

Memorandum For: Finance and Personnel Committee

From: Deputy City Attorney Scott R. Letteney

Subject: Analysis of Substantive Civic Centre Contract Amendments

Dated: October 24, 2006

Alderspersons, these are the substantive proposed changes to the Civic Centre Contract, which would take effect January 1, 2007.

ARTICLE 2 – The term of the contract changes from one year with four one-year renewals to one five-year term.

*Original Language:* The Agreement shall be for a term of one year (the "Term"), commencing on January 1, 2005 (the "Commencement Date") and expiring on December 31, 2005, unless earlier terminated as set forth herein. Unless terminated pursuant to Section 8.5 hereof, this Agreement may be renewed for four one year renewals, commencing on 1 January 2006. Owner shall provide 90 days' written notice to Manager of its intent not to renew this Agreement. Any references herein to a period of a "year" shall mean a calendar year, unless otherwise specifically provided.

*New Language:* The Agreement shall be for a term of five years (the "Term"), commencing on January 1, 2007 (the "Commencement Date") and expiring on December 31, 2011, unless earlier terminated as set forth herein. Any references herein to a period of a "year" shall mean a calendar year, unless otherwise specifically provided.

ARTICLE 5.1 – The Fixed Management Fee increases, but it is based upon the same formula as in the original contract. For 2005, the fixed management fee paid to Compass was \$5,000. For 2006, and thereafter, the fixed fee increases based upon the increase in the consumer price index. This formula remains.

*Original Language:* Management Fee. Commencing on January 15, 2005 and continuing on the fifteenth day of each month thereafter during the first year of this Agreement, Manager shall be paid a management fee of \$5,000 per month for the current month, prorated for any partial months (the "Management Fee"). The Management Fee for any subsequent renewal years shall be payable in the same manner in an amount increased by the percentage increase in the Annual Consumer Price Index-All Urban Consumers; Not Seasonally Adjusted; Midwest Area-Size Class B/C; All Items; Base Period-December 1996=100; Bureau of Labor Statistics Series ID CUURX200A0; 2004 Annual to be used as the basis for

adjustments. Manager shall submit a detailed monthly invoice to Owner for the Management Fee.

*New Language:* Management Fee. Commencing on January 15, 2007 and continuing on the fifteenth day of each month thereafter, Owner shall pay to Manager a Management Fee for the then-current month prorated for any partial months (the "Management Fee"). For purposes of calculation, a monthly Management Fee of \$5,167.81 for calendar year 2006 shall serve as the Base Management Fee. The Management Fee for 2007 and subsequent years shall be the Base Management Fee as increased annually by the percentage increase in the Annual Consumer Price Index-All Urban Consumers; Not Seasonally Adjusted; Midwest Area-Size Class B/C; All Items; Base Period-December 1996=100; Bureau of Labor Statistics Series ID CUURX200A0; 2004 Annual to be used as the basis for adjustments. Manager shall submit a detailed monthly invoice to Owner for the Management Fee.

ARTICLE 5.2 – The Variable Management Fee formula changes. This is a fee paid to Compass based upon the reduction in the City's subsidy to the Civic Centre. For the original calculation, the fee used 2004 as a base year. In the original contract, Compass would be 40% of the reduction in the City's subsidy to the Civic Centre up to a reduction of \$150,000. For any reduction in the subsidy over \$150,000, Compass would be paid 50% of the reduction. Under the new contract, Compass would be paid 50% of any reduction in the City's subsidy. A three-year rolling average will be used as the base line. Timing of the payment of the variable fee is also clarified.

*Original Language:* Variable Fee. Compass shall, if applicable, receive annually a Variable Fee equal to the following percentages of reduction in Owner's actual 2004 audited operational subsidy of the Civic Centre, defined as the operating loss net of depreciation: 40% of savings up to \$150,000, and 50% of savings over \$150,000, such amount being limited by the 2004 audited operational subsidy. For calculation purposes, the annual subsidy shall be defined as the net operating loss of the Civic Centre, net of the occupancy charge and the Manager's Management Fee as described in Section 5.1 if recognized by the Manager as Civic Centre revenue, per Manager's audit.

*New Language:* Variable Fee. Owner shall annually pay Manager, if applicable, a Variable Fee equal to 50 percent of the actual decrease in Owner's audited Annual Subsidy of the Racine Civic Centre.

5.2.1 Calculation. For calculation purposes, the "Annual Subsidy" shall be defined as the net operating loss of the Racine Civic Centre, net of the occupancy charge, depreciation, and Manager's Management Fee as described in Section 5.1 herein, for the average of the three immediately preceding calendar years.

5.2.2 Payment. Ninety percent of any Variable Fees due to Manager for each contract year, based upon the then-available calculation using pre-audited financial statements, shall be paid by Owner to Manager no later than February 15 of the next year or 15 days after the receipt by Owner of Manager's financial statements, whichever is later. Final payment of any remaining Variable Fees due to Manager for each contract year, based up the audited financial statements, shall be paid by Owner to Manager no later than July 1 of the next year.