

## **SPECIAL COMMITTEE ON THE CIVIC CENTER**

**July 25, 2000**

**Immediately Upon Conclusion of  
Cmte. on L & B**

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Pariseau, Cashin, Hirschmann, O'Neil

Messrs: P. Levy, C. Creeden, D. Risco, S. Ashooh

Chairman Wihby addressed Item 3 of the agenda:

Communication from Peter Levy regarding Manchester Resident Reports.

Mr. Levy stated that was submitted last week to all of the Aldermen and the Mayor.

Alderman O'Neil asked what are we doing to try to improve on those numbers because they are not very good. They are certainly not following even close to what we had hoped they were going to be.

Mr. Levy answered we have held job fairs. We are hooked up now or are going to be shortly with the State unemployment agency. They have actively recruited. There just aren't a lot of people out there with employment at an all time low.

Alderman O'Neil replied but that is their responsibility. Wasn't that in the contract when they signed it?

Mr. Levy responded that they show evidence that they are trying, yes.

Alderman O'Neil stated this doesn't look like they are making too much of an effort here and that shouldn't be our problem. That is their problem. They are being paid to provide a service. When are we going to start enforcing some penalties?

Mr. Levy replied we have to first demonstrate that they have not been conforming or trying.

Alderman O'Neil responded my recollection is it was a little more than try. They need to start showing some numbers or as far as I am concerned we are going to start enforcing some penalties.

Mr. Levy stated again if the people aren't there.

Alderman O'Neil responded that is not my problem. These subs took the contract knowing well that was in the contract. That is not my responsibility. That is their responsibility and the language was specifically in there.

Mr. Levy replied the language...there was no set percentage for a goal but it stated that they would try to maximize the local residency.

Alderman O'Neil stated looking at one of these, 8% is unacceptable. Actually 26% is unacceptable. Is there any recommendation to change it? Are you getting more involved with this than you should be?

Mr. Levy asked in what way.

Alderman O'Neil answered it sounds like you are involved in setting up with the State and all of this stuff. That is their responsibility.

Mr. Levy stated it is the construction manager who went through that exercise.

Alderman O'Neil stated I appreciate getting this information, but I am very concerned about it and I hope there are strides made within the next month to improve on that.

Mr. Levy replied more subcontractors are coming on site and the goals that they indicated they are going to try to achieve are encouraging and if they can achieve them that will be great.

Alderman O'Neil asked what are those percentages.

Mr. Levy answered one is 75%, another is 50%. Those two stood out in my mind.

Alderman O'Neil asked as far as you are concerned Severino Trucking, I know DL King is pretty much out of there but Severino Trucking and Methuen Construction still has some time to go. How are they being encouraged...?

Mr. Levy interjected Methuen Construction are the ones who held the job fair and I think they got one or two people out of it.

Alderman O'Neil replied that is poor. In all honesty, it is very poor.

Alderman Hirschmann stated I think these are early, preliminary reports. I think what you will see is maybe when the plumbing contractors come on site, the electrical and some of the structural contractors, that those percentages will drastically...Peter didn't we probably award a local plumbing firm?

Mr. Levy answered it is a local plumbing firm, yes.

Alderman Hirschmann asked Select Energy.

Mr. Levy answered Denron.

Alderman Hirschmann stated so Denron is going to come on site and they are 90% a Manchester firm. The electrical is probably going to be a local firm. You are going to see a lot of local labor on this project. Your concern is probably a little early here.

Alderman Vaillancourt stated my concern is that is might be even worse than the figures appear to be at first glance. Please tell me if there is any truth to the scenario I am about to spell out. You arrived at certain percentages by taking the total number of people hired and calculating into that number as the base. Is there any truth to the fact that some people, maybe 10 from a West side temp agency, might have been hired and only held on the job for a day or two and then released but kept in to count the percentage in the figures? Is there any truth to any of this? If not, how did you arrive at these figures?

Mr. Levy answered I don't believe so. Those are calculations of man-hours off of payrolls. The payrolls indicated the place of residence.

Alderman Vaillancourt asked so this is a total man-hours, not total people hired and maybe only there for a day or something.

Mr. Levy answered no. It is all man-hours.

Alderman Vaillancourt asked than you would be happy to share the detail of this with us.

Mr. Levy answered yes.

Alderman Vaillancourt replied I would love to see that.

Chairman Wihby addressed Item 4 of the agenda:

Continued discussion regarding Owner Controlled Insurance Program.

Chairman Wihby stated I know that Harry Ntapalis is not here, but I know that the people from the broker are here.

Mr. Levy replied we have the brokers, Aon Insurance or I should say Aon Risk Services and you can direct any questions that you might have to them.

Chairman Wihby asked them to come to the microphone. Please state your name and location for the record.

Cathy Creeden from Aon Risk Services.

Chairman Wihby stated Cathy we had a discussion at the last meeting and hopefully Peter told you where we were. There was some discussion from the Board wanting to know more about how it worked and what liability there was for the City and the cost and all of that other stuff. Can you give us a break down on how it works and who the employer is in this case?

Ms. Creeden stated I would like to introduce David Risco from Aon Risk Services as well. Do you want us to start from the beginning as to the basic concept of an OCIP and how that goes together?

Chairman Wihby replied yes, please.

Ms. Creeden stated basically what ends up happening is when you are going to build a building as the owner and you are buying the insurance from all of the contractors because they are going to load their cost of insurance into their bid and you will pay for that and depending on that...that contractor buys their insurance based on their volume buying power. It can vary. Rates can vary depending on their size, their negotiating ability, their history, their experience so what ends up happening when you buy...when you put an OCIP together what you are doing is you are saying you are going to buy the insurance for the contractor and ask them to remove that cost from their bid and then you get volume buying power so you can buy it cheaper for everybody than they could buy it individually so, therefore, you are going to save money.

Chairman Wihby replied so you break out their bid, take out the worker's compensation and then you go from there on who is the low bid.

Ms. Creeden responded correct. The worker's compensation and the general liability and what you do is you ask them to net those costs out of their bid but then they have to identify what they netted out because we can check that number and we request back-up information and copies of their policies so we can document whether or not they took the right number out. We do have back-up contract language which says that if we discover at any point in the process that they are charging us for insurance that the City is providing to them, then you have the right to go back and amend their contracts accordingly. They have to submit documentation as to their rates and their premiums and we take a look at that and we make sure that they took the right amount out of their bid. Basically what happens from an operational standpoint is in a non-OCIP situation, all of those sub-contractors as employers would have their own worker's compensation policies and they would all be issued their own worker's compensation policies and in an OCIP situation, nothing changes. Each employer is issued his or her own worker's compensation policy. We issue them a separate policy for that project only and they still remain the employer. Nothing changes in the relationship. The only thing that changes is who is paying for that policy and in the case of an OCIP you would buy that for them.

Chairman Wihby asked so it doesn't matter if it is an OCIP or not, the owner is still that person who has the coverage, that individual sub-contractor.

Ms. Creeden answered the employer is still the individual sub-contractor, right. Nothing changes in that contractual relationship. They have their own policies for their own employees. You are just buying it for them at a reduced rate.

Alderman Gatsas stated the first thing is I assume you folks are not the broker of record.

Ms. Creeden answered we are the broker.

Alderman Gatsas asked who is the broker of record.

Mr. Risco answered Aon Risk Services.

Alderman Gatsas asked who brought you the package. Obviously, some agent had to bring you the package, didn't they?

Ms. Creeden answered no. We are an agent.

Alderman Gatsas asked how many OCIP's have you participated with in the past.

Ms. Creeden asked me individually or our unit.

Alderman Gatsas answered the unit.

Ms. Creeden stated we have 30 OCIP's going right now.

Alderman Gatsas asked could you tell me what the most minimal cost of the construction project is that you have in your unit right now.

Ms. Creeden answered I have a project for \$12 million, which is part of a rolling wrap-up. What that means is the owner puts owner-controlled insurance for all of their projects...well actually they have a cut-off. They have to be approximately \$5 million in payroll. We have one that is \$12 million and that is less than payroll so that is our lowest amount.

Alderman Gatsas asked and that is for what kind of a project.

Ms. Creeden answered it is actually a rehab project in downtown Boston.

Alderman Gatsas asked and that is probably part of a much larger OCIP. This is probably just a clean-up piece?

Ms. Creeden answered no. They have an owner-controlled program for all of their projects.

Alderman Gatsas asked so that is one segment of a much larger package.

Ms. Creeden answered yes.

Alderman Gatsas asked how large is the package.

Mr. Risco answered that project has two locations. One is this \$12 million site and the other one is about \$150 million.

Ms. Creeden asked are you trying to get to what is our lowest single OCIP.

Alderman Gatsas answered no. My question is if you were going to give somebody insurance advice, I think that if you took a run of OCIP across the country, not just in your unit, that you probably would tell me that \$75 to \$100 million would be a minimum number to take a look at. That is where the number should fall.

Ms. Creeden replied it is actually down in the \$50 million neighborhood.

Alderman Gatsas asked what are the fixed costs in this program.

Mr. Risco answered about \$330,000.

Alderman Gatsas asked is that the fixed.

Mr. Risco answered yes.

Alderman Gatsas stated well I am looking at a project manager's budgeting and it the OCIP fixed costs look like \$660,000 to me.

Ms. Creeden answered that includes a claim number.

Alderman Gatsas stated no, estimated claims expenses is \$320,000.

Mr. Risco stated the fixed costs in the OCIP program were \$330,000. There is a brokerage fee not included in that number.

Alderman Gatsas replied which is \$120,000.

Mr. Risco responded \$140,000. There is a builder's risk number, which I believe is right around \$55,000. There is an umbrella liability policy with a \$50 million limit and a \$90,000 premium.

Alderman Gatsas stated I am looking at numbers here in the budget. Peter, are they correct or are they incorrect?

Mr. Levy replied they are correct.

Alderman Gatsas stated so the \$660,000 is the fixed cost. It is not \$320,000 like he is telling me? The estimated claims expense is \$320,000. There is an additional \$140,000 of broker fees that is not in here.

Mr. Levy replied that is in the fixed costs.

Alderman Gatsas asked of which one, the \$660,000.

Mr. Levy answered yes.

Alderman Gatsas stated now the fixed cost again, so I can get it straight, is \$660,000. Are we agreeing on that?

Mr. Risco replied based upon what you are saying, yes.

Alderman Gatsas stated it is not based on what I am telling you. Peter, help me.

Mr. Risco stated I am not familiar with what Peter gave you.

Chairman Wihby stated let's go back. \$330,000 is what you said and \$120,000 is what, Pete?

Mr. Levy answered the \$140,000 is the broker's fee.

Chairman Wihby asked what makes up the \$660,000.

Mr. Risco answered in addition to that there is an umbrella policy for \$90,000 and there is a builder's risk policy, which is I believe \$52,350.

Chairman Wihby stated that is \$612,000. We are missing \$48,000.

Mr. Risco asked is the number you have \$635,000.

Chairman Wihby answered it is \$660,000. The number we have so far that you have added up to is \$612,000.

Mr. Risco stated the only other number that I know that should be added to that is the claims handling charges or the charges for handling the claims.

Chairman Wihby asked how much is that.

Mr. Risco answered if we had \$320,000 in claims, that charge would be just under \$22,500. It would bring that total up to \$635,000.

Chairman Wihby asked so Peter why is it \$660,000 in the budget.

Mr. Levy answered I would have to go back to the records. I may have carried a little fluff in it to be on the same side.

Chairman Wihby stated so as far as we know, \$635,000 is the total expense. Is that what we are saying?

Mr. Risco replied yes. Program expenses before you count in claims.

Alderman Gatsas asked is Aon doing a pre-screening of loss history of the sub-contractors.

Ms. Creeden answered no. That is typically handled by the construction manager's prequalification. In other words, Gilbane would have, when they send out their invitations to bid they would have criteria that they would take a look at it when bids come in. They look at things like experience modification factor.

Alderman Gatsas stated I certainly have a problem having a general contractor taking a look at losses on the job when you folks are the experts and you are managing the money of the OCIP.

Ms. Creeden replied well the insurance part of when you buy out a bid the insurance part of that cost is a very small percentage of the whole contract.

Alderman Gatsas asked when did you enter into a contract.

Mr. Risco answered we were officially contracted in May. We first became involved in this process last November.

Alderman Gatsas asked there are no contracts that are signed that have a December 5 date.

Mr. Risco answered no.

Alderman Gatsas stated I will ask the question again.

Mr. Risco replied I will answer it again. There is no contract with a December 5 date. The Board of Housing Authority approved it in May.

Alderman Gatsas asked the Housing Authority approved it when.

Mr. Risco answered in May. I think it was May 24 and I think I sent out a resolution from the Housing Authority to that effect. The agreement was drafted back in December.

Alderman Gatsas asked was there an executed contract on December 5, 1999.

Mr. Risco answered no.

Alderman Gatsas asked if I present one and show it to you and show you that a payment had to be made in December, what are you going to tell me.

Mr. Risco answered it is not true.

Alderman Gatsas stated well I have to go down to my car and get it.

Mr. Risco stated it might have said at the top drafted in December.

Alderman Gatsas replied it was signed by Mark Taylor and I believe but I am not going to stake my life on it...

Mr. Risco interjected by who.

Alderman Gatsas stated Mark Taylor of the Housing Authority. It came with the package when I asked about the OCIP agreement.

Chairman Wihby asked is that the one that came a couple of days ago.

Alderman Gatsas answered no. This came about two weeks ago.

Chairman Wihby stated I have something here signed by Mark Taylor.

Alderman Gatsas stated it was asking for a payment December 5. It was a 1999 date. It was signed by both parties. It wasn't a draft agreement. It was signed by both parties. Is there a loss control officer on the site? Is there a safety person on site?

Ms. Creeden answered no.

Alderman Gatsas asked is there a particular reason that you don't have a safety person on site. Was it negotiated out of the contract? I noticed in the contract that you have monthly meetings or monthly inspections.

Ms. Creeden answered our typical service would include a monthly visit. Usually the safety on site is a three-pronged approach. It is usually handled first by the construction manager because they have the contract with the sub-contractors and they are able to enforce agreements and that sort of thing. Secondly, the insurance company also takes a look at the project from a loss control inspector who usually goes to the site once a month and then we usually have somebody who would go to the site once a month as another set of eyes. That approach typically works well.

Alderman Gatsas asked do you in other sites have a full-time safety representative.

Ms. Creeden answered no.

Mr. Risco stated there may be exceptions to that around the country, but it is a rare occasion for a broker to have a full-time safety representative on a project.

Alderman Gatsas asked there is nothing that says it couldn't be negotiated into any contract.

Mr. Risco answered it certainly could be negotiated into a contract.

Alderman Gatsas asked who does the checking of the OSHA laws, citations or fatalities with any sub-contractor.

Ms. Creeden answered that would be done by the construction manager as part of their pre-qualification.

Alderman Gatsas stated the budget that I am looking at talks about \$320,000 in estimated claims.

Mr. Risco responded that is correct.

Alderman Gatsas asked how did you derive that number. Based on what?

Mr. Risco answered that is an estimate arrived at based on our experience both locally and when I say locally I mean wrap-ups being run out of our Boston office plus input from our wrap-ups around the country and also from the insurance company with whom we do business.

Alderman Gatsas asked so the \$320,000 is just a close guess.

Mr. Risco answered it is an estimate, yes.

Alderman Gatsas asked what have your percentages been with allocations of estimates and how do you estimate what it is going to be if you really don't know what the wage experience is going to be on it.

Mr. Risco answered we have an estimate of the payroll going into the project.

Alderman Gatsas asked where did you get that from.

Mr. Risco answered we got that from Gilbane.

Ms. Creeden stated it is also derived from the percentage of contract value. We have numbers that we use and formulas for arriving at an estimated payroll based on contract value.

Alderman Gatsas asked so if I total your two numbers, I come out to \$980,000. Is that correct?

Mr. Risco answered yes.

Alderman Gatsas stated so the estimated savings number is somewhere around \$170,000. Is that correct?

Mr. Risco replied I am not sure what the estimated savings number is.

Alderman Gatsas stated well you are talking about credits and reductions of \$1,150,000 on worker's compensation.

Mr. Risco replied if we didn't go with an OCIP.

Alderman Gatsas responded right, if the OCIP wasn't in place.

Mr. Risco replied right.

Alderman Gatsas asked is there a dividend program in the policy.

Mr. Risco answered no because it is a loss sensitive program by its very nature so the results go up and down as the losses go up and down. A dividend would be put into a different kind of a program.

Alderman Gatsas asked what kind of a program would that be put in.

Mr. Risco answered that would be put into something called a guaranteed cost program where there would be a fixed premium paid and then a dividend, if losses perform well or if losses are low, then a dividend is paid at the end of the project.

Alderman Gatsas stated which is normally a much more conservative approach.

Mr. Risco replied it is a more conservative approach.

Alderman Gatsas stated a much more conservative approach because if we look here what is the maximum exposure to this program.

Mr. Risco replied the maximum exposure under the program we put in place is...well I would have to add some different numbers. Under the primary casualty program with Kemper, the maximum exposure is \$1,370,000. I am referring to a letter written by the advisor to the City on March 3 where he recommended one of the particular programs we had offered.

Alderman Gatsas asked do you have a copy of that letter.

Mr. Risco answered yes I do.

Ms. Creeden stated we offered the two options. The guaranteed cost with the dividend option and the loss sensitive option and he recommended the loss sensitive option.

Alderman Gatsas asked who accepted that.

Ms. Creeden answered Mike Rodman from J.H. Albert.

Mr. Risco stated the letter was written to Ken Edwards by Michael Rodman who has been the City's insurance advisor for several years.

Alderman Gatsas asked does the \$1,370,000 include the liability portion.

Mr. Risco answered yes it does include general liability coverage.

Alderman Gatsas asked so if for some reason we hit limits, we aren't saving any money.

Mr. Risco answered the way it was proposed, if this goes to its maximum you are not saving any money.

Alderman O'Neil asked in your professional experience is going through all of this type of program to save \$170,000 worth it.

Mr. Risco answered for a project this size, I would say yes.

Alderman O'Neil asked it is.

Mr. Risco answered yes.

Alderman Hirschmann stated going on the \$320,000 OCIP estimated claim expenses in the budget, say this project goes for 18 months and there is excellent history where there are no claims and everything is wonderful and Peter doesn't have any problems. Does that \$320,000 stay in Peter's budget or does that go to you people?

Mr. Risco replied no that...let's approach it from a different way. If you go back to the original \$330,000 number that I spoke about, the actual worker's compensation and general liability program itself exclusive of the fee and the builder's risk is a \$330,000 fixed cost. The insurance company charges that number regardless of claims. If there were no claims, an unlikely scenario, but if there were no claims, then the cost of that worker's compensation and general liability would be \$330,000.

Alderman Hirschmann responded maybe I am confused but the \$330,000 you are talking about is in the \$660,000 budget. There is another number in our project budget that says \$320,000 for estimated claims expenses.

Mr. Risco replied those are estimated claims. Those are claims you may or may not have.

Alderman Hirschmann asked if those never happen, is that our money.

Mr. Risco answered if those never happen, those are bills you never paid.

Alderman Hirschmann asked so that is in our budget and we would retain that.

Mr. Risco answered you would retain that. You only reimburse the insurance company for those claims as they pay them.

Alderman Hirschmann stated I understand the budget much better now. Thank you.

Chairman Wihby stated the discussions we had was that the employer was the City or whatever and there was more liability because of that. That is not true?

Ms. Creeden replied that is not true. The sub-contractor still remains the employer and they still report the claims. Everything stays the same. You have no more increased liability for providing that policy.

Chairman Wihby asked so tell me why we shouldn't allow this to happen or be upset with it if we know that the worse thing that can happen is we break even. What is the negative to this? Why should we be upset with having something like this if we know that the worse thing is we break even on it? If there is no more liability and the costs aren't going to be any higher but there is a chance of saving money by doing this, and we anticipate \$170,000, why should anybody be concerned? If you were sitting in our seats, why should we be concerned? Is there anything we should be concerned about? The discussion was that it was going to cost more money or it could cost more money than if we had a conventional plan or that there was more liability that the City was taking. Those two items are not true. There is no more liability and it is not going to cost any more.

Mr. Risco answered there is no more liability. A wrap-up insurance program doesn't change liability, it just changes how the insurance treats it because it is one insurance company treating the entire project rather than several insurance companies or many insurance companies.

Chairman Wihby asked everybody that walks on-site is covered.

Ms. Creeden answered no.

Chairman Wihby asked how does that work.

Mr. Risco answered we agree with the construction manager and the sponsor that certain types of employment...most people working on the site will be enrolled. There may be reasons why particular sub-contractors who may only be there for a day or two might not be enrolled or there might be a particular reason why someone who is only there to supervise an activity or if there were asbestos removal or some other equally hazardous situation where we may chose not to enroll somebody for a certain reason.

Ms. Creeden stated we don't put in people who supply products. Basically it is people get enrolled that generate payroll and have on-site labor. That is what would trigger an enrollment.

Chairman Wihby asked so everybody who has on-site labor will be in it.

Ms. Creeden answered generally speaking unless it is a one or two day or short duration. What ends up happening is we are in contact with the people at Gilbane and they let us know when they award a contract and then we follow-up.

Chairman Wihby stated so if there is a trucking company or an electrical company or whatever and they hire 10 new guys tomorrow and they bring them on the job they are all covered.

Ms. Creeden answered that is correct.

Alderman O'Neil stated I want to go back to something you stated a minute ago about hazardous conditions and asbestos removal. There was asbestos removal on this job.

Mr. Risco replied it was removed before the OCIP program went into effect.

Alderman O'Neil asked what was the date that the program went into effect.

Mr. Risco answered April 5.

Alderman O'Neil stated secondly there have been some conditions with contaminated soil. Would those employees have been covered by this program?

Mr. Risco replied no. The environmental component was outside the scope of the wrap-up.

Alderman O'Neil asked even though that was after April 5 and that contract was on-site with payroll. How is it differentiated then? So D.L. King who did the asbestos abatement was no part of this program?

Mr. Risco answered that is correct.

Alderman O'Neil asked Severino Trucking who was the site contractor but involved with the contaminated soil, were they part of this program.

Mr. Risco answered yes, they were.

Alderman O'Neil asked so even though there was a risk with the soil, they were still part of the program.

Mr. Risco answered that is correct, but the risk was minimized by on-site monitoring. A testing company was hired to protect the workers under OSHA standards for those who come in contact with contaminated soils. They were monitored on a daily basis and that was again to protect the City's interest.

Alderman O'Neil asked if for some reason the estimate of \$320,000 plus the estimated savings of \$170,000 is exceeded, what happens. There is \$500,000 in claims on the project. What happens?

Mr. Risco answered if there are \$500,000 in claims on the project, it will be those fixed costs of \$635,000 plus the losses.

Alderman O'Neil stated there is a number here of \$320,000 estimated claims and then this savings that we talked about is \$170,000 so that is \$490,000. What happens if there is \$500,000 in claims?

Mr. Risco replied if there are \$500,000 in claims there will be \$665,000 in costs plus \$500,000 in claims.

Alderman O'Neil asked so the additional money will have to be transferred from other parts of the budget then.

Mr. Risco answered I am not sure.

Mr. Levy stated I carried \$320,000 I believe in the budget for claims.

Alderman O'Neil stated my question was we exceed \$320,000. Somehow that money has to get paid, correct?

Mr. Levy answered yes.

Alderman O'Neil asked how is it getting paid.

Mr. Levy answered it will come out of the budget.

Alderman O'Neil asked so that savings could be...the savings of approximately \$170,000 could have to pay claims.

Mr. Levy answered right.

Alderman O'Neil stated I just want to go back to our two guests. You mentioned that you have about 30 of these programs going on right now. How many are with municipalities?

Ms. Creeden replied none in the Boston office. Nationally, I don't know.

Alderman O'Neil asked could you get that information for us.

Mr. Risco answered as far as public sector programs, yes we can.

Alderman O'Neil asked could you forward it to the City Clerk's Office.

Chairman Wihby asked are you looking for a vote to be taken. This is already done?

Mr. Levy answered tonight we are looking for a vote on the deduct for the OCIP under the change proposal. The first portion of the deduct or change proposal #13 for a deduct of \$428,264.

Alderman Hirschmann moved to approve Change Proposal #13 for \$428,264. Alderman Pariseau duly seconded the motion.

Alderman O'Neil asked who, in fact, did you folks negotiate with. Manchester Housing and Redevelopment Authority?

Ms. Creeden answered yes.

Mr. Risco stated our agreement is with the Housing Authority, yes.

Alderman O'Neil asked do you happen to know because the name doesn't ring a bell to me, is Mike Rodman a consultant for the Housing Authority or for the City of Manchester.

Mr. Risco answered he is a consultant for the City of Manchester.

Alderman Gatsas stated I am looking at this agreement dated 12/5/99, the Brokerage Service Agreement. Are you familiar with it?

Ms. Creeden replied yes. We started out with a draft and we issued many revisions to it.

Alderman Gatsas stated let me just tell you what it says here. Attached per the request of the Civic Center Committee is a copy of the brokerage service agreement and owner-controlled insurance program manual. Please let me know if you have any other questions or additional information. It is signed by Kevin Clougherty. Now, I would assume that...

Alderman Pariseau interjected who was that letter to.

Alderman Gatsas replied Alderman Wihby. I assume this was in the agenda of our last meeting that everybody got. If that was the request or the response from the letter and if I am looking at this agreement that is dated 12/5/99 and it doesn't say draft and it says the fee is \$620,000, would you assume that is a draft? Do you think somebody would send me a draft agreement when I am looking in here and somebody...it is saying that the amount of brokerage commission compensation, one amount is due 12/1/99, one is 3/1/2000, 6/1/2000 and 9/1/2000?

Mr. Risco replied I believe that was the date of the last revision.

Alderman Gatsas stated all I am saying is this is what somebody sent me. Now if you read this you would assume that this contract started December 1, 1999 wouldn't you? That is what I was given based on the question that Alderman Wihby asked of the Finance Officer.

Mr. Risco replied what you didn't get was and I am not sure if you have it or not yet, there was a resolution from the Housing Authority that authorized the execution of that document, which Mark Taylor as Chairman executed and that was March 24.

Alderman Gatsas stated I asked for something at that last meeting and this is what I was sent. If this is incorrect, then somebody better get a file that is correct so that when people are asking questions or asking for information they are getting the correct information. Now that is what I was given. That is what I assumed. I assumed that people were getting paid before the prior Board even voted in favor of this project because that is what this is telling me and nothing else other than that. It is signed by Mark Taylor and it is signed by...

Mr. Risco interjected but that specific agreement wasn't signed until the resolution was made, which was March 24 and I can see what your confusion was because we didn't supply you with the resolution from the Housing Authority.

Alderman Gatsas stated going back to Alderman O'Neil's question, what are the losses there right now. Can you tell me?

Mr. Levy replied right now we have zero losses.

Alderman Gatsas asked in the number of man-hours that were used on the asbestos removal, what was the total wage number.

Mr. Levy answered I don't know that off the top of my head. I will have to get that for you.

Chairman Wihby stated the asbestos wasn't included in the OCIP.

Alderman Gatsas replied I understand so it has to be added back on to the \$980,000 so that you have a true figure of whether the \$1.5 million is a true turn back or not. This Committee was told that there was going to be a \$170,000 savings.

Chairman Wihby stated there still is, even without that.

Alderman Gatsas replied no there isn't because that had to be in the bid price. Am I correct?

Chairman Wihby responded no. It wasn't in the bid price.

Ms. Creeden stated the asbestos people would have included a charge for insurance in their bid. They may not have had to identify that charge so you might have a hard time getting the number.

Alderman Gatsas replied it is not a hard number to get as long as you know number one if you just use the State rate and divided the wages by 100 and multiplied it by the State rate you are going to be pretty close. I want to say that the worker's compensation rate for the State for asbestos removal is somewhere around \$59 or \$60 per \$100.

Ms. Creeden responded there is going to be a discount on top of that I am sure.

Alderman Gatsas replied not necessarily. They could have a modification factor that would take it on the other side. A discount may not be true.

Ms. Creeden stated if you got a copy of their labor rate sheet, you might be able to get it. They might be charging you by the hour for insurance and you might be able to get that if they included it as part of their bid for extra work. You might get that number.

Chairman Wihby asked why does that have any bearing on this \$170,000 savings.

Mr. Risco answered I don't believe it does.

Alderman Gatsas stated it does if we were told that the whole \$1.5 million was the cost of worker's compensation.

Chairman Wihby replied but not for the asbestos we were told. This came in after the asbestos was done.

Alderman Gatsas asked this was done after the asbestos was done.

Mr. Levy answered yes.

Alderman Gatsas asked what was the date that this OCIP was put in place.

Mr. Risco answered April 5.

Alderman Gatsas asked are you sure.

Mr. Risco answered on or about April 5.

Alderman Gatsas stated so when this says received June 20, that is just...the dated agreement that I am talking about that says December 1, 1999...

Mr. Risco interjected the OCIP is an insurance program that we ultimately abound with an insurance company. The date of that program and the date of our brokerage services agreement wouldn't necessarily be the same. Sometimes they are and sometimes they aren't.

Chairman Wihby called for a vote on the motion to approve Change Order #13. The motion carried with Aldermen O'Neil and Cashin voting nay.

Chairman Wihby addressed Item 5 of the agenda:

Communication from the Economic Development Director expressing his understanding of the Committee's concerns and its expectations with respect to his scope of coordination responsibilities concerning civic center related issues.

Chairman Wihby stated Jay wrote us a letter expressing his understanding of what we wanted and he is not here today so I guess we should table this unless we want to take some other action with someone else. It sounds like Jay doesn't want to do much of the stuff that we want him to do or that Alderman O'Neil wanted him to do. We can table it or think about giving it to somebody else to do.

Alderman Vaillancourt stated I have a suggestion. I am not sure how much money we have in the budget, but I think I know how much Jay Taylor's salary is and I think we could probably get a citizen to oversee this project and it would save the City upwards of millions of dollars for a fraction of the price that we are paying

Jay Taylor. I think this Committee should, in all seriousness, and my comment is not in cheek now, ask Donald Welch if he would be willing to undertake this responsibility.

Alderman Hirschmann asked you mean the guy that is against the whole project.

Alderman Vaillancourt answered I think you need somebody that is against the whole project to bring the project in on line.

Chairman Wihby stated one of the persons that we have used and Alderman Gatsas had a good idea was Bill Jabjiniak over in the Planning Department. He has done a good job with 1030 Elm Street. I don't know if that is somebody that we want to dedicate to this project to oversee it or if we want to have Jay come in and talk about his letter. It sounds like in his letter he is trying to take less of the responsibility than we wanted him to take or we can just tell him that we want him to take it all when he comes to us.

Alderman O'Neil stated I didn't think we were asking for a heck of a lot.

Chairman Wihby replied that is what I thought too, but...

Alderman O'Neil interjected we asked that he be involved in some of these negotiations and report to us what is going on. I didn't think we were asking for a lot to be honest with you.

Chairman Wihby asked do you want to just wait until Jay comes back. Do we know if he is coming back next week?

On motion of Alderman Pariseau, duly seconded by Alderman Cashin, it was voted to table this item.

Chairman Wihby asked Mr. Ashooh who we got for naming rights.

Mr. Ashooh answered the only thing I can tell you at this point is that we are involved in naming rights negotiations. Obviously if it looks like we can bring them to a successful conclusion, being mindful of Alderman O'Neil's request, you will be getting a confidential package and you will know that we have something substantial to present to you. Those negotiations are ongoing and as soon as the information is available you will have it. The only other thing I will tell you is that we hope to get before this Committee in some fashion a due diligence procedure for the transition of SMG into the building management position for the civic center. Obviously, Ogden had agreed to a series of guaranteed and financial tests and the financial advisor for the City, Richard Tutoro, is constructing a series

of questions that this Committee will be getting to assure the City that SMG, in assuming that role, will meet all of the tests in the letter of the contract so that what was negotiated by Ogden is accepted and performed on by SMG.

Chairman Wihby asked have we received that yet from SMG.

Mr. Ashooh answered I believe the draft version may be going to the City Solicitor for review before you get it.

Chairman Wihby asked are you aware of any problems.

Mr. Ashooh answered I don't know of any problems. I have seen the document. We have had some input on it and what we are trying to do is get you a very clear bottom line on exactly what the key points are as far as SMG's ability to perform and SMG's assurance that they will treat this building well considering the fact that they manage other buildings in the region. We need to know that they can deliver programming to this building even though they have other buildings in the region to manage as well. You will have an opportunity to review those questions that are being prepared and we would like to get them to SMG as soon as possible so that they can respond and then the City can endorse or sign that contract to SMG. One of the key features is that SMG's role as the building manager they have a significant role to play in the construction of the facility to assure that they have a state-of-the-art building to manage and, therefore, getting them involved in the project which is a budgeted number which they are supposed to be doing now is important to us. We would like to move this process along. As soon as that document is available, this Committee will have it and we will be looking to you to authorize it or authorize the financial advisor for the City to go forward on that due diligence. Those are the two items that I know of at this point.

Alderman Gatsas stated I know I am not a member of this Committee, but I know that naming rights are a very vital part of this project. I think that the economic boom that we have seen is certainly part of the vitality of the price that is going to be brought. Skip, I certainly don't think that you aren't responsible enough to negotiate that portion, but I think a member of this Committee should be part of that team so that there is some closer input of what is happening with the naming rights because...let me just ask a silly question. Let's assume the stock market falls flat on its feet and God forbid that happens, I would say that the naming rights and the economy takes a downturn, the naming rights aren't going to be as valuable as we think they are.

Mr. Ashooh replied first of all, I am not negotiating that contract. I am aware of what is going on and I am keeping tabs on it.

Alderman Gatsas asked who is negotiating it.

Mr. Ashooh answered Scheer-Stern is negotiating it. John Pritchett, in particular, who is the same person who negotiated the record pouring rights deal that we got for this facility in the Northeast. He has also negotiated a number of naming rights deals already. They are actually doing the negotiations with a couple of parties. Everything they do is subject to review by this Committee before it is accepted and signed so this Committee will know all of the details of the naming rights deal before it is accepted.

Alderman Gatsas stated you didn't answer my question. My question was what happens if the economy turns down. What is the worth of the naming rights because that is a vital part...

Mr. Ashooh replied the worth of the naming rights does not change because it is a contract that is enforceable by law.

Alderman Gatsas responded you still didn't answer my question. You don't have a contract right now.

Mr. Ashooh stated if we don't complete negotiations on this contract before an economic catastrophe, you are right, we probably wouldn't be able to sell them for the same amount.

Alderman Gatsas replied well I guess we need to know how close you are to the naming rights. We have heard that dance tune for the better part of six months.

Mr. Ashooh responded in all honesty, the naming rights negotiations have been going on for about 18 months. Part of that is an effort not to undersell the value of the naming rights on this building. Naming rights, as this Committee has heard and the full Board has heard over the past from our consultant is a relatively new concept and negotiating them can't be complete until you identify whether you have, let's say a financial service provider or telecommunications company, because the package is tailored to them. Right now, there are very hard negotiations going on between two principles. I am not going to jump ahead and say that this is a done deal. I am going to let them come back to this Committee and say we have a deal of substance, but if it takes another year or if it takes six months or if it takes 30 days, the idea is to secure as much money for this project as possible. We get one chance for let's say 15 years to sell the naming rights before that contract renews so the consultants to the City on this are working as hard as they can to maximize those dollars.

Alderman Gatsas stated I don't question that, but obviously there has to be some sort of time-frame because the economic boom, I think, we all know that we have been in this cycle and when it turns and I am sure that there has to be some concern about the contamination and whether that has been concluded.

Mr. Ashooh replied I don't think that affects the naming rights. I can tell you what has had I think a qualitative effect and what I think has created some immediacy and some renewed energy in naming rights and part of that, frankly, is the purchase of controlling interest in the hockey team by the Los Angeles Kings. The groundbreaking had a significant role to play in the naming rights negotiations because frankly the project became real. It is a project being watched nationally and with the groundbreaking and the concrete being poured and the involvement of the Los Angeles Kings, I think you should expect to see some results but I would hesitate to put a timeframe on it because I don't think it is anything that we can control.

Alderman Gatsas stated as I said, Mr. Chairman, I believe someone from your Committee should be a lot closer to this than just we will tell you when it happens.

Alderman O'Neil stated may I make a suggestion, Mr. Chairman. Why don't we have Mr. Pritchett come in and see us?

Mr. Ashooh replied I will be in contact with him in the next two or three days and I am sure he would be happy to come in.

Alderman O'Neil moved to have Mr. John Pritchett appear before the Civic Center Committee. Alderman Cashin duly seconded the motion. Chairman Wihby called for a vote. There being none opposed, the motion carried.

Chairman Wihby asked is there an expense to this.

Mr. Ashooh answered yes. He is not going to walk up. If he is in this part of the country, we might be able to engineer something. What I would like to do is talk to him and see what his travel schedule is like and if he is here we might be able to minimize the cost in bringing him up.

Chairman Wihby stated let me know when he is going to be up here and we can schedule a meeting.

Alderman O'Neil asked can we bring Mr. Levy up again so I can review the budget.

Chairman Wihby stated we got this budget that we finally asked for and these are the totals that you are going with. What we need know as we go forward maybe monthly is how much money is expended. Maybe it could be done on an Excel spreadsheet that shows how much money is spent in each one of those accounts.

Mr. Levy replied each month there is a column to the right reflecting every draw that is made on each line item. It changes each month so you can track it on a monthly basis.

Chairman Wihby asked when does that come out.

Mr. Levy answered it will come out again right after the first of the month.

Chairman Wihby asked and it will show us if there is any money that we changed from contingency or whatever. It will show those change orders and everything else?

Mr. Levy answered yes. There is a separate sheet for the contingency draw down. I believe I sent that with the residency report. It was attached to that.

Chairman Wihby stated you get it monthly and we should be able to see that to.

Mr. Levy answered right.

Alderman O'Neil asked on July 25 the guaranteed maximum price is what.

Mr. Levy answered I don't have it in front of me right now.

Alderman O'Neil stated I have a number in front of me of \$44,197,000. That is the guaranteed maximum price?

Mr. Levy answered right.

Alderman O'Neil asked that will be the only guaranteed maximum price, correct.

Mr. Levy answered it will go up.

Alderman O'Neil asked then why do we call it a guaranteed maximum price.

Mr. Levy answered if there is a change of scope, then there is going to be a change in that guarantee. These issues with the soils are a scope change that was not included in the original document so that is added into the GMP and it will be deducted out of contingency.

Alderman O'Neil asked so it is \$44 million plus the \$1.1 million.

Mr. Levy answered the \$1.1 million is an estimate. We are hoping it is less than that. We know that we have \$300,000 that is coming out of that \$1.1 million. We are estimating \$600,000 for removing the contaminated soil to an approved facility. We are trying to minimize...that is based on a quantity of 16,000 cubic yards. We are trying to minimize that yardage and hopefully it is going to be significantly less and then the testing costs will be up where they are at. I have also included \$150,000 in there for one more tank.

Alderman O'Neil asked what would be wrong with getting rid of the phrase guaranteed maximum price and just calling it construction costs. It has changed at least five times.

Mr. Levy answered no actually it has changed twice.

Alderman O'Neil stated I will go back through these documents where it has changed at least five times.

Mr. Levy answered not before the contract was signed.

Alderman O'Neil replied you could be correct on that but this thing has changed about five times. I think we should stop being misleading and calling it that and just say the construction cost is in my opinion.

Mr. Levy responded okay.

Chairman Wihby stated basically when it changes, Peter, isn't it true that it goes higher but the contingency goes lower.

Mr. Levy replied that is correct.

Chairman Wihby stated we knew contingency was going to be used for problems that arose and we knew that we were probably going to use all of that anyway. So, even though we are talking about maximum price and we say we are over the maximum price, we are still not over budget as far as the total goes because we had that money in contingency that we knew we had to use.

Mr. Levy replied that is correct.

Alderman Vaillancourt asked would it be logical then to assume that the guaranteed maximum price could not exceed \$44.197 million plus the contingency of \$2.761 million. That we will never see a figure larger than, according to my math, approximately \$47 million.

Mr. Levy replied that is correct.

Chairman Wihby asked so the \$44 million plus the \$2 million, if you add those two together it is \$46,959,402. That should really be the guaranteed maximum price.

Mr. Levy stated that would be the total price for construction. Now there is one other instance on the F, F & E budget where some of that may be given for installation to the construction manager that would also increase that number but again that comes out of the F, F & E budget.

Alderman Vaillancourt stated well the F, F & E budget is substantial. It is upwards of \$5 million. Are you now saying that it could go from \$47 million to \$52 million?

Chairman Wihby replied he is saying that it could go down. He is saying you could probably take a part of the F, F & E budget and add that to the construction costs but reduce the F, F & E number.

Alderman Vaillancourt asked so the construction costs could go up beyond \$47 million.

Mr. Levy answered the construction costs could go up but again the overall budget will not.

Chairman Wihby stated that is where we are having confusion. People think that we are over budgeted, yet if you take the total project cost we are still within that because we are just moving it from contingency to the maximum price and maybe moving some of the F, F & E to the construction price. The total project cost is still the same.

Alderman Vaillancourt stated we might just end up with no fixtures then.

Alderman Hirschmann stated my only question with the budget that we are looking at is originally and things change but I don't remember taking about this, originally we had a stub fund budget of \$1.2 million or something in case things didn't happen on time. I guess we went out and bought insurance.

Mr. Levy replied yes.

Alderman Hirschmann asked once we bought that insurance did we get rid of the stub fund as part of the budget.

Mr. Levy answered that is correct.

Alderman Hirschmann asked that is not in here.

Mr. Levy answered right.

Chairman Wihby stated so you will get us a monthly budget on exactly where we are and there is some other information that I think Alderman O'Neil asked for.

Alderman Vaillancourt stated I have a question regarding something and I am not sure if Mr. Levy would be the one to answer it, but I brought up about three or four months ago the overruns of legal expenses in Phase II. Is that coming out of Phase III? How has Craig, Wieners and Craig been paid and are they still being paid?

Mr. Levy answered no. He has had no further costs than what was shown in the budget.

Alderman Vaillancourt asked was it paid out of Phase II or the current phase.

Mr. Levy answered he was paid out of Phase II, I believe.

There being no further business to come before the Committee, on motion of Alderman Hirschmann, duly seconded by Alderman Pariseau, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee