET BRIDGE CONSTRUCTION ESTIMATE**

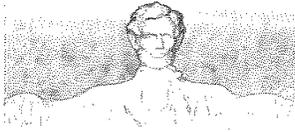
EXHIBIT K

**O Street Roadway and Bridge Summary of Quantities and Costs
Corps of Engineers Breakout**

Item No.	Description	Pay Unit	Total Qty	Eligible Qty (FHWA Funding)	Total Non Eligible FHWA Qty's	AV Flood Control Project Qty	Non-Participating Qty	ESTIMATED Unit Price	FHWA Eligible Cost	Eligible AV Flood Control Project Cost	Non-Participating JAVA/City 100% Cost	Total Extension
Grading and Removal Items												
1	PAVEMENT AND SIDEWALK REMOVAL	CY	3,415.000	2,446.000	969.000	700.000	269.000	13.00	31,798.00	9,100.00	3,497.00	44,395.00
2	TREE REMOVAL (12" to 23")	EA	2.000	0.000	2.000	2.000	0.000	150.00	0.00	300.00	0.00	300.00
3	TYPE "A" SAWING	LF	722.000	203.000	519.000		519.000	2.50	507.50	0.00	1,297.50	1,805.00
4	TYPE "C" SAWING	LF	152.000	37.000	115.000		115.000	4.00	148.00	0.00	460.00	608.00
5	MILLING, ASPHALT PAVEMENT	SY	460.000	460.000	0.000		0.000	10.00	4,600.00	0.00	0.00	4,600.00
6	MILLING, CONCRETE CURB	LF	12.000	12.000	0.000		0.000	15.00	180.00	0.00	0.00	180.00
7	GENERAL CLEARING & GRUBBING	LS	1.000	1.000	0.000		0.000	5,000.00	5,000.00	0.00	0.00	5,000.00
8	WHEEL SAWING	LF	475.000	475.000	0.000		0.000	3.00	1,425.00	0.00	0.00	1,425.00
9	EXCAVATION (ESTABLISHED QUANTITY)	CY	2,173.000	2,173.000	0.000		0.000	5.00	10,865.00	0.00	0.00	10,865.00
10	MOBILIZATION	LS	1.000	0.330	0.670	0.617	0.053	100,000.00	32,962.53	61,729.22	5,308.25	100,000.00
11	TRAFFIC CONTROL	LS	1.000	0.330	0.670	0.617	0.053	50,000.00	16,481.27	30,864.61	2,654.13	50,000.00
12	FIELD OFFICE	LS	1.000	0.330	0.670	0.617	0.053	12,500.00	4,120.32	7,716.15	663.53	12,500.00
13	CONSTRUCTION STAKING	LS	1.000	0.330	0.670	0.617	0.053	55,000.00	18,129.39	33,951.07	2,919.54	55,000.00
Subtotal Grading & Removals Items =									126,217.00	143,661.05	16,799.95	286,678.00
Concrete Pavement & Surfacing Items												
14	ASPHALTIC CONCRETE SURFACE COURSE FOR RESIDENTIAL STREET	TONS	1,245.000	1,245.000	0.000		0.000	45.00	56,025.00	0.00	0.00	56,025.00
15	ASPHALTIC CONCRETE CURB	LF	291.000	291.000	0.000		0.000	7.00	2,037.00	0.00	0.00	2,037.00
16	ADJUST MANHOLE TO GRADE, COMPLETE	EA	5.000	5.000	0.000		0.000	400.00	2,000.00	0.00	0.00	2,000.00
17	ADJUST WATER VALVE BOX TO GRADE, COMPLETE	EA	5.000	5.000	0.000		0.000	125.00	625.00	0.00	0.00	625.00
18	ADJUST WATER STOP BOX TO GRADE, COMPLETE	EA	2.000	2.000	0.000		0.000	115.00	230.00	0.00	0.00	230.00
19	STANDARD MONUMENT BOX (IN PLACE)	EA	2.000	2.000	0.000		0.000	200.00	400.00	0.00	0.00	400.00
20	10" PORTLAND CEMENT CONCRETE PAVEMENT W/ INTEGRAL CURB	SY	3,317.000	2,907.000	410.000		410.000	37.00	107,559.00	0.00	15,170.00	122,729.00
21	INTEGRAL CURB	SY	857.000	677.000	180.000		180.000	45.00	30,465.00	0.00	8,100.00	38,565.00
22	10" COLORED PORTLAND CEMENT CONCRETE PAVEMENT	SY	226.000	226.000	0.000		0.000	58.00	13,108.00	0.00	0.00	13,108.00
23	10" COLORED PORTLAND CEMENT CONCRETE PAVEMENT (HIGH EARLY STRENGTH)	SY	48.000	48.000	0.000		0.000	65.00	3,120.00	0.00	0.00	3,120.00
24	7" PORTLAND CEMENT CONCRETE PAVEMENT W/INTEGRAL CURB	SY	316.000	316.000	0.000		0.000	32.00	10,112.00	0.00	0.00	10,112.00
25	8" PORTLAND CEMENT CONCRETE ALLEY PAVEMENT	SF	1,129.000	1,129.000	0.000		0.000	35.00	39,515.00	0.00	0.00	39,515.00
26	CONCRETE SIDEWALK, 4" THICK	SF	18,971.000	13,277.000	5,694.000		5,694.000	3.25	43,150.25	0.00	18,505.50	61,655.75
27	COLORED CONCRETE SIDEWALK, 5" THICK	SF	1,572.000	1,572.000	0.000		0.000	4.25	6,681.00	0.00	0.00	6,681.00
28	CONCRETE DRIVEWAY, 6" THICK	SF	3,330.000	1,931.000	1,399.000		1,399.000	4.00	7,724.00	0.00	5,596.00	13,320.00
29	TEMPORARY SURFACING	SY	871.000	871.000	0.000		0.000	40.00	34,840.00	0.00	0.00	34,840.00
30	CONCRETE BARRIER CURB, IN PLACE	LF	43.000	43.000	0.000		0.000	17.00	731.00	0.00	0.00	731.00
31	TRUNCATED DOMES	SF	130.000	130.000	0.000		0.000	30.00	16,900.00	0.00	0.00	16,900.00
Subtotal Concrete Pavement & Surfacing Items =									375,322.25	0.00	47,371.50	422,593.75

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLES OF CITY REIMBURSEMENT REQUESTS TO NDOR**

EXHIBIT L



**CITY OF LINCOLN
NEBRASKA**

MAYOR COLEEN J. SENG

lincoln.ne.gov

Public Works and Utilities Department
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609

This is an example of Big T reimbursement request with 7.76% non-FHWA eligible portion taken out.

May 11, 2005

Mr. Ernest Murillo
NE Department of Roads
302 Superior St
Lincoln, NE 68521

Partial Billing #3
Lincoln City Project #880106
Big Tee Project
CN#11215 E
CM-55 (144)

Dear Mr. Murillo,

The following charges have been incurred from March 1, 2005 through April 30, 2005.

Preliminary Engineering			
City Staff Payroll	\$30,515.54		
Consultant Services	\$1,418,436.92		
Other Expenses	\$1,746.00		
Less Previously Billed	(\$1,448,489.48)		\$2,208.98
Construction			
Contractor Payments	\$6,005,525.47		
Other Expenses	\$36,333.32		
Less Previously Billed	(\$3,786,039.54)		\$2,255,819.25
Construction Engineering			
City Staff Payroll	\$17,291.75		
Consultant Payments	\$333,071.78		
Other Expenses	\$0.00		
Less Previously Billed	(\$27,202.57)		\$323,160.96
Utilities			
Utilities Expense	\$0.00		
Less Previously Billed	\$0.00		\$0.00
Subtotal Expenses			\$2,581,189.19
Less 7.76% Non-FHWA eligible			(\$200,300.28)
Subtotal 92.24% FHWA eligible			\$2,380,888.91
Right of Way			
Right of Way	\$294,922.62		
Less Previously Billed	(\$292,741.62)		\$2,181.00
Subtotal Expenses			\$2,383,069.91
Less city share (20%)			(\$476,613.98)
Subtotal			\$1,906,455.93
Less amount withheld per contract (5%)			(\$95,322.80)
Total Amount Due =>			\$1,811,133.13

Please find enclosed proof of payment reports to itemize expenses.

If you have any questions, please contact Wayne Teten at 441-4939 or myself at 441-7537.

Sincerely,

Fran Mejer
Assistant Public Works/ Utilities Business Manager

*+ print
6.11.08
1825,335.93
2085,747.83

5722216.59
4053583.25

pynd.
1668633.14
deal
628,266.35

\$ 1,040,366.79*



JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLES OF CITY REIMBURSEMENT REQUESTS TO NDOR

EXHIBIT L

880106



CITY OF LINCOLN
NEBRASKA

MAYOR CHRIS BEUTLER

lincoln.ne.gov

Public Works and Utilities Department
Karl Fredrickson, Director
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609

June 8, 2007

Beverly Vonasek
Railroad Liaison Manager
1500 Highway 2
Central Complex
Lincoln, NE 68502

This is an example of a Big T reimbursement without the 7.76% non-FHWA eligible portion taken out.

Dear Beverly,

Following is the list of expenditures we are submitting to you for reimbursement on the Antelope Valley Big T Project (CM11215E). This billing is the final billing to collect the remaining \$2,000,000 in Federal Rail Safety Funds. A summary follows below with attached reports and invoices for detail.

Federal Rail Safety Funds (80%)

Vendor	Invoice Amount	Retained Amount	Amount Paid to Vendor
Consultants			
Parsons Brinkerhoff	\$2,071,860.88	—	\$2,071,860.88
Contractors			
Hawkins Construction	277,643.96	2,776.44	274,867.52
Roberts Lawn & Landscaping	85,881.35	4,294.07	81,587.28
City Engineering	<u>111,018.04</u>	<u>—</u>	<u>111,018.04</u>
	\$2,546,404.23	\$7,070.51	\$2,539,333.72
Less 20% City Contribution Eligible Expense			<u>507,866.74</u>
			\$2,031,466.98
Maximum amount to be reimbursed			\$2,000,000.⁰⁰

If you have any questions, please call me at 441-7537.

1,500,000.00

Sincerely,

Fran Mejer

Fran Mejer
Asst. Public Works & Utilities Business Manager

Attachment

AV Big T Project_Fed Rail Safety Funds_June 2007 FAM.wpd



**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLE OF CITY REIMBURSEMENT REQUEST TO NDOR**

EXHIBIT M



**CITY OF LINCOLN
NEBRASKA**

MAYOR COLEEN J. SENG
lincoln.ne.gov

Public Works and Utilities Department
Karl Fredrickson, Director
555 South 10th Street
Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609

February 14, 2007

Mr. Tigeris
NE Department of Roads
302 Superior St
Lincoln, NE 68521

Partial Billing #4
Lincoln City Project #880106
Big Tee Project
CN#11215 E
CM-55 (144)

Dear Mr. Tigeris,

The following charges have been incurred on this project.

Construction Engineering	
Consultant Payments	\$7,392,574.38
Subtotal Expenses	\$7,392,574.38
Less 7.76% Non-FHWA eligible	(\$573,663.77)
Subtotal 92.24% FHWA eligible	\$6,818,910.61
Less city share (20%)	\$1,363,782.12
Subtotal	\$5,455,128.49
Less amount withheld per contract (5%)	(\$272,756.42)
Total Amount Due =>	<u>\$5,182,372.06</u>

If you have any questions, please contact Wayne Teten at 441-4939 or myself at 441-7537.

Sincerely,

Fran Mejer
Assistant Public Works/ Utilities Business Manager

Handwritten notes:
6/14
2,397,770.50
2,284,601.48

This reimbursement request does not include the amount of previous requests. The \$7 million was listed as consultant payments for construction engineering services, but were actually construction costs.



JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #1

Questioned Amount	Description of Expense	Federal Regulation
\$95	Replacement envelopes, return address envelopes, window envelopes, laser invoices, laser vouchers, and "We are Moving" cards totaling \$3,380, which was included in the relocation assistance payment. However, the business paid a discounted rate of \$3,285, resulting in a \$95 overpayment.	49 CFR 24.301 (g)(13) indicates relettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move are eligible actual moving expenses.
\$41,133	Invoice for \$41,133 for the replacement of the business's computer system. No estimates to move and install the old equipment were on file, as required by Federal regulations. A letter from the company from whom the equipment was purchased was on file indicating a new server was appropriate because of the age of the existing server and potential for lost data during the physical move.	49 CFR 24.301 (g)(16) indicates purchases of substitute personal property is an eligible moving expense, at the lesser of the cost of the substitute item, including installation costs, or the estimated cost of moving and reinstalling the replaced item.
\$41,228	Total Questioned Costs for Property #1	

Property #13

Questioned Amount	Description of Expense	Federal Regulation
\$59	This moving expense was a self move payment to the business. Replacement of telephone system. Two bids were received. First bid - \$20,464 to move and \$67,400 to replace. Second bid - \$6,770 to move (bid was determined to be incomplete) and \$20,405 to replace. It appears the \$20,405 to replace was the lowest estimate and should have been used for the payment. The \$20,464 was the amount paid, a difference of \$59.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #13 (Concluded)

Questioned Amount	Description of Expense	Federal Regulation
\$10,939	This moving expense was a self move payment to the business. Replacement of computer system. Two bids were received. First bid - \$1,794 to move equipment (determined to be incomplete) and \$44,400 to replace system. Second bid - \$55,339 only to replace system. The \$44,400 bid was the lowest estimate and should have been used for the payment. The \$55,339 was the amount paid, a difference of \$10,939.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."
\$118,315	This moving expense was a self move payment to the business. Relocation of vehicle lifts and hoists. Only one bid received of \$118,315. This move does not appear to be low cost or uncomplicated, as provided for in the Federal regulations.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."
\$5,350	This moving expense was a self move payment to the business. Relocation of an air cleaner system. Only one bid was received of \$5,350. This move does not appear to be a low cost or uncomplicated, as provided in the Federal regulations.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."
\$100,000	This moving expense was a self move payment to the business. \$100,000 was estimated by the Relocation Agent to cover miscellaneous costs such as internet service, remaining life of yellow page ad, re-lettering of signs, and replacement of obsolete stationary. There were no bills or estimates on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."
\$234,663	Total Questioned Costs for Property #13	

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14

Questioned Amount	Description of Expense	Federal Regulation
\$670	Self move payment for movement of business property. There was \$670 included in the self move payment without documentation to indicate the purpose of the expense.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment. Title 410 NAC 5-003.03C states, "At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less."
\$1,300	Actual moving expenses for business. Electrical disconnect of equipment. One estimate for \$1,300 was on file, no invoice or receipts were on file.	49 CFR 24.301 (a)(1) Any owner-occupant who qualifies as a displaced person and who moves from a business is entitled to payment of actual moving and related expenses. 49 CFR 24.207 (a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$26,458	Actual moving expenses for business. Electrical reconnect of equipment. Spreadsheet created by owner attached as support for expense. Adequate documentation (receipts) not on file. Additionally, \$511 in electrical permits were paid twice - once included here and once below (Questioned Amount of \$170).	49 CFR 24.301 (a)(1) Any owner-occupant who qualifies as a displaced person and who moves from a business is entitled to payment of actual moving and related expenses. 49 CFR 24.207 (a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$4,750	Actual moving expenses for business. Reinstallation of equipment. One estimate for \$4,750 on file, no invoice or receipts were on file.	49 CFR 24.301 (a)(1) Any owner-occupant who qualifies as a displaced person and who moves from a business is entitled to payment of actual moving and related expenses. 49 CFR 24.207 (a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Continued)

Questioned Amount	Description of Expense	Federal Regulation
\$7,900	Actual moving expense for business. Run air lines in body shop. Two bids on file. Low bid was \$7,900, no invoice or receipts were on file.	49 CFR 24.301 (a)(1) Any owner-occupant who qualifies as a displaced person and who moves from a business is entitled to payment of actual moving and related expenses. 49 CFR 24.207 (a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$2,331	Actual moving expenses for business. Insurance costs of \$2,331 from July 2005 to October 2007 for building insurance and contents for a warehouse owned by this same owner. The insurance costs seem to be for the warehouse building and the contents. There is no documentation to support the replacement value of the property being moved.	49 CFR 24.301(g)(5) insurance for the replacement value of the property in connection with the move and necessary storage is an allowable moving expense.
\$170	Actual moving expenses for business. Payments of \$5,478 were reimbursed for permits for new construction. Documentation on file supported only \$5,308 in expenses actually incurred, a difference of \$170. This included \$511 which was reimbursed previously in the questioned amount of \$26,458, above.	49 CFR 24.301(g)(11) any license, permit, fees, or certification required of the displaced person at the replacement location qualifies as an eligible expense.
\$7,825	Actual moving expenses for business. Remaining life of yellow page ads. Actual payments for yellow page ads were reimbursed. A total of 18 months of invoices were on file from September 2005 to May 2006, September 2006 to April 2007, and June 2007 totaling \$15,640. Owner moved from displaced property to temporary location in June 2006. It appears the yellow page ads were paid for under a contract or agreement and were paid in installments. APA could not determine why actual amount of the bills prior to the move (September 2005 to May 2006) were reimbursed. Total of invoices during that time was \$7,825.	49 CFR 24.301(g)(7) other moving-related expenses that are not listed as ineligible under 24.301(h) may be considered eligible moving expenses by the Agency.
\$2,332	Items classified as moving expenses but were actually reestablishment expenses. Since \$10,000 limit on reestablishment expenses had already been met, amounts were not eligible for reimbursement. 515 pens and 519 sticky note pads purchased just prior to grand opening of new location \$834. 500 grand opening post cards and 100 ice cream flyers for \$343. 500 ice cream flyers \$278. Additionally, 254 red and blue koozies and 2,625 emery boards were purchased for \$877 in March of 2008, after grand opening.	49 CFR 24.304(a)(5) reestablishment expenses - include advertisement of replacement location. 49 CFR 24.304 reestablishment payments not to exceed \$10,000.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Continued)

Questioned Amount	Description of Expense	Federal Regulation
\$4,086	Installation of fire suppression system under the purchase of substitute personal property. Two bids were on file for a new system - \$3,943 and \$4,495. After the grand opening, in June 2008, a letter was received from a vendor indicating it would cost more to move the old system. A bid from 2004 estimated the cost to move the old system at \$2,000. This amount was included in the self move payment to owner of \$134,140 (see below). Since he already received \$2,000 in the self move payment, owner was not entitled to this actual expense. Permit costs of \$150 were included in the \$2,000 self move amount; however, owner also received \$143 in reimbursement under permits for new construction, above, which should not have been paid. (\$3,943 plus \$143 equals \$4,086.)	49 CFR 24.301 (g)(16) purchase of substitute personal property is an eligible moving expense, at the lesser of the cost of the substitute item, including installation costs, or the estimated cost of moving and reinstalling the replaced item.
\$10,028	Replacement of telephone and computer system. Equipment and systems were installed by owner and only copies of credit card statements were provided with items which were requested for reimbursement. Owner requested \$5,378 for computer equipment and \$2,650 for telephone equipment, plus an additional \$2,000 for labor to install. There was no documentation on file to support the labor charges. There was not adequate documentation on file to support the entire expense.	49 CFR 24.301 (g)(16) purchase of substitute personal property is an eligible moving expense, at the lesser of the cost of the substitute item, including installation costs, or the estimated cost of moving and reinstalling the replaced item.
\$2,665	Purchase of a security system. Displaced site had security system in place. Only one proposal on file for the purchase of a new system at \$2,665. No estimated cost for moving and reinstallation of existing system.	49 CFR 24.301 (g)(16) purchase of substitute personal property is an eligible moving expense, at the lesser of the cost of the substitute item, including installation costs, or the estimated cost of moving and reinstalling the replaced item.
\$1,000	Owner of displaced property completed a Suitability Market Study in February 2008 and received \$1,000 for the study. This expense was not allowable since the study was conducted after the purchase or lease of the replacement site.	49 CFR 24.303(b) professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation is also an eligible expense.
\$800	Survey for new construction of replacement location. ALTA/ACSM survey is principally used to developed commercial property and is examined by buyers and lenders who are concerned that the buildings, parking areas, and other improvements are located properly. Invoice on file for \$800. Amount not eligible for reimbursement.	The FHWA's Federal-Aid Policy Guide, Non-regulatory Supplement for Part 24, Subpart D (5) dated February 2006 indicates that eligible expenses under 49 CFR 24.301(g)(12) do not include architectural or engineering type drawings, concepts or considerations at the replacement site. Such expenses are not to be considered "professional services" under the provisions of 49 CFR 24.303(b).

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Continued)

Questioned Amount	Description of Expense	Federal Regulation
\$10,458	Attorney fee for zoning of new construction of replacement location. Invoices on file totaling \$10,458 for services rendered December 2005 through April 2006. Does not appear eligible as services were performed after the purchase of the replacement site. The replacement property was purchased in October 2005.	49 CFR 24.303(b) professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation is also an eligible expense.
\$32,956	Architectural services for replacement site. Invoice from architect on file totaling \$32,956 for services rendered January 2006 through September 2006. The replacement property was purchased in October 2005. Does not appear eligible as services were performed after the purchase of the replacement site.	49 CFR 24.303(b) professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation is also an eligible expense. The FHWA's Federal-Aid Policy Guide, Non-regulatory Supplement for Part 24, Subpart D (5) dated February 2006 indicates that eligible expenses under 49 CFR 24.301(g)(12) do not include architectural or engineering type drawings, concepts or considerations at the replacement site. Such expenses are not to be considered "professional services" under the provisions of 49 CFR 24.303(b).
\$21,494	Reestablishment expense. Construction of restrooms and furnace room at the replacement site. Estimate on file for \$21,494, but no invoice or receipt. Reestablishment expenses should have been capped at \$10,000. APA determined entire amount to be unsubstantiated as proper documentation was not on file to support the expense.	49 CFR 24.304 a small business is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business at a replacement site. 49 CFR 24.304(2) modifications to the replacement property to accommodate the business operation or make replacement structure suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.207(a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$7,471	Construction of a privacy fence. Statement on file totaling \$7,471. This does not appear to be a necessary expense.	The FHWA's Federal-Aid Policy Guide, Non-Regulatory Supplement for Part 24, Subpart D(10)(11) dated February 2006 indicates that the Uniform Act does not require the displaced businesses be made whole. The test for reestablishment expenses is not a comparative standard. Rather, it is one of necessity -- i.e., is the expense necessary to reestablish the displaced business.
\$4,141	Installation of underground sprinkler system. Two bids were on file. Lower bid was \$4,141. No invoices for actual work performed were on file. This does not appear to be a necessary expense.	The FHWA's Federal-Aid Policy Guide, Non-Regulatory Supplement for Part 24, Subpart D(10)(11) dated February 2006 indicates that the Uniform Act does not require the displaced businesses be made whole. The test for reestablishment expenses is not a comparative standard. Rather, it is one of necessity -- i.e., is the expense necessary to reestablish the displaced business.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Continued)

Questioned Amount	Description of Expense	Federal Regulation
\$4,074	Increased cost of insurance. A letter from the insurance company was on file dated January 2008 noting an additional premium payment of \$4,074 per month from the old site to the new site. However, reestablishment amount of \$10,000 was already met.	49 CFR 24.304(a)(6)(iii) the estimated increased costs of operation during the first 2 years at the replacement site for insurance premiums can be included as reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$14,250	Landscaping of the replacement property. Two proposals were obtained - one for \$14,250 and another for \$1,843. An invoice dated August 2007 was also on file for \$3,726. Proper documentation was not on file, and amount was not a necessary expense.	The FHWA's Federal-Aid Policy Guide, Non-Regulatory Supplement for Part 24, Subpart D(10)(11) dated February 2006 indicates that the Uniform Act does not require the displaced businesses be made whole. The test for reestablishment expenses is not a comparative standard. Rather, it is one of necessity -- i.e., is the expense necessary to reestablish the displaced business.
\$23,079	Signs and advertising at replacement property. One proposal was obtained for various signs. APA could not determine which signs were actually provided. Various prices listed for signs. No invoices or receipts were on file. Expense could qualify for reestablishment expense; however, \$10,000 limit had already been reached.	49 CFR 24.304(a)(3) the construction and installation costs for exterior signing to advertise the business is an eligible reestablishment cost. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$264	Increased cost of real estate taxes. Tax statement from 2007 indicated \$8,884 in taxes. Tax statement from 2004 indicated \$4,840 in taxes, for an increase of \$4,044. \$3,780 was included in the \$10,000 cap on reestablishment expenses, so \$264 should not have been reimbursed.	49 CFR 24.304(a)(6)(ii) indicates the estimated increased costs of operation during the first 2 years at the replacement site for personal or real property taxes can be included as reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$15,134	Truck and driver rental to prepare new building site, total invoice \$15,134. Could have been considered reestablishment expense; however, \$10,000 limit was already exceeded.	49 CFR 24.304(a)(2) modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$8,945	Demolition and clearing of the replacement property. Invoice on file for \$8,945. Reestablishment expense limit of \$10,000 was already exceeded.	49 CFR 24.304(a)(2) modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$3,959	Receipts on file from Apollo Steel. Three other bids received. Appears to be some type of steel for new replacement building. Reestablishment expense limit of \$10,000 was already exceeded.	49 CFR 24.304(a)(2) modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Continued)

Questioned Amount	Description of Expense	Federal Regulation
\$5,750	Installation of water and sewer service. Two bids on file. Lower of two bids used - \$5,750. Reestablishment expense limit of \$10,000 was already exceeded.	49 CFR 24.304 and 24.304 (a)(2) modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$4,120	Installation of storm sewer. Two bids on file. Lower of two bids used - \$4,120. Reestablishment expense limit of \$10,000 was already exceeded.	49 CFR 24.304 and 24.304 (a)(2) modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are eligible reestablishment expenses. 49 CFR 24.304 reestablishment expenses not to exceed \$10,000.
\$16,965	Self move payment. Total amount of self move payment was \$134,140. Two bids were received from commercial movers - one for \$31,895 and another for \$48,860. Higher bid was used. Difference of \$16,965.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.
\$53,850	Self move payment. Total amount of self move payment was \$134,140. Only one bid received for moving paint booths and accessories. Total bid was \$53,850. Adequate documentation was not on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.
\$7,500	Self move payment. Total amount of self move payment was \$134,140. No bids or invoices on file for the move of paint room, cans of paint, and accessories. Estimate of \$7,500 was created by owner. Adequate documentation was not on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.
\$8,250	Self move payment. Total amount of self move payment was \$134,140. Only one bid on file for moving of 3 solar panels. Total estimate was \$8,250. Adequate documentation was not on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #14 (Concluded)

Questioned Amount	Description of Expense	Federal Regulation
\$8,000	Self move payment. Total amount of self move payment was \$134,140. Only one bid on file for moving heavy bulk equipment and personal property. Total estimate was \$8,000. Adequate documentation was not on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.
\$5,500	Self move payment. Total amount of self move payment was \$134,140. No bids or invoices on file for the move of built-in shelving and 13 locker cabinets. Estimate of \$5,500 was created by owner. Adequate documentation was not on file.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) The lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.
\$328,475	Total Questioned Costs for Property #14	

Property #11

Questioned Amount	Description of Expense	Federal Regulation
\$18	Storage of non-residential property. Two storage units were charged an incorrect rate for the final month. Both units should have been billed at \$49 for the prorated month, but they were actually billed at \$58. Variance of \$18.	49 CFR 24.301(g)(4) allows storage of personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
\$89	Storage of non-residential property. Four storage units were rented beginning December 8, 2006. Payment was made for this statement for the period December 1, 2007, to December 31, 2007, which exceeded the 12 months. \$120 was the total for the four units for one month. Prorated amount through December 8, 2007, was \$31, a difference of \$89.	49 CFR 24.301(g)(4) allows storage of personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
\$7,784	Commercial moving cost. Two bids on file. Low bid was \$42,408 but was reduced by \$2,568 to \$39,840 when two sheds could not be moved. Invoice included an additional \$7,784 for delays caused by the owner of the property, but this amount was not included with the low bid. The additional amount for delays was paid by the City to the moving company.	49 CFR 24.301(d)(1) allows moves from a business by a commercial mover based on the lower of two bids or estimates prepared by a commercial mover.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #11 (Concluded)

Questioned Amount	Description of Expense	Federal Regulation																		
\$44,639	<p>Replacement housing payment. \$44,639 was determined to be the replacement housing payment, as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Acquisition cost of displaced dwelling</td> <td style="text-align: right;">\$72,000</td> </tr> <tr> <td>Less: land lost for comparable dwelling (49 CFR 24.403(a)(2))</td> <td style="text-align: right;"><u>\$7,629</u></td> </tr> <tr> <td>New Acquisition cost of displaced dwelling</td> <td style="text-align: right;">\$64,371</td> </tr> <tr> <td>Cost of comparable replacement dwelling</td> <td style="text-align: right;">\$109,000</td> </tr> <tr> <td>Less: New Acq. cost of displaced dwelling</td> <td style="text-align: right;"><u>\$64,371</u></td> </tr> <tr> <td>Replacement Housing Payment (Difference in payment amount of \$10)</td> <td style="text-align: right;">\$44,629</td> </tr> </table> <p>However, the actual cost of the replacement dwelling was \$76,000, not the \$109,000 used in the City's calculation. The City added \$33,000 to the actual purchase price of the comparable replacement dwelling for a two stall garage that was ultimately to be used for the displaced business and should not have been included in the replacement housing payment calculation. Correct calculation is:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Actual cost of displaced dwelling</td> <td style="text-align: right;">\$79,000</td> </tr> <tr> <td>Cost of comparable replacement dwelling</td> <td style="text-align: right;"><u>\$76,000</u></td> </tr> <tr> <td>Replacement housing payment</td> <td style="text-align: right;">\$0</td> </tr> </table> <p>Payment should have been \$0 since the cost of the displaced dwelling exceeded the cost of the replacement dwelling.</p>	Acquisition cost of displaced dwelling	\$72,000	Less: land lost for comparable dwelling (49 CFR 24.403(a)(2))	<u>\$7,629</u>	New Acquisition cost of displaced dwelling	\$64,371	Cost of comparable replacement dwelling	\$109,000	Less: New Acq. cost of displaced dwelling	<u>\$64,371</u>	Replacement Housing Payment (Difference in payment amount of \$10)	\$44,629	Actual cost of displaced dwelling	\$79,000	Cost of comparable replacement dwelling	<u>\$76,000</u>	Replacement housing payment	\$0	<p>49 CFR 24.401(b) replacement housing payments are limited to the amount necessary to relocate to a comparable replacement dwelling. The payment shall be the sum of: (1) The amount by which the cost of the replacement dwelling exceeds the acquisition cost of the displacement dwelling, (2) the increased interest and other debt service costs, and (3) the reasonable expenses incidental to the purchase of the replacement dwelling. 49 CFR 24.401(c)(1) the price differential to be paid which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of: (i) The reasonable cost of a comparable replacement dwelling or (ii) the purchase price of the decent, safe, and sanitary replacement dwelling actually purchased by the displaced person. 49 CFR 24.403(a)(2) if the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling. 49 CFR 24.403(a)(7) if the displacement dwelling was part of a property that contained another space used for non-residential purposes (i.e. business) only that portion of the acquisition payment attributable to the displaced dwelling shall be considered the acquisition costs when computing the replacement housing payment.</p>
Acquisition cost of displaced dwelling	\$72,000																			
Less: land lost for comparable dwelling (49 CFR 24.403(a)(2))	<u>\$7,629</u>																			
New Acquisition cost of displaced dwelling	\$64,371																			
Cost of comparable replacement dwelling	\$109,000																			
Less: New Acq. cost of displaced dwelling	<u>\$64,371</u>																			
Replacement Housing Payment (Difference in payment amount of \$10)	\$44,629																			
Actual cost of displaced dwelling	\$79,000																			
Cost of comparable replacement dwelling	<u>\$76,000</u>																			
Replacement housing payment	\$0																			
\$1,139	<p>Replacement dwelling was owned by JAVA. A proposal/invoice was on file for mold remediation at the replacement dwelling for \$4,357. Also included was \$1,139 in lost time expenses. No documentation on file to support these additional expenses.</p>	<p>The Real Estate Sales agreement between JAVA and owner of displaced property to acquire the replacement dwelling included mold remediation as the responsibility of the seller (JAVA).</p>																		
\$29	<p>JAVA paid for the installation of new carpeting on a replacement dwelling. Sales tax was paid by JAVA to replace carpeting. Sales tax totaled \$29. JAVA should not have paid sales tax.</p>	<p>Expense appears reasonable to make the dwelling decent, safe, and sanitary. However, the expense was not included in Real Estate Agreement.</p>																		
\$53,698	Total Questioned Costs for Property #11																			

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #12

Questioned Amount	Description of Expense	Federal Regulation
\$9,784	Architect fees and prints totaling \$9,184, legal lot survey for \$600, and permits and fees for \$1,255 for replacement property. Legal lot survey was performed in October 2004. The replacement site was purchased in April 2004. Does not appear reasonable as service was performed after the replacement site had been purchased. Architect fees are not eligible expenses.	49 CFR 24.303(b) professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation is also an eligible expense. The FHWA's Federal-Aid Policy Guide, Non-regulatory Supplement for Part 24, Subpart D (5) dated February 2006 indicates that eligible expenses under 49 CFR 24.301(g)(12) do not include architectural or engineering type drawings, concepts or considerations at the replacement site. Such expenses are not to be considered "professional services" under the provisions of 49 CFR 24.303(b).
\$500	City of Lincoln impact fees totaling \$2,517 and asbestos survey for \$500. Asbestos survey is not eligible because it was conducted in June 2005, after the owner purchased the replacement property in April 2004.	49 CFR 303(b) professional services performed prior to the purchase of the replacement site to determine its suitability for the business operation is an eligible expense.
\$4,600	Reestablishment expenses. Two estimates for construction of sandblasting rooms, lower estimate of \$3,000 was used. Lower estimate received from the father of the owner of the business. One estimate for a concrete foundation and pad for Lincoln Electric System (LES) of \$1,600. This estimate was also received from the father of the owner of the business. Actual receipts were not provided.	49 CFR 24.304 and 24.304(a)(2) a small business is entitled to receive a payment not to exceed \$10,000 for expenses <u>actually</u> incurred in relocating and reestablishing the business at a replacement site, including for modifications to the replacement property to accommodate the business operation or make replacement structure suitable for conducting the business. 49 CFR 24.207(a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$14,825	Self move payment. Three bids obtained to move all stock items and setting up same, move shop and office equipment and setting up same, move compressor, sandblaster, and all shop equipment and setting up same. Low bid of \$58,000 was submitted by the father-in-law of the owner of this property, and payment of the self move was assigned to him in February 2006. However, in April 2005, owner was already paid \$18,675 for "loss of tangible property," including a motor compressor and tanks that were agreed to be left behind. At that time, the cost to move the compressor, motor and tanks was \$14,825. It appears the movement of the compressor is now also considered in this self move payment. APA considers the \$14,825 that was paid for the loss of the compressor, motor, and air tank to be a duplicate payment with this self move payment.	49 CFR 24.301 (d)(2) A self move payment may be based on one or a combination of the following: (i) the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; (ii) Supported by receipted bills for labor and equipment.

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
RELOCATION ASSISTANCE DETAILED QUESTIONABLE COSTS

EXHIBIT N

Property #12 (Concluded)

Questioned Amount	Description of Expense	Federal Regulation
\$3,966	Reestablishment expenses. One expense totaled \$4,398 for a curb inlet for storm water. Only an estimate was on file from vendor, not an actual invoice or receipt. There was also an invoice from the City of Lincoln for the curb closure totaling \$306. Total expenses were \$4,704. Owner was only reimbursed \$4,242 from JAVA, as the City's records indicate the owner had only \$4,242 of the \$10,000 maximum reestablishment expenses remaining. APA prorated the amount of payment without adequate documentation based on the actual amount paid to the owner (\$4,242 / \$4,704 = 90%). 90% of \$4,398 is \$3,966.	49 CFR 24.304 and 24.304(a)(2) a small business is entitled to receive a payment not to exceed \$10,000 for expenses <u>actually</u> incurred in relocating and reestablishing the business at a replacement site, including for modifications to the replacement property to accommodate the business operation or make replacement structure suitable for conducting the business. 49 CFR 24.207(a) Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals or other evidence of such expense.
\$599	Moving expenses. Total payment for moving expenses was \$27,246 and included \$900 for moving two signs, \$21,822 for electrical work, \$750 for disconnecting, moving, and reconnecting computer equipment, \$241 for printing business cards and envelopes, \$2,500 in searching expenses, \$800 in professional services to obtain a business loan, \$220 for City approval for plans for replacement building, and \$13 for new labels for brochures. Adequate documentation was not on file for the labels. Additionally, owners actually requested \$2,646 in searching expenses, but \$732 of these expenses occurred after the replacement property was purchased, which would not be eligible. Therefore, only \$1,914 in searching expenses were eligible of the \$2,500 paid. \$586 overpayment and \$13 with lack of documentation equals the \$599. The \$800 professional services and \$220 for replacement building plans are considered reestablishment expenses.	49 CFR 24.301(a)(1) any owner of a property who moves a business is entitled to payment of his or her actual moving and related expenses. 49 CFR 24.301(f) allows for reimbursement for loss of advertising signs. 49 CFR 24.301(g)(3) considers disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, etc. an eligible actual moving expense. 49 CFR 24.301(g)(11) any license permit, fees or certification required at the replacement location are an eligible actual moving expense. 49 CFR 24.301(g)(12) professional services the Agency determines to be actual, reasonable, and necessary for planning, moving, or installing personal property are an eligible actual moving expense. 49 CFR 24.301(g)(13) relettering signs and replacing stationery on hand at the time of the displacement to be an eligible actual moving expense. 49 CFR 24.301(g)(17) an amount up to \$2,500 for actual expenses incurred in searching for a replacement location is an eligible actual moving expense.
\$1,572	APA noted total reestablishment expenses of \$11,572, exceeded the maximum reestablishment expenses by \$1,572. These expenses included \$1,158 for closing costs, \$4,600 for concrete foundation and construction of sandblasting rooms, \$552 for trenching electrical lines, \$4,242 for curb inlet for sewer and curb closure, and \$1,020 for professional services in obtaining a business loan and for replacement building plans.	49 CFR 24.304 and 24.304(a)(2) a small business is entitled to receive a payment not to exceed \$10,000 for expenses <u>actually</u> incurred in relocating and reestablishing the business at a replacement site, including for modifications to the replacement property to accommodate the business operation or make replacement structure suitable for conducting the business. 49 CFR 24.304 reestablishment payments not to exceed \$10,000.
\$35,846	Total Questioned Costs for Property #12	

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
ORIGINAL ESTIMATED LAND VALUES

EXHIBIT O

	DONATED VALUES (ESTIMATE)			TOTAL
	Antelope Valley Projects Real Estate Acquisition and Relocation Cost Budget	LPS NRD		
	1.75 sq ft ST. Fair Park DAF	225 sq ft		
	NSF DAF NSE 100%	UNL UNL		
STORM WATER	2,650,946.55	6,709,610.80	40,579.00	9,421,136.35
TRANSPORTATION	1,268,582.86	2,434,828	30,402.10	3,733,812.76
	<u>3,919,469.41</u>	<u>9,144,438.80</u>	<u>90,981.10</u>	<u>13,154,899.31</u>
	ST. NE.			

4474939

Wayne S. Fisher
12-3-03

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLE OF ENGINEERING SERVICES EMPLOYEE TIMESHEETS**

EXHIBIT P

Name: Miller Mark C. Division: Eng. Services
 Social Security#: _____ Section: _____
 Pay period: 04/02/2009 to 04/15/2009

**CITY OF LINCOLN
EMPLOYEE TIME DISTRIBUTION
DEPARTMENT OF PUBLIC WORKS**

Earnings Codes
 1 Regular 10 Family Sick 19 Stand By 34 Overtime @ 1.5
 4 Vacation 12 Holiday 20 Military 35 Overtime @ 1
 5 Vacation Bank 14 Pers Holiday 22 Injury 43 Call Back
 8 Sick 16 Funeral 32 Out of Class 49 H-day Worked @ 1.5
 18 Jury

Earn Code	Total Hours	Business Unit	Task Code	Work Order #	Job Description	Thur 04/02	Fri 04/03	Sat 04/04	Sun 04/05	Mon 04/06	Tue 04/07	Wed 04/08	Wkly Total	Thur 04/09	Fri 04/10	Sat 04/11	Sun 04/12	Mon 04/13	Tue 04/14	Wed 04/15	Wkly Total	
4	0	7961C			Vacation								0									0
8	0	7961C			Sick								0									0
		7961C			Family Sick								0									0
		7961C			Holiday								0									0
		7961C	999		General Office Functions								0									0
34	8	79610	901		Education & Training							8	8									0
14	0	79610	325		Pers Holiday								0									0
1	11	79610	325	702616	Quiet Zone Project BNSF 33rd to 70th								0	3	2				2	2	2	11
1	15	79610	325	801757	DB1635 Univ of NE Tech Park 3rd Add						3	3	6	2	2				1	2	2	9
34	4	79610	325	801757	DB1635 Univ of NE Tech Park 3rd Add						1	1	2							1	1	2
1	0	79610	325	801458	S75018 Addition								0									0
34	0	79130	325	801458	S75018 Addition								0									0
1	18	79610	325	880108	1 Bldg Demolition 880108D	2	2			2	2		8		2				4	2	2	10
34	4	79610	325	880108	h Bldg Demolition 880108D		0.5	3		0.5			4									0
	0	79610	325										0									0
1	21	79610	325	902269	W Denton Rd, Folsom - Amaranth	2	3			3	3		11	3	2				1	2	2	10
34	12.5	79610	325	902269	W Denton Rd, Folsom - Amaranth							8	8	4.5								4.5
1	0	79610	325	801760	S81637 U of N Tech. Park 3rd Add								0									0
34	0	79610	325	801760	S 81637 U of N Tech. Park 3rd Add								0									0
1	7	79610	325	801759	W81639 U of N Tech Park 3rd Add.		4	3					7									0
34	2	79610	325	801759	W81639 U of N Tech Park 3rd Add.		1	1					2									0
1	0	79610	898	700811	MSC DSC Implementation								0									0
1	0	79610	325	701781	O St, 2nd to 9th St (Harris Overpass)								0									0
34	0	79610	325	701781	O St, 2nd to 9th St (Harris Overpass)								0									0
49	0	79610	325	701781	O St, 2nd to 9th St (Harris Overpass)								0									0
1	0	79610	325										0									0
1	0	79610	325	546636	Bridge Inspection								0									0
					Total From Page 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	102.5					0	9.5	3	0	9.5	9	10	50	12.5	8	0	0	0	8	9	9	46.5

Earnings code 34 is overtime.

8 Hours highlighted in green were coded as overtime prior to the employee reaching 40 hours in the work week. 4 of the 8 hours were charged to a JAVA project.

JAVA Hours Worked

40 Hours Worked

Should have been overtime hours worked.

Employee's Signature: *Mark C. Miller*

Supervisor's Approval: *Ron [Signature]*

**JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLE OF ENGINEERING SERVICES EMPLOYEE TIMESHEETS**

EXHIBIT P

Name: Drake, Kirk Division: Engineering Services
 Social Security# _____ Section: Traffic
 Pay period: 02/21/2008 to 03/05/2008

**CITY OF LINCOLN
EMPLOYEE TIME DISTRIBUTION
DEPARTMENT OF PUBLIC WORKS**

Earnings Codes							
1 Regular	10 Family Sick	41 Standby	34 Overtime @ 1.5				
4 Vacation	12 Holiday	20 Military	35 Overtime @ 1				
5 Vacation Bank	14 Pers Holiday	22 Injury	43 Call Back				
8 Sick	16 Funeral	32 Out of Class	49 Hday Worked @ 1.5				
	18 Jury						

Viewing Only W/O Number	Earn Code	Total Hours	Business Unit	Task Code	Work Order #	Job Description	Thur 02/21	Fri 02/22	Sat 02/23	Sun 02/24	Mon 02/25	Tue 02/26	Wed 02/27	Wkly Total	Thur 02/28	Fri 02/29	Sat 03/01	Sun 03/02	Mon 03/03	Tue 03/04	Wed 03/05	Wkly Total
Locates	1	76	79250			Locates	8	4			8	8	8	36	8	8			8	8	8	40
Vacation	4	4	79240			Vacation		4						4								
Traffic Accidents			79260	355	701006	Traffic Accidents																
Call Back			79260	355		Call Back																
84th & Adams	34		79260	355	801653	84th & Adams																
84th Fremont	34	1	79260	355	801625	84th Fremont																1
NorW&Holdr	34	2	79260	355	702279	NorW&Holdr	1						1									1
17th Holdredge	34	1	79260	355	880107	17th Holdredge - East Leg				1				1								
Beal Slough	34		79260	355	700925	Beal Slough																
27th Yankee-kendra	34	1	79260	355	701662A	27th Yankee-kendra	1							1								
Urban Devel	34		79260	355	540613	Urban Devel																
98th & Boathouse	34	1	79260	355	801628	98th & Boathouse								1								
9th&10th&Van-Dorn	34	2	79260	355	702186	9th&10th&Van Dorn											2					2
st 23-24th	34		79260	355	880104	st 23-24th																
50th O-R	34		79260	355	701824	50th O-R																
Antelope Valley	34	2	79260	355	880101	Antelope Valley				1				1			1					1
HarrisOvrpass	34	1	79260	355	701781	HarrisOvrpass	1							1								
Trago Park	34	1	79260	355	780303	Trago Park											1					1
Misc Water break	34		79260	355	700836	Misc Water Breaks																
Ashbrook Water	34	1	79260	355	801692	Ashbrook Water				1				1								
D st Water	34	2	79260	355	700304	D st Water				1				1			1					1
Hwy 77 Denton-Ar	34		79260	355	801599	Hwy 77 Denton-Ar																
X Street Water	34		79260	355	701321	X Street Water																
3rd 0 Water	34	1	79260	355	701781	3rd 0 Water								1								
TOTAL		96					12	8		5	8	8	8	49	8	8	7		8	8	8	47

Earnings code 34 is overtime.

Highlighted in green are 9 hours recorded as overtime prior to the employee working 40 hours. 1 hour was charged to a JAVA project.

JAVA Project

41 hours Thursday through Tuesday. 1 hour of overtime should have been recorded on Tuesday.

Overtime hours should have been recorded as 1 hour on Tuesday and 8 hours on Wednesday.

Employee's Signature: Kirk Drake Supervisor's Approval: Douglas W. Powell

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
EXAMPLE OF URBAN DEVELOPMENT OVERHEAD BILLING DOCUMENT

EXHIBIT Q

CITY OF LINCOLN, NE
Interdepartmental Charges

Document Type: **UX**
 Document Number/FD: **273646**
 G/L Date: **7/15/09**

Model (Y) / Reverse or Void (R/V):
 Explanation: **Antelope Valley R.O.W. (Page 1 of 1)**
 Reimbursement Hrs. **3/5/09-5/27/09**
 Batch Number: **488420**
 Ref 1:

Account No	Debit Amount	Credit Amount	SubLedger	Type	Explanation 2
13006.3711		24,170.96			**See Listed Activities**

Signature of Claimant: _____

Description:	A/V - Transportation				A/V - Storm Water Management				
	880-111	880-108	880-109	880-110	880-202	880-203			
Thomas 30.696	1.00 hrs. 30.70	51.00	hrs. 156.50	47.00	hrs. 144.27	2.00	hrs. 61.39	hrs. 15.50	hrs. 475.79
Backemeyer 27.885	3.75 hrs. 104.57	38.25	hrs. 106.60	53.75	hrs. 149.82	-	hrs. 1.25	hrs. 34.86	1.50 hrs. 41.83
Ensign 17.802	-	hrs. 5.00	hrs. 89.01	38.00	hrs. 676.48	-	hrs. -	-	hrs. -
Total due (wages x 3.41)	135.27	461.27	9,278.99	12,337.41	368.01	209.34	61.39	34.86	517.62

Account No	Debit Amount	Credit Amount	SubLedger	Type	Explanation 2
88011.4010.270	461.27				A/V Transport (South St. Bridge), 880-111
880108.6010.270	9,278.99				A/V Transport (Q to Y), 880-108
880109.6010.270	12,337.41				A/V Transport (19th, K to Q), 880-109
880110.6010.270	209.34				A/V Transport (J St. Bridge), 880-110
880202.6010.370	118.87				A/V Storm Water Mgmt. (Phase II), 880-202
880203.6010.370	1,765.08				A/V Storm Water Mgmt. (Phase III), 880-203

The undersigned hereby certifies that the above material and/or service has been received and/or performed and funds have been appropriated for said purpose.

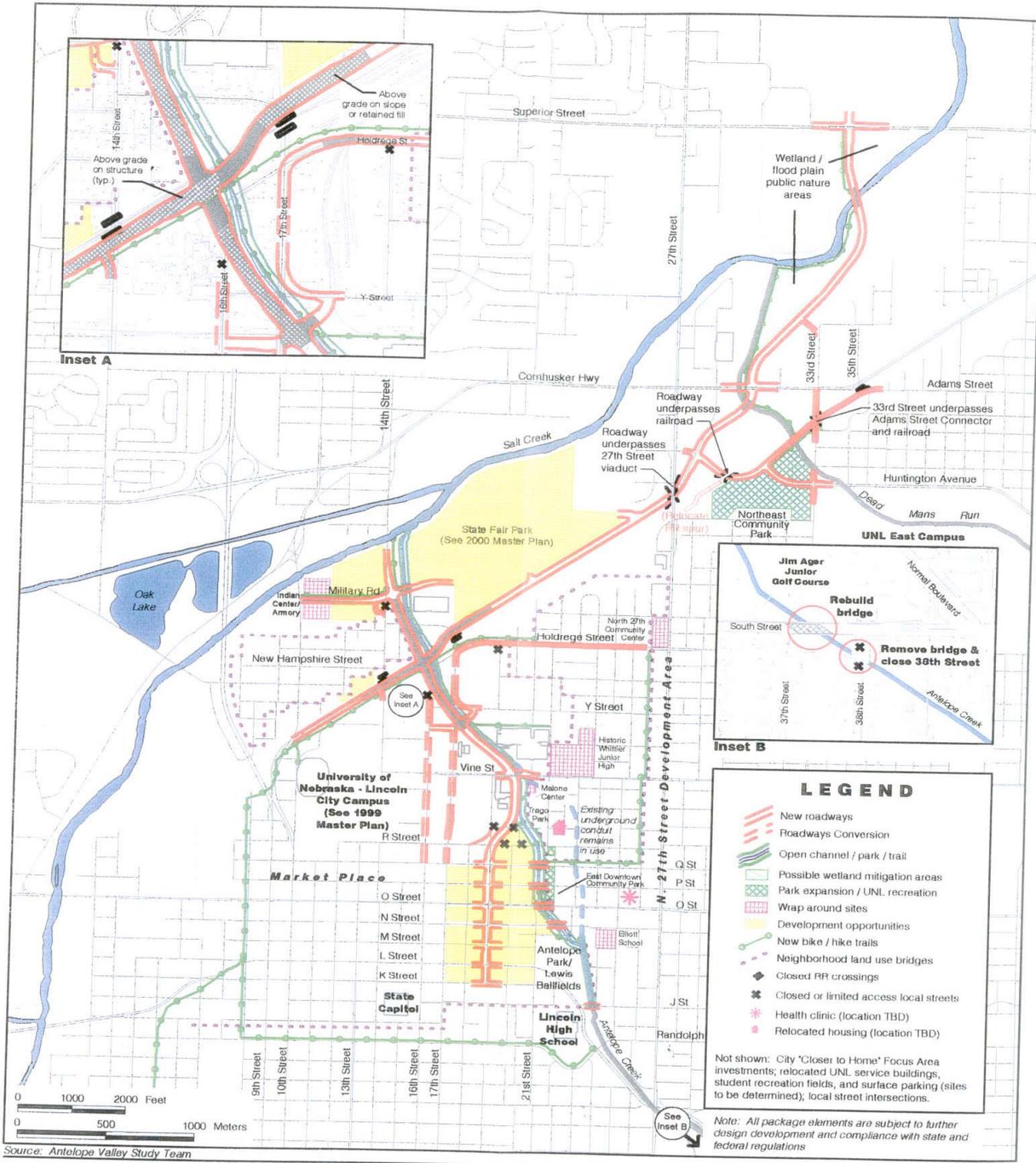
Approved For Payment By: _____
 Director of Department

Sign Here >>>>>>>> *Kris Humphrey* - 6-23-09
 OK FOR TRANSFER - KRIS HUMPHREY 7/6/09

Audited By: _____ Date Paid: _____

JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
AMENDED DRAFT SINGLE PACKAGE

EXHIBIT R



Source: Antelope Valley Study Team

**ANTELOPE VALLEY STUDY
ENVIRONMENTAL IMPACT STATEMENT**
City of Lincoln, Nebraska
University of Nebraska - Lincoln
Lower Platte South Natural Resources District



**AMENDED
DRAFT SINGLE PACKAGE**

DSP2.APR/dsp new 03-01

Note: All package elements are subject to further design development and compliance with state and federal regulations

JOINT ANTELOPE VALLEY AUTHORITY
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EXHIBIT S



U.S. Department
of Transportation
**Federal Highway
Administration**

NEBRASKA DIVISION

April 2, 2010

100 Centennial Mall North
Room 220
Lincoln, NE 68508
(402)742-8460

Mr. Mike Foley, State Auditor
State Capitol, Room 2303
P.O. Box 98917
Lincoln, NE 68509-8917



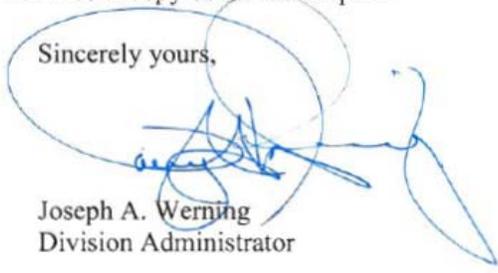
In Reply Refer To:
HDA-NE

Dear Mr. Foley:

In September 2009, the Nebraska State Auditor and the Auditor of Public Accounts (APA) contacted the Federal Highway Administration (FHWA) regarding an open audit their agency was conducting on the Antelope Valley Project in Lincoln, Nebraska. Subsequently, the Nebraska State Auditor requested technical assistance from FHWA to review and evaluate the change order documentation and justification for several Antelope Valley Projects that were constructed in part with Federal-aid highway funding.

In response to this technical assistance request, FHWA agreed to conduct a limited review of the construction project change orders resulting from four Antelope Valley Projects during January 2010. As a result of this review, please find an enclosed copy of the final report.

Sincerely yours,


Joseph A. Werning
Division Administrator

Enclosure



JOINT ANTELOPE VALLEY AUTHORITY
AND THE ANTELOPE VALLEY PROJECT
FHWA CONSTRUCTION CHANGE ORDER REVIEW

EXHIBIT S

**Antelope Valley Projects
Construction Change Order Review**

FHWA Nebraska Division Office

March 2010

Background

In September 2009, the Nebraska State Auditor and the Auditor of Public Accounts (APA) contacted the Federal Highway Administration (FHWA) Nebraska Division regarding an open audit their agency was conducting on the Antelope Valley Project in Lincoln, Nebraska. At the request of the Nebraska State Auditor, a meeting was held on October 20, 2009 with the FHWA Nebraska Division regarding the subject project and to discuss Federal-aid highway program requirements. Subsequently, the Nebraska State Auditor contacted the FHWA Nebraska Division requesting technical assistance to review and evaluate the change order documentation and justification for several construction projects that are a part of the Antelope Valley Projects in Lincoln, Nebraska.

The FHWA Nebraska Division agreed to conduct a limited review of the construction project change orders to determine if the Federal-aid requirements for change order documentation and justification were satisfied. Also, this review evaluated the Federal-aid eligibility of the items contained within these change orders, along with the associated time extensions.

History and General Discussion

Change orders are used to make the design a better fit for the actual field condition, and/or include the use of a better product at no substantial increase in cost or time, and/or substitute an equivalent product with savings in cost, time, or both. Change orders are usually classified by purpose, whether it is for a plan change, a specification change, a cost change (increase or decrease), or a time change (increase or decrease). There are four basic components that FHWA will consider during its review of change orders. These components include:

1. Federal-aid eligibility,
2. Impact on the original "scope of the work,"
3. Basis of payment, and
4. Time adjustments.

Federal-aid policy requires that major extra work or major changes proposed to contract plans and specifications be formally approved in writing in advance of the work by the Division Administrator of FHWA. A major change is defined in 23 CFR 635.102 as "*a change which will significantly affect the cost of the project to the Federal government, or alter the termini, character or scope of the work.*" Minor changes and extra work also require formal approval,

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however, at the Division Administrator's discretion these approvals may be made retroactively. This same criterion is also used for the approval of contract time extensions. The actions that fall under the major and minor change order criteria are currently contained in the NDOR LPA Manual (May, 2009) in Chapter 12 (Construction).

With the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, approval authority for various project actions, including change order approval, has been delegated to NDOR for certain projects under the NDOR/FHWA Stewardship Agreement. Federal-aid projects for which FHWA retains approval authority are called full oversight projects and projects for which NDOR has been granted approval authority (acting on FHWA's behalf) are called state delegated projects.

Importantly, both delegated and non-delegated Federal-aid projects must meet all applicable Federal laws, regulations, and requirements. As such, NDOR accepts responsibility for meeting these requirements, including LPA projects. Under Title 23, FHWA is ultimately accountable for all programs under the Federal-Aid Highway Program. However, the State may assume responsibility for project-level activities associated with 23 USC 106 on certain National Highway System (NHS) projects and all non-NHS projects. The Antelope Valley projects have been delegated to NDOR for oversight and according to 23 CFR 635.105, "The state transportation department (NDOR) has responsibility for the construction of all Federal-aid projects and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency."

Also defined in 23 CFR 635.120 and 635.121 is the justification and documentation required for the contract cost and time changes contained within any Federal-aid change order. For each negotiated contract change or negotiated extra work order, an independent cost analysis shall be performed and adequately documented that establishes the basis for the change in cost. In addition, any changes in contract time related to the contract changes or extra work must be submitted at the same time as the respective work change. These contract time extensions must also be fully justified and adequately documented. A change in contract time is only warranted when the change order affects a controlling operation.

When reviewing change orders, FHWA considers the Federal-aid eligibility, the impact on the original scope of work, the basis of payment, time adjustments, reason codes, cost estimates and analysis, and supporting information documented in the request. Since NDOR acts on behalf of FHWA, they are expected to document and monitor state delegated Federal-aid projects the same manner and extent FHWA monitors full oversight change orders. An independent cost analysis developed by NDOR is required for each negotiated contract change order or negotiated extra work order. Supporting documentation within each change order must justify why the change was made and how the costs were determined for each individual work item. Any time extensions are to be based on the current controlling operation and based on the components (labor, equipment, and materials) of that activity. Each change must be able to stand on its own merit regarding the justification for the change and how the costs were determined. In addition, the change orders must be within the original contract project limits.

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FHWA CONSTRUCTION CHANGE ORDER REVIEW

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For this review, the Antelope Valley Projects are state delegated projects in accordance with the active NDOR/FHWA Stewardship Agreement of the time. Each change order must be adequately documented and justified in order to be considered acceptable. In addition, the change order must be reviewed and approved by either the LPA or by the Nebraska Department of Roads (NDOR) depending on the type of project or the type of change order. All major COs must receive prior approval from NDOR or FHWA while minor COs can be approved by the LPA. However, minor COs for full oversight projects must also receive formal approval from FHWA, but changes can be incorporated prior to formal approval. In all cases, the LPA should discuss change orders with NDOR prior to initiating the change to prevent possible non-reimbursement determinations.

Division Office Review

The FHWA Nebraska Division spent two days (January 8, 2010 and January 28, 2010) at the Parsons Brinckerhoff Quade & Douglas, Inc. (PB) offices in Lincoln, NE to review the change orders and project records related to the Antelope Valley Projects. During this review, four separate construction projects were reviewed out of the total phased projects that constitute the entire Antelope Valley Projects work activities. These 4 projects were chosen as they were the only project contracts that had all vouchers submitted and had been closed-out. The 4 projects that were reviewed are listed below:

Project No.	Federal Project No.	Project Title	Contract Amount	# of COs	Percent Increase
880101	STPC-5242(3)	Y St. Bridge/Roadway	\$4,212,295.79	19	+ 17.3%
880102	STPC-5240(3)	Vine St. Bridge/Roadway	\$4,201,141.21	9	+ 4.7%
880103	STPC-5242(4)	Military Rd. Bridge/Roadway	\$4,698,213.12	16	+ 12.7%
880106	CM-55(144)	Big "T" Project	\$19,951,873.51	25	+ 7.7%
		Total:	\$33,063,523.63		\$3,069,438.53

Review Findings and Recommendations

As a result of this change order review, the FHWA findings and recommendations are listed below.

Observation/Finding: 23 CFR 635.121 requires that each change order be properly documented and the cost basis be adequately established. In many cases, the change orders for the above projects did not provide sufficient justification or the documentation was incomplete. In order for the change order to have sufficient documentation, it must be able to stand on its own merits

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AND THE ANTELOPE VALLEY PROJECT
FHWA CONSTRUCTION CHANGE ORDER REVIEW

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and be self-contained. Supporting documentation can be referenced, but the information and justification presented in the change order must tell the whole story as to why the change occurred, why it was required, and the cost basis justification. The amount of documentation varied from change order to change order and project to project.

Action for Compliance: Each change order must be suitably documented. Any change order which does not have adequate justification as to why the change was warranted, how the costs and quantities were determined, and how any time extensions were added are essentially considered to be non-participating for Federal funds. A quality control review of the projects and change orders for the Antelope Valley Projects should be conducted. If the review determines that adequate documentation is not available, the change orders should be coded as non-participating with Federal-aid funds.

Observation/Finding: Time extensions should be based on the type of work, how it relates to the controlling operation, and the labor, equipment, and materials needed for the work. Time extensions must not be granted based solely on the monetary value of the items contained within the change order. It must be based on the impact it has on the critical path or the controlling operation for the project. Any time extensions must be identified and determined within the change order that warrants the extension.

Action for Compliance: When work identified in the change order does not affect the controlling operation, a time extension is not warranted. In addition, a time extensions should not be based solely on maintenance shutdowns, breakdowns, or material delays. Also, delays as a result of right-of-way, railroad, or utility clearances should not be used to grant time extensions, unless exceptional circumstances can be shown. It is recommended that a quality control review be conducted to determine if any time extensions were improperly granted and how those extensions may have affected any liquidated damages associated with the project.

Observation/Finding: Based on the documentation provided, several projects contained work items that are or may be ineligible for Federal-aid reimbursement (City specific changes or additions, work activities outside the original project scope or limits, items not actually incorporated into the project, construction activities related to non-transportation improvements, etc.). Any ineligible work items should be clearly noted in the change order to flag it and ensure that it is not paid for using Federal-aid funds in the processing of progress payments as well as the Final Voucher. In addition, for cases such as the Antelope Valley Projects that include multiple funding sources, each item included in a change order must have the appropriate funding eligibility identified to ensure the appropriate funding is coded on the payment vouchers.

Action for Compliance: NDOR should perform a quality control review to verify the Federal-aid eligibility of these items contained within the change orders. If the review determines Federal-aid ineligibility, the item should be coded as non-participating with Federal-aid funds. Material not actually incorporated into a project or purchased for future maintenance activities is not eligible for Federal-aid funds.

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Observation/Finding: It appears a funding eligibility matrix was developed at the beginning of each Antelope Valley project to develop the estimated eligibility percentage of Federal-aid funds for each project. Then, it appears this percentage was used to define the amount of Federal-aid eligible work being paid on each voucher for the entire project. Although an overall project summary matrix of all bid items and the agency funding code assigned to each one appears to have been developed at the end of the projects, it is unclear how this matrix was used to determine the actual Federal-aid eligibility reimbursement criteria used for the project vouchers.

Action for Compliance: FHWA requires actual costs to be documented and invoiced accordingly to close out a project. Although an estimate of costs is used at the time of project development for the PS&E package, the actual costs invoiced are expected to be reviewed and verified for eligibility prior to being forwarded to FHWA for payment. In addition, this determination of Federal-aid eligibility must also be completed for each change order prior to invoicing and payment. All bid items included in the Antelope Valley Projects, including additions or adjustments contained in change orders, must be reviewed to determine Federal-aid eligibility and clearly identified for all projects.

General Findings and Recommendations

- It appears that several City of Lincoln Standard Specifications were used for many of the Antelope Valley Projects. Prior to using either City-specific specifications or plan sheets, these must be approved by NDOR for use on Federal-aid projects. It does not appear NDOR reviewed or approved the use of these specifications prior to their inclusion or use and there is the possibility that these specifications either conflict with the FHWA approved NDOR Standard Specifications or conflict with Federal-aid requirements.
- If plan changes or time adjustments are made to active Federal-aid funded contracts to adjust work schedules associated with non-Federal-aid funded contracts, it is possible the changes are not eligible for Federal-aid funding. It appears that at least one active Federal-aid contract was modified to account for changes related to a USACE-funded project. These changes should be evaluated to determine Federal-aid eligibility and any additional incurred costs.
- It appears that PB is charging the City of Lincoln to provide a copy of the requested project records to APA and FHWA as a result of the APA review. These costs are not eligible for Federal-aid funds as the audit was not approved as a direct cost to the project and was not mandated by the project agreement (2 CFR 225, Appendix B).

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Conclusion

This review by FHWA focused on change orders from four construction projects associated with the Antelope Valley Projects. Substantial deficiencies and areas of non-compliance were identified which could jeopardize Federal funding. From this review alone, the eligibility of \$2,859,873.73 may be in question for Federal funding. Deficiencies were noted on all four of the sample construction projects and are possible on the remaining Antelope Valley projects. An in-depth evaluation is needed to determine the extent of non-compliance and to determine the appropriate corrective actions.

It is recommended that NDOR conduct a review of Federal-aid eligibility for all projects and items associated with the Antelope Valley Projects. In addition, it is recommended that an FHWA investigative team conduct an independent review of the Antelope Valley Projects to determine the adequacy and accuracy of the NDOR review.

Based on this review, it appears that both the City of Lincoln's and NDOR's knowledge of FHWA's eligibility criteria is limited. A FHWA review of NDOR's change order documentation that was conducted in 2008 found similar deficiencies. After the 2008 review, training was provided to NDOR on how to properly document and process change orders.

FHWA has identified several *Actions for Compliance* in the processing of contract change orders for the Antelope Valley Projects. This review indicates that:

- Compliance with Federal-aid laws, regulations and policies is not being accomplished in all cases when processing change orders to amend contract documents,
- Project documentation provided is not always adequate to substantiate Federal-aid reimbursement,
- It appears that numerous work items are not eligible for Federal-aid reimbursement,
- Adequate oversight and proper controls by the grantee (NDOR) are lacking, and
- The City of Lincoln and NDOR must provide justification to FHWA that all Federal-aid eligible work performed on the Antelope Valley Projects was performed after the funds were authorized by FHWA in their Fiscal Management Information System (FMIS). When Federal-aid funding is requested by NDOR for a construction project, NDOR is responsible for ensuring that no work activities occur prior to that FMIS authorization. Any work that occurs prior to the FMIS authorization for that specific work scope is not eligible for Federal-aid funding.

NDOR, as the grantee recipient of Federal funds, will need to work with the subgrantee (City of Lincoln) to respond to FHWA regarding the findings and observations included in this report.

JOINT ANTELOPE VALLEY AUTHORITY
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Project Specific Change Order Findings

Project No. STPC-5242(3), 880101 (Y Street Bridge/Roadway)

- Items are added and/or modified with no documentation and/or justification
- Any item credits need to be clearly identified and documented
- Funding sources are not identified for items that are added and/or modified. Each change order needs to clearly identify which agency is paying for what costs
- The scope of work addressed in Change Orders 2 & 3 and any associated time extensions need to be evaluated for Federal-aid participation. It is unclear in the change orders if the contaminated soil was incorporated into the transportation project and if Federal-aid funds were used for the work.
- Items have been added (irrigation system and subsequent repairs, pedestrian safety fence requested by UNL) that are questionable for Federal-aid eligibility
- A running total of all change orders and the corresponding dollar amount in each change order is good practice
- The project completion date was changed from October 15, 2004 to September 30, 2005. No justification is provided showing how this time extension was made based on the critical path for the project. In addition, Federal-aid work delayed as a result of non Federal-aid work may be subject to liquidated damages.
- Design changes requested by the USACE during construction that impact the cost of Federal-aid eligible items need to be evaluated to determine the Federal-aid eligibility of the added cost
- The final change order project cost listed in Change Order 19 (\$4,733,233.51) must be reconciled with the total project cost listed in the final Certificate of Payment (\$4,942,798.31) for the project.

Project No. STPC-5240(3), 880102 (Vine Street Bridge/Roadway)

- Items are added and/or modified with no documentation and/or justification
- Funding sources are not identified for items that are added and/or modified. Each change order needs to clearly identify which agency is paying for what costs
- Plan changes have been made (piling material substitution) without justification or indicating coordination with bridge designer
- Storm sewer relocations may not be eligible for Federal-aid funds
- Plan revisions and change orders must be documented and approved together. For this project, several plan revisions dated from April to December, 2004 were not documented in change orders until April, 2005.
- Change Order 8 has many issues, including:
 - time extension from November 1, 2005 to June 30, 2006 with no justification,
 - no identification of possible non Federal-aid eligible items (239, 243, 244, 245, 246, and 247),
 - reduction adjustments to unit prices due to contract specifications not being met,
 - changes to the contract due to requests from the City of Lincoln, Lincoln Parks and Recreation, and the University of Nebraska-Lincoln, and

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- no cost basis determination
- Change Order 9 has many similar issues

Project No. STPC-5242(4), 880103 (Military Road Bridge/Roadway)

- Items are added and/or modified with no documentation and/or justification
- Cost basis for new items is not provided
- Funding sources are not identified for items that are added and/or modified. Each change order needs to clearly identify which agency is paying for what costs
- A running total of all change orders and the corresponding dollar amount in each change order is good practice
- Document why the unsuitable material in Change Orders 2 and 4 was not identified during the design stage.
- Change Order 6 contains no justification for the need for Plan Revision 4
- Change Order 8 changed the final completion date from October 15, 2004 to July 31, 2005 due to the installation dates for the buffalo grass plugs. Indicate how the critical path was determined for this item and determine if other construction items were allowed to be completed past the original completion date without liquidated damages being charged.
- If a lump sum item is added to the contract, the cost basis for its determination needs to be documented. The justification should not be just accepting the cost estimate submitted by the contractor.
- Change Order 10 appears to contain several items not eligible for Federal-aid participation, including temporary lighting at the State Fair entrance, colored concrete, use of modified wire mesh, etc.
- Change Order 11 contains additional asphalt surfacing for residential streets. The Federal-aid eligibility, need and justification for this item must be evaluated.
- Change Order 13 appears to contain several items not eligible for Federal-aid participation, including the justification for adding of a traffic signal to the project.
- Change Orders 14 and 15 include payment for repairs to the irrigation and sprinkler systems that occurred during construction activities. These are likely not eligible for Federal-aid reimbursement.
- The items in Change Order 16 need to be evaluated for Federal-aid eligibility. Although it is stated in this change order that the buffalo grass plug installation was postponed due to the planting window closing, no justification is provided why this delay occurred for the project.

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- Items are added and/or modified with limited documentation and/or justification
- Cost basis for new items is not provided
- Change Order 4 does not contain justification for Plan Revision 1 except that it was done to accommodate UNL construction projects. Federal-aid funds cannot be used to pay for changes made at the request of another agency unless it is warranted for the Federal-aid transportation project

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- Change Order 5 contains design change requested by contractor for 54-inch storm sewer. Confirm this design change was evaluated by the City for adequacy and sufficiency.
- Change Order 6 contains an item to “Clear Tract 7 for the property demolition (Issue 4).” Verify why this clearing work was added to this project and that the acquisition of this property did follow the Uniform Act.
- Change Order 8 is a major change that must be re-evaluated for Federal-aid eligibility, including the verification that Tract 4 and Tract 9 were obtained in conformance with the Uniform Act and why Federal-aid funds are being used for the clearing activity. This change order appears to add over \$350,000 in Federal-aid funds due to a diversion channel requested by JAVA to complete the South Leg prior to the USACE construction of Channel Phase 2. This change order does not contain a cost basis for lump sum items.
- Change Order 9 removes the “Clear Tract 7 for the property demolition” from Change Order 7 as a duplicate. However, the cost added in Change Order 7 and then removed in Change Order 9 is assigned to the Flood Control (non Federal-aid funds) category. Verify why the cost in Change Order 6 for the same item is assigned to Federal-aid funds. Also, the eligibility of the item “Channel Armoring, BNSF RR Bridge” needs to be evaluated
- Change Order 12 needs to be evaluated for Federal-aid eligibility participation related to temporary traffic control requested by the City of Lincoln and all items related to the BNSF construction
- Change Order 13 needs to be evaluated for Federal-aid eligibility participation
- Change Order 15 needs to be evaluated to determine if Federal-aid is being used for the UNL parking lot pavement and the additional trail and bridge lighting for the USACE pedestrian trail project. Federal-aid is not eligible for these items.
- All items in Change Order 16 and 17 need to be evaluated for Federal-aid eligibility
- Change Order 18 and all subsequent change order are dated after the substantial completion date of 12/01/06 – some in 2007 and some in 2008. If substantial work with change orders is still being completed, liquidated damages should be assessed to the contractor. In addition, the eligibility of these change orders must be determined as all change orders must be approved by the LPA prior to work initiating.
- Change Order 18 contains approximately \$100,000 more for the additional pedestrian lighting that was constructed by USACE. These added items were not part of a FHWA project and are most likely not eligible for Federal-aid funds.
- Several items in Change Order 19 are lump sum items with no justification. The items in this change order also need to be evaluated for Federal-aid eligibility.
- In Change Order 20, the additional fiber optic work requested by the City of Lincoln that was added during construction may not be eligible for Federal-aid funds. The need for this change related to this project is not identified.
- Change Order 21 extends the project completion date from 12/01/06 to 12/15/07 due to Change Order 20. This change order contains no basis for the time extension based on the project critical path. If Change Order 20 is determined to be ineligible for Federal-aid funds, then the time extension would also not be valid and liquidated damages must be assessed.
- Change Order 22 has Federal-aid funds assigned to purchase additional tubular markers for the City of Lincoln. Federal-aid cannot be used for items not actually incorporated into the

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project. All the items in this change order also need to be evaluated for Federal-aid eligibility.

- Change Order 25 is a final change order that accounts for all overruns and/or underruns. This is good practice. All items that differ by more than 10% should provide justification as to the reason for the overruns and/or underruns.

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ANTELOPE VALLEY PRIORITY PROJECTS

EXHIBIT T



Antelope Valley Projects

Community Revitalization • Stormwater Management • Transportation Improvements

Joint Antelope Valley Authority (JAVA)

- University of Nebraska - Lincoln
- Lower Platte South Natural Resource District
- City of Lincoln, Nebraska

Transportation Projects

