WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
June 2, 2011

Meeting Began At: 3:35 P.M.

Meeting Ended At: 5:28 P.M.

Members Present: Tim Clare, Jayne Snyder, Chris Beutler

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

Chair Snyder opened the meeting and introduced the members of the JPA Board. She advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder announced that public comment is welcome. Individuals from the audience wishing to speak will be given a total of five minutes to speak on specific items listed on today‟s agenda. Those testifying should come forward, identify themselves for the official record and sign in, and comments need to be relative to the item on the agenda.

Item 3 – Approval of the minutes from the JPA meeting held May 5, 2011

Snyder asked for any corrections or changes to the minutes from May 5, 2011. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, Program Manager with SAIC, came forward to review the May Progress Report. Since the last meeting the second and third major infrastructure projects are underway. 10th and Salt Creek began at the end of March. We now have the projects called Initial Site Preparation and the USPS Parking Lot contracted and underway.

The first work on Initial Site Preparation is removal of unsuitable soils on the area north of „R‟ Street where the arena will go. The arena design continues in the design and development phase. This is taking the schematic design approved by the Board and refining it for a final review in the fall. Mortensen/Hampton, Construction Managers at Risk, are in the process of working with the design team to assemble what is called design assist packages on the major mechanical, electrical, concrete, steel. The qualification packages were sent out a couple of weeks ago and the actual RFP‟s will be forthcoming over the next several weeks.

10th and Salt Creek construction is well underway. On two of the three segments completed so far the contractor was ahead of schedule and will be on schedule on the third. The parking lot on the USPS needs be completed by September 15. There is a right-of-access agreement on the agenda today that allows us to start some work. The second part, phase I of the arena site preparation, needs to be completed by September 15.

Design work on parking garages one block south of „R" Street and south of „Q" Street continues. Parking Garage #1 design is underway for approximately 980 cars. Parking Garage #2 is a shared foundation garage with the DEC. That will take about one-third of the capacity. With the shared capacity, Garage #2 is now anticipated to be in the 650 car range. Both those numbers could change as design continues.

The „M" and „N" Streets design has been split into two phases. The first phase involves some curb work on 10th Street, a temporary access road continues off „N" Street to allow the passengers to get to the new Amtrak Station, and preparation of the pad work where the Station will actually sit. Phase two is actually „M" and „N" Streets proper. We are delaying work on „M" Street due to large vehicles needing to transverse that area. We don't want to damage a newly paved street. Also, we will do the little block of 8th Street between „M" and „N" Streets. That work will begin late spring next year.

Charleston Street Bridge review and design continues. The first submittal was delivered in May and all key stakeholders are now involved in planning the design and schedule of that construction.

The Amtrak Station design work is nearing completion. Construction estimation continues. Meetings are being held with BNSF to coordinate construction access and where the site fences need to go to protect the live tracks. As mentioned previously, the temporary access road for passengers will be done with the „M" and „N" Street project.

The District Energy design continues adjacent to Parking Garage #2 south of „Q" Street. That will be completed in late fall or early winter of 2012 to supply heating and cooling to allow interior work on the arena.

Title 200 environmental work is complete. A study to characterize the remaining soils on the site will be underway shortly south of „R" Street down to „O" Street. Some monitoring wells will be installed in the next few months around the Title 200 site. The City Remediation Action Plan was submitted to DEQ and a public meeting was held for comment on May 9. We are expecting NDEQ approval of the action plan during the middle of June.

The rest of the infrastructure projects are in various stages of design. Completion dates are sequenced throughout the remainder of the program as needed. The critical path issues are keeping the initial site preparation work on schedule so we can start the arena foundation work. Pending weather or other items we can't control, we are on target for that completion. It is imperative that the railroad work by Union Pacific and BNSF, as well as the property acquisitions, stay on track.

As a summary, overall things are looking good and things are proceeding as a major construction program should and activity is picking up every week. Snyder commented that she had made a site visit around 6:30 last night and was impressed to see the amount of activity that late in the day. She observed them compressing the soil before it settles. She was delighted to see the roadway up to the roundabout was completed. Jim confirmed that they are doing a good job and working some weekends. The contracts were well written providing for incentives and penalties. Snyder would encourage the public to go out to see the progress – which can be viewed from the walking bridge as you go to the Salt Dogs Stadium.

Item 5 – Approval of Payment Registers

Don Herz, City Finance Director, presented the April Check Register and Public Works Engineering Costs to the Board. Copies of this information are available to the public at the back of the meeting room today and on the website. There is one page of check register payments and one page of engineering payroll costs. On the check register payments a change was made on the fourth column from the left. The project number was added so you can see for each payment what project was charged. This will provide both the Board and the public additional information.

Clare asked for clarification regarding the small payment to Jinni Chug Revocable Living Trust for a temporary easement. Dan Marvin explained that was for the „M‟ and „N‟ Streets project, and Don verified that is where it was charged. They have a copy of the actual easement for viewing. Snyder asked if all the engineering costs were within the budget that was earmarked for Public Works Engineering costs. Don responded that the costs were covered by the budgeted dollars.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 6 – Review of the April 2011 Expenditure Reports

Don Herz noted that the Construction Expenditure Report was for the month of April. May activity was not ready for the Board packets and reports will be presented at the next meeting.

For the month of April, the total budget is still $321 million. We have expended $61 million, much of which is the payment to the BNSF escrow account. There are encumbrances of $26 million which represent contracts for which we have made commitments, but expenditures have not been made. We‟ve had about $1.5 million in expenditures, which is not significantly different than the previous month. However, as construction payments start to increase, we will be seeing a fair amount of increased activity. On the next report you‟ll see under environmental an accounts receivable of approximately $800,000 representing the money we will receive from the State. So, whereas the billable balance shows negative amount, that will adjust as we receive the payment from the State, showing a positive balance of approximately $300,000. We also added subtotals after each major project to assist in analysis of this report. We are willing to take any other suggestions for improving the report. On the last two pages, on the activity and operating budget, the expenses are within budget except for some postage expense. We went

about $1,500 over budget due to several mailings in an effort to communicate with restaurants, bars, and hotels on occupation tax. Later on the agenda, Don will give an update on those revenues. Snyder requested that Don revisit the information on the railroad payment and asked about the negatives they are seeing. Don explained that two thirds of our expenditures were in one check, that being to the railroad escrow for the first closing. Minus amounts are usually reflective of the need for some sort of adjustment. There also may need to be some amounts reallocated between the major categories.

Item 7 – Bill No. WH 11-38 Resolution to approve the final reconciliation to the Agreement with General Excavating for work associated with diesel plume remediation. (Miki Esposito)

Miki Esposito with the West Haymarket Environmental Team distributed a breakdown of the environmental remediation budget for north of „O" Street and a list of environmental milestones. Frank Uhlarik from Benesh is also available here today to answer any technical questions. Miki reviewed the final reconciliation, which is essentially the last step to finalize the contract with General Excavating. The Title 200 diesel plume remediation work was completed May 10. What we need to do now is review the overruns and under runs within the contract, to close out the project, and to proceed with reimbursement application to the State. That will allow us to tap into the $809,000 reimbursement for this activity. There are 13 pay items. At the beginning of a contract you have certain amounts that are estimated. By the end of the contract you have pay items that are clear and defined and quantifiable. So you may have additions to the quantities, deductions, or you may have an item completely removed. So, you will see in each of the pay items that some were added, some were reduced, and some were deleted. On the second page of the reconciliation, we had total additions of $208,890.32 and deductions of $150,681.79 for a net reconciliation of the contract of $58,208.53. That is what we are asking the Board to approve today to get this contract closed out. So to keep all of this in context, you have been provided an update to the budget for north of „O" Street. The State Title 200 reimbursement is shown as a deduct item under expenses. The expenses to date are just over $1.9 million, leaving a remaining balance for north of „O" Street of approximately $2.2 million. That amount will then be used south of „O" Street and added to an estimated $3.2 million. That leaves a total environmental budget of around $5.4 million to address the scrap yard, the lumber yard, and some other challenges south of „O" Street. Clare asked Miki about the total budget amount and whether agenda item dollars are shown on the handouts. Miki affirmed that the total environmental budget was $7.35 million for both north and south of „O" Street. Of that total, $4.1 was for north and $3.2 was for south of „O" Street. There is still site preparation going on, but we appear to be in good shape with the environmental dollars at this point. The $58,000 under this agenda item, as well as the approximately $184,000 in next agenda item, are taken into consideration within this budget update. Also, each member received an environmental milestones handout. The strikeouts show what actions have been accomplished thus far and the sheet gives you a look at what is left to do. For the environmental work, we are on time and under budget. Snyder asked about a letter from the State on what they would like us to do to complete the remedial action and associated deadline of August 1 to complete those items. Miki explained this is for the initial site preparation activities going on now for the eastern flank of the site. This letter is to approve those activities which DEQ has to review. NDEQ says in this letter that we have a green light to proceed. Clare summarized that the site north of „O" Street is clean, and we came

in $2.2 under budget. Frank Uhlarik explained that the $2.2 would also be reserved for any work on the festival area. Miki explained that that area is yet to be characterized. NDEQ is saying the arena and developable areas south of the arena (the eastern flank or the hole in the donut) are cleared, and we have done enough work there. The only exception to that is where the actual diesel plume was -- that isolated area requires performance monitoring for a year to provide clean samples. Once that is cleared, then the entire area is fully developable. We are making progress.

Being no further comments on this item, Beutler made a motion to adopt WH 11-38. Clare seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 11-39 Resolution to approve Amendment No. 2 to the Agreement with Alfred Benesh Company (formerly HWS) for services associated with environmental remediation. (Miki Esposito)

Miki Esposito introduced this resolution relative to Amendment No. 2 to the agreement with Benesh. Again, Frank is here to answer any technical questions. On the first page of the Amendment No. 2 the supplemental request for Task 5 in the amount of $3,970 is to cover the cost of updating the Phase I Environmental Site Assessments. We have visited previously about how important those are to property acquisitions. When you do your due diligence, they reduce your liability. They are very important and they have to be within six months of any property acquisitions. So these additional funds would be used to compensate the consultant for the additional work to assess the Alter Scrap Yard and also for the update to the Jaylynn Phase I ESA. On Task 6 the supplemental request is for $173,450. As the project evolved, we found we needed to provide compliance assistance for other projects – like infrastructure projects, Amtrak, and the Arena. It isn"t that you clean up the site and walk away. The Environmental Team is needing to shepherd the projects through environmental compliance, asbestos inspections and abatement, lead inspections and abatement, managing contaminated soil and groundwater issues and making sure the impacted media gets managed appropriately and to the correct landfill if appropriate or gets treated in some other way. The Team"s role has expanded and the additional cost is to respond to the needs of those projects to avoid any delays and avoid issues with the State. We are proactive through the Environmental Contingency Plan. This is the best and most responsible way to deal with the sites. The third request is for Task 15 for oversight of the diesel plume remediation contract. Benesh provided us with contract oversight and remediation. Because the contract extended, we would like to compensate them in the amount of $7,085 for that additional work.

Clare requested clarification on Task 6 as to whether this work was requested in the original contract. Seems like this is a very large adjustment and that people may be doing things we did not ask them to do in the beginning. Miki responded that, when the contract was originally scoped, we did not know that we would have to provide compliance assistance to every individual project. Every time you do a project, you are potentially coming in contact with impacted media, and a decision must be made about how to appropriately handle that impacted media and mitigate our liability. Under normal circumstances, we would let the contractor at a non-dirty site just manage the dirt as they wish. They may take to a landfill or to a private property for use as beneficial fill. DEQ looked at the Environmental Team as a representative of

the JPA on this project since there are different rules on a dirty site. Someone from the team had to step up and take responsibility for the contaminated media. We had a relationship with DEQ and we have the expertise with the impacted media or environmental contaminated or sensitive areas so it just sort of naturally fell in this Team‟s lap to take responsibility. Under the Contingency Plan we will help these projects and facilitate their compliance so they are not getting into trouble. Previously, the Mayor had asked a question about how to limit our liability if we are managing the soil and impacted media for the contractor. If a contractor did mess up, the State would look to all of us as being responsible. They would not selectively hold just the contractor responsible, so we took this proactive approach. Clare asked if the environmental cleanup costs are included within the budgets for the individual projects or is the environmental budget simply for the Arena project. Miki explained that environmental response dollars are within our budget. It was known that there would be environmental impacts and needs so contingencies were created for appropriate response by a team environmentally. When you have a dirty site there are many unknowns until the shovel is in the ground. We just naturally fill that role. Clare appreciates the work being done. However, he is stunned that such a large amount was not estimated and included in the budget. Miki used the canopy as an example of where the lead issue was actually a bigger problem than anticipated and required a change in scope. Instead of a canopy removal project it became a lead abatement project, and caused a $90,000 increase for the lead abatement. We are regulatory charged to meet standards and provide cleanup. Snyder also shares the concern with items on today‟s agenda where JPA is being asked to approve additional reimbursements. Even if budgeted, it would be helpful if the Board knew prior that costs were coming. It seems we have been approving numerous change orders, and not for such small amounts. Dan Marvin emphasized that we may know about some issues coming, but we may not have determined which funding pocket or who specifically should handle those issues until we are confronted with them. Regulatory items have changed or expanded as we move forward affecting the scope on some projects, such as on the areas designated by the State where the groundwater has been identified as needing treated differently. Miki went on to clarify that it is a better explanation to say that we are simply moving the monies from one bucket to another to accommodate the needs. But then we have to come to the JPA for authority to use that bucket. Snyder confirmed that this keeps the JPA informed. It seems like JPA is seeing a lot of these, but as we move forward it is anticipated those will increase.

Frank Uhlarik explained that when the remediation contract was initially negotiated we foresaw some of these items within individual projects and thought they would be handled by the individual contractors. However, we have found it more cost effective and efficient to avoid delays to have the Environmental Team respond. Clare asked whether this change order affected the $2.2 million of savings to do the environmental remediation north of „O‟ Street. Miki responded that she had already taken into account both this amendment and the prior request when figuring the $2.2 million savings.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve Resolution WH 11-39. Clare seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 11-40 Resolution to approve Change Order No. 2 to the West Haymarket Utility Relocation Project Agreement with T.J. Osborn Construction for additional costs in the amount of $231,814.23 due to plan revisions changing the location of sanitary sewer pipe. (Figard/Blahak)

Chad Blahak of Public Works, serving as Project Coordinator for the Department, detailed that this change order included the amount for the change in location of sanitary sewer pipe, as well as a few other significant items. In the original design we were cutting across the festival parking lot area. In the revised design, we instead took the sewer out and around the area. Although, quite a bit more length, it added a lot more flexibility for the use of the festival area. At that time, that was looked as a possible location for the ice sheet, so the sanitary sewer was moved out from underneath that site to avoid any possible future conflict. This resulted in a lot larger quantity for steel encasement for the sanitary sewer underneath what would be a portion of the railroad right-of-way for about $60,000. The other major component to this change order was a lot larger amount of unsuitable materials encountered during construction. This required about 6.5 thousand yards of new materials to get compaction at a cost of $80,000 additional expense. They also had to haul additional materials across the site to meet environmental testing requirements, rather than offsite as may have been anticipated originally. Also, a 4" communications conduit had to be lowered in the area of the railroad grading for the City"s flood mitigation area to the west. Another additional item within the sanitary sewer relocation for was the bypass pumping station where we tied into the live line. Those represent the largest items. Clare asked the same question as on the last item regarding why these items could not be anticipated upfront. Chad clarified that the original alignment most likely represented the shortest route to an existing sanitary sewer that did not have to be relocated. He was not aware of the decision making process originally, but two factors for the relocation were the possible location of the ice sheet and to move it out from under the festival parking lot area to add future flexibility to that space. As far as the conduit, sometimes things do get missed and this may have been one of those items. We try to minimize those negative effects on a project and project costs. Clare asked if the work had already been completed on this change order, and what is the impact of saying no? Chad responded that the vast majority of the sanitary sewer relocation has occurred. Clare would like options ahead of time versus after the work is completed for the future. Chad assured the Board that we try to follow that procedure. We are working to streamline the process. Clare informed staff he would rather have emergency meetings if necessary than approve these types of changes after the fact.

Bob Olson from the audience asked whether the figures are being checked to be sure they are realistic so costs are not being padded. He is concerned about items being "rubber-stamped" after the fact.

Jim Martin from SAIC explained that the sanitary sewer was one of the first items completed as it had to be so the railroad could get started. The original estimates were done in 2008. At that time there was no building anticipated – there was only a parking lot. Since that time, new ideas have developed creating the need for change in plans to increase the flexibility of the space. It would be a much higher cost to have to go back and change later if needed once the sanitary sewer is completed. As to auditing, Public Works provided project management. Their project managers actually create the quantities, observe the work, and measure the work. These finished

measurements are looked at up through the management of that Department and a decision is made as to how much the contractor is to be paid for on the project. When they come across SAIC desk, these charges are reviewed to be sure they fall within normal construction rates for a project of that size. These costs fall within those parameters.

Being no further discussion, Beutler moved to adopt WH 11-40. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-41 Resolution to approve reimbursement to BNSF for actual costs and expenses incurred for additional work and authorizing the Program Administrator to revise the draw schedule for the escrow agreement and to negotiate the terms and conditions for payments to BNSF for such additional work. (Confer)

Ron Confer, Lincoln City Attorney and counsel for the West Haymarket JPA, presented information on this resolution which is to request authority to pay BNSF to catch up to the construction schedule that was originally set out for the project. Originally BNSF was to conduct quite a bit of their work in 2010 as a summer signing of the contract was anticipated. In 2010 negotiations took longer than anticipated by anyone and contracts were not signed until October. Therefore, they missed a large portion of the construction season upon which they counted. Clare asked for clarification on the timing. If anticipated in July and signed in October, did that mean there was approximately a three month delay? Rod acknowledged that was correct. In order to catch up and get back on the original tight schedule, BNSF said they will need to charge extra to cover the increased labor costs, increased materials cost due to inflation, and additional equipment rental. The additional amount estimated by BNSF is $3,379,913 to catch up. This resolution is authorizing payment up to that amount. The amount would be held in escrow and allow them a draw schedule. BNSF would have to account for the expense they are incurring and, if less, only actual amount would be paid. This work has not been completed yet; but, in order to meet the deadline to have the arena ready for the 2013 UNL basketball schedule, we have to get back on schedule. Snyder is aware that the reasons for the delays were not all our fault. But, although railroad added to those delays, we are taking the financial brunt which is of concern. Have the figures been checked to be reasonable? Rod stated that we have had Olsson and Associates, as well as City staff, review these figures and the recommendation is that these be allowed. The BNSF is not willing to work on the basis of not being paid until the work is done. They get paid in advance and will be doing quarterly draws. Clare wondered about what efforts we made to help expedite the work to be done by BNSF due to the three month delay. Did we assume some of their contractual obligations? Rod confirmed there were certain items that we were able to allow BNSF to start without the contract in place and some things BNSF was not willing to undertake without a contract. We did whatever we could to speed up that process, and both sides worked very hard and stayed in communication. It was and is a tremendously complex contract. It really doesn‟t make much difference who is to blame. The railroad said for them to undertake this move, they were not willing to assume any costs. So, with that in mind, it doesn‟t really matter why the delay occurred. They were perfectly happy to stay where they are currently. If we wanted BNSF to move, it was on the terms they stated. Clare expressed that he was bothered by the fact that this is a community project requiring a lot of teamwork on behave of public and private sector within the community. It sounds as though there is one party not willing to work with the others. He finds it hard to

believe that a three month "delay" resulted in a $3.4 million added cost to us. He is also concerned on what is to prevent this from happening again at future closings. Obviously, Rod stated he cannot give any assurances on what will happen in the future. We are told this is the estimate of costs to get back on track. Snyder asked if the railroad would allow anyone else to do any of the work. Rod stated they would not give rights to anyone else as it is work on their property to build their new rail yard.

Jocelyn Baade was curious to know who says this has to be done by 2013 UNL basketball season. Is it not a City project? Dan Marvin said that we have agreements with UNL, and would like to get this done since they will need a place to play basketball. We created an incentive program to try to have the building done by September 1, 2013, but may have a couple of weeks before basketball season would start in November. We have a good working relationship with UNL, but the City is between a rock and a hard place because we cannot slide the schedule and still accommodate the needs for the basketball season. Although a City project, we have certain obligations as a landlord with UNL as the tenant.

Bob Olson wondered what the dollar contribution is from UNL since they are considered a partner in the Haymarket. Clare explained that the University is paying a lease and surrendering dollars they would normally receive from tickets, naming rights, concessions, premium seating, etc. In the new arrangement, most of that goes to the project so they are surrendering revenue. Bob feels they are getting much more than they are giving and calling the shots as to dates. He is also concerned about railroad costs and how to avoid future escalation. He has some experience in engineering and railroading and the costs seem way too high. However, he is unsure what we do now as it appears we are over a barrel.

Snyder stressed that the JPA Board will continue to monitor these issues for the benefit of both the project and the protection of the citizens. They are equally concerned.

Snyder asked for further comments. Hearing none, Beutler moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 – Bill No. WH 11-42 Resolution to approve Amendment No. 1 to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company adopting a revised Exhibit "E" (Subcontractor Procurement) which provides for use of the City of Lincoln"s e-bid system to distribute information, allows responses to an RFQ and proposals to an RFP to be received directly by email and hard copy, requires a list of proposers to an RFP and a list of responders to an RFQ to be posted on Haymarket Now, and makes other minor changes for clarification. (Yancey/Peo)

Rick Peo, City Law Department, said that reading the description pretty well summarizes this request. This is a minor amendment to simplify the bid process to allow them to be received by e-mail and hard copy as well as sent in on the e-bid system and provides increased public disclosure by posting names of responders on RFP and RFQ"s on HaymarketNOW! Snyder asked if we had used previously. Rick responded that we had used procurement exhibit previously. With the major bids that will be coming in, we wanted to be able to use the revised process for those bids.

Dan Marvin reported that they have been through an RFQ process posting the people who qualified. There was a good response, with approximately two-thirds being local businesses. As we move forward to RFP"s they will be narrowing this and getting down to actual bids. John Henshaw from Mortenson reported that they received a great response for the qualification process for nine designer assists subcontracts. They are now in the proposal stage. So they are moving forward with the Design Team on procuring those nine designer assist subcontracts. There were approximately two thirds of the teams who are local or teaming with local businesses. Clare thanked John for the transparency in posting information on HaymarketNOW! Public transparency was very important to the Board and efforts are appreciated.

Snyder asked if there were any other comments. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 12 – Bill No. WH 11-43 Resolution to authorize the Program Administrator to execute a Right-of-Entry and/or Temporary Construction Easement with USPS, upon terms and conditions acceptable to the JPA"s legal counsel, in order to allow the JPA to timely construct parking lot improvements on the south side of the Main Post Office Building and to remove the existing wall blocking the extension of „R" Street to the west. (Marvin/Peo)

Rick Peo explained that this is one of those situations where we are trying to not to fall behind on the arena project. We want to get in and have access to USPS property to make certain improvements prior to formal agreement with the USPS. We are trying to prepare and finalize those documents. They are willing to open up the land for some work on the parking lot improvements south of their building via a temporary construction easement. The wall would not be able to come down, but we would be able to start and that would allow for timely completion once the formal agreement is finalized. We should have final agreements before they need to go to Phase II of the project. Snyder suggested posting the map submitted with the resolution so people today could view. When she was there she saw work on what she assumed is the parcel belonging to the City. Jim Martin confirmed that would be the correct parcel. Rick explained that the City had to do some infrastructure work under the JPA Parcel that is currently utilized by the Post Office under an agreement for parking. They allowed us to basically disrupt their parking to do that work. The USPS Parcel is south and we would have to acquire that parcel. The „R" Street extension would cross that parcel. Once completed, the current access south of the main Post Office will not function in same manner. The JPA Parcel would have to be reconfigured to allow the Post Office to function at current capacity. We will be doing some restriping on the east side of the building to create some additional parking stalls. That is during the first phase. The Post Office will allow us to come in and do that and not charge for the temporary construction easement. We just have to build according to plans submitted to them, maintain the property during construction, and restore the property after construction. The Post Office sent a template for a temporary easement and Rick returned a draft. He will be discussing any issues with them. Dan Marvin added that a purchase agreement for USPS Parcel 2 containing approximately 31,982 SF will come back before the Board. That is the agreement currently under review by USPS. And the JPA Parcel 1 will be leased to the USPS and will continue to have parking on the west side. Snyder wondered if that would eventually go away. Dan responded that the green parcel on the map (JPA Parcel) will be leased to USPS and

continue to be used for parking. The pink parcel on the map (USPS Parcel 2) will be purchased and used for the „R" Street extension and remainder will be used eventually as an open plaza area. It is adjacent to Iron Horse Parking Lot which will remain as parking even after acquisition of the USPS property, at least until other parking is built for the Haymarket area so we don't create parking difficulties. Rick explained that one of the unique issues in the timing of work with the Post Office is that they want to be the drafter of all of those agreements so we are waiting until they initiate. Then we are the responder. Clare questioned who determines fair market value in purchasing the USPS Parcel 2. Dan relayed that the appraisal has been completed by Great Plains and accepted by the parties. Rick further commented that there were concerns, but those have been worked on, and we won't be fighting over fair market value.

Snyder asked if there were further comments from the JPA or comments from the audience.

Chris Beutler asked Don Herz to come forward relative to this and numerous discussions today. Beutler recounted the procedure at the beginning of this process before the vote of the people. Don put together what at the time were reasonable estimates of costs for the dozens and dozens and dozens of components on this huge project – largest one in the history of the City. After those figures were put together, they were examined by numerous private and public people for input as their reasonableness. You checked with experts in numerous fields to gather input. Would that be right? Don confirmed that was true and, in fact, we contracted with Michael Sullivan to analyze all aspects of the overall financial plan. He reviewed all revenues and expenditures. Beutler went on to point out that we all knew some of those components would be high and some would be low. On this scale of a project it is unreasonable to assume we would be right on target on all the components. Don acknowledged that was true. They costed everything in 2009 dollars and provided an inflation contingency. On top of that, we added another 15% contingency to deal with uncertainties. The total budget was in the range of $340 million. We have not yet allocated any of the contingency dollars. Beutler reiterated that we understood when we went to the public that there may be variances, and the contingencies were there to deal with any variances on the high side. After we were done with the estimates and reviews, we went to the public we went to the public with a total price and overall schedule. When the public voted, they were counting on that information in its totality. As we have proceeded to date, some estimates have been high and some have been low. Don assumes the public was voting on overall cost. On the financing side the news is very very good. We were conservative on the tax collection estimates. Those two aspects are positive variances. Beutler recognized that the areas being dealt with on today's agenda are only a couple of the components. Considering all the components we know about to date, are we on time and on schedule. Don responded in the affirmative. At this point, he doesn't know that we need to increase the budget above the $321 million estimate. Until we get in bids we won't know exactly where we are, but to date we have not allocated any contingency monies. It would be premature to do so until we see some of those major construction bids.

Hearing no further comments, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

<u>Item 13 – Bill No. WH 11-44 Resolution to amend the Memorandum of Understanding with „N" Street Company LLC (Alter) to revise dates and to express the parties' intentions to</u>

<u>use best efforts to cooperate during the lease term to allow „N" Street to continue to operate its business during relocation. (Marvin/Austin)</u>

Dan Marvin, Project Manager, explained that this item came after discussion with „N" Street Company LLC (Alter). There were certain dates in that agreement. A key date for them was July 1. If they performed or behaved in such a way to allow the BNSF closing on May 10, which was a critical date for the entire project, then we would not proceed with condemnation against them prior to July 1, 2011. We went to the West „O" Business Association meeting in May, involving West „O" businesses and Capitol Beach residents. There was a lot of discussion about the land use and Lincoln Steel as a future home for Alter. After that discussion, Alter wanted time to work with those neighbors. They asked Planning Department to delay discussion before Planning Commission, which was on pending currently. They wanted to extend by 30 days. Since that time it has been extended an additional two weeks, resulting in about a six week delay. It was delayed on Planning Commission to mid June. If they get positive votes, it would move forward to the City Council in July. The possible action date would be past the July 1 date, and we could break faith with Alter by condemnation. The July 1 date made Alter nervous with this timeframe in mind. So Alter asked us, if they work with the businesses and neighbors, would we be willing to extend this date. This key date is proposed in this resolution to be extended to August 1. There are some other dates and additional minor clarifications. Bill Austin has been in contact with Alter and is available if the Board has any additional questions.

Snyder asked if there were questions from the JPA or comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 14 -- Bill No. WH 11-45 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (existing Watson Brickson site). (Marvin/Austin)

Item 15 -- Bill No. WH 11-46 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (stormwater mitigation site/conservation easement). (Marvin/Austin)

Items 14 and 15 were called together. Dan Marvin requested a delay until the next JPA Board meeting on June 24 as these items are not emergencies and there are still documents coming in on these items. Calculations are fairly benign and clarifications are needed. Basically these deal with buying property that is Watson Brickson and moving it to an area on West „O" Street. Again, we are working with a business without condemnation. It would provide an additional five acres to be acquired, creating storage capacity on the east side of the tracks to offset a reduction in fill on the west side, giving us a no net rise situation. This will help long term as we true up our calculations.

Clare made a motion to approve the delay WH 11-45 and WH 11-46 until June 24. Beutler seconded the motion. Motion carried 3-0.

Item 16 – Discussion Only: Proposed process for approving change orders. (Herz/Marvin)

Don Herz requested we look at creating of a formal process on change orders. Original thought is to have a tiering approach to authorize change orders prior to coming to the Board. The thinking would be to get some input from the Board on what those thresholds would be so we can bring forward a resolution.

Dan Marvin suggested that there may be three thresholds. Maybe the Project Manager and Program Manager could approve the lowest or first tier amounts. There will be shorts and longs for unanticipated costs within the contracts. As these occur on a daily basis (moving a fire hydrant or a telephone pole or the need for additional hours worth of work) there needs to be a system to approve to handle the small change orders on a timely manner. The City handles this by giving the people in the field the authority to make those small amount authorizations in the field. It still would go up through an appeal process through Roger Figard, City Engineer, or Greg MacLean, Director of Public Works. Since this is a larger project, we were thinking of a second tier, maybe $25,000 to $100,000, that would require a few more signatures. The third tier might be over $100,000 and would not move forward until after getting JPA Board approval. There are going to be a lot of these types of change orders, and we would like to have a system in place to handle these like the City does.

Don stated that the Finance Department would aggregate these small dollar change orders and bring forward to the Board monthly. We are asking Board members to visit about any ideas on the thresholds with Dan, Rod, Rick or himself. Beutler asked about the authority on the different tiers. Don said they had thought about the project manager and Program Manager (SAIC) on first tier. The next level may require the Treasurer and Secretary to sign off as well, as those people are more in tune with the overall view of the project.

Snyder asked about how to gather comments. Dan said they would get some type of paperwork into the hands of the Board for comment so we can move forward with a resolution.

Item 17 – Other Issues

Don Herz reported that we had collected four months of Occupation Taxes. We"ve collected approximately $3.6 million, which annualized is $10.8 million. That is about a million more than estimated. And, the peak activity is thought to be during the next six months. We think there is good news as we made a very conservative estimate on our major revenue stream. That number goes on as long as there are outstanding bonds. The Financial Team is looking at issuing the third and last major series of bonds due to the favorable interest rates. As you recall, we are saving about $3 million a year in lower cost of borrowing on the first $200 million. We think interest rates are the lowest they may be, so we may want to be in the market this fall. Dollars saved are not only saved in one year, but for the life of the bonds (30 years). JPA has to be audited to issue debt and report financial activity. RFP will be going out within the next week. The intent is to have someone under contract in August and bring a resolution to the Board for that audit.

Snyder asked if there were any other issues to be discussed today.

Item 18 – Set Next Meeting Date

The next meeting will be held on Friday, June 24, 2011 3:30 P.M. in Room 112, City Council Chambers. Previously scheduled meeting on June 16 is cancelled.

Snyder recognized Trish Owen, the Deputy Chief of Staff to the Mayor, who has been overseeing this project. Today is her birthday. Board expresses their thanks to Trish.

Beutler made a motion to adjourn. Clare seconded the motion. Motion carried 3-0.

Meeting adjourned at 5:28 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities

ENVIRONMENTAL MILESTONES

Petroleum Remediation (Title 200 work)

~~Notice to Proceed~~	~~January 13, 2011~~
~~Initial Completion Date~~	~~March 9, 2011~~
~~Contingencies/Possible Delays~~	~~March 9, 2011 – May 22, 2011 (2.5 months)~~
~~Revised Completion Date~~	~~May 10, 2011~~
~~Initial Site Preparation~~	~~May 23, 2011~~
Reimbursement Applications	Summer 2011 – Winter 2012
Performance Monitoring (4 quarters)	August 2011 – August 2012
Final Report (following monitoring period)	September 2012
Well Abandonment	October 2012
No Further Action/Closure Letter	November 2012

Voluntary Cleanup Program Phase I (Properties North of O Street)

~~Submit Interim Remedial Action Plan to NDEQ (Eastern Flank)~~	~~March 15, 2011~~
~~NDEQ Review & Public Participation Process~~	~~March 15 – May 10, 2011~~
~~NDEQ Approval of Interim Remedial Action Plan (Arena Footprint Cleared for Development)~~	~~May 13 – May 22, 2011~~
~~Initial Site Preparation~~	~~May 23, 2011~~
Remedial Action (Eastern Flank)	May 23 – November 2011
Submit Report & Remedial Action Plan (Western/Northern Portions)	August 1, 2011
NDEQ Review & Public Participation Process	August 1 – December 1, 2011
Remedial Action (Western/Northern Portions)	December 2011
Submit Final Report (Site-Wide)	February 2012
No Further Action/Closure Letter	March 2012

BREAKDOWN OF ENVIRONMENTAL REMEDIATION BUDGET (NORTH OF O STREET)

Description	Total
TEUP Budget (North of O Street):	
North Area - R to Tracks (Arena Site)	1,171,563.00
South Area - R to O Street	2,515,625.00
West Area	431,250.00
Total Estimated Budget for Remediation North of O Street	**4,118,438.00**
Environmental Remediation Expenses to Date:	
AON Insurance (environmental insurance)	259,987.00
Benesch – Environmental Consultant	1,016,543.00
General Excavating – T.200 Plume Remediation	1,415,592.38
State Title 200 Reimbursement	(809,449.00)
NDEQ Oversight Expenses	22,213.23
Engineering Services Expenses	8,891.54
Health Department Expenses	312.22
BNSF Expenses	1,307.13
Other/Miscellaneous	138.32
Total Expenses to Date:	1,915,535.82
Balance remaining:	**2,202,902.18**

** Budgeted amount North of O only represents a portion of the overall $7.35 million environmental remediation budget. Budget amount for environmental remediation South of O street is estimated at $3,234,375.00 (leaving a total remaining balance for environmental remediation of $5,437,277.18).

West Haymarket JPA Meeting

Date 6/2/11

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Name (Please Print)	Address	Phone/E-Mail
JOCELYN BAADE	3742 WILDBRIAR LN	402-423-7234
Bob Olsen		