

**AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD WEDNESDAY, NOVEMBER 3, 2021 AT 2:30 P.M.
CITY-COUNTY BUILDING
COUNCIL CHAMBERS, 1ST FLOOR
555 S. 10TH STREET
LINCOLN, NE 68508**

1. Introductions and Notice of Open Meetings Law Posted by Door
2. Public Comment and Time Limit Notification Announcement
Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.
3. Approval of the minutes from the JPA meeting held September 23, 2021.
 - (Staff recommendation: Approval of the minutes as presented)
4. Approval of September 2021 Payment Register and review of the September 2021 Expenditure Reports. (David Young)
 - Public Comment
 - (Staff recommendation: Approval of the Payment Registers. No action is required on the Expenditure Reports).
5. WH 21-13 Resolution approving an Agreement for Engineering Services between the West Haymarket JPA and JEO Consulting Group, Inc. for the Pinnacle Bank Arena ADA ramp improvements project for an amount not to exceed \$12,510.00. (Caleb Swanson)
 - Public Comment
 - (Staff recommendation: Approval)
6. WH 21-14 Resolution approving an Amendment to the Memorandum of Understanding between the West Haymarket JPA and Project Control of Texas, Inc., reflecting a rate increase for Construction Management Services for a term of September 1, 2021 through August 31, 2022 with costs not to exceed \$50,000.00. (Chris Connolly)
 - Public Comment
 - (Staff recommendation: Approval)
7. WH 21-15 Resolution approving a Right of Entry Agreement between the West Haymarket JPA and the University of Nebraska to enter upon an abandoned railroad bridge to conduct 3D laser scanning experiments through December 31, 2021. (Chris Connolly)
 - Public Comment
 - (Staff recommendation: Approval)
8. WH 21-16 Resolution approving a Memorandum of Understanding between the West Haymarket JPA and the Lincoln-Lancaster County Health Department for purposes of administering COVID-19 vaccines at the Pinnacle Bank Arena. (Chris Connolly)
 - Public Comment
 - (Staff recommendation: Approval)
9. Next Meeting Date: The next meeting date will be Thursday, December 9, 2021 at 2:30 p.m. in Council Chambers, First Floor of the County-City Building.
10. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
September 23, 2021

Meeting Began At: 3:02 P.M.

Meeting Ended At: 3:21 P.M.

Members Present: Leirion Gaylor Baird and Tim Clare

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

Gaylor Baird advised that this is a public meeting subject to the open meetings act posted at the back of the room.

Item 2 - Public Comment and Time Limit Notification.

Gaylor Baird advised members of the public are given five minutes for public comment on specific items listed on today's agenda and those testifying should identify themselves for the record.

Item 3 – Approval of the minutes from the JPA meeting held August 26, 2021.

Clare moved approval of the minutes as presented. Gaylor Baird seconded the motion. Motion carried 2-0.

Item 4 - Approval of August 2021 Payment Register and Review of August 2021 Expenditure Reports.

David Young, Interim Finance Director and JPA Treasurer, stated in reviewing the highlights for the August 2021 payment registers, the major payments consisted of \$100,901.00 to the City of Lincoln for fourth quarter city staff costs as budgeted for fiscal year 2020-21; \$221,832.00 to DEC for the August billing of which 70.2% or \$155,724.80 is billed to the West Haymarket private customers; \$194,017.90 for parking deck management for July 2021; and \$27,814.43 to Pinnacle Bank Arena for July arena repair and maintenance; and \$15,000.00 to Pinnacle Bank Arena for upgrades to HVAC control software.

Jane Kinsey, Watch Dogs of Lincoln Government, asked how the \$2 million loss was made up. Young asked Kinsey to give him more information. Gaylor Baird commented that the payment register is being discussed and asked if this question concerns a different item on the agenda. Kinsey asked if there are any new members to the DEC or if they are the same. Young stated they are the same. Kinsey commented this bill continues to be high. Young commented it continues to be very consistent. Kinsey commented that she thought they were trying to get this down by getting more members online. She then asked if the parking garage amount is consistent or about the same. Young stated it is very consistent.

Clare asked if when Block 4 comes on line, what guesstimate will this bring down the JPA's obligation for the DEC. Young stated he has not seen the calculations on this and will email him this information.

Clare asked where the JPA is financially with respect to where we anticipated being. Young stated we are in very good financial position. The projections for the occupation taxes correspond with 2025 and are 2% over the projections for the year. That leaves us at 8.43% over original projections.

There being no further discussion or public comment, Clare moved approval of the payment register. Gaylor Baird seconded the motion. Motion carried 2-0.

Item 5 – WH 21-11 Resolution approving an Amendment to Memorandum of Understanding between the West Haymarket JPA and Project Control of Texas, Inc., for Construction Management Services for a term of September 1, 2021 through August 31, 2022 with costs not to exceed \$50,000.00. (Chris Connolly)

Connolly, stated this is a renewal of an agreement for construction management. Last year the agreement was with two entities, Project Control and Alfred Benesch. This agreement is with Project Control only. There weren't enough projects to split up between two different entities. If it looks like the costs will exceed this amount, we will come back to the board with an amendment for the additional costs. All other terms and conditions are the same.

Clare commented that Project Control is very receptive and attends every single meeting. He further commented that we would not be where we are without them.

Kinsey asked if this is just a rollover of the contract. Connolly explained it is an amendment extending the contract and providing that the annual expenses will not exceed \$50,000.00. Kinsey asked what the original contract amount was and what this amendment is for. Connolly stated there are a number of smaller projects throughout the course of the year that need project management, and this is what the \$50,000.00 is for. Kinsey again asked if this is in addition to the other contract. Adam Hoebelheinrich, Project Control, explained that this is a yearly not to exceed. Last year's contract amount was for \$60,000.00 and every year a new contract is done with a not to exceed amount. He further explained they bill for their time as they do the work. Gaylor Baird commented that this is simply an amendment for an extension of time with a new amount not to exceed \$50,000.00.

There being no further discussion or public comment, Clare moved approval of the resolution. Gaylor Baird seconded the motion. Motion carried 2-0.

Item 6 - WH 21-12 Resolution authorizing the Treasurer of the West Haymarket JPA to negotiate and execute Club Seat Agreements at Pinnacle Bank Arena. (Chris Connolly)

Connolly stated this is a matter of how to deal with the club seats, loge boxes, and suites. The most activity occurs with the club seats. People want to buy them, move, cancel their contracts, or assign them. In the last year, there has been a little more turbulence because there has not been that many shows at Pinnacle Bank Arena. There have been discussions on how to handle these transactions going forward with the club seat owners only. There has not been enough activity with the loge boxes and suites to make any changes for these. This would authorize the Treasurer to execute and modify the club seat agreements as necessary. We don't want to delay these transactions as people want to act fast. This is how we would like to proceed going

forward. The Board will be provided with any reports or updates on the transactions. Connolly feels this would be a faster and more efficient way to deal with this.

Kinsey asked if the price is going to change. Connolly explained there is nothing in this agreement that changes the price. He further explained that the club seat holders were told we were going back to the original price. All this agreement does is change who is authorized to sign the contract. Kinsey asked if these are the seats that were suspended. Connolly confirmed they were and stated they did not collect on them last year. Kinsey asked what the original price was. Connolly stated \$750.00.

Clare commented that when we do have the opportunity to visit with club seat and suite holders, he requested to find out how their experience has been and what we can do to enhance their experience. He commented that we want to create the wow factor and we can use this as an opportunity to see what their thoughts are and how we can make their experience better. Connolly stated that Young has developed a form for seat holders to fill out and give their reasons why they are moving or no longer want the tickets. This also gives us a record of the change.

There being no further discussion or public comment, Clare moved approval of the resolution. Gaylor Baird seconded the motion. Motion carried 2-0.

Item 7 - Set Next Meeting Date.

The next meeting will be Thursday, October 28, 2021 at 2:30 p.m. in Council Chambers, First Floor of the County-City Building. Gaylor Baird stated there is a conflict with this date and asked that a new meeting date be scheduled.

Item 8 – Motion to Adjourn

Clare moved to adjourn. Motion seconded by Gaylor Baird. The meeting adjourned at 3:21 p.m.

West Haymarket Joint Public Agency
 Payment Register
 September 2021

Vendor Number	Vendor Name	Payment Remark	Cat	Busi Unit	Obj Acct	Description	Do Ty	Document Number	Amount	Check Date	Payment Number
98079	Black Hills Energy	277 Pinnacle Arena Dr	OP	06095	5825	Natural Gas	PV	2110550	38.15	09/02/21	164008
406174	BKD LLP	Client 0081643	OP	06095	5624	Auditing Service	PV	2110551	4,500.00	09/02/21	164049
82350	Nebraska Department of Revenue	Waste Reduction Fee 7/20-6/21	OP	06095	5993	Fees Paid to State of NE	PV	2111343	25.00	09/08/21	627561
118009	University of Nebraska-Lincoln	Customer 268641	OP	06095	5621	Misc Contractual Services	PV	2111346	241,550.00	09/08/21	627562
118009	University of Nebraska-Lincoln	Customer 268641	OP	06095	5621	Misc Contractual Services	PV	2111347	90,050.00	09/08/21	627562
37233	Olsson Inc	Olsson Project 019-35460	OP	06095	5628	Consultant Services	PV	2110928	518.50	09/09/21	164127
53356	Lincoln Electric System	277 Pinnacle Arena Dr	OP	06095	5821	Electricity - Bldg & Grnds	PV	2111335	550.94	09/09/21	164134
53356	Lincoln Electric System	200 N 7th St	OP	06095	5821	Electricity - Bldg & Grnds	PV	2111336	114.98	09/09/21	164134
53356	Lincoln Electric System	605 N 8th St Pk Lot Lgh	OP	06095	5821	Electricity - Bldg & Grnds	PV	2111337	46.50	09/09/21	164134
76881	Windstream	Billing number 402-477-6387	OP	06095	5829	Telephone	PV	2111341	37.40	09/09/21	164147
76881	Windstream	Billing number 402-477-6387	OP	06095	5829	Telephone	PV	2111341	78.55	09/09/21	164147
77921	County/City Property Management	Amtrak Station FY 2021-22	OP	06095	5870	Other Bldg Maintenance	PV	2111342	5,193.39	09/09/21	164149
604774	Pinnacle Bank Arena	Sponsorship/Op Increment Qtr 1	OP	06095	5643	Management Services	PV	2111350	250,000.00	09/09/21	164238
604774	Pinnacle Bank Arena	Sponsorship/Op Increment Qtr 1	OP	06097	5643	Management Services	PV	2111350	150,000.00	09/09/21	164238
324566	Union Bank & Trust Company	WHJPA Series 2011 9/20-8/21	OP	195031	6233	Bd Trustee Pmt-Serv Chg	PV	2112398	424.00	09/15/21	627765
38391	Lincoln Journal Star	Account Number 118-60115244	OP	06095	5952	Advertising/Media Serv	PV	2112397	35.05	09/16/21	164314
77921	County/City Property Management	July 2021 acct #209-1	OP	06095	5261	Postage	PV	2112394	303.01	09/16/21	164338
102154	Public Building Commission	Space Rental 9/21	OP	06095	5928	Rent of Co/City Bldg Space	PV	2112278	86.10	09/16/21	164362
102154	Public Building Commission	Space Rental 9/21	OP	06095	5931	Parking Rent Bldg Comm	PV	2112278	8.75	09/16/21	164362
588846	District Energy Corp	Customer ID 0005	OP	06095	5835	Thermal Heating & Cooling	PV	2112280	221,205.50	09/16/21	164440
598263	Project Control of Texas, Inc	Project Mgmt WH01262	OP	06095	5621	Misc Contractual Services	PV	2112399	1,687.50	09/16/21	164461
620543	Midwest Alarm Services	Account Number 900508-11	OP	06095	5683	Fire Alarm Monitoring	PV	2112281	33.90	09/16/21	164522
98642	Information Services	JPA FY 2021-22	OP	06095	5631	Data Processing Service	PV	2113183	1,277.00	09/22/21	627922
141073	City of Lincoln-Street Maintena	WHJPA property clean up	OP	06095	5621	Misc Contractual Services	PV	2113163	15,246.87	09/22/21	627923
624874	Ashley McElmurry	Red 1 Garage Refund	OP	06096	3941	Deck 1-Lease	PV	2113063	37.50	09/22/21	627924
616389	Midwest Office Automations	CSL-FD00/13475-CSL-01	OP	06095	5762	Photocopying	PV	2112861	18.17	09/23/21	164737
624886	Ryan Knutson	Green 2 Garage Refund	OP	06096	3941	Deck 2-Lease	PV	2113418	35.00	09/29/21	628082
624925	Cam Fagerland	Green 2 Garage Refund	OP	06096	3941	Deck 2-Lease	PV	2114036	70.00	09/29/21	628083
77921	County/City Property Management	acct 209-1 08/21	OP	06095	5261	Postage	PV	2114135	224.26	09/30/21	164824
604774	Pinnacle Bank Arena	Arena Repair/Maint/CIP 8/21	OP	06095	6069	Data Processing Equipment	PV	2114136	5,519.00	09/30/21	164925
604774	Pinnacle Bank Arena	Arena Repair/Maint/CIP 8/21	OP	06095	5633	Software	PV	2114136	17,500.00	09/30/21	164925
604774	Pinnacle Bank Arena	Arena Repair/Maint/CIP 8/21	OP	06095	5870	Other Bldg Maintenance	PV	2114136	36,326.30	09/30/21	164925
Category: OP total									1,042,741.32		
Grand total									1,042,741.32		

	Original Budget	P/Y Enc & Revisions	Total	YTD Expend	Encumbered	Available Balance
51 JPA						
00950 West Haymarket Revenue						
11 Materials & Supplies						
5221 Office Supplies	250.00		250.00			250.00
5261 Postage	2,500.00		2,500.00	224.26		2,275.74
5323 Bldg Maint Supplies	500.00		500.00			500.00
11 Materials & Supplies	3,250.00		3,250.00	224.26		3,025.74
12 Other Services & Charges						
5621 Misc Contractual Services	922,166.00		922,166.00	331,600.00		590,566.00
5624 Auditing Service	19,700.00		19,700.00			19,700.00
5628 Consultant Services	73,074.00		73,074.00			73,074.00
5631 Data Processing Service	1,277.00		1,277.00	1,277.00		
5633 Software	95,000.00		95,000.00			95,000.00
5635 Delivery Service	500.00		500.00			500.00
5643 Management Services	1,680,000.00		1,680,000.00	400,000.00		1,280,000.00
5643.61 Deck 1 Mgmt Services	868,160.00		868,160.00			868,160.00
5643.62 Deck 2 Mgmt Services	496,695.00		496,695.00			496,695.00
5643.63 Deck 3 Mgmt Services	583,384.00		583,384.00			583,384.00
5683.04 Snow Removal	2,500.00		2,500.00			2,500.00
5683.05 Fire Alarm Monitoring	500.00		500.00	33.90		466.10
5762 Photocopying	500.00		500.00	18.17		481.83
5763 Printing	250.00		250.00			250.00
5783 General Liability	26,509.00		26,509.00			26,509.00
5786 Property	185,435.00		185,435.00			185,435.00
5794 Public Officials	28,119.00		28,119.00			28,119.00
5795 Misc Insurance Floater	4,099.00		4,099.00			4,099.00
5821 Electricity - Bldg & Grnds	7,500.00		7,500.00	712.42		6,787.58
5825 Natural Gas	1,500.00		1,500.00			1,500.00
5829 Telephone	1,450.00		1,450.00	115.95		1,334.05
5830 Water	1,500.00		1,500.00			1,500.00
5835 Thermal Heating & Cooling	2,920,000.00		2,920,000.00	221,205.50		2,698,794.50
5856 City Share Linc Center Maint	21,000.00		21,000.00			21,000.00
5862 Grounds Maintenance	18,000.00		18,000.00			18,000.00
5870 Other Bldg Maintenance	401,194.00		401,194.00	5,193.39		396,000.61
5928 Rent of Co/City Bldg Space	1,055.00		1,055.00	86.10		968.90
5931 Parking Rent Bldg Comm	105.00		105.00	8.75		96.25

	Original Budget	P/Y Enc & Revisions	Total	YTD Expend	Encumbered	Available Balance
51 JPA						
00950 West Haymarket Revenue						
12 Other Services & Charges						
5952 Advertising/Media Serv	1,560.00		1,560.00			1,560.00
5993 Fees Paid to State of NE	25.00		25.00	25.00		
5996 Credit Card/Bank Fees	7,500.00		7,500.00			7,500.00
12 Other Services & Charges	8,370,257.00		8,370,257.00	960,276.18		7,409,980.82
13 Capital Outlay - Equipment						
6068 Concession Equipment	475,000.00		475,000.00			475,000.00
6076 Miscellaneous Equipment	700,000.00		700,000.00			700,000.00
13 Capital Outlay - Equipment	1,175,000.00		1,175,000.00			1,175,000.00
14 Capital Outlay - Improvements						
6132 Buildings	1,855,000.00		1,855,000.00			1,855,000.00
6140 Grounds Improvements	824,600.00		824,600.00			824,600.00
6142 Sewer System	97,200.00		97,200.00			97,200.00
14 Capital Outlay - Improvements	2,776,800.00		2,776,800.00			2,776,800.00
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg	2,620.00		2,620.00			2,620.00
6234 Bd Trustee Pmt-Principal	5,675,000.00		5,675,000.00			5,675,000.00
6235 Bd Trustee Pmt-Interest	14,111,361.00		14,111,361.00			14,111,361.00
15 Debt Service	19,788,981.00		19,788,981.00			19,788,981.00
00950 West Haymarket Revenue	32,114,288.00		32,114,288.00	960,500.44		31,153,787.56
51 JPA	32,114,288.00		32,114,288.00	960,500.44		31,153,787.56

	Current Fiscal Yr

Revenues:	
Occupation Taxes	1,631,029.28
Permits & Fees	230.00
DEC Customer Payments	156,998.80
Arena Premium Seat Revenue	495,243.98
Facility Lease & Other Rent	3,367.08
Parking Revenue	271,722.51
Sponsorship & Misc Revenue	145.00

Total Revenues	2,558,736.65

Expenditures:	
General Government	960,500.44

Total Expenditures	960,500.44

Excess (Deficiency) Of Revenues Over Expenditures	1,598,236.21

Other Financing Sources (Uses):	

Total Other Financing Sources (Uses)	

Excess (Deficiency) Of Revenues And Other Financing Sources Over Expenditures and Other Uses	1,598,236.21

Fund Balance Beginning Of Year	40,655,173.63

Fund Balance End Of Year	42,253,409.84
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Pinnacle Bank Arena
Income Statement
For the One Month Ending September 30, 2021

	Year to Date Actual	Year to Date Budget	Year to Date Variance	Annual Budget
EVENT INCOME				
Direct Event Income				
Rental Income	\$ 75,724	64,100	11,624	\$ 915,650
Service Revenue	405,574	609,650	(204,076)	2,611,300
Service Expenses	(499,013)	(717,416)	218,403	(3,504,584)
Total Direct Event Income	<u>(17,715)</u>	<u>(43,666)</u>	<u>25,951</u>	<u>22,366</u>
Ancillary Income				
F & B Concessions	171,057	164,813	6,244	1,611,434
F & B Catering	21,241	19,501	1,740	220,886
Novelty Sales	22,139	20,782	1,357	132,530
F & B Premium	30,945	14,822	16,123	146,564
Parking	56,946	71,027	(14,081)	295,124
Total Ancillary Income	<u>302,328</u>	<u>290,945</u>	<u>11,383</u>	<u>2,406,538</u>
Other Event Income				
Premium	9,647	16,000	(6,353)	90,100
Ticket Commissions	134,253	149,262	(15,009)	736,060
Facility Fees	55,596	68,296	(12,700)	371,068
Total Other Event Income	<u>199,496</u>	<u>233,558</u>	<u>(34,062)</u>	<u>1,197,228</u>
Total Event Income	<u>484,109</u>	<u>480,837</u>	<u>3,272</u>	<u>3,626,132</u>
Other Operating Income	87,693	86,833	860	1,046,000
JPA Operational Increment	50,000	50,000	0	600,000
NE Event Center Stabilization	0	0	0	0
Adjusted Gross Income	<u>621,802</u>	<u>617,670</u>	<u>4,132</u>	<u>5,272,132</u>
INDIRECT EXPENSES				
Salaries & Wages	323,334	431,100	(107,766)	4,202,959
Payroll Taxes & Benefits	77,656	83,019	(5,363)	996,217
Labor Allocations to Events	(119,337)	(229,659)	110,322	(1,785,644)
Net Salaries and Benefits	281,653	284,460	(2,807)	3,413,532
Contracted Services	0	333	(333)	4,000
General and Administrative	36,311	32,652	3,659	375,400
Operating	7,055	7,455	(400)	82,700
Repairs & Maintenance	108	525	(417)	6,300
Operational Supplies	7,255	11,846	(4,591)	140,500
Insurance	16,450	17,810	(1,360)	207,700
Utilities	91,181	94,667	(3,486)	1,071,000
Other	100	0	100	0
SMG Management Fees	19,066	18,417	649	221,000
Total Indirect Expenses	<u>459,179</u>	<u>468,165</u>	<u>(8,986)</u>	<u>5,522,132</u>
Net Income (Loss)	<u>162,623</u>	<u>149,505</u>	<u>13,118</u>	<u>(250,000)</u>
Beginning Retained Earnings	95,111	95,111	0	95,111
Net Income (Loss)	<u>162,623</u>	<u>149,505</u>	<u>13,118</u>	<u>(250,000)</u>
Ending Retained Earnings	<u>\$ 257,734</u>	<u>\$ 244,616</u>	<u>13,118</u>	<u>(154,889)</u>

Pinnacle Bank Arena
Income Statement
For the Twelve Months Ending August 31, 2021

	Year to Date Actual	Year to Date Budget	Year to Date Variance
EVENT INCOME			
Direct Event Income			
Rental Income	\$ 396,562	1,064,750	(668,188)
Service Revenue	629,298	2,451,600	(1,822,302)
Service Expenses	(779,375)	(3,172,377)	2,393,002
Total Direct Event Income	<u>246,485</u>	<u>343,973</u>	<u>(97,488)</u>
Ancillary Income			
F & B Concessions	347,903	1,224,130	(876,227)
F & B Catering	168,266	162,124	6,142
Novelty Sales	19,449	111,995	(92,546)
F & B Premium	6,234	136,886	(130,652)
Parking	45,370	62,748	(17,378)
Total Ancillary Income	<u>587,222</u>	<u>1,697,883</u>	<u>(1,110,661)</u>
Other Event Income			
Premium	9,670	87,400	(77,730)
Ticket Commissions	90,524	761,700	(671,176)
Facility Fees	59,793	340,550	(280,757)
Total Other Event Income	<u>159,987</u>	<u>1,189,650</u>	<u>(1,029,663)</u>
Total Event Income	<u>993,694</u>	<u>3,231,506</u>	<u>(2,237,812)</u>
Other Operating Income	1,184,631	1,210,186	(25,555)
JPA Operational Increment	600,000	600,000	0
NE Event Center Stabilization	2,000,000	0	2,000,000
Adjusted Gross Income	<u>4,778,325</u>	<u>5,041,692</u>	<u>(263,367)</u>
INDIRECT EXPENSES			
Salaries & Wages	2,634,009	3,965,625	(1,331,616)
Payroll Taxes & Benefits	699,345	936,210	(236,865)
Labor Allocations to Events	(463,854)	(1,449,903)	986,049
Net Salaries and Benefits	2,869,500	3,451,932	(582,432)
Contracted Services	0	4,000	(4,000)
General and Administrative	172,177	360,100	(187,923)
Operating	43,938	81,700	(37,762)
Repairs & Maintenance	4,868	6,300	(1,432)
Operational Supplies	33,586	140,000	(106,414)
Insurance	167,337	205,660	(38,323)
Utilities	937,233	1,073,000	(135,767)
Other	61,591	0	61,591
SMG Management Fees	217,900	219,000	(1,100)
Total Indirect Expenses	<u>4,508,130</u>	<u>5,541,692</u>	<u>(1,033,562)</u>
Net Income (Loss)	<u>270,195</u>	<u>(500,000)</u>	<u>770,195</u>
Beginning Retained Earnings	(175,075)	(175,075)	0
Net Income (Loss)	<u>270,195</u>	<u>(500,000)</u>	<u>770,195</u>
Ending Retained Earnings	<u>\$ 95,120</u>	<u>\$ (675,075)</u>	<u>770,195</u>

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Agreement for Engineering Services between the West Haymarket Joint
4 Public Agency and JEO Consulting Group, Inc. for design and engineering services for the
5 Pinnacle Bank Arena ADA ramp improvements project for a sum not to exceed \$12,510.00, is
6 hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
7 Representatives is hereby authorized to execute said Agreement.

Adopted this _____ day of November, 2021.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tammy Ward

WEST HAYMARKET JOINT PUBLIC AGENCY AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is entered into by and between West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (WHJPA), and

JEO Consulting Group, Inc.

(Engineer).

In consideration of the mutual covenants herein contained, WHJPA hereby agrees to contract with Engineer to perform engineering and related professional services hereinafter outlined in connection with

Pinnacle Bank Arena ADA Ramp Improvement
JEO Project Number 211664.00

(Work).

SECTION I — SCOPE OF SERVICES

Engineer agrees to timely and professionally complete the Work described above and herein, furnish and pay all costs, including any related taxes, and to furnish all labor, supplies and material and everything else reasonably necessary to complete the same unless specifically provided otherwise in this Agreement for the services listed in the Scope of Services (Scope), attached hereto. Such Scope of Services may also be referred to as “the Work.” To the extent that the Scope, Engineer’s proposal, or any other attachment hereto is in conflict with this Agreement, this Agreement shall control.

SECTION II — COMPENSATION

For the services or Work covered by this Agreement, WHJPA agrees to pay Engineer as follows:

1. **Basic Services.** Engineer shall be paid the compensation set forth in the Scope attached hereto, plus all allowed actual expenses and the total of all fees and allowed actual expenses shall not exceed \$12,510.00 without written consent of WHJPA. WHJPA is not responsible for fees or expenses incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in the Work Schedule attached to this Agreement unless otherwise agreed to by WHJPA.
2. **Additional Services or Change in Scope.** WHJPA may from time to time, require additional services or change in Scope. Such services, including the amount of compensation for such services, which are mutually agreed upon by and between WHJPA and Engineer, shall be effective when incorporated by written amendments to this Agreement. Additional services or change in Scope shall not begin until the amendment is executed.
3. **Cost Overruns.** Engineer is responsible for determining if the actual fees or expenses will exceed the maximum amount stated above. If at any time during the Work, Engineer determines that the fees or expenses will exceed, or have exceeded the maximum amount stated above, Engineer must immediately notify WHJPA in writing and describe which fees or expenses are causing the overrun and the reason. Engineer must also estimate the additional

fees or expenses needed to complete the Work. WHJPA will then determine if the maximum amount is to be increased, remain the same, or determine if the scope of the Work needs to be modified or terminated. An amendment will be prepared if cost overruns are authorized by WHJPA.

4. **Notice to Proceed.** Following execution of this Agreement, WHJPA shall provide written notification to Engineer to proceed. Engineer shall not begin the Work under this Agreement until specified in the Notice to Proceed.
5. **Term of Agreement.** The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this Agreement, but in no event longer than June 30, 2022, unless approved extensions are issued by written amendment.
6. **Invoices.** Unless otherwise set forth in the attachments, invoices shall be payable as follows:
 - Monthly
 - Quarterly
 - Lump Sum
 - Other: _____Invoices must present activities of Engineer and/or any subcontractors showing not less than actual hours worked, hourly rates applied, actual expenses incurred unless otherwise specified in the Scope or Fee Schedule, and any applicable supporting documentation, such as, but not limited to, receipts. All invoices shall be in a format acceptable to WHJPA.
7. **Progress Reports.** Invoices shall be substantiated by written progress reports which indicate the percentage of the Work completed or other metrics of progress agreed to or reasonably requested by WHJPA or as set forth in the proposal or Scope. A written progress report shall be provided to WHJPA each month in which Work is done by Engineer. Engineer shall provide a progress report within a reasonable time after a request for such report by WHJPA, separate and apart from the billing process.
8. **Payment.** WHJPA shall pay Engineer within thirty (30) days of approval of Engineer's invoices. WHJPA may reject all or part of any invoice for any reasonable cause. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the Work and whether WHJPA determines that the Work is satisfactory. Upon determination that the Work was adequately substantiated and satisfactory, payment will be made in the amount of one hundred percent (100%) of the billed actual costs and hourly fees. After Engineer has completed all Work required under this Agreement, a final invoice shall be submitted to WHJPA. Upon acceptance of the Work by WHJPA and final payment is made, an audit of all invoiced amounts may be completed by WHJPA or its authorized representative.
9. **Final Payment.** The acceptance of the final payment will constitute and operate as a release to WHJPA for all claims and liability of Engineer, its representatives, and assigns, for any and all things done, furnished, or relating to the services and Work rendered by or in connection with this Agreement or any part thereof. Engineer agrees to reimburse WHJPA for any overpayments.

SECTION III — WHJPA’S RESPONSIBILITIES

If available, WHJPA will furnish, as required for the Work and not at the expense of Engineer, the following items:

1. Property, boundary, easement, right-of-way, utility surveys, and property descriptions when such information is required.
2. All maps, drawings, records, audits, annual reports, and other data that are available in the files of WHJPA and which may be useful in the Work involved under this Agreement, including existing surveys, maps, and boring information for the site. Engineer must identify and specifically request available information by itemized written request with sufficient detail to identify existing documents. WHJPA does not warrant or represent that such information is accurate or complete with regard to the Work.
3. Access to public and private property, as necessary, when required in conduct of field investigations.
4. Charges for review of drawings and specifications by governmental agencies required for concurrence or permits, if any.

SECTION IV — OTHER MATTERS

It is mutually understood and agreed:

1. **Termination of Agreement.** Termination may occur for any of the following reasons:
 - a) This Agreement may be terminated by WHJPA or Engineer if the other party fails to adequately perform any material obligation required by this Agreement (Default). Termination rights under this section may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.
 - b) WHJPA may terminate this Agreement, in whole or part, for any reason for WHJPA's own convenience upon at least ten (10) calendar days' written notice to Engineer.
 - c) WHJPA may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of WHJPA. In the event of unavailability of funds to pay any amounts due under this Agreement, WHJPA shall immediately notify Engineer, and this Agreement shall terminate without penalty or expense to WHJPA. Upon termination, WHJPA shall pay Engineer for any approved and documented Work completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.
 - d) If the Agreement is terminated by WHJPA as provided in (b) or (c) above, Engineer shall be paid for all Work performed, and reimbursable expenses incurred, not to exceed the maximum amounts payable under the compensation section above, up until the date of termination. Engineer hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.

- e) Engineer agrees that, upon termination as provided in this section (a) above, Engineer shall not be employed by any developer or other party who is or may be interested in the Work, without prior written approval of WHJPA.
- f) WHJPA reserves the right to withhold payment for Work rendered that is not in compliance with this Agreement or setoff against payments due.
2. **Project Representatives.** Caleb Swanson (Project Control) will act as WHJPA's Authorized Representative for the Work and Nathan Boone, PE will act as Engineer's authorized representative. Engineer's authorized representative shall have direct and responsible charge for timely completing Engineer's responsibilities. All changes and other matters requiring decisions on the part of WHJPA will be administered and directed by WHJPA's authorized representative.
3. **Cost Estimates.** Engineer represents that construction estimates are done according to the Scope and shall comply with the current applicable WHJPA of Lincoln Standard Specifications for Municipal Construction, using unit prices where possible. Engineer does not warrant that contractor bids will be acceptable to WHJPA.
4. **Signatures and Approvals.** All submittals by Engineer shall be complete for project purposes and include all required seals, signatures, and approvals.
5. **Construction Phase Changes.** All design changes made during construction must be approved by WHJPA in a written change order or amendment to this Agreement.
6. **Advisory Capacity for Disputes.** In disputes between WHJPA and any other party, Engineer shall advise WHJPA on issues concerning the Work.
7. **Ownership of Drawings and Specifications.** Upon termination or final payment, drawings, specifications, electronic files, and other work product or deliverables (information) shall become the property of WHJPA as soon as payment for the same has been completed or termination has been affected. Engineer may retain copies of all information for its records and use if it so desires. In the event WHJPA elects to use portions of or all of the information contained in the documents prepared for the Work, for any purpose other than the specific purpose for which they were prepared, WHJPA agrees to hold harmless and indemnify Engineer for and against any and all liability in any manner whatsoever arising out of the utilization of such information.
8. **Engineer's Supervision; Seal.** All required Work shall be performed under the direct supervision of a registered professional engineer licensed to practice in the State of Nebraska. Engineer also hereby agrees to affix the seal of a registered professional engineer licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.
9. **Independent Contractor.** WHJPA is interested only in the results produced by this Agreement. Engineer has sole and exclusive charge and control of the manner and means of performance. Engineer shall perform as an independent contractor, and it is expressly understood that neither Engineer nor any of its staff are employees of WHJPA and are not entitled to any WHJPA benefits including, but not limited to, overtime, retirement benefits,

workers' compensation, sick leave, injury leave, or other leave provisions.

10. **Fair Employment.** Engineer shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, Neb. Rev. Stat. § 48-1122, as amended, or such similar federal law as may be applicable.
11. **Fair Labor Standards.** Engineer shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.
12. **Insurance; Coverage; Indemnification.** Engineer, prior to beginning the Work, agrees to WHJPA's Indemnification requirements and shall provide proof of insurance coverage in a form satisfactory to WHJPA, which shall not withhold approval unreasonably, with the coverages, minimum limits, and endorsements described in the INSURANCE CLAUSE FOR ALL CITY OF LINCOLN, LANCASTER COUNTY, AND PUBLIC BUILDING COMMISSION AGREEMENTS, and the insurance clause shall be attached and incorporated herein to the Agreement.
13. **Sovereign Immunity.** Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the sovereign immunity of WHJPA.
14. **Copyrights, Royalties, and Patents; Warranty.**
 - a) Without exception, Engineer represents and warrants that the consideration for this Agreement includes Engineer's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the Work provided herein by Engineer pursuant to this Agreement. Further, Engineer shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Engineer represents that all materials, processes, or other protected rights, if any, to be used in the creation of the Work have been duly licensed or authorized by the appropriate parties for such use. Engineer agrees to furnish WHJPA upon demand written documentation of such license or authorization and if unable to do so, Engineer agrees that WHJPA may withhold a reasonable amount from Engineer's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.
 - b) Engineer shall indemnify WHJPA and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Engineer has used in the course of performing this Agreement.
 - c) Engineer represents and warrants to WHJPA that it is free to enter into this Agreement and that the performance thereunder will not conflict with any other Agreement to which Engineer may be a party. Engineer represents and warrants to WHJPA that the Work is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.

- d) Engineer agrees to and hereby transfers all right, title, and interest, including those of a property or copyright nature, in any reports, studies, data, website creation, digital files, imagery, metadata, maps, statistics, forms, and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Engineer without express written consent of WHJPA. WHJPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as WHJPA deems appropriate. Engineer warrants that all materials, processes or other protected rights to be used have been duly licensed or authorized for WHJPA's use.
15. **Engineer's Standard of Care.** In providing the Work under this Agreement, Engineer shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to Engineer and by mutual agreement between the parties, Engineer will, without additional compensation, correct those services not meeting the standard set forth herein. Engineer further agrees that the Work provided shall conform to the requirements of this Agreement.
16. **Compliance with Law.** Engineer shall comply with all Federal, State, and local laws, rules, and regulations applicable to the Work, including applying for and obtaining all necessary permits, certifications, licenses, and approvals required by the law or regulations that relate to the Work.
17. **Nebraska Law.** This Agreement shall be construed pursuant to the laws of the State of Nebraska.
18. **Integration; Amendment; Assignment; Severability; Waiver.** This Agreement represents the entire agreement between the parties, and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement signed by both parties. Any assignment or transfer of any of the Work to be performed by Engineer is hereby prohibited unless prior written consent of WHJPA is obtained. This Agreement shall be binding upon the successors and assigns of the parties hereto. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement, and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any section of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every section of this Agreement.
19. **Audit and Review.** This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. Engineer shall maintain, and also require that its Sub-Consultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at Engineer's office at all reasonable times during the Agreement term and for five (5) years from the date of final payment under this Agreement. Such

materials must be available for inspection by City, State, FHWA, or any authorized representative of the state or federal governments and, when requested, Engineer shall furnish copies.

20. **Federal Immigration Verification.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Engineer agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. Engineer shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. §1324b. Engineer shall require any sub-agreement or to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.
- a) **Attestation Form.** If Engineer is an individual or sole proprietor, Engineer agrees to complete the United States Citizenship Attestation Form as provided by WHJPA and attach it to the Agreement.
- b) **Public Benefits Eligibility Status Check.** If Engineer is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Engineer agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. Engineer agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§ 4-108 through 4-114. If the applicant indicates he or she is an alien, Engineer shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at WHJPA's request. For information on the SAVE program, go to www.uscis.gov/SAVE.
21. **Living Wage.** If the compensation for the Work provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance Chapter 2.81 of the Lincoln Municipal Code. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Engineer shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Living Wage Ordinance, WHJPA shall have authority to terminate this Agreement and to seek other remedies for violation of this ordinance.
22. **Records Retention.** Unless WHJPA specifies in writing a different period of time, Engineer agrees to preserve and make available at reasonable times all of its books, documents, papers, records, and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of the expiration or termination of this Agreement. See WHJPA of Lincoln Records Retention Schedule. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

23. **Document Control Clause.** The Agreement includes the following documents:

- a) Scope of Services, Schedule, and Fee;
- b) Insurance requirements, certificates, and endorsements;
- c) Amendments to Agreement (if any);
- d) _____
- e) _____

For Agreement documents submitted prior to execution, if terms and conditions therein conflict with other Agreement documents, those Agreement document with the date closest to the date of execution of this Agreement shall control.

24. **Capacity.** Each party hereby represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid, and binding obligation of said party.

IN WITNESS WHEREOF, WHJPA and Engineer do hereby execute this Agreement as of the date of execution set forth below.

**WEST HAYMARKET JOINT PUBLIC
AGENCY, a political subdivision and corporate
body politic of the State of Nebraska.**

Date: _____

By: _____
Leirion Gaylor Baird, Chair

ENGINEER

Date: _____

By: _____

Name: _____

Title: _____

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Amendment to the Memorandum of Understanding for West Haymarket
4 Joint Public Agency Cooperative Contract (MOU094) between Project Control of Texas, Inc.
5 (“Project Control”) and the West Haymarket Joint Public Agency for reflecting a rate increase for
6 construction management and inspection services for a one year term through August 31, 2022,
7 with costs not to exceed \$50,000.00, is hereby approved and the Chairperson of the West
8 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said
9 Amendment on behalf of the JPA.

Adopted this _____ day of November, 2021.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tammy Ward

AMENDMENT TO MEMORANDUM OF UNDERSTANDING
Construction Management and Inspection Services
RFP No. 20-047
MOU094
West Haymarket Joint Public Agency
Rate Increase
Project Control of Texas, Inc

This Amendment is hereby entered into by and between Project Control of Texas, Inc., 728 Q Street, Suite A, Lincoln, NE 68508 (hereinafter "Contractor") and West Haymarket Joint Public Agency (hereinafter "JPA"), for the purpose of amending the Memorandum of Understanding (MOU) dated February 25, 2021, for Construction Management and Inspection Services, based on RFP No. 20-047, MOU094, which is made a part hereof by this reference.

WHEREAS, the parties hereby amend the MOU to reflect a rate increase, per Attachment A; and

WHEREAS, the expenditures for the JPA for the current term shall remain the same; and

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in the MOU, all amendments thereto, and as stated herein, the parties agree as follows:

- 1) The parties hereby amend the MOU to reflect a rate increase, per Attachment A.
- 2) The expenditure for the JPA for the current term shall remain the same.
- 3) All other terms of the MOU, not in conflict with this Amendment, shall remain in full force and effect.

The Parties do hereby agree to all the terms and conditions of this Amendment. This Amendment shall be binding upon the parties, their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties do hereby execute this Amendment upon completion of signatures on:

Vendor Signature Page
JPA Signature Page

Vendor Signature Page

AMENDMENT TO MEMORANDUM OF UNDERSTANDING
Construction Management and Inspection Services
RFP No. 20-047
MOU094
West Haymarket Joint Public Agency
Rate Increase
Project Control of Texas, Inc

Please sign, date and return within 2 days of receipt.

Mail to: City/County Purchasing
Attn: Lori L. Irons
440 So. 8th St., Ste. 200
Lincoln, NE 68508
Or Email: llirons@lincoln.ne.gov

Company Name:	Project Control of Texas, Inc.
By: (Please Sign)	
By: (Please Print)	Adam C. Hoebelheinrich
Title:	Regional Vice President
Company Address:	728 Q Street, Suite A, Lincoln, NE 68508
Company Phone & Fax:	402-477-0487
E-Mail Address:	adam@projectcontrol.com
Date:	September 29th, 2021
Contact Person for Orders or Service:	Adam C. Hoebelheinrich
Contact Phone Number:	402-477-0487

West Haymarket Joint Public Agency Signature Page

**AMENDMENT TO MEMORANDUM OF UNDERSTANDING
Construction Management and Inspection Services
RFP No. 20-047
MOU094
West Haymarket Joint Public Agency
Rate Increase
Project Control of Texas, Inc.**

EXECUTION BY THE WEST HAYMARKET JOINT PUBLIC AGENCY

ATTEST:

Tammy Ward, Secretary

WEST HAYMARKET JOINT PUBLIC AGENCY

Leirion Gaylor Baird, Chair of the West
Haymarket Joint Public Agency Board of
Representatives

Dated: _____

Attachment A



September 28, 2021

Mr. Bob Walla
City of Lincoln/Lancaster County Purchasing Agent
City of Lincoln Nebraska
440 So. 8th Street, Suite 200
Lincoln, NE 68508

Re: Proposed Hourly and Expense Rates

Dear Bob:

We would like to once thank the City of Lincoln once again for allowing us to provide construction management and inspections on their projects. We look forward to successfully completing the current projects and to doing the same on future projects with the City.

Per your email we have assembled our proposed hourly rates to be in effect from September 2021 through August 31, 2022. When extensions are granted, we can discuss at that time or agree to adjustments according to the Midwest CPI for cost of living will be included going forward.

The proposed rates are as follows:

September 1, 2021- August 31, 2022	
Proposed Billing Rates	
Staff Level	Billing Rate/HR
Project Executive /Executive Leadership	\$179
Senior Project Manager / Contract Lead	\$148
Project Manager	\$142
Onsite Lead PM/Project Inspector	\$125
Onsite PM/Project Inspector	\$98
Project Coordinator/Administration	\$62

The rates above cover any typical expenses we will occur on projects performed with in the city limits. If for some reason non typical expenses are incurred they will be approved ahead of time, documented, and billed at cost.

Thank you again for awarding us this contract with the City of Lincoln. Should you have any further questions, you can reach me via cell at (402) 405-9311 or e-mail at ahoebelheinrich@projectcontrol.com.

Best regards,

A handwritten signature in black ink, appearing to read 'Adam Hoebelheinrich'.

Adam Hoebelheinrich
Regional Vice President

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Right of Entry Agreement between the West Haymarket Joint Public
4 Agency and The Board of Regents of the University of Nebraska, to enter upon the property
5 legally described as Outlot A, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, to
6 conduct 3D laser scanning experiments on the abandoned railroad bridge on the property for the
7 benefit of its students, is hereby approved and the Chairperson of the West Haymarket Joint Public
8 Agency is hereby authorized to execute the same on behalf of the West Haymarket Joint Public
9 Agency and any extension mutually agreed to by the parties.

Adopted this _____ day of November, 2021.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tammy Ward

**RIGHT OF ENTRY AGREEMENT
WEST HAYMARKET JOINT PUBLIC AGENCY**

THIS RIGHT OF ENTRY AGREEMENT (the “Agreement”) is made and entered into this ____ day of November, 2021, by and among the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (hereinafter “JPA”), and The Board of Regents of the University of Nebraska, a corporate body of the State of Nebraska and governing body of the University of Nebraska-Lincoln (hereinafter “the University”).

RECITALS

1. The JPA owns the land legally described as Outlot A, West Haymarket Addition to the City of Lincoln, Lancaster County, Nebraska (“the Property”).
2. JPA owns an abandoned railroad bridge on the Property.
3. The University, through its College of Engineering, wishes to conduct 3D laser scanning experiments on the decommissioned railroad bridge to provide educational opportunities to students.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

I. Right of Entry

- a. In consideration of the mutual benefits and obligations of this Agreement, the JPA hereby grants a right of entry to the University, its employees and students for the Property for the following purposes and no others:

3D laser scanning experiments on the abandoned railroad bridge.

- b. In consideration of the Right of Entry above the University agrees to provide to the JPA at no cost a copy of the final version, if any, of the final results of the 3D laser scanning experiments. The University shall not be required to disclose any confidential or proprietary information used or developed during the course of testing.
- c. It is understood and agreed that the University shall not be liable for trespass of any kind arising out of entering on to the Property for the purposes provided herein. It is further understood and agreed that JPA shall have no right to direct, interfere with, instruct, limit, or participate with, the University with regard to the work unless the JPA determines, during the course of the 3D laser scanning experiments, that the abandoned railroad bridge is at a significant risk, as determined by the JPA, of collapse, substantial damage, or injury to persons or other property as a result of the experiments, in which case the JPA shall

provide written notice of its determination along with available documentation supporting such determination.

- d. The University shall carry sufficient insurance or self-insure in an amount of not less than described in Article V below, covering the term of this Right of Entry.

II. Condition of the Property; Failure of the Railroad Bridge.

The University, on behalf of itself, and its employees, students, and agents acknowledges and agrees that the railroad bridge on the Property is an old railroad bridge that has suffered substantial decay and deterioration. The JPA, its board members, and its agents have made no representations to the University about the condition of the railroad bridge or its ability to withstand the 3D laser scanning experiments. No warranty or representation that the railroad bridge is suitable for such 3D laser scanning experiments is made by the JPA, its board members, or agents. The University shall conduct the 3D laser scanning experiments at its own risk of injury to persons or property and hereby waives any liability claims against the JPA, its board members, and agents for any partial or total failure of the bridge during the 3D laser scanning experiments, regardless of whether such partial or total failure results in personal injury or property damage of any kind, except to the extent caused by the negligence or willful misconduct of the JPA. The University uses the railroad bridge **AS IS** and agrees to be exclusively responsible for adequate safety measures being taken before, during, and immediately after the University's 3D laser scanning experiments. In the event of a partial failure as a result of University testing, the University shall be solely responsible for repairs sufficient to make the structure safe to traverse on foot; provided, however, in the event the estimated cost of repair exceeds the amount to remove the bridge, the University may, in its sole discretion, choose to remove the metal portions of the bridge rather than repairing the same. In the event of a complete failure as a result of University testing, the University shall pay for clean-up, removal, and disposal of the steel and other metal portions of the railroad bridge and will make the site safe and clean for foot travel in the area. The JPA acknowledges and agrees that the University may make alterations or modifications to the bridge for purposes of 3D laser scanning experiments; provided the bridge remains safe for pedestrian traffic, the University will not be required to put the bridge back in its condition prior to such alterations or modifications.

III. Term and Termination.

- a. This Right of Entry shall be in force and effect from and after the execution and approval of this Agreement and shall terminate on December 31, 2021 provided, however, if the University has not yet completed the experiments, the University shall be permitted to extend the term of this Agreement by thirty (30) days by providing written notice to the JPA and the Chair of the West Haymarket JPA is hereby authorized to approve an extension of this agreement.
- b. No use of the Property shall commence under this Right of Entry until the University has obtained all insurance required herein and such insurance has been approved by the City Attorney for the City of Lincoln; provided, however, if evidence of the required insurance is provided to the City Attorney for the City of Lincoln and no response is received by the University within five days thereafter, then the City Attorney for the City of Lincoln shall

be deemed to have approved the insurance. The University may also provide a letter stating that it will self-insure for this Right of Entry.

- c. The JPA may terminate this Agreement immediately upon written notice to the University if the University violates any of the covenants, agreements, stipulations, or conditions herein, and such violation or default shall continue for a period of five (5) business days after written notice from the JPA to the University of such violation or default, then the JPA may without demand and notice terminate this Agreement and re-enter the Property with or without process of law, using such force as may be reasonably necessary to remove all persons or chattels therefrom, and the JPA shall not be liable for damage by reason of such re-entry or forfeiture.

IV. Indemnification.

- a. Indemnification by the University. To the extent allowed by law, the University agrees to indemnify and hold the JPA, its board members and agents (collectively “the JPA”), harmless against, and will reimburse the JPA upon demand for any payment, loss, cost or expense (including reasonable attorney’s fees) made or incurred by or asserted against the JPA, its board members and agents with respect to any and all damages resulting from any omission, misrepresentation, negligence, willful or intentional misconduct of the University, its professors, instructors, students, or agents, provided, however, in no event shall the University be required to indemnify and hold harmless the JPA for any damages, liabilities or obligations caused by the negligence or willful or intentional misconduct of the JPA.
- b. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections IV(a) or IV(b) hereof:
 - 1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and
 - 2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party’s sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party’s inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall

fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

V. Insurance.

- a. Notwithstanding anything in this agreement to the contrary, the JPA acknowledges and agrees that the University may self-insure pursuant to the University of Nebraska Self-Insurance Program (the "Program"). Subject to the terms, conditions, exclusions, and limits of the Statement of Self-Insurance Coverage contained in the Program, the Program shall pay on behalf of the University during any of its fiscal years all sums for which the University shall become legally obligated to pay as damages for liability occurrences, up to the limits of \$1,000,000 per liability occurrence and \$3,000,000 in the aggregate of liability occurrences in any fiscal year. Upon written request, the University will provide the JPA with a copy of the University of Nebraska Self-Insurance Trust Fund Program Statement evidencing such coverage.

VI. Severability.

If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

VII. Construction.

The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

VIII. Authority.

This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms. The JPA owns the Property, and no other persons have any interest in such real estate which would detrimentally affect the University's ability to use the Right of Entry for the purposes stated herein.

IX. Integration and Amendments.

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended or modified only in writing signed by both Parties.

Executed by West Haymarket Joint Public Agency this ____ day of _____, 2021.

ATTEST:

WEST HAYMARKET JOINT PUBLIC AGENCY,
a political subdivision and corporate body politic of
the State of Nebraska.

Tammy Ward, Secretary

By: _____
Leirion Gaylord Baird, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Leirion Gaylor Baird, Chair, on behalf of the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska.

Notary Public

Executed by Board of Regents of the University of Nebraska this ____ day of _____, 2021.

BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA
a corporate body of the State of Nebraska

By: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, on behalf of the Board of Regents of the University of Nebraska, a corporate body of the State of Nebraska, on behalf of the University.

Notary Public

RESOLUTION NO.

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the attached Memorandum of Understanding between the West Haymarket Joint
4 Public Agency and the Lincoln-Lancaster County Health Department, for purposes of
5 administering COVID-19 vaccines at the Pinnacle Bank Arena, is hereby approved and the
6 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby
7 authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency and
8 any extensions mutually agreed to by the parties.

Adopted this _____ day of November, 2021.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Leirion Gaylor Baird

Tim Clare

Tammy Ward

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made this ___ day of November, 2021 by and between the Lincoln-Lancaster County Health Department, a department of the City of Lincoln, Nebraska, a municipal corporation, (“Health Department”) and the West Haymarket Joint Public Agency, a Nebraska political subdivision (“JPA”).

WHEREAS, the COVID-19 pandemic has infected over 40,000 people and taken the lives of more than 300 people in Lancaster County as of January 26, 2021; and

WHEREAS, vaccines have been developed to help with the public health crisis created by the pandemic; and

WHEREAS, the Health Department is in need of facilities to continue to distribute one or more of the available vaccines and/or boosters; and

WHEREAS, the JPA previously provided space in Pinnacle Bank Arena for the purpose of allowing the Health Department to distribute vaccines to members of the community; and

WHEREAS, the JPA remains willing to provide space in Pinnacle Bank Arena (sometimes referred to as “PBA”), owned by the JPA, for the Health Department to distribute additional vaccines and/or boosters to members of the community; and

WHEREAS, this MOU will set forth certain terms and conditions for use of PBA by the Health Department for use in a vaccination program.

NOW, THEREFORE, in mutual consideration of the terms and conditions set forth herein, the Parties hereto agree to the following:

1. **Use of Pinnacle Bank Arena for Vaccinations.** The JPA hereby agrees and consents to the Health Department establishing and operating a vaccination program in or on the premises of Pinnacle Bank Arena during the current COVID-19 pandemic.
2. **Scheduling of Vaccination Clinics.** The Health Department shall coordinate dates for use of PBA for vaccinations with ASM Global, the authorized operator and manager of PBA.
3. **Use of Facilities, Equipment, and Staff; Costs.** The JPA shall provide all reasonable assistance necessary to the Health Department to facilitate the vaccination clinics. The Health Department shall pay for the reasonable costs of staff brought in exclusively to assist in the vaccination clinics and all other out of pocket expenses incurred by the JPA above and beyond normal operating costs during the pandemic, not to exceed \$50,000.00 without consent of the Health Department. Eligible costs shall include those costs reasonably incurred during the term of this MOU. Use of equipment including, but not limited to, chairs, tables, and directional signs that are already available on the premises and do not cost extra to operate shall not be a cost to the Health Department. The Health Department shall be responsible for providing all medical equipment, vaccines, and necessary clinical supplies and materials to provide vaccinations.
4. **Parking.** The JPA shall arrange for safe and sufficient parking for all staff, volunteers, and patients attending vaccine clinics.

5. **Food and Beverages.** The JPA may arrange for food and beverages for medical staff, volunteers, and patients receiving vaccinations. If the JPA or ASM Global are requested to provide such food and beverages by the Health Department, the Health Department shall pay the reasonable costs thereof.
6. **Term.** This MOU shall run for a period of six months from execution herein unless terminated earlier or extended by mutual agreement of the Parties.
7. **Insurance.** The Parties hereto acknowledge and understand that some risk is inherent in any medical procedure involving use of public facilities not designed for mass vaccination programs. The JPA shall maintain all current coverages at current levels. The Health Department, through the City of Lincoln, shall provide such insurance as is necessary to protect its interests. In the event the Health Department secures any additional insurance for itself or the City, the JPA shall be added as additional insured to the extent possible under such policy or policies.
8. **Employees.** The JPA and the Health Department shall each be responsible for identifying their respective employees needed to assist in the vaccination clinics and provide the necessary training, personal protective equipment, and training for their employees for purposes of operating a vaccination clinic.
9. **Volunteers.** The Health Department shall be solely responsible for checking the backgrounds, licensing, and credentialing of volunteers participating in the vaccination clinics. The Health Department acknowledges that some volunteers may be employed by hospitals, pharmacies, or other medical businesses and that some volunteers may be compensated by their full or part-time employer while participating in the vaccination clinics. Regardless of whether a volunteer is being paid to participate in the vaccination clinics, the Health Department shall take all reasonable steps to ensure that all volunteers shall be appropriately credentialed and free from any adverse history, criminal or otherwise, that may endanger the safety of the patients, staff, or volunteers at or during vaccination clinics at PBA.
10. **Construction of this Memorandum of Understanding.** The Parties hereto agree and acknowledge that the vaccination program anticipated herein is fluid and subject to change. Minor changes to this MOU may be negotiated between ASM Global and the Health Department in order to better facilitate the vaccination program. Significant changes shall be brought to the attention of counsel for the JPA and amendments will be prepared and executed to the extent necessary.
11. **Termination.** Termination may occur for any of the following reasons:
 - a. This Agreement may be terminated by the Health Department or JPA if the other party fails to adequately perform any material obligation required by this Agreement ("Default"). Termination rights under this section may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.
 - b. The Health Department or JPA may terminate this Agreement, in whole or part, for any reason for convenience upon at least ten (10) calendar days' written notice to the other Party. In the event the Health Department terminates for convenience, the JPA shall be reimbursed for all reasonable costs permitted under this Agreement and allowed by the Health Department up to and including the date of termination.
 - c. The Health Department may terminate this Agreement in whole or in part when funding is not

lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the Health Department. In the event of unavailability of funds to pay any amounts due under this Agreement, the Health Department shall immediately notify the JPA, and this Agreement shall terminate without penalty or expense to the Health Department. Upon termination, the Health Department shall pay the JPA for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

- d. If the Agreement is terminated by the Health Department as provided in (b) or (c) above, the JPA shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the maximum amounts payable under the compensation section above, up until the date of termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.
- e. The Health Department reserves the right to withhold payment for services rendered that is not in compliance with this Agreement.

12. **Nebraska Law.** This MOU will be construed pursuant to the laws of the State of Nebraska and the Lincoln Municipal Code.

Lincoln-Lancaster County Health Department, a
department of the City of Lincoln, Nebraska

Health Director

WEST HAYMARKET JOINT PUBLIC AGENCY, a
Nebraska political subdivision

Chair of the Board of Representatives

Acknowledged by:

Tom Lorenz, ASM Global
Manager of Pinnacle Bank Arena