WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
December 20, 2011

Meeting Began At: 2:05 P.M.

Meeting Ended At: 2:55 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

Chair Beutler opened the meeting with introductions of the Board members. Beutler 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

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 December 8, 2011

Beutler asked for corrections or changes to the minutes from December 8, 2011. Hearing none, Carroll motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – Bill No. WH 11-92 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a special purchase for construction of the Amtrak platform to construct a 1200' x 15' x 8" concrete passenger platform without building or canopy, subject to the submission of informal quotes by contractors by December 6, 2011. Work shall begin on December 9, 2011 and shall be completed by April 30, 2011

Beutler asked Rick Peo to come forward to present the contract and provisions and Chris Connolly to discuss the ADA issue.

Peo stated that when this item was originally put on the agenda for approval in early December they were still waiting on quotes from contractors so this item was pulled and delayed until this meeting. In the interim, the quotes were evaluated and Stephens and Smith came in with the low bid. A revised resolution was submitted to the Board for approval of the contract. After preparing the final contract documents for publication, Peo discovered that some of the requirements included in the bid documents were incorrect. Due to the fact that this property is owned by Burlington Northern, leased by Amtrak and subleased by the JPA; the JPA has an obligation to abide by the requirements included in the sublease and construction maintenance agreements. In addition to those provisions, the insurance amounts had to be increased to meet the railroad requirements. The contract agreement has been revised under Motion to Amend No. 2 as it was unfair to burden Stephens and Smith with the additional costs that were not in the bid documents. The original bid proposal of $565,499 will

be increased by $22,620 for a contract sum of $588,119 and will also allow for a construction contingency of an additional $22,620 in the event that the extra insurance costs are in excess of the contract sum. The contractor's contingency fund is only for those types of overriding costs. If they aren't needed, that money will not be spent and will be retained by the JPA. The bottom line is an overall maximum under all circumstances of $610,739, but Peo is hopeful that it will only be $588,119.

The final completion date for this project will be April 30, 2012. In order to accommodate Burlington Northern work that needs to be done, the substantial completion will be April 1, 2012. Clare asked if the procedure used to procure this contract was done fairly and pursuant to the bidding rules. Peo answered yes and noted that even with the increases Stephens and Smith is still the low bidder. Clare then asked where the bid came in with regards to the budget. Peo stated that this project was initially budgeted at over a million dollars.

Chris Connolly, City Law Department, came forward and reported that they have been reviewing the ADA issue for two months as it is a sensitive issue. The bottom line is that the JPA is in full compliance with the 2010 ADA standards, which is the latest those standards have come out. The JPA will also be in compliance with the Federal Railroad Administration (FRA) if this contract is approved and construction is started before February 1, 2012. Connolly explained that the Amtrak Station will be moved approximately 700 feet to the west to make room for the other projects and to provide better access to the arena. The original schedule was for the platform and building to be constructed in mid to late spring of 2012 because Burlington Northern was not going to be able to move their tracks until early spring. Burlington Northern was able to complete that work early this fall allowing the platform and building construction to move forward more quickly.

The 2010 ADA standards call for the platform to be a minimum of 8 inches above top of track which is what the platform design standards include. This is important to Burlington Northern as they will continue to operate freight on the tracks. There is no reference in the ADA standards to 15 inches as has been discussed. The FRA regulations that came out in October state that platforms newly constructed after February 1, 2012, must be 15 inches if the track is not being shared with freight operations. If construction was held off until after February 1, 2012, Amtrak would have to submit an accessibility plan to the FRA and they would have to review and approve it. This process could take weeks or months affecting the construction schedule. Aside from the schedule, there is a cost savings with not having to pour an additional 7 inches of concrete. Burlington Northern has stated that they need this track for their freight operations and a 15 inch platform would not work for them. There are safety concerns with switchmen riding on the back of cars when they move rail cars and also maintenance equipment that would strike a 15 inch platform. Amtrak is also on board with the 8 inch platform and they stand ready to use whatever equipment is necessary to allow people with wheelchairs to get on their trains.

Beutler noted that Burlington Northern submitted a letter stating they are going to use the tracks for freight. Connelly noted that they are submitting that letter to the FRA to let them know that is what they intend to do. Beutler then questioned if the rule would apply to this project if it were constructed after February 1st. Connelly advised that it could apply if the FRA did not accept Amtrak's accessibility plan. In the preamble to the rule they reference the ADA in general but also acknowledge this won't work in all circumstances. In fact, they admit that in regard to freight rail operations, they don't have authority to tell Burlington Northern that they must allow a 15 inch platform. It is Connelly's opinion that this regulation does not apply to this platform because it involves not only Amtrak but Burlington Northern and Burlington Northern cannot be forced to

accept that situation.

Peo added that the JPA does not have the unilateral authority to change the platform from 8 inches to 15 inches. The sublease agreement with Amtrak specifically requires the platform to only be 8 inches above top of rail and the agreements with BNSF requires them to approve all construction activity. They have mandated the 8 inches above top of rail as a requirement of their prime lease which is incorporated in the sublease with Amtrak. Clare asked if timing wasn't an issue and construction waited would the FRA come to the conclusion that the JPA is in compliance with the ADA with an 8 inch platform. Connelly stated that the FRA will not analyze the station in terms of ADA but only with compliance of their rule. As long as Burlington Northern says they are going to use it for freight they have no jurisdiction or authority to tell Burlington Northern they have to accept a 15 inch platform. The JPA is currently in compliance with the ADA and the 15 inch rule is not an ADA rule so that won't change if the February 1 deadline isn't met.

Carroll asked if the railroad establishes the elevation of the tracks of which the 8 inch platform is based on. Peo answered yes and explained that the design was approved almost two years ago and the 8 inch platform was established at that time.

Beutler asked for public comments. Dr. Barbara Traudt came forward and stated that the construction company and the railroad are following the 2010 ADA rules even though new rules are going into effect on February 1, 2012 saying that platform has to be 15 inches. The rules say that passengers with disabilities must be able to access each train car. Americans with disabilities are more important than the building schedule. It is also a waste of taxpayer's money because it should be built right the first time. Beutler thanked Dr. Traudt and asked her to speak with Chris Connolly after the meeting so that he could explain the situation in more detail so that although she may disagree, there will be some understanding as to why the City is doing what it is doing.

Jo Feller came forward and stated that there is no question the platform has to stay at 8 inches because it is used for freight but her concern is with what is going to be used to comply with the new rules. The ADA law states that every car at the platform has to be accessible to everyone. Beutler stated that reasonable accommodation is the requirement and something they are happy to provide. He also asked Feller to stay after the meeting to continue this discussion with Chris Connolly.

Jane Kinsey came forward and stated that it has been her experience that the owner of a property has to meet the ADA requirements even if they don't like it. The law is in favor of the disabled person so that needs to be looked at carefully. Kinsey asked if the JPA has gotten an outside opinion from an attorney who is an expert in ADA law. The City attorneys have looked at this but they have a bias and the City could be sued by the ADA for this.

John R. Judds, CEO of Judds Brothers Construction Company came forward and stated that his company was asked during the completion of the initial site prep to prepare an estimate for the Amtrak platform. Utilizing the team they had in place that knew the railroad insurance requirements, rail safety requirements and the exhibit that was going to be signed by BNSF they put together what he felt was a good estimate. Subsequently, the City had to legally go a different way and put it out for bid. Judds was surprised that after all of the projects that have been bid on this site that a contractor could still not know the insurance that is required and be able to come back and get more money. Early in the first job, Osborn was able to get more money for insurance on its contract. Judds stated that he always bids the right amount in his initial bids because he understands the rules but he is surprised that someone else is coming back and saying they need $45,000 more for

insurance when the documents should be boiler plate. He didn't know if Purchasing or the Legal Department made the mistake but thinks there should be more consistency between the two departments.

Hearing no other comments, Carroll made a motion to approve WH 11-92. Clare seconded the motion. Carroll then made a motion to approve Amendment No. 2. Clare seconded the motion. Motion carried 3-0. WH 11-92 as amended was then voted on and carried 3-0.

Item 5 – Bill No. WH 11-94 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a Contract with the lowest responsible bidder for construction of the Amtrak station and canopy over the platform

Dan Marvin informed the Board that in 2009 there was a long negotiation process to create a replacement building for Amtrak. The agreement was to provide them with a building that was similar in nature to the building they currently operate out of. Design work began in the summer of 2009 and the lease agreement was approved by this Board in January 2010. Under the terms of the lease the JPA was to deliver a 90% complete design by June of 2010. In June of 2010, Amtrak decided they wanted to expand the size of the building to be able to move a crew base into Lincoln, adding an additional 300 square feet. By November it appeared everything was finalized and the project that included the building and the canopy that goes on top of the platform was put out for bid. Several alternates included with many of the variations being on the canopy. There were eight companies that submitted bids and of those, two were very close. When the various alternates were chosen Ronco came in as the low bidder. Their bid is lower than the estimate so there will be a small amount of savings on this project.

Clare noted that this company is out of Omaha and asked if they are organized labor as he noticed a union logo on their website. Marvin did not know if they were union or not but did know that they have experience in constructing an Amtrak building in Omaha.

Beutler asked for public comment. Dr. Traudt came forward and expressed her concern about the cost of the platform. She was very surprised that a concrete platform would cost half a million dollars. Beutler agreed that it is a lot of money and he was surprised at the cost as well.

Randy Swanson, PC Sports, advised that there were nine bidders on the building with a great range of qualified contractors from Lincoln and Omaha. The bids were very close so they spent extra time scrutinizing the bids to make sure they got qualified candidates and a correct number. Swanson also did research on the cost of the platform and it is comparable to other platforms going up across the country. That reassured him that they were headed down the right path.

Clare asked if the cost of the platform, station and canopy are all within the budget and what was estimated. Swanson answered that they are all on budget and maybe a little better than expected. With site work in the winter there is a little challenge ahead depending on how cold it gets and how much concrete can be poured. Carroll asked what the completion date is and if there is an incentive for early completion. Swanson stated that the completion date is June 15, 2012 and there is not an incentive.

Peo informed the Board that Motion to Amend No. 1 puts the agreement with Ronco before the board as the original resolution was created when there were still bid proposals coming in.

Hearing no other comments, Carroll made a motion to approve WH 11-94. Clare seconded the motion. Carroll then made a motion to approve Amendment No. 1. Clare seconded the motion. Motion carried 3-0. WH 11-94 as amended was then voted on and carried 3-0.

Item 6 -- Set Next Meeting Date

The next regular meeting date is scheduled for Friday, January 6, 2012 at 3:30 in City Council Chambers Room 112.

Item 7 – Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. Meeting adjourned at 2:55 P.M.

Prepared by: Melissa Ramos-Lammli, Public Works and Utilities

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Date 12/20/2011

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Name (Please Print)	Address	Phone/E-Mail
Jane Kinsey		
Dr. Barbara Troxel		
Jo Feller		