WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
August 22, 2013

Meeting Began At: 8:03 A.M.

Meeting Ended At: 9:57 A.M.

Members Present: Tim Clare, Chris Beutler, Doug Emery

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

Chair Beutler opened the meeting with introduction of the Board members. He advised that the open meetings law posted at the back of the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

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

Item 3 -- Approval of the minutes from the JPA meeting held July 12, 2013

Beutler asked for corrections or changes to the minutes of the July 26, 2013 meeting. Being none, Emery moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- Approval of July 2013 Payment Registers

Steve Hubka, City Finance Director, presented the payment registers for July 2013. Hubka noted that the total is $10,481,375 including charges from Engineering Services in Public Works. The bulk of the expenditures include $7.1 million to Mortenson. Another $3.1 million is to Hawkins Construction for Canopy Street, Phase II Festival Space, and Haymarket Parking Lot. Responding to Clare, Hubka stated we are on budget and are following necessary procedures from an audit perspective.

Being no public comment, Clare moved approval of the payment registers. Emery seconded the motion. Motion carried 3-0.

Item 5 -- Review of July 2013 Expenditure Reports

Hubka presented the July Job Cost Reports and Expenditure Reports for both the Operating Budget and the Capital Budget for Phase I and II. He noted there will be amendments to the Capital Budget involving mostly shifts from contingency dollars to various activities within the budget. Most or all have been previously approved expenditures by the Board, but this will reconcile the budget. Steve anticipates this may be included in the second meeting of September.

Clare asked about an article stating that we were over budget with respect to the bridge. He wanted to clarify that the additional bridge expenditures to fix the girders will be reimbursed by the party found at fault and that these expenses will not be paid for by the City or taxpayers or the JPA. Hubka explained that we will be paying some expenses upfront with the full anticipation of reimbursement. Some of those expenses are showing on the payment register. This is similar to other expenses where they must be shown, even if there is another funding source covering those expenditures.

Jane Kinsey, Lincoln Watchdogs, questioned Hawkins payments. Hawkins is one of the companies who may have some responsibility for the failures, yet we continue to pay them.

Paula Yancey, P.C. Sports, explained that the current payments to Hawkins are for other work items within their contract with the JPA. They are performing work associated with the Core Area Roadway Project, the Canopy Project, and the Festival Space Parking Lot Project. Contractually we have to pay them. We have not continued to pay them on the pedestrian bridge.

Kinsey wanted to know if they would have money to reimburse the City if found responsible. She wondered if anyone had checked to see if Hawkins had a bond. Yancey responded that they were required to have a bond so a portion of the contract total is kept in reserve. Also, for all construction projects, we hold a retainage amount. It is being withheld currently on the pedestrian bridge itself. Kinsey appreciated that and stated that it was important that the taxpayers know there is protection.

Item 6 -- WH 13-76 Resolution to approve Amendment No. 2 to the Contract Agreement between Terracon Consultants Inc. and the West Haymarket Joint Public Agency (JPA) to add Pedestrian Bridge special inspections to the Contract for West Haymarket Arena and Garage Special Inspections.

Paula Yancey, P.C. Sports, introduced this resolution. The $280,712.72 for this contract will be put in the package for reimbursement when the bridge failure responsibility is determined. Terracon did all the third party testing and inspections associated with the bridge failure for the engineers of record and third party engineers. They do not provide the actual reasoning for the failure.

Clare asked whether the scope or breadth of work had expanded. Yancey explained that they were doing the inspections on the pedestrian ramp and elevated plaza. We then asked them to do the bridge since it was all connected. They are one of several third party inspectors.

Kinsey asked if other people involved in this work are being paid and from which funding source. She also asked about the remaining balance. Yancey listed that we are paying Thorton Tomasetti who is the third party structural engineer of record, Olsson eConstruct Team as the engineer of record, and thirdly Terracon Consultants. Currently we are using funds available within the pedestrian bridge budget, which was within the original budget. Of course, there will be reimbursement requested. She does not anticipate having to increase the budget before this is settled or increase payment to others as believes everything is covered. She will provide the remaining balance to Kinsey.

Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

Item 7 -- WH 13-77 Resolution to approve Maintenance Contract between the West Haymarket Joint Public Agency and the Downtown Lincoln Association to provide day to day maintenance of the planting areas and sidewalks within the West Haymarket Area.

Dan Marvin, JPA Secretary, came forwarding stating that Terry Uland and George Pinkerton are present and can explain the process of maintaining this area in this interim way. As background, Marvin explained that there is a Business Improvement District (BID) covering much of the downtown area. Business Improvement Districts can charge in a variety of ways and this particular one for maintenance is on a front linear foot basis. We anticipate a district will overlay the West Haymarket area. The problem in initiating a district is that three different votes have to go before the City Council. The first one to form the BID is complete. With that process, a number of people (stakeholders) must determine level of service area and needs which is in the works right now. Then there is a second vote to alert property owners in the area of a potential additional levee on their property. We do not anticipate concerns since stakeholders have been involved in the process from the beginning. Finally, there will be a final vote by the City Council to levee the dollars to pay for the maintenance of this area. We are anticipating that in the December-January timeframe this series of events will have occurred such that the BID will include this area. This leaves a gap between now and approximately January where no maintenance is provided. This resolution provides for a maintenance agreement between the JPA and the Downtown Lincoln Association (DLA) to provide maintenance during that gap.

Terry Uland, Downtown Lincoln Association, explained that they are a 24/7 operation. Currently there is one maintenance bid and two management bids in the downtown district. The maintenance bid takes care of the public right-of-way and the management bids cover specifically a Chamber of Commerce for downtown. The City shares the expenses on the maintenance bid as DLA takes care of the right-of-way and other items the City would have to take care of otherwise. They have 66 block faces currently that they maintain. The interim gap expansion proposed is only on the maintenance side.

George Pinkerton, Downtown Lincoln Association, detailed that they currently take care of everything in the public right-of-way (litter, garbage, sand, gravel, and emptying of trashcans on a daily basis). They also assist with special events, such as the Farmer's Market. They take care of all horticultural beds (irrigation, trees, shrubs, and other plantings). In the winter, they move snow off the handicap ramps and keep the crosswalks clear. In the case of any damage to trees due to storms, they take care of that as well. They are responsible for graffiti removal on a weekly basis. Their recycling program was started a few years ago and has been successful with about 35% of garbage kept out of the landfill. As stated previously they are a 24/7 operation so they are called out regularly.

Clare thanked the DLA for their efforts in keeping the downtown beautiful.

Emery asked if the interim rate is in line with what the final rates would be if the district were approved. Marvin confirmed that was true as they are applying the current standard rate for the downtown area. We are also including some coverage in the double roundabout.

Kinsey asked where the DLA gets their money and where they are housed. Uland responded that administration is housed at 206 South 13th in the Sharpe Building. The shop is at 244 South 19th, which is now Antelope Parkway. The BID is thirty-five years old and is renewed periodically. Half of the money comes from the assessment on the parcel owned by the property owner and the other half is from the City. For the maintenance bid, the cost is approximately $6 per lineal feet of the parcel. So, the City would pay approximately half that amount. The City does not contribute to the management bids. The maintenance bid is the only one proposed to be extended during this interim period, and they have

mirrored the rates and services proposed for the Haymarket area. The boundaries currently extend approximately from 17th to under the viaduct at 7th Street and from approximately "R" to "K" Streets.

Kinsey asked about payments within the interim agreement. Marvin explained there will be a monthly cost paid by the JPA until the BID is established. Once the BID is established, it picks up the cost for the maintenance in the Haymarket area. The interim agreement is anticipated to be about three months long and will be terminated once the BID is established and taxes are levied to pay for the BID.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 -- WH 13-78 Resolution to approve Amendment to Pinnacle Bank Arena Private Suite Use Agreement between the West Haymarket Joint Public Agency and the Journal Star Printing Company to establish the value of trade credits for advertising and promotion of events.

Beutler announced this item was pulled from today's agenda.

Item 9 -- WH 13-79 Resolution to approve the Contract Agreement between the West Haymarket Joint Public Agency and Olsson Associates to provide West Haymarket Parking Decks 2 and 3 special inspections.

Paula Yancey, P.C. Sports, explained this resolution is to approve a special inspections contract with Olsson Associates for Decks 2 and 3 construction materials testing services. This was bid through the City Purchasing Office. There were three responses received. After reviewing the two lowest responses and comparing their test rates versus standard number of tests, Olsson Associates was the low bidder. Olsson also did the inspections on Deck 1 and did a quite a great job. The amount of this contract is for $60,629.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 -- WH 13-80 Amendment No. 9 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to extend the contract period to 12/31/2014; install groundwater monitoring wells and monitoring groundwater for the presence of free product in the vicinity of Parking Deck 1, Canopy Lots and Hyatt Place under existing Task 8; prepare a final remedial action completion report for the West Haymarket Redevelopment Site North (WHRSN) under existing Task 9; and to provide sampling and remediation oversight and reporting for the former Alter North Property and JayLynn Property under new Task 28, for an additional amount of $107,677.46.

Miki Esposito, Director of Public Works & Utilities, and Frank Uhlarik, Environmental Compliance Administrator in Public Works & Utilities, provided background on this resolution. Esposito talked about the monitoring component relative to this amendment. This is a $21,000 effort. We are monitoring a small amount of diesel free product discovered during the investigation and verification sampling. Free product is product in its natural form – it has not been broken down. Small pockets were found in three areas 15-20' below ground on the groundwater. This has no significant impact on the arena opening or for what is ahead, because there is no risk to human health or the environment. This is historic railroad property and, for over 100 years, materials were deposited in the soil and groundwater. When we began construction in the area, doing things like installing utilities and auger case pilings, we started moving things around. There was a lot of stability on the site and we started dislodging things from soil that ended up in groundwater. The NDEQ rules are that when you find even

little minuscule amounts of free product you have to go in and monitor these detects, which we are proposing to do. Their general rule is that, when you remove the risk associated with any contamination through excavation (as we did on the big dig), through a 3' soil cap (as we put in place), through prohibition of groundwater use, and prohibition on basements in the area to remove vapor risks, you have eliminated risk to anyone and can proceed with development. This is exactly what we have done under NDEQ rules. It is a risk free rule. NDEQ has taken a stance that, for the integrity of the groundwater, they want the detects monitored regardless of size. If we find nothing after monitoring for four consecutive periods (quarterly samples), we close it out. If additional detects are found, we come in – probably on a Sunday -- with a vac truck and suck it out of the 2.5" diameter well. It is a very passive system that most people will not even be aware is happening. It is part of our due diligence in monitoring the area and is a very unremarkable event. In developing the environmental plan, we knew we would come into some contaminated media and this is part of that expectation.

Uhlarik explained that this amendment is for a total of $108,000. $65,000 is for oversight of the cleanup on the Alter and Jaylynn properties. That amount is mostly reimbursable under the EPA Brownfields Grant. Another approximately $22,000 is for final reporting on all areas north of "O" Street under the Voluntary Cleanup Program. It will document all the soil, all the hard surface covers that were put in place, what soil was removed, and verify that the Remedial Action Plan (put in place in 2012 and approved by the DEQ) was done to their specifications. Lastly, as already mentioned, it will include the monies to install six groundwater monitoring wells and monitor the groundwater for four consecutive quarters for no free product occurrence. As a matter of prospective, in the 1980's BNSF was initially detecting and investigating their free product plume of the groundwater, which covered an area of five acres approaching the Post Office. They were literally sitting on a sea of diesel fuel. They pumped on that for 20 years to the size of the footprint of the big dig executed in 2011. They have vastly addressed the majority of petroleum impacts in that area. Additional soils have been removed and disposed of correctly throughout the core area and utility work if contamination was found. It is not surprising that we may still find small pockets to address. It is predictable and understandable and accounted for in the budget and in the approach to the site.

Beutler asked if this product attenuates naturally over time as well. Esposito confirmed that was true and it has done so for the most part. Uhlarik stated this was not an exact science as there is a lot of variability in the ground and groundwater and pockets can be found in other locations as one is cleaned up.

Regarding the monitoring wells, Clare assumed we are coordinating and communicating with NDEQ and all appropriate environmental agencies on location and depth and the entire effort to make sure we are doing all we can to eliminate all potential issues. Uhlarik confirmed his assumption and listed the locations as one in Deck 1 (western fringe of the big dig), four wells on the north side of Canopy Lofts that will be flat at grade with access points, and one on the southeast corner of Canopy Lofts (actually in the alleyway between Hyatt Place and Canopy Lofts). The developers understand and are in agreement with our approach. Esposito added that NDEQ would actually not allow the development to occur if there were any threat. Clare relayed what he heard earlier that this was not a surprise that some follow up is to be expected in a cleanup of this magnitude, and the important issue is to follow appropriate procedures to get it cleaned up. Clare asked for a brief description of the size and view of the monitoring wells. Uhlarik explained they were going to use what is called a geoprobe. It is smaller, lightweight mobile equipment to move around and place in more wells most efficiently. It is a 2" diameter pipe that goes 15-25' depending on the elevation of the groundwater at the particular location. It will be a flat surface finished at grade with a steel plate, similar to a manhole, to give access.

Emery asked if we tend to see more pockets as we are doing development that moves the soil around and, once that slows down, there will be less. Uhlarik responded that at the surface there will be less as deeper utilities going in place cause more disturbance of soil and groundwater. Emery then asked about the budget. Uhlarik thought the budget was roughly $7.5 million and there is roughly $2.5 million left in budget, which is more than enough to complete anticipated remaining work. Emery summarized that what has been found is not a safety risk, this has very little impact on the budget, and is something that we knew was a possibility. Uhlarik confirmed and said that we have suggested to NDEQ that the groundwater is not migrating, that the "plume" is stable, and that there is no vapor risk. They have on occasion allowed free product to remain in place with elevated monitoring. We did not feel that was appropriate so are moving forward with the process.

Kinsey stated that Watchdogs would like to present another opinion. With due respect to those here, there are honorable people who have another opinion about this. The public was not informed that there would be monitoring for diesel plumes after the arena was built. It was up to the taxpayers to decide if this was misinformation or the lack of information was by design. 44% of the taxpayers had concerns about the arena being built at this location and this partially gives their viewpoint some validity – although not the only concern about the arena, this was one of the big concerns. She wanted to know who is saying there is no risk. She would prefer the public is not told that this is a small item, that it is the City's opinion, and there could be more of this in the future that could lead to problems that are more serious. Some honorable, knowledge people say that is the case. Kinsey is glad to know money is left although about $5 million has been spent if that was correct. Uhlarik responded that it is in that ballpark, but there are State reimbursements and EPA grant dollars that need to figured in that budget.

Kinsey went on to inquire as to whom is asking for the monitoring. Uhlarik explained that the DEQ oversees the Petroleum Remediation Program, but the EPA (through the Brownfields Grants starting in 2005) has been there since day one overseeing the broader investigations under the Voluntary Cleanup Program. Anything involved with the Brownfields Grants has had them involved in reviewing and approving. That is the national EPA Region 7 in Kansas City. Kinsey asked if approval of the Brownfields Grants were approved due to this issue, to which Uhlarik responded it was unrelated to the petroleum issues at the site. There is petroleum Brownfields money and there is hazardous substance Brownfields money. We applied for the hazardous substance cleanup funding for the Alter and Jaylynn properties. There was nothing about petroleum cleanup and this generally would be ineligible for EPA monies since State funds have been spent on that property.

Kinsey wanted to know where additional funds would come from for cleanup if these were used up. Beutler stated we were speculating on things that do not exist. If an event does occur, either in environmental or other areas, it is not something we should be speculating on if not needed. He wanted to go on record that this Board has been entirely transparent on all matters relating to West Haymarket, the arena, and associated development. He believes it is less than the highest quality of civil discourse to suggest that unidentified, undisclosed sources who it is implied have some expertise or knowledge are saying that something other than complete transparency is occurring. He asked that she bring the people forward if they have some information that would be useful. Kinsey reminded him that in the "No-to-Arena Campaign" that was brought up as one of the main things. At that time the City did not deny it, they just said they would take care of it. She wanted to know who said there was no risk.

Clare wanted to clarify with Esposito that the cleanup efforts are consisting of best practices at the City level, State level and Federal level. Esposito confirmed that was correct. Clare went on to echo Beutler's comments that, if specific people have specific issues relevant to the cleanup efforts that have been conducted, bring those people forward. He does not believe it is fair to lob negative statements when we are doing everything by City's best practice and everything that the State and Federal government say is appropriate in a cleanup effort. He is pleased with what is happening. When things happen, we will address it and continue to be transparent about it.

Kinsey stated that she does not have an issue with what we are doing, but with the "plumes" being there. Esposito again stated that the State and Federal agencies are not prohibiting development simply because there is no risk to human health. Two points of further clarification. It is not true that the monitoring after the arena was built was never contemplated. The DEQ and EPA will require monitoring for a while and that will be part of our environmental covenants on the property until there are no detections. Monitoring has always been part of the NDEQ process, has been represented in the budgets, and will continue as needed. The no risk determination is actually part of the State's analysis and, if there were risks posed, we could not proceed with any development. So, the fact that they have approved our actions and ability to develop, means that there are no risks. We have eliminated them through our giant excavation effort, through soil capping, and through prohibitions on groundwater use and prohibitions on basements.

Emery said from the very beginning HWS said they believed the remediation would be $5-7 million. He believed that was an absolute disclaimer they knew remediation would be needed. Also, regarding the budget, that figure is very close compared to meetings he was in where other educated people had various figures upwards of $50 million.

Kinsey closed by saying that honorable people have different opinions. Particularly within a democracy, this is allowed and encouraged. She wants to present the other side and their hope is that taxpayers will not have to come up with more money in order to take care of any issues.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 -- WH 13-81 Resolution approving the adoption of the 2013-2014 JPA Operating Budget.

Beutler announced this item was pulled from today's agenda.

Item 12 -- Set Next Meeting Date

The next meeting date is set for Friday, September 6, 2013 at 3:00 p.m. in City Council Chambers Room 112.

Item 13 -- Motion to Adjourn

Emery made a motion to adjourn the meeting. Clare seconded the motion. The meeting adjourned at 9:57 a.m.

Prepared by: Pam Gadeken, Public Works & Utilities

West Haymarket JPA Meeting

Date 8/22/13

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Name (Please Print)	Address	Phone/E-Mail
Jane Kinsey Watchdogs		