WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
December 19, 2013

Meeting Began At: 3:04 P.M.

Meeting Ended At: 4:00 P.M.

Members Present: Chris Beutler, Tim Clare, 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 November 14, 2013

Beutler asked for corrections or changes to the minutes of the November 14, 2013 JPA meeting. Being none, Emery moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- Approval of November 2013 Payment Register

Steve Hubka, City Finance Department, presented the November payment register for $8,893,907.86. It includes a large payment of $3.3 million to Mortensen. Many of the smaller expenditures are for FF&E (furniture, fixtures, and equipment) items and some larger payments are starting to show up for Parking Garages 2 and 3 that are under construction.

Clare asked if contracts, procedures, signatures, and other items were completed and reviewed as required from a performance audit standpoint. Steve confirmed stating that Mark Leikam, Controller, does a great job in that regard. They discuss those types of items regularly.

There was no public comment. Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

Item 5 – Review of the November 2013 Expenditure Reports

Hubka presented the expenditure reports for the Phase I Budget. Later on the agenda are amendments which, if adopted, will be reflected on the December report. Also presented are the

Phase II Budget and Operating Budget Reports. Since there is no adopted budget yet, that column is currently showing blank.

Jane Kinsey, Watchdogs of Lincoln Government, asked when the budget will be prepared. Hubka responded that the amendment on the Program Budget is before the Board in today's meeting, as well as the Operating Budget. If those are approved, the December report will reflect the amounts.

Item 6 -- WH 13-90 Resolution approving the 2013-2014 JPA Operating Budget.

Hubka presented a proposed budget of roughly $21.2 million. Since we are moving from a construction to an operating phase of the arena, there are a number of items in the budget that were not previously. These include purchase of Husker tickets for $263,000, a pre-opening loan repayment, pouring rights, parking management services for $660,000, District Energy thermal services of $1.5 million, and arena sales commissions for $1.3 million. The budget went from $15.7 to $21.2 million. As in the past, the most significant number being the $15.7 million for interest payments on outstanding bonds.

New this year, a Revenue Distribution Schedule is included on page 2 identifying arena revenues, JPA revenues, and City revenues. This includes a citation of documents giving legal authority.

Rod Confer, City Attorney and Council for JPA, distributed a Memorandum to the Board clarifying the pouring rights interface between IMG naming rights agreement and the SMG management agreement. While the SMG agreement was being negotiated for management of the arena, one of the provisions of the agreement provided that the pouring rights – that is for beverage sales at the arena – would be part of the operating revenues used to operate the arena by SMG. After that agreement was signed, the JPA entered into a later agreement with IMG, the marketing agent for the University. Under that agreement, it was agreed that IMG would have the opportunity to market those pouring rights. IMG sold the pouring rights in return for which they pay JPA a flat fee. In order to honor the commitment with SMG that those pouring revenues would be utilized as operating revenues to operate the arena, there is now a portion of the IMG flat fee that is allocated to pouring rights. This year that was $285,000 based on the actual sale of beverages at the arena. That portion is paid to SMG for operations of the arena. SMG operates the arena as the City's agent. Any profits are then turned over to the JPA as revenue and the revenue is put into the stream of funds to pay off the bonds, operation and maintenance, depreciation, etc. on the arena. So the flow of funds are that the money is paid to IMG as part of their agreement, IMG then pays a flat fee to the JPA, and then the JPA pays a portion attributable to the pouring rights to SMG in accordance with their agreement.

Beutler asked if, with approval of this operating budget, the JPA is legally ratifying the understanding of the relationship of its contractual agreements. Confer affirmed pointing out that pouring rights are specifically labeled in the budget – on page 1 under Operating Expenditures Services and on page 2 under both JPA Revenues Item 9. and Arena Revenues Item 3.

Clare stressed the importance of the budget review. Over the past several years, numerous resolutions and agreements have been approved to make this project work. It will be important, especially in the future when some people making those commitments may not be around, to

understand what was contractually agreed upon and the intent in order to meet those commitments. He appreciates everyone's patience and efforts to answer questions during this review. He believes page 2 does a good job of detailing our obligations and the associated legal authority in order to move into the future and continue to meet those commitments. He is very comfortable with the budget as presented.

Beutler thanked Clare, as well as Emery, for their questions. He agrees the scrutiny is important now to minimize future confusion. Emery agreed and, having come in late to the process, he needed to understand the correlation and authority. He appreciates the extra review and efforts. He also realizes this is a process that was written as it was underway so expects more fine-tuning will be needed requiring more review in succeeding budgets to make their intent clear.

Kinsey asked how they arrived at the Arena Revenue figure. Hubka explained there were a number of items in the revenues that are fixed, such as UNL and Amtrak Station rent, and an estimate of interest. Arena Revenues comes from a model that Don Herz, former City Finance Director and current consultant to the JPA, prepared. And, over time, those amounts have solidified themselves. The Federal Subsidy has fallen victim to the sequester with a reduction of approximately 8%. The remainder of the source is the Occupation Tax, which is the portion needed to fund the remaining budget. We will take in about $13.4 to $13.6 million this year so this is the portion needed. The $13.4 to $13.6 is projected, but we only have one month left to collect so should be very close.

Kinsey asked if the Arena Revenues included monies from events. Hubka explained that it did not include any of those revenues, but did include monies from sale of items such as sale of the suites, loge, and club seating. Page 2 of the budget does detail what is included. Hubka explained that the profits from events are within the operating account of the manager, SMG, to handle the operations of the arena to take in ticket and concession revenues and to settle with promoters, etc. There is a provision in that agreement that those net profits could go back to the JPA. There are cash flow needs at the arena so it would not be wise to move every dollar back to the JPA. At the end of the fiscal year that will be evaluated.

Kinsey stated that the paper reported that $8 million gross has been collected from events. She wondered if the net amount would have an impact on this item and questioned who would get those profits. Hubka replied that the net really did not have to do with what is before the Board as this is JPA Revenues. Although it is conceivable that JPA could receive profits in the future, and they certainly anticipate operational profits, it is too early to know for sure since the arena has only been open 3.5 months. Hubka is contract administrator for the operations, as well as Treasurer for the JPA, so monies would simply be moving from one hand to the other. He does not anticipate operational revenue from SMG to be a significant portion of future bond repayment. Kinsey wanted to clarify for the public that the $8 million was gross profit and where that would go.

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

Item 7 -- WH 13-91 Resolution approving the ongoing Program Budget.

Hubka relayed that this resolution is asking for an amendment to the Phase I Program Budget. There is a movement of monies to individual project line items. Overall, it is moving approximately $2.5 million, with just over $300,000 out of the Contingency Fund to line items. There will probably be several more amendments before the project is complete. Currently there is a significant amount of Contingency Funds remaining, and it has not been assigned to line items in the Program Budget.

There was no public comment. Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 -- WH 13-95 Resolution to approve Amendment No. 18 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, Haymarket Infrastructure Design Project No. 870000, to extend the Agreement through December 31, 2014 and to increase the hourly rates by up to 1% from the 2013 rates.

Yancey explained that this resolution is for a zero-dollar contract increase amendment. It is to clean up some contractual terms within the existing LHIT contract, such as extending the contract term from December of 2013 to December 2014. There is additional work needed due to Phase II projects, as well as clean up of infrastructure projects. Additionally, there is an hourly rate adjustment per the CPI increasing the hourly rates up to 1%. This is still a not-to-exceed contract, so the total is not impacted.

Clare clarified that this has a zero financial impact to the JPA and is more of an administrative cleanup item. Yancey confirmed.

Kinsey asked for clarification as to how there can be a 1% increase, but no financial impact. Yancey explained it did not matter what was billed as the total is still capped at a not-to-exceed amount. Therefore, even if they increase the hourly rate, it does not increase the contract amount. Emery described that if there is a $100,000 cap, they could bill $90,000 plus a 1% increase – but overall they still cannot exceed the $100,000 total. Once the maximum amount is reached, the 1% is null and void. Yancey confirmed we would only pay what was approved per the contract agreement.

Kinsey then asked what was included in the contract. Yancey responded that this was for the Lincoln Haymarket Infrastructure Team (LHIT) Contract that is a consortium of local firms who do the design and engineering for a number of infrastructure projects, including core area roadway projects, wayfinding, streetscape projects, Deck II parking, festival parking lots, and utility packages. Some of these projects are past and some are ongoing. We are closing out some of the projects such as core area roadway projects, the streetscape project to be completed in the spring, and the pedestrian bridge. Other projects have been added such as Deck II and Deck III parking to be completed next September.

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

Item 9 -- WH 13-96 Resolution to approve the Consultant Agreement between the West Haymarket Joint Public Agency and Don Herz for ongoing maintenance and refinement of a cash flow and financing model and analysis for a term expiring December 31, 2015.

Hubka presented the contract with Herz. Two years ago the JPA retained Herz to develop, maintain, and refine a financial model. It was originally written to have a two-year term with up to $20,000 a year. So far, Herz has billed about $14,000 for two years. This resolution renews the contract with Herz for another two years with a maximum of up to $12,000 per year for the ongoing maintenance and cash flow of the financial model. Some of the benefits from having this model were recognized in the last two weeks when we issued a smaller amount of bonds saving the borrowing cost over 30 years, it helped greatly in our ratings calls with Moody's and Standard and Poor's, and we announced the proposed policy development for early debt retirement and use of future cash fund balances. The model was key to these items.

Kinsey stated that this contract includes wording about exploring additional projects that can be funded and wondered what projects that might be. Hubka explained that it could be anything that comes along that needs JPA financing, but there is nothing definite. Responding to Kinsey, Hubka confirmed that the amount to Herz could not exceed $12,000 for each one of the two years. The likelihood of needing that total is low and it could not be raised without coming back before this Board. There are no plans for that to happen.

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

Item 10 -- WH 13-97 Resolution to establish a West Haymarket Joint Public Agency Cash Balance Designation Policy and the associated financial model.

Hubka stated that Herz is here to answer any questions on the financial model. This adopts a method for JPA Boards to identify monies available for early debt retirement. First and foremost, per our Bond Ordinances, we need to fund certain funds to protect the bondholders. This does not change that requirement in any way. It does allow us to use a financial model and outlines the basis of that financial model to identify an amount that will be available for early retirement of debt. Our first bonds become callable in December of 2021, but this allows for identification of amounts as they become available. Taking the conservative outlook, this model assumes all the contingency money will be expended. If that is not the case, the amount for early reduction of debt service could be available sooner. The current model shows 2018 as the first amount designated. The current Board members encourage and support this model and, by formally adopting the model, it provides a strong statement for future successors.

Clare believes this is a great exercise and policy. When some of this debt gets retired, we may not be involved so it is great to have something in writing to show the intent -- which was to use these dollars to pay off debt so money is not diverted to other items. It does not mean debt would be paid off in the next couple of years, but may mean the debt could be retired three to four years early. This should give some assurance to the taxpayers that we are serious about early retirement of debt. Although it can be changed, it shows the intent by this Board as to where the dollars are to be allocated.

Emery stated it sets some absolutes and establishes some conservative projections. As we move forward we can subtract out the absolutes and will know what monies are available for early payment on bonds.

Kinsey asked if this includes paying the principle in addition to the interest. Herz responded that the forecasts go out to the end of the debt service including interest and principle. The first $300 million is for interest extending for approximately 10 years. Then we start amortizing the debt through the end of the project.

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

Item 11 – WH 13-98 Resolution to authorize the City to award a combined Contract with Cramer & Associates for the 10th Street Bridge/Rosa Parks Bridge repair project and the City Harris Overpass Misc. Repairs and Pigeon Proofing project to be funded in part by the JPA (i.e. 50% of the cost for the Harris Overpass Pigeon Proofing Work).

Yancey explained that this contract is with the City of Lincoln for several projects, including the Rosa Parks Bridge repairs, the "O" Street Bridge repairs, and extending the pigeon proofing under the Harris Overpass. The agreement between the JPA and the City was that the JPA would fund 50% of the cost of the pigeon proofing project only. The project was bid through the City Purchasing Office. The pigeon proofing portion of the project was about $581,000. Including the 50% agreed upon plus a portion of the engineering costs, the total JPA amount is $300,798.49. This amount is an extension of what is currently in place and is included in the existing budget.

Clare stressed this is an important project in that there are both cars and people that will be in this area and people can get quite ill from the pigeon droppings. This will also make a more desirable area and is necessary.

Kinsey asked about the bids on this project and inquired as to whether other means of pigeon control had been examined. Yancey reported that there were two bids – Judds and Cramer, who was the low bidder. Kinsey stated there are other cheaper ways to manage pigeons than by infrastructure. One is by birth control. Once numbers are reduced, the pigeons will leave voluntarily. If the ledge is removed, the pigeons may not follow the expected plan as to where they will go and starlings may come. Yancey explained that, since this was an extension, this provides the same aesthetic and continuous method for the control. The decking material used removes the opportunities for any bird to roost underneath the entire bridge area. She explained that the original area did not include the areas beyond the railroad tracks. Now that those roads are built and the construction activities are complete under the bridge, it is the appropriate time to do this project. Confer added that the Public Works Department has looked at this issue and other options for many years. This was found to be the most effective option prior to doing the initial project.

Emery responded that had these roadways existed when initially done, the project would have included the area. Since the BNSF was not willing to pay to extend the project over the railroad tracks, the project stopped at that point. It seems logical to continue the existing method since we have now expanded the roadways and walkways in the area where railroad tracks existed previously. It does not seem logical to change methods for the remaining portion.

Kinsey replied that the original project was in 2008 and methods may have evolved since that time making a review beneficial. Her overall point was that a lot of investigation should be included when expending taxpayer dollars – maybe even throwing the issue out to the public for

ideas as many minds may be able to come up with a worthwhile solution. This allows for other ideas and helps avoids tunnel vision when spending money. When some suggest that there is not enough public input, some officials respond that they can vote them out of office if not happy. That is not appropriate and can only be done over time. Beutler thanked Kinsey for her comments and stressed they care about the public as well. He is confident that Public Works has investigated this issue. He agrees that the more public input the better.

Lynn Darling, taxpayer, wanted to second Kinsey's comments. She also wanted to thank Mr. Clare publicly for his wisdom and inquiries. She has been around Lincoln longer than most of the people there today and does not think the way business is conducted is pretty. Darling believes this is an example where it is not pretty. The public was not asked for information as to what has worked in other areas, and the expenditure of taxpayer monies was not considered.

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

Item 12 -- Set Next Meeting Date

The next meeting date is set for Thursday, January 16, 2014 at 3:00 p.m. in the County-City Building Room 303.

Item 14 -- Motion to Adjourn

Emery made a motion to adjourn the meeting. Clare seconded the motion. The motion passed 3-0. The meeting adjourned at 4:00 p.m.

Prepared by: Pam Gadeken, Public Works & Utilities

West Haymarket JPA Meeting

Date Dec. 19, 2013

Page 1

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