

**SPECIAL MEETING AGENDA  
FOR THE WEST HAYMARKET  
JOINT PUBLIC AGENCY (JPA)  
TO BE HELD MONDAY, JULY 18, 2022 AT 9:00 A.M.  
CITY-COUNTY BUILDING  
COUNCIL CHAMBERS, 1ST FLOOR  
555 S. 10<sup>TH</sup> 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. WH 22-6 Resolution to approve Amendment No. 2 to the DAS Concession Agreement between the West Haymarket JPA and Concourse Communications Group, LLC for an extension of the agreement to provide DAS services at the Pinnacle Bank Arena for two additional five-year periods through July 1, 2034. (Chris Connolly)
  - Public Comment
  - (Staff recommendation: Approval)
4. Motion to Adjourn

**RESOLUTION NO.**

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

3 That the attached Amendment No. 2 to DAS Concession Agreement between the West  
4 Haymarket Joint Public Agency and Concourse Communications Group, LLC for an extension of  
5 the agreement to provide DAS services at the Pinnacle Bank Arena for two additional five-year  
6 periods through July 1, 2034, is hereby approved and the Chairperson of the West Haymarket Joint  
7 Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 2  
8 on behalf of the West Haymarket Joint Public Agency.

Adopted this \_\_\_\_\_ day of July, 2022.

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 NO. 2 TO DAS CONCESSION AGREEMENT

This Amendment No. 2 to DAS Concession Agreement (this “**Amendment**”) is made and entered into as of the date of the last signature affixed hereto (the “**Amendment Effective Date**”) by and between West Haymarket Joint Public Agency (“**Licensor**”) and Concourse Communications Group, LLC (“**Concourse**”).

### BACKGROUND

A. Licensor is the owner and manager of Pinnacle Bank Arena, located at 400 Pinnacle Arena Drive, Lincoln, NE 68508.

B. Licensor and Boingo previously entered into a DAS Concession Agreement, dated May 13, 2013, as amended by that certain Amendment No. 1 to DAS Concession Agreement, dated June 18, 2014 (together, the “**Agreement**”), pursuant to which Licensor granted Concourse an exclusive license to provide DAS Services in the Coverage Area and to install and operate the System in the Assigned Areas (as such terms are defined in the Agreement).

C. The Initial Term of the Agreement terminates on July 1, 2024, and pursuant to Section 2.01A of the Agreement, the Term may be extended for two additional five-year periods at Licensor’s option.

D. Licensor desires to extend the Term of the Agreement for two additional five-year periods, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Concourse agree as follows:

### AGREEMENT

1. Capitalized Terms. Capitalized terms used in this Amendment but not defined herein shall have the meanings assigned to them in the Agreement.

2. Extension of Term. Licensor hereby exercises its option to extend the Term for two additional consecutive five-year terms ending on July 1, 2034.

3. Carrier Milestone and Carrier Deficiency Payments.

a. Concourse shall use commercially reasonable efforts to enter into Carrier Agreements with two additional Licensed Wireless Service providers (such as AT&T and T-Mobile) on or before July 1, 2024 (the “**Carrier Milestone**,” and such date, the “**Carrier Milestone Deadline**”). If Concourse fails to satisfy the Carrier Milestone by the Carrier Milestone Deadline as set forth herein, then Licensor shall have the right to terminate the Agreement upon thirty (30) days prior written notice to Concourse. In the alternative, Licensor may elect to receive a payment from Concourse in the amount of \$9,000.00 each quarter that the full Carrier Milestone is not achieved (“**Carrier Deficiency Payment**” or “**CDP**”). The CDP shall represent lost revenues to Licensor due to an insufficient number of carriers. The CDP shall commence with the first quarter after the Carrier Milestone Deadline and shall continue until the earlier of the expiration of this Agreement or three carriers have been secured by Concourse. The CDP

shall increase at the rate of five percent (5%) each year beginning on the first anniversary of the first CDP payment. Licensor shall notify Concourse of its election to either terminate this Agreement or accept the CDP payments (the “**Election Notice**”) no later than sixty (60) days following the Carrier Milestone Deadline (the “**Election Deadline**”). If Licensor fails to deliver the Election Notice on or before the Election Deadline, then the rights and remedies granted to Licensor as described in this subparagraph (a) shall automatically terminate and the Agreement shall remain in full force and effect. Notwithstanding any of the foregoing, if Licensor elects to receive the CDP payments, Concourse shall have the right to terminate the Agreement at any time upon six (6) months prior written notice to Licensor. Following such termination, Concourse shall have no further obligations to Licensor with respect to the CDP payments; provided, that Concourse shall remain liable for any outstanding CDP payments due prior to the effective date of termination.

b. If the Agreement terminates in accordance with subparagraph (a) above, then: (i) Licensor shall be required to pay to Concourse, in addition to any other amounts that may be owed under the Agreement, the full unamortized amounts of all capital investments made following the Amendment Effective Date: (A) by Concourse under the Agreement; and (B) by Concourse and all Licensed Wireless Services providers pursuant to Carrier Agreements, each calculated on a straight line basis over the period of time commencing on the date such capital investment was made and ending on July 1, 2034, and (ii) the provisions of Section 5.03 of the Agreement shall apply.

4. Full Force and Effect. Except as modified hereby, the Agreement shall remain in full force and effect.

5. Severability. If any provision of this Amendment or any portion of any provision is held to be void, illegal or otherwise unenforceable by a court of competent jurisdiction, that provision will be deemed modified to the minimum extent necessary to render it enforceable. All other provisions of this Amendment shall remain in full force and effect.

6. Governing Law. This Amendment shall be governed by and construed and interpreted under the laws of the State of Nebraska, without reference to conflicts of law principles.

7. Counterparts. This Amendment may be executed in multiple counterparts (including by PDF or electronic signatures (e.g., DocuSign)), which PDF or electronic signatures will be accepted as original executed signatures of this Amendment), each of which shall be deemed an original but all of which shall constitute one and the same Amendment.

[Signature page follows. Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and effective as of the date of the last signature below.

Licensor:

**West Haymarket Joint Public Agency**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Concourse:

**Concourse Communications Group, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_