AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY, SEPTEMBER 17, 2015 AT 3:30 P.M.

CITY-COUNTY BUILDING
BILL LUXFORD STUDIO, 1ST FLOOR
555 S. 10TH STREET
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)

2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

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

3. Approval of the minutes from the JPA meeting held August 27, 2015 (Chair Beutler)
   - (Staff recommendation: Approval of the minutes as presented)

4. Approval of August 2015 Payment Register (Steve Hubka)
   - Public Comment
   - (Staff recommendation: Approval)

5. Review of August 2015 Expenditure Reports (Steve Hubka)
   - Public Comment

6. WH 15-19 Resolution to approve the Agreement between the West Haymarket Joint Public Agency (JPA) and Ed Carpenter relating to the final design, engineering, fabrication, and installation services for a metal sculpture to be installed in an area of the Pinnacle Bank Arena Plaza at 400 Pinnacle Arena Drive as designated by the JPA. (Chris Connolly)
   - Public Comment
   - (Staff recommendation: Approval)

7. Set Next Meeting Date: The next meeting date will be Thursday, October 29, 2015 at 3:30 p.m. in the County-City Building, First Floor, Bill Luxford Studio.

8. Motion to Adjourn

*If the conflicting meeting ends early, this meeting will be held in the City Council Chambers Room 112.
Pinnacle Bank Arena Event and West Haymarket JPA information may be found at:
www.pinnaclebankarena.com
www.lincoln.ne.gov

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
August 27, 2015

Meeting Began At: 2:01 P.M.

Meeting Ended At: 3:28 P.M.

Members Present: Chris Beutler, Tim Clare, and Carl Eskridge

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

Chair Beutler opened the meeting with the introduction of fellow Board members Tim Clare and Carl Eskridge. Beutler advised that the open meetings law posted at the entrance to the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

Beutler advised the audience that public comment is welcome. He further stated that individuals from the audience are given a total of five minutes to speak on specific items listed on today's agenda and that those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting June 25, 2015

There being no corrections or changes to the minutes of the June 25, 2015 JPA meeting, Clare moved approval of the minutes as presented. Eskridge seconded the motion. Motion carried 3-0.

Item 4 -- Approval of June and July 2015 Payment Registers

Steve Hubka, City Finance Director, presented the June and July 2015 payment registers. He reported that the June payment register total was $8.4 million and said a vast majority of that amount is interest payments on the bond issues and the monthly payment to the District Energy Corp. Hubka said the July total was in the $750,000 range and consisted of such things as parking reimbursements, the DEC payment, and some bills to UNL for basketball tickets. Hubka pointed out that the typical monthly payments are diminishing greatly, with the exception of the semi-annual debt payments on the bonds.

There being no questions or comments from the Board or the public, Clare moved approval of the payment registers. Eskridge seconded the motion. Motion carried 3-0.

Item 5 -- Review of June and July 2015 Expenditure Reports

In presenting the June and July 2015 Expenditure Reports, Hubka said the reports show a comparison to the budgeted amounts, reflecting the activity on the payment registers. He pointed

out that an amendment to the 2014-2015 Operating Budget will be presented to the Board today. If the amendment is approved, the final year-end expenditure report will reflect those amendments.

There were no questions or comments from the Board or the public. No action on this item was necessary.

Item 6 -- Delivery and presentation of Venue Solutions Group's "Operational and Financial Review" report regarding its operational and financial review of the Pinnacle Bank Arena.

Mike Wolley of Venue Solutions Group (VSG) made a formal presentation of the company's findings and recommendations resulting from its Operational and Financial Review of the Pinnacle Bank Arena (PBA). Mr. Wolley began his presentation by setting out the overall scope of the project which included a review of the financial performance of the PBA; a review of the SMG operations of the PBA, focusing on how well it is being maintained and the processes SMG has in place to maintain the facility according to industry best practices; a benchmark comparison of the PBA with four peer arenas; and making recommendations for change where appropriate. The report was based upon (1) interviews with a diverse group of individuals including City employees, the staff and project manager of the Arena, UNL athletic administration, JPA board members, and others such as suite holders and individuals with opinions regarding their arena experiences; (2) a walking tour of the arena to see the overall cleanliness and maintenance of the facility; (3) the research resulting in the selection of four peer benchmark arenas to be used for comparison (Ford Center, Evansville, IL; John Paul Jones Arena, Richmond, VA; SaveMart Center, Fresno, CA; and Chaifetz Arena, St. Louis, MO); and (4) the experience and institutional knowledge of VSG's management and employees.

Wolley stated the first year of operations of PBA resulted in $32,000 in net income after the transfer of $465,000 in advertising revenue. He said the facility generated about $6.8 million in gross revenue and 50% of that was earmarked to go to JPA to pay debt service. That revenue stream was generated by the sale of naming rights, suite/loge leases, club seats, and advertising and sponsorships. Wolley pointed out that the Lease and Operating Agreement with UNL was advantageous to the JPA for generating revenue as it allowed the JPA to maximize advertising and sponsorship opportunities.

In summarizing VSG's financial review of the PBA, Wolley said PBA compared favorably to the benchmark facilities in Utilization (the number of events held) but underperformed in the area of family shows (likely due to the fact that such shows typically require set up days and multiple-day runs which are hard to accommodate with so many basketball games in the PBA schedule of events). As to financial performance, Wolley said that JPA revenues for debt service are exceeding projections. He said, like the PBS, some of the benchmark facilities have revenue going to sources other than arena operations and need additional funds from the owner to make up some of the costs of operations. Wolley reported that the largest PBA revenue streams are from rentals of the facility, food and beverage sales, ticket rebates, and advertising. Most of the revenue for the facility is generated on the event side, with concerts making up the vast majority of that revenue. He confirmed that much of the PBA generated revenues currently reside with the JPA for debt service and not for Arena Operations. Wolley said that the PBA revenues compare very favorably to the benchmark groups, including per capita food and beverage

spending, with the exception of UNL men's basketball games, adding that this is likely due to the lack of alcohol sales during UNL events and the many nearby dining and/or drinking options in the area.

The comparison of expenses between PBA and the benchmark facilities revealed that the PBA had higher expenses but those higher expenses resulted from the fact that almost all of the services are handled in-house compared to the benchmark groups that outsource services such as food and beverage, cleaning, and maintenance. When comparing salary and wages, Wolley said that PBA is in line or a little less than what the comparable facilities pay. He added that providing in-house services allows PBA management more control and easier changes to those services.

Turning to PBA food service, Wolley reported there was an initial over-projection relating to the amount of food service revenues the PBA would generate. This over-projection was likely due to SMG not understanding what customer behavior might be; what impact the businesses around PBA would have on food and beverage spending in the Arena, and prices higher than what they should have been when compared to the market. Wolley said time and experience has provided SMG with a much better ability to understand what the food and beverage revenues are going to be and credited SMG for all they have done to improve the food and beverage service in PBA. Wolley then addressed the fact that no alcohol is served at University events. He said everyone is aware of the University's position on alcohol. He said VSG is not taking a position one way or the other on the issue, but noted that alcohol is being sold in most sports facilities due in part to additional revenues related to the sale of alcohol, and in part due to the fact that facility operators seem to feel better about taking on the associated risk management issues. Wolley went on to address special events. He said SMG is trying to put as many events into the building as possible and is looking for creative ways to generate event activities, whether inside PBA, in the parking lots, or Pinewood Bowl. However, he pointed out that although PBA hosted successful watch parties during UNL football games, watch parties have been scaled back by the City Council for 2015 due to local dining/drinking establishments seeing them as competition. In closing on the revenue review, Wolley said that from a revenue standpoint, the facility is performing very, very well. "157th in the United States is very good." Wolley reminded the Board that the JPA needs to keep pushing, and monitoring, and making sure that the use of the building is maximized.

Wolley then reported on VSG's Operational Review of PBA and how the building is being maintained. He highlighted and summarized the wide variety of issues SMG looked at which relate to creating a positive customer experience in the facility: recycling, parking, surveys of customer experiences, cleanliness, staffing, preventative maintenance; building automation systems, capital planning, and safety and security. Upon closing his formal presentation, Mr. Wolley entertained questions from the Board.

In response to questions from Eskridge, Wolley pointed out that all four of the Benchmark facilities serve alcohol at University sporting events on a facility-wide basis, but there are other facilities that have designated family sections within the facility where alcohol is not allowed to be served or consumed. Wolley thought these family sections were not required , but rather were an amenity provided as an alternative to those who do not want to be around alcohol or experience it.

Clare did not have any questions but he told Wolley he appreciated the report. Clare explained this was a process the JPA Board underwent to review primarily the two things that Wolley laid out: the operation piece to see if there are things we are doing that could be done better or enhanced, and the financial aspect of things. Clare pointed out that from the financial standpoint, the way the JPA has been doing things and is continuing to do things to build up the JPA debt service account so we can pay the debt on the Arena bonds has been very advantageous. The fact that SVG's review shows that the Arena is performing very well both from income and expense standpoints validates what the Board has been saying for the past couple of years. From an operational standpoint, Clare felt that the review of the food and beverage service and other things will ultimately help improve the experience for guest and fans coming to the games. He wants to create that "wow factor" in the Arena.

Beutler asked if Wolley could summarize and prioritize two, three or four things in the report that the Board should focus on.

Wolley responded that food and beverage is the major priority. The JPA needs to maximize every opportunity on food and beverage service as almost 50% of the Arena's annual revenue comes from food and beverage. The JPA's ability to provide an environment where you can maximize per capita revenue is critical on an ongoing basis to insure that as much revenue as possible is being generated. The second priority is to put efforts towards bringing in as many concerts as possible. However, Wolley acknowledged that increasing concerts is always a challenge when you operate a building. You have to figure out how quickly you can get event and tenant schedules done and how quickly you can clear hold dates. Wolley stated he knew that the University is a partner in scheduling more concerts at the Arena and that they continue to want to advocate and work on that goal and they understand the importance of that goal. Wolley stressed the need to keep a continual dialog going. Turning to the expense side, Wolley stated that the JPA should focus on its ability to audit expenses and make sure that the building is being maintained in a first-class manner. Maintenance will be key as you move forward. Having a strategic plan for when capital improvements are going to be needed is going to be an important part of that. Look at technology that will allow you to capture data so you can make good sound operating decisions moving forward.

Beutler pointed out that the layout (geographically and physically) in the West Haymarket is an organized pattern that includes a lot of restaurants and bars in the very near vicinity of the Arena that creates a very competitive situation for food and drink. He asked Wolley if this competition, when compared to the benchmark facilities, is more intense, less intense or about the same.

Wolley felt the competition is a lot less for the comparison facilities; but he noted that the Arena's unique environment relative to the concentration of businesses is not all bad. He stated you may see them as a competitor but there might be some ability to partner with those businesses to create some special events. In a response to a question from Eskridge as to how do the comparison facilities conduct watch parties that do not fly in the face of the private sector, Wolley replied that the comparison facilities are not faced with that issue as they are not located in areas of concentrated restaurants and bars. In response to a follow-up question from Clare, Wolley stated that while it would be a good idea to survey and find out what other college towns with similar circumstances are doing, the JPA would have to do some pretty in depth research to

match up with other facilities with the Arena's unique circumstances, but he imagined they do exist.

Following up on Wolley's operations review, Eskridge inquired about Wolley's comments concerning new positions needed and what they are. Wolley pointed to two sales positions left unfilled because of attrition and ,more importantly, a vacant Director of Operations position which Wolley feels plays a critical role in the maintenance and presentation of the building.

Eskridge then inquired about excess energy use and whether there is a good plan in place to help reduce those costs. Wolley felt there is a very good plan in place. Although the cost per square foot is a little higher than the comparables, technological improvements are being implemented to monitor energy usage that are already making tangible results on energy use. In the 15/16 fiscal year, dramatic improvements are expected. Beutler clarified that the District Energy system supplies energy to the Arena and all buildings built south on Canopy Street. Each time one of those buildings is built, it adds a customer to the DEC system and each time a customer is added, the Arena energy bill goes down. When the HUDL building is built, the Arena bill will go down another $70,000 to $100,000.

Chair Beutler then opened the presentation to the public for comment. Jane Kinsey of Watchdogs of Lincoln asked Mr. Wolley his opinion on several subjects such as whether too many liquor licenses are being granted considering the number of complaints from restaurant owners about the Arena taking away business from them; what amount is paid for an event to come in to the Arena; and is it wrong of SMG to not outsource maintenance? Wolley had no opinion on whether Lincoln has issued too many liquor licenses. Due to confidential proprietary information, he could not answer Kinsey questions on the amount paid for an event to come to the Arena; and with regard to outsourcing maintenance, Wolley stated there is no right or wrong answer.

In response to Kinsey's last question as to whether BSG had any concerns about the construction or maintenance of the building, Wolley replied no and that it is an asset the community should be very proud of.

In closing, Beutler reiterated Wolley's statement that SMG is doing a great job and expressed the Board's appreciation for all of SMG's efforts, attitude, and hard work ethic, and caring for the community.

No action was required by the Board on this item.

Item 7 -- WH 15-13 Resolution to amend the 2014-2015 JPA Operating Budget.

Steve Hubka pointed out that this resolution amends the 2014-2015 Operating Year, which ends on Monday, August 31st. He said the purpose of amending this budget is to provide an Arena Operational Increment to the Operator of the Arena; to add funds for Arena Maintenance, Repair, and Replacement; to transfer funds to cover the City's Turn Back Tax obligation until the turn back tax revenue was received. Hubka added that the Facilities Agreement, which governs the building, clearly allows for these amendments.

Clare asked Hubka to address what these amendments will do, in terms of putting a burden on cash flow, in the years going forward. Hubka said it redirects some revenue to the Operator, however, our cash flow projections to 2032, after paying principal every year, is roughly $34,000,000 of cash at the end of the year. Hubka pointed out occupation tax receipts are estimated to be about $15.3 million (roughly a 7% increase over the prior year). Those receipts continue to come in very, very well. As a higher base is established, it will continue to make a difference going forward. In comparison, Hubka said that after this year, there is still only a 2% projected increase in cash flow projections which is a very conservative projection.

Public Comment: Jane Kinsey commented on the need for the budget to be more in depth. Hubka pointed out that Ms. Kinsey was looking at the Arena Budget contained within City Budget and provided her a copy of the Proposed Amended JPA Operating presented today. In closing, Kinsey expressed her belief that the Haymarket and Arena area is geared towards highly paid millennials while the large majority in Lincoln are either over 65 or in the low income group.

There being no further discussion, Clare moved approval of the resolution. The motion was seconded by Eskridge. The motion carried 3-0.

Item 8 -- WH 15-14 Resolution adopting the 2015-2016 JPA Operating Budget.

Steve Hubka stated that this is the proposed budget for the upcoming fiscal year that starts September 1. The budget provides an operational increment for the Operator and building repair, replacement, and maintenance expenses. He pointed out that the budget decreases from $26.6 million to $23.7 million. The big change is that last year there was $2.8 million budgeted for sales commissions. Those were paid and will no longer be in the budget.

There being no further discussion or public comment, Clare moved approval of the resolution. The motion was seconded by Eskridge, and the motion carried 3-0.

Item 9 -- WH 15-15 Resolution to approve the Letter Agreement to engage BKD to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards for the year ended August 31, 2015

Chris Lindner, Audit Director with BKD said this Engagement Letter Agreement follows the normal auditing standards in the recommended format laying out the engagement objectives and scope of what the audit entails, auditor responsibilities, the JPA's responsibilities, and other matters as well. This agreement is standard to what the Board has seen in the past. He pointed out that BKD's initial four-year contract to provide audit services to the JPA expired after last year's audit and that BKD was again selected to provide services for a second four-year term only after competing with other firms by submitting a formal proposal through the RFP bid process. Lindner closed by saying BKD is thankful for the opportunity and looks forward to working with the JPA again.

Public Comment: Jane Kinsey renewed Watchdogs' call for an independent audit. The chair asked for clarification of independent audit. Kinsey responded "someone independent of your hiring somebody to do an audit" and added that Watchdogs sees that as a conflict of interest.

There being no further comments, Clare moved approval of the resolution. Eskridge seconded the motion. The motion carried 3-0.

Item 10 -- WH 15-16 Resolution to approve the West Haymarket TDP Phase Three Redevelopment Agreement between the City of Lincoln, West Haymarket Joint Public Agency, and TDP Phase Three, LLC relating to the redevelopment of property generally bounded by R Street on the north, O Street on the south, Pinnacle Arena Drive on the west, and 7th Street on the east, including Canopy Street south to N Street, and the Project Site which is legally described as the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 3, Block 6, West Haymarket Addition (HUDL Project).

Rick Peo reminded the Board that the Board had previously authorized the negotiation of a redevelopment agreement between the JPA, City, and TDP Phase Three regarding the HUDL project. Pursuant to that direction, a negotiated purchase price of $1,141,140 was reached for the sale of the property. Peo said that price equates $33 per square foot which is twice the price received for the Railyard or Project Oscar properties. He went on to explain that this agreement provides for an initial first payment at Closing of $700,000, which is $20/sq. ft. The remaining $440,000 would be deferred and paid from tax increment financing in later years of this project. Peo added that JPA will be getting a tenant in one of its underutilized garages and that the prepaid parking rights amount to $890,000. Another advantage of this agreement is that the new building will connect to DEC which will reduce Arena energy expenses.

The other major provision under this agreement would be the JPA's purchase of a TIF bond in the amount of $5,000,000. TIF is estimated to be $6,000,000. TDP Phase Three will buy a $1,000,000 bond and the JPA will buy a $5,000,000 bond. The JPA's $5,000,000 bond will have priority over the $1,000,000 bond. This priority provides a 17% cushion to the JPA as to whether the tax increment revenues will come in as estimated. TDP Phase Three has estimated the tax increment based upon the method the county assessor used to calculate the assessed value of the Project Oscar building occupied by Olsson Associates. TDP Phase Three is comfortable that the amount of TIF to be generated is accurate. In addition, this agreement provides if there is any shortfall in tax revenues for debt service on the bonds, TDP Phase Three will pay that deficiency on an annual basis. Peo believes there is very little financial risk to the JPA under this purchase. TDP Phase Three will make about a $30,000,000 investment to the project. Peo said this project is an enormous benefit to the City.

In response to question posed by Eskridge, Peo clarified that the project covers only the South Half of Lot 3, Block 6, West Haymarket Addition plus an additional 5 feet to the north.

Clare pointed out that this project is about three years ahead of expected development which he said shows how robust and dynamic the West Haymarket Area is. He feels having HUDL as a partner in that area is going the benefit the area in a number of capacities and credited those who were involved in working out this agreement.

Public Comment: Jane Kinsey acknowledged that HUDL is the "shining star of the City" but voiced the protests of Watchdogs for giving HUDL so many benefits and for the use of City money for developing beautification in their facility. Watchdogs sees that as an inappropriate

use. Kinsey said they hope the projections regarding this project do come true, but they see it as a "give away."

In response to questions and comments Kinsey made regarding Arena energy costs, Beutler said everything is calculated by engineers and architects and estimated before any particular facility is built. He confirmed that the plant is capable of managing new facilities and that the plant was built to deal with a large area. Beutler explained that as the plant reaches its capacity, the energy costs to the Arena go down because partners have joined and pay part of the total cost. Beutler confirmed that all new facilities subject to DEC cost sharing are aware of that requirement from the beginning. Adam Hoebelheinrich of PC Sports added that each new building decreases the energy cost to the other buildings on the grid as well as to the Arena.

There being no further discussion or public comments, Clare moved approval of the resolution. Eskridge seconded the motion. The motion carried 3-0.

Item 11 -- WH 15-17 Resolution to approve the Settlement Agreement and Release of Claims between the JPA and Hawkins Construction Company relating to the lawsuit filed by the JPA arising out the dispute over the responsibility for and cost to repair the pedestrian bridge following the partial collapse of a concrete bridge girder which supports the pedestrian bridge.

Chris Connolly presented a review of the Settlement Agreement between the JPA and Hawkins. He said the lawsuit regarding the partial collapse of the pedestrian bridge occurring in 2013 was filed last fall. Connolly said that during the discovery process, we were approached about doing some settlement negotiations; that those negotiations have taken place; and this agreement is the result. He went on to explain that the agreement provides for a payment by Hawkins to the JPA in the amount of $679,637.89 in two payments. The first is Hawkins' retainage in the amount of $353,637.89 which the JPA is currently holding. Those funds will be kept by the JPA and not paid out to Hawkins. The other payment is $326,000.00 which will be paid to the JPA in four installments of $81,500, the first of which will be paid upon closing which is expected to occur sometime in September. The JPA will then receive annual payments of $81,500.00 on January 5th of 2016, 2017, and 2018. That money will be put into an endowment to be used for streetscape purposes in the West Haymarket Area. Connolly said this settlement represents about 80% of the recovery sought.

In response to a question from Clare regarding the types of streetscape expenses to be covered by funds in endowment, Connolly said a firm list of those items has not yet been put together, but it would include items such as the cost of maintaining the canopy itself along Canopy Street and trees planted along the streets in the West Haymarket Area. He said it will be up to the Board to determine what those funds are used for and it is anticipated that expenditures from the Endowment will come back to the Board for approval. Eskridge, reading from the agreement, clarified that the purpose of the endowment fund is to enhance the current and/or future West Haymarket properties.

Public Comment: Jane Kinsey said "job well done." She added that after having problems with Hawkins two times, Hawkins should never be hired again.

There being no further discussion or public comments, Eskridge moved approval of the resolution. Clare seconded the motion. The motion carried 3-0.

Item 12 -- WH 15-18 Resolution authorizing the Chair to enter into a temporary Right-of-Entry Agreement with TDP Phase Three, LLC to enter upon the South Half of Lot 3, Block 6, and the South 5 feet of the North Half of Lot 7, Block 6, West Haymarket Addition prior to closing on TDP Phase Three's acquisition of said Property to begin mobilization, site preparation (fencing around site, scrape rock off site, install SWPPP barriers, rebar/ supplies ordered, etc.) and completing auger cast test piles to facilitate the building schedule agreed to in the Redevelopment Agreement between the JPA, City of Lincoln, and TDP Phase Three, LLC

Rick Peo said this resolution basically authorizing the Chair to enter into a Right of Entry Agreement. The agreement was not included in the Board's packets as the request came in late, but an agreement has since been prepared and agreed to by TDP Phase Three and Peo is asking the Mayor to sign that agreement today. The agreement follows the standard format used for right of entry agreements for both the JPA and the City of Lincoln. It will give TDP Phase Three the right to do some preliminary site work activities prior to actually buying the property and closing upon that sale. Peo explained that the agreement is needed for two reasons: (1) TDP Phase Three would like to hold a ground-breaking ceremony on Friday and are anxious to begin the preliminary activities to keep on a building schedule; and (2) the property is currently tax exempt but if you sell the property prior to the levy date for the 2015 property taxes, it becomes taxable for the entire year. If we close in mid-October after that tax levy takes place, assuming a 2% sales tax on a million dollar price tag, that would $20,000 savings to both parties. Thus, we would like to defer that closing until after the levy date to maintain the tax exempt status.

Public Comment: In response to questions posed by Jane Kinsey, Peo responded the terms of sale have been worked out and that the sale price is $1,141,000. The price was $33/square foot compared to the sale price of prior properties of $15/square foot.

There being no further discussion or public comments, Clare moved approval of the resolution. Eskridge seconded the motion. The motion carried 3-0.

Item 13 -- Set Next Meeting Date

Without objection, the next meeting date was set for Thursday, September 17, 2015 at 3:30 p.m. in the City-County Building, Third Floor, Room 303.

Item 14 -- Motion to Adjourn

Eskridge moved to adjourn. Motion seconded by Clare. The meeting adjourned at 3:28 p.m.

Prepared by: Cheryl Eno, City Law Department

West Haymarket JPA Meeting

Date: AUGUST 27, 2015

Name (Please Print)	Address	Phone/E-Mail
Dave Finney	Watchdogs	

West Haymarket Joint Public Agency
Payment Register
August 2015

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
76881	Windstream	Billing Number 402-477-6387	OP	06095	W Haymarket Surplus	PV	1644739	102.43	08/05/15	540102
53356	Lincoln Electric System	605 N 8th St Pk Lot Lgh	OP	06095	W Haymarket Surplus	PV	1644737	68.62	08/06/15	83270
53356	Lincoln Electric System	200 N 7th St	OP	06095	W Haymarket Surplus	PV	1644738	272.42	08/06/15	83270
97885	Copy Services	Customer #595381	OP	06095	W Haymarket Surplus	PV	1648431	.46	08/19/15	540938
113806	City Treasurer	WHJPA credit card fees	OP	06095	W Haymarket Surplus	PV	1648433	36.99	08/19/15	540939
129525	City Controller	Arena Dr/Festival Lot maint.	OP	06095	W Haymarket Surplus	PV	1648434	56,335.00	08/19/15	540940
53356	Lincoln Electric System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1648429	669.38	08/20/15	83733
77921	County/City Property Management	Amtrak Station 07/15	OP	06095	W Haymarket Surplus	PV	1648430	381.74	08/20/15	83745
102154	Public Building Commission	Space Rental 08/15	OP	06095	W Haymarket Surplus	PV	1648432	38.75	08/20/15	83773
102154	Public Building Commission	Space Rental 08/15	OP	06095	W Haymarket Surplus	PV	1648432	80.50	08/20/15	83773
596579	SMG	Loan payment 14/15	OP	06095	W Haymarket Surplus	PV	1648436	203,420.00	08/20/15	83878
98415	Lincoln Water System	277 Pinnacle Arena Dr	OP	06095	W Haymarket Surplus	PV	1650250	142.87	08/26/15	541315
98642	Information Services	JPA 07/15	OP	06095	W Haymarket Surplus	PV	1650251	104.48	08/26/15	541316
120272	City of Lincoln - Accounting Dept	City Staff	OP	06095	W Haymarket Surplus	PV	1650252	91,500.41	08/26/15	541317
431100	City of Lincoln - Parking	JPA Parking Mgmt 07/15	OP	06095	W Haymarket Surplus	PV	1650256	19,914.56	08/26/15	541318
431100	City of Lincoln - Parking	JPA Parking Mgmt 07/15	OP	06095	W Haymarket Surplus	PV	1650256	17,504.53	08/26/15	541318
431100	City of Lincoln - Parking	JPA Parking Mgmt 07/15	OP	06095	W Haymarket Surplus	PV	1650256	24,337.78	08/26/15	541318
609335	Venue Solutions Group LLC	50% PBA operational review	OP	06095	W Haymarket Surplus	PV	1650263	27,500.00	08/26/15	541319
222586	Don Herz	Consulting 3/25/15-8/17/15	OP	06095	W Haymarket Surplus	PV	1650254	2,058.10	08/27/15	84057
588846	District Energy Corp	Customer WHM-JPA	OP	06095	W Haymarket Surplus	PV	1650258	182,487.89	08/27/15	84106
Category total								626,956.91		
596877	Olsson Associates	Design, 6/7-7/4/15	PH1	870000	WH General Coordination	OV	1645031	3,585.97	08/13/15	83635
596877	Olsson Associates	Design,6/7-7/4/15	PH1	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1645031	995.24	08/13/15	83635
82368	State of Nebraska	May charges,Monitoring#10620	PH1	870602	WH Voluntary Clean-up Program	PV	1647305	54.25	08/20/15	83749
82368	State of Nebraska	June charges,Monitoring#10620	PH1	870602	WH Voluntary Clean-up Program	PV	1647306	1,592.66	08/20/15	83749
82368	State of Nebraska	June charges,Monitoring#0637	PH1	870602	WH Voluntary Clean-up Program	PV	1647307	1,567.36	08/20/15	83749
594773	Alfred Benesch & Company	Environmental,4/13-5/10/15	PH1	870601	WH NDEQ T-200	OV	1647322	1,545.75	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,4/13-5/10/15	PH1	870604	WH Other/Miscellaneous	OV	1647323	234.47	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,4/13-5/10/15	PH1	870602	WH Voluntary Clean-up Program	OV	1647323	20,801.20	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,5/11-6/14/15	PH1	870601	WH NDEQ T-200	OV	1647324	1,245.75	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,5/11-6/14/15	PH1	870604	WH Other/Miscellaneous	OV	1647325	200.97	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,5/11-6/14/15	PH1	870602	WH Voluntary Clean-up Program	OV	1647325	11,066.93	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,6/15-7/5/15	PH1	870601	WH NDEQ T-200	OV	1647326	1,313.00	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,6/15-7/5/15	PH1	870604	WH Other/Miscellaneous	OV	1647646	200.97	08/20/15	83875
594773	Alfred Benesch & Company	Environmental,6/15-7/5/15	PH1	870602	WH Voluntary Clean-up Program	OV	1647646	11,537.05	08/20/15	83875
36863	General Excavating	Cust#12035,Job#15-04-335,PED B	PH1	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1649742	354.00	08/27/15	83959
82368	State of Nebraska	Remediation,May on ACT 0637	PH1	870602	WH Voluntary Clean-up Program	PV	1649741	2,881.55	08/27/15	83996
598263	PC Sports LLC	July,2015 Ph 3 oversight	PH1	870002	WH General Coordination P3	OV	1648575	17,000.00	08/27/15	84127
Category total								76,177.12		
478426	Millard Sprinkler	Install 75 station Rain Bird	PH2	870309	WH Streetscape P2	PV	1645035	395.00	08/12/15	540529
602078	Hausmann-Dunn, a Joint Venture	Final on Deck 2	PH2	870205	WH Parking Garage #2 P2	OV	1648574	3,702.00	08/27/15	84139
602078	Hausmann-Dunn, a Joint Venture	Final on Deck 3	PH2	870206	WH Parking Garage #3 P2	OV	1648574	3,126.00	08/27/15	84139
Category total								7,223.00		

Vendor Number	Name	Remark	Cat	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
Grand total								710,357.03		

As of August 31, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870000 WH General Coordination	6,812,618.77	6,593,054.96	219,563.81	
870002 WH General Coordination P3	204,000.00	119,000.00	85,000.00	
70090 West Haymarket Park	7,016,618.77	6,712,054.96	304,563.81	
70091 Arena				
870100 WH Arena	183,878,900.40	183,777,880.40	27,020.00	74,000.00
870101 WH Arena Contingency	1,923,102.37			1,923,102.37
870203 WH Arena Parking Garage	726,438.23	726,438.23		
70091 Arena	186,528,441.00	184,504,318.63	27,020.00	1,997,102.37
70092 Parking				
870201 WH HymktPkLot,FestSp&PedGrdStr	15,020,199.15	14,992,966.34	27,586.81	354.00-
870202 WH Parking Garage #1	14,041,819.09	14,032,834.09		8,985.00
870204 WH Parking Garage #2	203,400.39	203,400.39		
70092 Parking	29,265,418.63	29,229,200.82	27,586.81	8,631.00
70093 Roads				
870301 WH Charleston Bridge/Roadway	252,015.40	252,015.40		
870302 WH "M"&"N" St,7th to 10th St	3,436,496.59	3,436,496.59		
870303 WH USPS Parking Lot Reconstctn	696,053.96	696,053.96		
870304 WH 10th & Salt Creek Road Impr	3,436,720.69	3,436,720.69		
870305 WH Core Area Roadway & Utility	14,890,418.47	14,682,918.47		207,500.00
870306 WH Traffic Analysis	72,351.96	72,351.96		
870307 WH Streetscape	2,584,704.75	2,583,558.83		1,145.92
870308 WH Sun Valley Blvd & West "O"	23,681.50	23,681.50		
70093 Roads	25,392,443.32	25,183,797.40		208,645.92
70094 Pedestrian Ways				
870401 WH Plaza				
870402 WH Canopy Phase II	1,431,269.05	1,356,269.05		75,000.00
70094 Pedestrian Ways	1,431,269.05	1,356,269.05		75,000.00

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70095 Utilities				
870501 WH Sanitary Sewer Relocation	1,492,905.32	1,492,905.32		
870502 WH Fiber Optic Comm & Other	506,034.95	506,034.95		
70095 Utilities	1,998,940.27	1,998,940.27		
70096 Environmental				
870601 WH NDEQ T-200	1,983,034.68	1,642,335.72	25,002.11	315,696.85
870602 WH Voluntary Clean-up Program	1,937,395.49	1,850,167.27	76,588.91	10,639.31
870603 WH Environmental Contngy Pln	2,181,523.91	1,332,043.57	109.01	849,371.33
870604 WH Other/Miscellaneous	711,095.22	704,111.25	401.94	6,582.03
870605 WH Canopy Phase I-Lead Abatemt				
870606 WH Alter Brownfield Site	200,000.00	289.86		199,710.14
870607 WH JayLynn/Watson/Alter N	200,000.00	200,000.00		
70096 Environmental	7,213,049.30	5,728,947.67	102,101.97	1,381,999.66
70097 Dirt Moving				
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF				
870703 WH Initial Haymarket Site Prep	6,087,616.60	6,087,616.60		
870704 WH Other Stormwater Mitigation				
70097 Dirt Moving	6,087,616.60	6,087,616.60		
70098 TIF Improvements				
870800 WH TIF Improvements				
70098 TIF Improvements				
70099 Site Purchase				
870901 WH BNSF Land Acquisition	1,060,419.44	1,060,419.44		
870902 WH Alter Site Purchase	4,611,008.12	4,611,008.12		
870903 WH Jaylynn Site Purchase	1,702,838.21	1,702,838.21		
870904 WH UP Site Purchase	1,326,248.15	1,326,248.15		
870905 WH BNSF Const, Rehab, Reloc	47,671,698.85	47,671,698.85		
870906 WH Amtrak Station	2,369,425.17	2,369,425.17		
870907 WH UP Track Mod West of Bridge	1,225,231.66	1,225,231.66		

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70099 Site Purchase				
870908 WH Other Private Prop Acqstns	2,264,387.01	2,264,387.01		
70099 Site Purchase	62,231,256.61	62,231,256.61		
70100 Other Costs				
870951 WH ITS & Dynamic Message Signs	1,140,949.49	1,140,949.49		
870952 WH Community Space & Civic Art	1,500,000.00	370,114.85		1,129,885.15
870953 WH Breslow Ice Rink	2,000,000.00			2,000,000.00
70100 Other Costs	4,640,949.49	1,511,064.34		3,129,885.15
70105 Bond Related Costs				
870975 WH Miscellaneous				
870976 WH Line of Credit	78,227.31	78,227.31		
870977 WH Series 1 JPA Debt	1,535,167.50	1,535,167.50		
870978 WH Series 2 JPA Debt	1,221,802.25	1,221,802.25		
870979 WH Series 3 JPA Debt	577,661.29	577,661.29		
870980 WH Series 4 JPA Debt	1,243,824.50	1,243,824.50		
70105 Bond Related Costs	4,656,682.85	4,656,682.85		
00951 West Haymarket Capital Proj	336,462,685.89	329,200,149.20	461,272.59	6,801,264.10

As of August 31, 2015

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
70090 West Haymarket Park				
870001 WH General Coordination P2	360,000.00	360,000.00		
70090 West Haymarket Park	360,000.00	360,000.00		
70092 Parking				
870205 WH Parking Garage #2 P2	12,112,457.43	12,103,607.93	10,000.00	1,150.50-
870206 WH Parking Garage #3 P2	14,858,656.42	14,833,773.58		24,882.84
70092 Parking	26,971,113.85	26,937,381.51	10,000.00	23,732.34
70093 Roads				
870309 WH Streetscape P2	953,573.17	943,968.17	10,000.00	395.00-
70093 Roads	953,573.17	943,968.17	10,000.00	395.00-
70105 Bond Related Costs				
870981 WH Series 5 JPA Debt P2	411,982.31	411,982.31		
70105 Bond Related Costs	411,982.31	411,982.31		
00951 West Haymarket Capital Proj	28,696,669.33	28,653,331.99	20,000.00	23,337.34

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06094 W Haymarket Revenue					
16 Transfer Out					
9220 Cash Transfers Out		250,000.00	250,000.00	453,465.63	203,465.63-
16 Transfer Out		250,000.00	250,000.00	453,465.63	203,465.63-
06094 W Haymarket Revenue		250,000.00	250,000.00	453,465.63	203,465.63-
06095 W Haymarket Surplus					
11 Materials & Supplies					
5221 Office Supplies	250.00		250.00		250.00
5261 Postage	1,750.00		1,750.00	1,630.52	119.48
5323 Bldg Maint Supplies	500.00		500.00	41.88	458.12
11 Materials & Supplies	2,500.00		2,500.00	1,672.40	827.60
12 Other Services & Charges					
5621 Misc Contractual Services	799,772.00		799,772.00	796,187.20	3,584.80
5624 Auditing Service	20,000.00		20,000.00	13,400.00	6,600.00
5631 Data Processing Service	1,254.00		1,254.00	1,253.75	.25
5635 Delivery Service				73.52	73.52-
5642 Legal Services				82.00	82.00-
5643 Management Services	1,223,420.00		1,223,420.00	1,223,420.00	
5643.61 Deck 1 Mgmt Services	564,000.00		564,000.00	548,747.54	15,252.46
5643.62 Deck 2 Mgmt Services	407,000.00		407,000.00	264,546.15	142,453.85
5643.63 Deck 3 Mgmt Services	569,000.00		569,000.00	346,202.22	222,797.78
5683.04 Snow Removal	2,500.00		2,500.00	1,079.50	1,420.50
5683.05 Fire Alarm Monitoring	500.00		500.00	307.80	192.20
5723 Meals & Parking				60.00	60.00-
5762 Photocopying	500.00		500.00	38.22	461.78
5763 Printing	500.00		500.00	30.25	469.75
5784 Misc Insurance	26,521.00		26,521.00	26,521.00	
5786 Property	145,754.00		145,754.00	145,754.00	
5794 Public Officials	24,640.00		24,640.00	19,067.50	5,572.50
5821 Electricity - Bldg & Grnds	7,065.00		7,065.00	9,097.36	2,032.36-
5825 Natural Gas	3,000.00		3,000.00	2,129.30	870.70

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06095 W Haymarket Surplus					
12 Other Services & Charges					
5829 Telephone	1,200.00		1,200.00	1,284.28	84.28-
5830 Water	1,000.00		1,000.00	929.26	70.74
5835 Thermal Heating & Cooling	2,150,000.00		2,150,000.00	2,124,349.14	25,650.86
5856 City Share Linc Center Maint	33,000.00		33,000.00	19,337.77	13,662.23
5862 Grounds Maintenance	3,000.00		3,000.00		3,000.00
5870 Other Bldg Maintenance	11,000.00	68,413.00	79,413.00	73,714.18	5,698.82
5928 Rent of Co/City Bldg Space	966.00		966.00	966.00	
5931 Parking Rent Bldg Comm	465.00		465.00	465.00	
5952 Advertising/Media Serv	1,450.00		1,450.00	825.00	625.00
5969 Arena Sales Commissions	2,828,329.00		2,828,329.00	2,828,329.00	
5993 Fees Paid to State of NE				45.00	45.00-
5996 Credit Card/Bank Fees	5,000.00		5,000.00	236.04	4,763.96
12 Other Services & Charges	8,830,836.00	68,413.00	8,899,249.00	8,448,477.98	450,771.02
06095 W Haymarket Surplus	8,833,336.00	68,413.00	8,901,749.00	8,450,150.38	451,598.62
06097 W Haymarket Oper & Maint					
12 Other Services & Charges					
5643 Management Services		650,000.00	650,000.00	650,000.00	
12 Other Services & Charges		650,000.00	650,000.00	650,000.00	
06097 W Haymarket Oper & Maint		650,000.00	650,000.00	650,000.00	
195011 JPA 2010A Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6235 Bd Trustee Pmt-Interest	4,651,510.00		4,651,510.00	4,651,510.00	
15 Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	
195011 JPA 2010A Debt Service	4,652,034.00		4,652,034.00	4,652,034.00	

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195021 JPA 2010B/C Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	1,048.00		1,048.00	1,048.00	
6235 Bd Trustee Pmt-Interest	5,874,323.00		5,874,323.00	5,874,322.50	.50
15 Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50
195021 JPA 2010B/C Debt Service	5,875,371.00		5,875,371.00	5,875,370.50	.50
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	424.00	100.00
6235 Bd Trustee Pmt-Interest	4,591,688.00		4,591,688.00	4,591,681.83	6.17
15 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195031 JPA 2011 Debt Service	4,592,212.00		4,592,212.00	4,592,105.83	106.17
195041 JPA 2013 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524.00		524.00	524.00	
6234 Bd Trustee Pmt-Principal	540,000.00		540,000.00	540,000.00	
6235 Bd Trustee Pmt-Interest	1,136,075.00		1,136,075.00	1,136,075.02	.02-
15 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
195041 JPA 2013 Debt Service	1,676,599.00		1,676,599.00	1,676,599.02	.02-
00950 West Haymarket Revenue	25,629,552.00	968,413.00	26,597,965.00	26,349,725.36	248,239.64

WH 15-19 Introduce: 9-17-15

RESOLUTION NO. WH- _____

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

That the attached Agreement between the West Haymarket Joint Public Agency (JPA) and Ed Carpenter relating to the final design, engineering, fabrication, and installation services for a metal sculpture to be installed in an area of the Pinnacle Bank Arena Plaza at 400 Pinnacle Arena Drive as designated by the JPA is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the JPA.

The City Clerk is directed to return one fully executed copy of the Agreement to Assistant City Attorney Chris Connolly for transmittal to Ed Carpenter.

Adopted this _____ day of September, 2015.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Carl Eskridge

CONTRACT FOR DESIGN, FABRICATION, ENGINEERING,
AND INSTALLATION OF ARTWORK FOR THE PINNACLE BANK ARENA PLAZA

1. **Introduction.** This Agreement is between the West Haymarket Joint Public Agency, a Nebraska joint public agency ("JPA") and Ed Carpenter ("Artist") to perform certain services on the terms described herein. The Artist is being engaged to perform final design, engineering, fabrication, and installation services for an approved design for a metal sculpture (the Art) to be installed in an area of the plaza of Pinnacle Bank Arena designated by JPA and generally described as 400 Pinnacle Arena Drive, Lincoln, Nebraska (the "Space").

2. **Services.** Artist has heretofore produced an artistic design for the Art and the Space previously accepted by JPA. Artist is hereby engaged by JPA, and Artist hereby agrees, to provide the following final design, engineering, fabrication and installation services in connection with the Art and the Space:

A. Design, Fabrication, and Inspection, and Delivery.

i. Design; Fabrication; Source Inspection – Artist shall be responsible for developing the preliminary and final design of the Art and procuring all materials and third party services required for the fabrication and installation of the Art. The JPA shall have the right of final approval of the design. Artist shall also be responsible for monitoring the progress of the Art fabrication process and performing such source inspections during fabrication of the Art components as may be necessary to ensure that the Art conforms to the design, with all of the foregoing determined by the Artist in his sole discretion, except that any substantial change to the Art shall be reviewed and approved by the JPA before the change is made. Artist shall notify JPA in writing of the expected deadline for completion within ten (10) days of the beginning of the fabrication of the Art.

ii. Delivery; Shipping; Insurance – Artist agrees to deliver the components of the Art to the Space on a best efforts basis not later than such day (the "Art Delivery Date") which shall be no later than ten (10) calendar months following execution of this Agreement. Artist shall provide photo documentation to JPA periodically and with its notification of completion. Artist shall be solely responsible for preparing the Art components for shipment and arranging for transportation to the Space. Shipment shall be FOB destination, and Artist shall be responsible for all costs for materials and labor in connection with preparation and packing of the Art components for shipment and all costs of transportation to the Space. Artist shall bear the risk of loss (a) during the fabrication phase of the Art, (b) during transportation of the Art to the Space, and (c) during construction and installation of the Art in the Space. Artist agrees to obtain insurance in an amount not less than the replacement value of the Art (or portion thereof relating to work in process) naming the JPA as an additional insured for any amounts paid, the costs of which will be borne by Artist, and shall provide a certificate to JPA. Artist shall take all necessary and reasonable measures to protect the Art during fabrication, transportation, construction, and installation.

iii. Interface Design; Inspection at Destination – Not later than ninety (90) days following issuance of the first payment herein, Artist shall provide to JPA drawings and/or sketches in sufficient detail to define the structural and dimensional interface between the Art to be delivered by Artist and the Art foundation to be constructed to allow for review by the City of Lincoln's Department of Building and Safety for compliance with all applicable building codes. Following shipment of the Art components to the Space, Artist shall inspect the components prior to construction and installation.

B. Construction and Installation

Construction, installation, and erection of the Art components shall be hereinafter referred to as "installation."

i. Artist shall be responsible for all labor, materials and equipment required for the installation, and the preparation for installation, of the Art at the Space. Artist shall bear the risk of loss during the preparation for installation and the installation of the Art at the Space.

ii. JPA and Artist agree that the JPA may, in its sole discretion, elect to place the Art components in storage following shipment to the Space by Artist (a "Delayed Installation"). In the event Artist has been notified in writing by JPA of a Delayed Installation, Artist agrees to (a) unpack the Art components at the site designated by JPA for storage to the extent necessary to inspect the Art components for any shipping damage, (b) re-pack the Art components following such inspection and (c) re-inspect the Art components following delivery of the Art components to the Space by JPA at a later time designated by JPA. JPA shall be responsible for insuring the Art against loss during the time period the Art is being stored by JPA and, so long as Artist has not received the Installation Progress Payment or the Final Payment (as such terms are defined in Section 6 hereunder), Artist shall be named as an additional loss payee on such insurance.

C. Ancillary Services By Artist

i. Artist agrees to meet with JPA, including JPA's professional consultants, by telephone, video conferencing, or in person, at reasonable times and with reasonable frequency as shall be mutually agreeable between Artist and JPA in order to assist JPA with the coordination of the final design and fabrication of the Art for which Artist is responsible, and with the design and use of the Space for which JPA is responsible. The JPA will pay for travel expenses for in person meetings in Lincoln, Nebraska that are requested by the JPA and are not part of the travel schedule of the Artist necessary for fabrication or installation of the Art. Costs for telephone or video conferencing shall be paid by the party initiating the telephone call or video conference.

ii. Artist shall, at JPA's request, provide documentation of the progress of the Art. Artist shall provide documentation for JPA's determination of completion of the various phases in the schedule prior to payment for each phase as provided herein. The Artist

shall advise the JPA in writing of substantial changes to the design, look, fabrication, or installation of the Art and the JPA shall be given a reasonable amount of time to respond to the proposed change(s).

3. **Term.** The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than one year after the date of execution by JPA and issuance of the first payment to the Artist. The parties shall amend the Agreement if the project herein is not completed within one year in the event the cause or causes of the delay do not constitute a breach herein.

4. **Phases.** The Artist shall complete the project in the following phases:

   A. **Phase I: Design Drawings**. The Artist shall submit completed design drawings, with an engineer's seal for the State of Nebraska, to the JPA within 120 days of issuance of the first payment herein provided that JPA has supplied to Artist the site documents referred to in Section 7 below;

   B. **Phase II: Component Fabrication.** Upon payment for the Design Drawings, Artist shall cause the components of the Art to be fabricated and said fabrication shall be completed not later than 10 calendar months following issuance of the first payment herein with delivery of the Components to the site no later than 11 calendar months after issuance of the first payment hereunder;

   C. **Phase III: Site Preparation**. Artist shall not be permitted to do site preparation until authorized by JPA in writing. Upon authorization, Artist shall have 90 days to install necessary infrastructure at the site including, but not limited to, electrical and foundations. Artist shall consult with JPA prior to beginning site preparation and shall coordinate activities on the site with JPA's agent, SMG Management;

   D. **Phase IV: Construction and Installation.** Following completion of site preparation, Artist shall have 30 days to construct, assemble and install the Art. Installation should require about a month. The Artist and JPA agree that the Art shall be fully constructed, installed, operating, and accessible by the public no later than one year after issuance of the first payment hereunder.

5. **Project Budget.** Artist and JPA agree that the amounts budgeted below are estimates of cost for each category and may not reflect actual or final cost of each category. Artist and JPA further agree that the total cost for the Art shall not exceed $972,000.00. Any use of Contingency funds shall be determined exclusively by JPA. Estimated costs for elements of the Art are as follows:

(1)	Preliminary design, design development and final design	$50,000.00
(2)	Component fabrication	$545,000.00
(3)	Site preparation	$75,000.00
(4)	Shipping and installation	$60,000.00
(5)	Travel, insurance, and administrative assistance	$17,000.00
(6)	Artist's compensation	$150,000.00
	Subtotal (Project Cost)	$897,000.00
(7)	Contingency	$75,000.00
	Total Cost	$972,000.00

6. **Payment.** JPA agrees to pay the Artist in accordance with the following schedule:

A. Within ten (10) days of execution of the Agreement, the sum of $89,700.00 representing 10% of the Project Cost;

B. Within ten (10) days of approval of final design drawings by JPA, the sum of $89,700.00, representing 10% of the Project Cost;

C. Within ten (10) days following notice (including photographic evidence) by Artist to JPA that the Art component fabrication is 33% complete, the sum of $179,400.00 representing 20% of the Project Cost;

D. Within ten (10) days following notice (including photographic evidence) by Artist to JPA that the Art component fabrication is 66% complete, the sum of $179,400.00 representing 20% of the Project Cost.

E. Within ten (10) days following notice (including photographic evidence) by Artist to JPA that the Art components have been 100% fabricated and delivered to the site and passed inspection by the Artist, the sum of $179,400.00, representing 20% of the Project Cost;

F. The Artist shall notify the JPA when installation reaches substantial completion. The JPA shall have seven days to inspect the completed Art after notice of substantial completion is given by the Artist. The JPA shall accept the completed Art upon the Art passing inspection after substantial completion. Within ten (10) days following acceptance by the JPA of the Art as installed at the Space, the Artist shall be paid the sum of $134,550.00 representing 15% of the Project Cost. Upon final completion of the project, including all punchlist items, the Artist shall be paid the sum of $44,850.00 plus any contingency used in the Fabrication and Installation cost of the Art that was not previously paid to Artist. Said amount represents the remaining 5% of the Project Cost (the "Final Payment"); provided, however, in the event JPA has not issued a notice to proceed with construction or similar formal authorization to proceed with site preparation within ninety (90) days following the commencement of a Delayed Installation pursuant to Section 2.B.(ii) hereunder, JPA shall pay Artist for all actual

Project Costs incurred by the Artist, including the full amount of Artist's compensation. Artist shall be paid within ten (10) days following the expiration of such ninety (90) day period.

7. **JPA Duties.** JPA shall provide to Artist a site suitable for construction and installation of the Art and shall provide Artist with reasonable access to the site. JPA will provide access to electric power for Construction and Installation purposes at the site and will provide access for connection of permanent electric power for the Art. The Artist shall be responsible for constructing all connections and infrastructure needed to deliver electric power to the Art. The JPA shall also provide documents and drawings showing existing conditions and utility locations. Upon submission of sufficient documentation from the Artist, JPA shall timely process the payments set forth in Section 6.

8. **Risk of Loss.** The parties hereto understand and acknowledge that the Art and the work of creating, fabricating, constructing, and installing the Art shall be owned and is the sole responsibility of the Artist, except for design approval and change orders, until the Art is accepted by the JPA which shall occur upon final payment. The risk of loss or damage shall remain with the Artist until acceptance, unless stored by the JPA pursuant to section 2(B)(ii) above.

9. **Warranty.** The Artist hereby provides a one year warranty on the parts, material, and labor for the fabrication and installation of the Art. The warranty shall commence upon acceptance of the Art by the JPA.

10. **Change Orders**. All requests for changes in the scope, phasing, cost, or any other execution of this agreement shall be made in a written change order request by the Artist to the JPA. Such change order requests made by the Artist shall be timely reviewed and considered by the JPA. Upon approval of any such change orders, the approved change order shall be deemed an amendment to this agreement.

11. **Copyrights, Royalties & Patents.**

    A. Without exception, Artist represents that the consideration for this Agreement includes Artist's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the services provided herein by Artist pursuant to this Agreement. Further, Artist shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Artist represents that all materials, processes, or other protected rights, if any, to be used in the creation and fabrication of the Art have been duly licensed or authorized by the appropriate parties for such use. In the event a claim is made by a third party claiming ownership or other related interest in the Art prior to final payment, Artist agrees to furnish the JPA upon demand written documentation of such license or authorization and if unable to do so, Artist agrees that the JPA may withhold a reasonable amount from the Project Cost

herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

B. Artist shall indemnify the JPA, the University of Nebraska-Lincoln, and the City of Lincoln, Nebraska and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Artist has used in the course of performing this Agreement.

C. Artist represents and warrants to JPA that it is free to enter into this Agreement and that its performance thereunder will not conflict with any other Agreement to which Artist may be a party. Artist represents and warrants to JPA that the Art is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties. Artist shall not make any additional exact duplicate additions of the Art, nor shall the Artist grant permission for others to do so without written permission of the JPA.

D. Artist grants to JPA an irrevocable license to make and use graphic reproductions of the Art for non-commercial purposes, including reproductions used in brochures, media publicity, or other similar publications, including by computer and internet, and that such rights are royalty-free and unrestricted, but shall always credit the Artist. It is understood that the Art may be photographed by the public.

E. Notwithstanding anything in this Agreement to the contrary, in no way shall this Agreement be construed as creating any rights of "works made for hire" for the benefit of the JPA under U.S. and international copyright laws, and all copyright and similar intellectual property interests in the Art is expressly reserved to the Artist and shall remain intellectual property belonging solely to the Artist.

F. Subject to the copyright expressly reserved by Artist pursuant to Section 4.C. hereunder, upon passing inspection by the Artist and applicable building code inspectors, JPA shall become the legal and beneficial owner of the Art. JPA agrees to arrange for a prompt final building code inspection upon request of the Artist.

G. After final payment and acceptance of the Art, the JPA shall not perform any substantial repairs, modifications, or other changes to the Art without the consent of the Artist, whose consent shall not be unreasonably withheld.

H. The Artist grants to the JPA an irrevocable license to possess and use all drawings, plans, diagrams, and other materials related to the Art in the event of the death of the Artist. At the time of completion of the fabrication and construction of the Art, the JPA shall return to the duly appointed personal representative of the Artist's estate all original drawings, plans, diagrams, and other materials related to the Art. The JPA may keep a copy of all such materials exclusively for maintenance, repair, or permitted modifications to the Art.

12. **Termination.** Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. JPA also has the right to terminate this Agreement for any reason for its own convenience with thirty (30) days written

notice of the termination. JPA may terminate this Agreement immediately, without penalty or expense, in whole or in part, when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of JPA. Upon termination, JPA shall pay Artist for any services completed up to the date of termination that are documented and approved, but the total of all payments hereunder shall not to exceed the maximum amount allowed by this Agreement. The JPA shall take possession of and dispose of any components fabricated herein that are not used due to a cancellation of this Agreement by the JPA.

13. **Maintenance and Life Span.** Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Art. Artist shall provide JPA with a general plan for routine maintenance and cleaning for the Art with reasonable expectations of time and expense. JPA strives to maintain the Art in good repair and condition. JPA shall not perform any substantial repairs, modifications, or other changes, including removal, relocation, or deaccession, without the consent of the Artist, whose consent shall not be unreasonably withheld. The anticipated life span of the Art is 40 years, at which time the JPA in its sole discretion may evaluate to continue repair or to remove the Art.

14. **General Duties.** Artist agrees as follows: (A) to timely and professionally complete the services as described above, and to furnish labor and pay all its own costs, including any taxes, required to complete the services; (B) to furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement; (C) to apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the work; (D) to conduct all activities related to the services in a lawful manner; (E) to provide and perform the work in a professional and workmanlike manner and in accordance with the provisions of this Agreement; and (F) provide proof of payment to subcontractors, fabricators, and other providers of services or products for which a lien upon the Art may be imposed and lien waivers from any such providers.

15. **Independent Contractor.** JPA is interested only in the results produced by this Agreement. Artist has sole and exclusive charge and control of the manner and means of performance. Artist shall perform as an independent contractor and it is expressly understood that neither Artist nor any of its staff or subcontractors are employees of JPA, the University of Nebraska-Lincoln or the City of Lincoln, Nebraska and, thus they are not entitled to any JPA, University of Nebraska-Lincoln or City of Lincoln, Nebraska benefits including, but not limited to, overtime, retirement benefits, workers compensation, sick leave, or injury leave. Artist is responsible for payment of all costs related to the fabrication and installation of the Art, including but not limited to subcontractors, materials, supplies, travel expenses, equipment, transportation, shipment, and documentation.

16. **Taxes.** Artist shall be responsible for all applicable taxes, including sales/use and excise taxes, local and federal taxes, which may be due from it as a result of this Agreement.

17. **Insurance.**

A. Artist shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Artist and JPA, its officials, employees and volunteers as insured, against claims for damages resulting from (i) all acts or omissions, (ii) bodily injury, including wrongful death, (iii) personal injury liability, and (iv) property damage which may arise from operations under this Agreement whether such operations by Artist and Artist's employees, or those directly or indirectly employed by Artist.

B. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

i. Professional Liability – The Artist shall produce adequate proof of insurance from his consulting engineers with the Artist and JPA listed as additional insureds. All Acts or Omissions - $2,000,000 each Occurrence; $2,000,000 Aggregate;

ii. General Liability - $2,000,000 each Occurrence; $2,000,000 Aggregate;

iii. Personal Injury Damage - $1,000,000 each Occurrence;

iv. Contractual Liability - $1,000,000 each Occurrence;

v. Fine Arts Insurance - $1,000,000.00 each Occurrence

vi. Medical Expenses (any one person) - $10,000; and

vii. Fire Damage (any one fire) - $100,000.

C. The following shall be provided and attached to this Agreement by Artist:

i. A Certificate of Insurance for its General Liability Insurance. The JPA shall be specifically named as an additional insured on the General Liability Insurance. The Artist shall also provide the insurance endorsement on form CG 20 10 demonstrating the additional insured coverage.

ii. Proof of Workers Compensation Insurance, where appropriate.

D. Artist is required to provide JPA with thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

18. **Indemnification by Artist.** To the fullest extent permitted by law, Artist shall indemnify, defend and hold harmless JPA, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of this Agreement, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of Artist, or anyone for whose acts Artist may be liable. This section will not require Artist to indemnify or hold harmless JPA for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence or intentional misconduct of JPA, its elected officials, officers, employees, and agents. JPA does not waive its

governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

19. **Indemnification by JPA**. To the fullest extent permitted by law, JPA shall indemnify, defend, and hold harmless Artist, his agents and employees from and against claims, damage, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of the JPA, or anyone for whose acts JPA may be liable. This section will not require JPA to indemnify or hold harmless the Artist, his agents or employees from any losses, claims, damages, and expenses arising out of or resulting from the sole negligence or intentional misconduct of the Artist, his agents or employees. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

20. **Payment Bond.** The Artist shall provide a corporate surety bond, in a form satisfactory to the JPA, in an amount of not less than the amount necessary to secure the payment of all laborers, material suppliers, equipment, rentals, and all other entities covered by Neb. Rev. Stat. Section 52-118. In addition to the payment bond, the Artist shall provide to the JPA proof of payment to vendors, suppliers, contractors, and subcontractors providing products or services before the next scheduled payment from the JPA to the Artist is made. Such proof shall include lien waivers.

21. **Audit.** Artist shall be subject to audit under the laws of the City of Lincoln per Lincoln Municipal Code Chapter 4.66 and applicable Nebraska state law and shall make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

22. **Fair Employment.** Artist shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended.

23. **Fair Labor Standards.** Artist shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

24. **Integration, Amendment, Assignment, Severability, Waiver.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or

limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. This Agreement shall be governed and interpreted by the laws of the State of Nebraska without reference to the principles of conflicts of law.

25. **E-Verify.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Artist agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Artist shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. § 1324b. Artist shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

26. **Capacity.** The undersigned Artist represents that he is a sole proprietor and that no other corporations, partnerships, limited liability companies or other entities related to the Artist are necessary for the execution and performance of this Agreement, except for subcontractors hired by the Artist.

27. **Contract Documents.** The Contract Documents that comprise the Agreement of the parties include the following documents and are incorporated herein as if fully set forth regardless of whether attached hereto:

    a. Contract For Design, Fabrication, Engineering, and Installation of Artwork for Pinnacle Bank Arena Plaza;
    b. Plans and specifications provided by the Artist, including a Nebraska Engineer's seal;
    c. Employee Classification Act, Executive Order 83319;
    d. City of Lincoln Standard Specifications for Municipal Construction, where applicable, except liquidated damages provisions shall not apply;
    e. Addendums (if any);
    f. Payment Bond;
    g. Sales Tax Exemption Forms 13 and 17;
    h. Personal Property Tax certification;
    i. Insurance certificates and form CG 20 10.

28. **Binding Agreement.** The Agreement set forth in the Contract Documents set forth in Paragraph 27 constitute all the terms and conditions of this contract and the JPA and the Artist hereby agree that all terms and conditions of this Agreement shall be binding upon themselves and their heirs, administrators, legal and personal representatives, successors, and assigns.

29. **Assignment.** Neither party may assign the rights and obligations herein without the consent of the other party to this Agreement.

30. **Nebraska Law.** This Agreement shall be construed pursuant to the laws of the State of Nebraska.

IN WITNESS WHEREOF, Artist and JPA do hereby execute this Agreement.

Artist's Signature:
Ed Carpenter
1812 NW 24th Ave.
Portland, OR 97210

_____
Ed Carpenter, Artist

West Haymarket Joint Public Agency,
a Nebraska Joint Public Agency

_____
Chris Beutler, Chair

Date of Execution: _____

07/09/20

Pinnacle Bank Arena