WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
June 18, 2014

Meeting Began At: 3:30 P.M.

Meeting Ended At: 4:20 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 an 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 who wish to would get 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 May 14, 2014

Beutler asked for corrections or changes to the minutes of the May 14, 2014 JPA meeting. Clare moved approval of the minutes as presented. Emery seconded the motion. Motion carried 3-0.

Item 4 -- Approval of April and May 2014 Payment Registers

Steve Hubka, City Finance Director, presented the 2014 payment registers for April and May. Following Regent Clare's request, Mark Leikam incorporated a column to identify whether each item goes against the Operating Budget, the Phase I Budget, or the Phase II Budget. For both months, the bulk of the expenditures are for Hausmann for the Phase II Budget. The total is $2,937,637.58 for April and $2,854,194.39 for May.

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

Item 5 -- Review of April and May 2014 Expenditure Reports

Hubka presented the April and May Expenditure Reports. Within the next several months, there will be minor modifications brought forward on the project budget. Those reconciliations will be within the overall project budget.

Item 6 – WH 14-19 Resolution approving Amendment No. 1 to the DAS Concession Agreement with Concourse Communications Group LLC to expand the Coverage Area of the DAS Services in the Pinnacle Bank Arena to include additional outdoor coverage to the Arena main entrance and down Canopy Street.

Rick Peo, City Attorney's Office, explained this was an agreement with Concourse who does the WiFi to allow Verizon to expand their service area to space outside the arena and down Canopy Road. Exhibit B showing the new equipment locations was missing last month when this came before the Board. It is added by Motion to Amend 1. Peo also distributed a minor language change requested by Concourse in Motion to Amend 2. Concourse's desire is to get Board approval today so equipment can be installed and operational by August for football season.

JPA received a guaranteed minimum payment (GMP) on this contract, with a percentage on fees above the minimum amount. There is no cost to the JPA. It is at the company's cost to install equipment with the JPA getting a share of the revenue from Concourse.

Clare wanted to ensure any antennae did not take away from the beauty of the facility. Tom Lorenz, General Manager of Pinnacle Bank Arena, responded that they have the same concerns. They will work together to pick the locations and ensure that they are as unobtrusive as possible – probably in the stair tower area.

Jane Kinsey, Watchdogs of Lincoln Government, requested the current income figures and clarification on how this would increase JPA monies. Peo can get the current figures for Kinsey.
He explained that there is a contractual agreement with Concourse to sell rights. Based on the amount of revenue received, the JPA gets a GMP and a percentage of dollars above that minimum. By allowing Verizon to sell additional or better services to people with cellular phones, more revenue will come in with the JPA getting a percentage of the additional revenue.

Emery moved approval of the resolution as amended by Motion to Amend 1 and Motion to Amend 2. Clare seconded the motion. Motion carried 3-0.

Item 7 – WH 14-22 Resolution approving a Temporary Energy Service Agreement between the West Haymarket Joint Public Agency and Project Oscar, LLC for the delivery of thermal energy for a building located on the southwest corner of Canopy Drive and P Street.

Chris Connolly, City Attorney's Office, recalled a contract was concluded with Project Oscar last summer for a 30-year agreement for steam and chilled water in their building. At that time, they did not have a need for temporary service. They are now at a construction stage where they are working inside and need temporary service for air conditioning. The difference in the temporary contract is that there is no Demand Charge financial component, which there will be in the permanent agreement. This component is to start once construction is substantially completed, which will be in the next couple of months. This is a pass through arrangement in paying for the commodities and there is no charge to the JPA. This is figured into the DEC figure currently so it will not affect the number shown in the operating expenditures. The financial component will aid things once Project Oscar is complete.

Kinsey questioned whether Project Oscar was already built. Regarding the agreement with Lincoln Electric System (LES) to provide green/thermal energy, she asked if this was the same thing. Beutler responded that Project Oscar is a building that is mostly constructed and it will use thermal energy. Energy is also provided to a number of other buildings that will be serviced by the District Energy

Commission (DEC), including the arena itself. Kinsey is trying to understand why the electricity is so high, which is leading to the deficit in the arena income. She wanted to clarify whether we are paying commercial rates in that building. Beutler responded that the building is a new facility with unique qualities and fixtures making it difficult to predict the needs. Hubka added that the arena pays a high demand charge, which is based on the need to draw a large amount of electricity in a short amount of time. We are not getting any kind of break from LES on the charges. So, the amount paid would be the same commercial rate as a similar type and size of facility would pay.

Kinsey expressed concern that the Council allowed LES to raise their rates, which indicates to her that there was no thought as to how the increase would affect the arena. Beutler offered that demand in Lincoln has been going down with sustainability efforts. Emery interjected that the Council actually did not raise any rates. As they do every year, LES came forward with a rate package request, the Council deemed it a reasonable request, and the Council approved the request. It would be inappropriate to have it not affect the arena since the increase affected everyone in town. Although no rates would have increased if not approved, LES may not have been able to pay their bills leading to an even bigger problem. Emery disagreed with Kinsey's characterization – he believes the Council knew exactly what they were doing. They did not look at the arena in a vacuum, but looked at every residence and business as they are charged with doing. They did not like the increase, but it is part of paying the bills. Kinsey responded that she is worried about the arena being able to pay its bills.

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

Item 8 – WH 14-23 Resolution to amend the Operating Budget for September 1, 2013 to August 31, 2014 to include and authorize a $465,000 IMG Sponsorship payment from the JPA to the Pinnacle Bank Arena and up to $90,000 sales tax payment to the Nebraska Department of Revenue attributable to the taxability on the right to purchase premium seating

Hubka pointed out that the resolution before the Board amends the Operating Budget for the current fiscal year that runs September 1, 2013 through August 31, 2014. It has two components: 1) transfer and reallocation of IMG sponsorship revenue from JPA to the Pinnacle Bank Arena and 2) an addition to the budget of $90,000 to pay sales tax due on premium seating.

The first part of the budget proposal is to address the arena's shortfall due to high-energy costs by providing a reallocation of revenues. The budget passed in December identified the sources of revenue and authorizations that are now in place. The agreement with IMG College guarantees $750,000 in sponsorship payments to the JPA in the current fiscal year. The previously adopted budget showed $285,000 for the pouring rights to the arena operation. The current proposal would provide the remaining $465,000 for this F.Y. to the operation of the arena to cover the projected year-end deficit. Of the possible reallocation of revenue streams, this one appears to many to make the most sense since: 1) sponsorship revenue typical stays with an arena, 2) sponsorships are impacted by the number and type of events that draw people who see the advertising to the arena, 3) SMG, as the arena operator, has fulfillment obligations related to the sponsorship deals that create expenses, as well as revenues for the arena operation, and 4) costs that get sold by SMG can be impacted by the sponsorship deals that get made and generate the sponsorship revenues in the first place. Along with this agreement, SMG has agreed to renegotiate the provisions in the operating agreement for their incentive payment.

The second part is a proposal the JPA pick up $90,000 of sales tax owed to the Department of Revenue for premium seats for the current fiscal year. In April of 2013, we were contacted with questions regarding sales tax not being collected on premium seat payments for suite, loge and club payments that

represented admissions, plus the options for tickets. We had information from Century Link that club seat payments were not taxable. After many meetings and letters over a course of a year, the Department of Revenue determined that the option to buy tickets for suites were subject to sales tax at $1,200 and club seats at $150. The remainder was tickets sales or could be considered a donation. In late May, we determined that we owe about $90,000 in sales tax on premium seating arrangements. One piece of good news is that we will get $47,223 back as Turnback Tax.

With annual bills due to go out shortly, the City Attorney has agreed to write a letter to the premium seat holders explaining the situation. The contracts do agree for them to pay sales tax. Since it is almost the end of the year, it was appropriate for this cost to be picked up for the current fiscal year by the JPA. Hubka agreed with Clare's summarization that this resolution requests a one-year payment by the JPA with future tax for this seating to be paid by the premium seat holders.

City Attorney, Jeff Kirkpatrick, added that part of the consideration was that these people are paying a contribution to make the arena possible. It is important not to give them the unpleasant surprise of asking for next year's taxes, and then asking for back taxes. Emery asked if there were any legal ramifications if we ask for payment from seat holders. Kirkpatrick did not believe that to be a possibility since it was laid out within the agreements that they are responsible for any tax. Responding to Beutler's question as to whether everyone is being treated equitably across the State now, including football stadiums; Kirkpatrick explained that one of the reasons they were surprised by this and argued so strenuously with the Department of Revenue is that, from everything known today, this is not something that is being applied to Century Link. Of course, the Department of Revenue will not comment on what other taxpayers pay, but say their intent is to interpret and apply this same to everyone. As far as is know, the football stadiums are treated the same as Century Link.

Clare is concerned about the way this is written, as it implies the arena is losing money and, in his mind, it has been very successful. The operator has had some unanticipated expenses that have caused the operator to be in a deficit right now. Hubka explained that, if taken in isolation, the arena operation is showing a loss on the financials and is projected to show a loss at the end of the fiscal year. If you look at the entire project, however, the project is doing extremely well. The occupation tax monies far exceed the amount of money talked about here.

Clare continued that this was anticipated as there are provisions in the contract to make SMG whole. Hubka clarified that there are provisions in several locations, including the SMG operating agreement that provides that deficits in the operating account, which is a checking account at Pinnacle Bank, be made up. That is more of a cash flow issue. Today's discussion deals more with a net income issue. That is addressed in the facilities agreement. That is one of four buckets of money that is filled up by the JPA revenues. Peo confirmed he reviewed the facilities agreement, and Section 8. says that utilities, taxes and other operating costs of the arena are ultimately the responsibility of the JPA to pay out of the operation and maintenance fund. That fund itself specifically says it will be used for operating costs to the arena to the extent that the revenues received by the arena manager are insufficient for such purposes. Clare summarized then that the JPA is then fulfilling what the contract requires them to do with regard to SMG's shortfall, and, secondly, that pulling the monies from advertising is a common practice throughout the industry because booking of popular shows by the operator and advertising sales and associated revenues are interdependent. Peo agreed stating they are trying to get this on a cash flow basis so the budget does not need amended. Finally, Clare understood that the operator was never intended to make a large profit – it was close to break even. They are now proposing to modify the agreement that, if there is indeed a profit due to the move of this money, some may flow back to the JPA. Peo clarified that all the revenues flow through the same revenue account and any excess monies

help the overall costs. It is just that this one fund in the account has a revenue source from the arena manager prior to utilization of the arena operations and maintenance fund. Hubka explained that this action only covers the current budget through the end of August. Therefore, a similar discussion will probably happen again.

Kinsey asked if this means the charges for the premium seating will go up in order to collect the taxes. Kirkpatrick clarified that the actual seat charges will not change as they are set by contract and cannot be changed. However, the Department of Revenue has determined that a portion of the premium seat charges is taxable and, therefore, we are required to collect the sales tax. In the future, that will be collected from the customer purchasing the premium seats. Kinsey asked how much income has been collected in Occupation Tax, to which Hubka responded that the City has received $13,652,000 last calendar year. During the first five months of this year, we were up about 6.7%. That is on restaurants, hotels, and car rentals. Kinsey stated that if the arena does not break even, it is losing money regardless of what it is called. She is concerned that the JPA does not want people to speak in opposition, but honorable people can have differing opinions.

Sharon Wherry, Board of Directors of Pinnacle Bank Arena and past Pershing Auditorium Board came forward. She has served for over ten years, the entire time that Tom Lorenz has been here. She is supporting the resolution and the staff that have done a tremendous job in keeping expenses down. She agrees with Clare that the arena has been extremely successful. They have done their part to keep expenses where they should be and is happy that the JPA has enough cash flow to pay down the debt, probably ahead of schedule. Beutler thanked Wherry for her service. Emery asked if Wherry believed it was fair to say that this was a learning year for a new facility making it difficult to determine what the base budget should be. Wherry said it is a very complicated process. When the budget was set before the arena was built, they talked to other arenas about their experiences and expenses. The University contracts were subsequently negotiated. Monies that typically would come to the arena to pay for the expenses of doing business have gone to the JPA instead for debt payments. This is one way to bring some of those resources back so they rightfully pay a fair share of the arena expenses for the year. It is a difficult business as they do not know from year to year what acts will be secured making it difficult to set a budget. The entertainment climate and organizational activities can change quickly. They do their best based on experience and then juggle throughout the year as needed.

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

Item 9 -- Set Next Meeting Date

Thursday, July 10, 2014 at 3:00 p.m. in the County-City Building City Council Chambers
Room 112

Item 10 -- Motion to Adjourn

The meeting adjourned at 4:20 p.m.

Prepared by: Pam Gadeken, Public Works & Utilities

West Haymarket JPA Meeting

Date June 18, 2014

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