

CAPITAL IMPROVEMENT BOARD OF MANAGERS
OF MARION COUNTY, INDIANA
Minutes of Meeting
Thursday, November 13, 2014
Indiana Convention Center Boardroom

A Meeting of the Capital Improvement Board of Managers of Marion County, Indiana ("Board") was held on November 13, 2014 in the Indiana Convention Center's Boardroom.

Board Members present included Ann Lathrop, Jay K. Potesta, David N. Shane, Carolene Mays, Milton O. Thompson, Brenda Myers, and Jim Dora Jr. as well as Ex-Officio, Leonard Hoops. Board Members Douglas R. Brown and Maggie A. Lewis were absent. Others in attendance included Barney Levengood, Executive Director, Megan Ornellas, CFO, Jack Woodside, Special Projects Consultant, W. Tobin McClamroch, General Counsel, Bingham Greenebaum Doll LLP, Donald Graham, General Counsel to the Board on Construction Matters,, Bingham Greenebaum Doll LLP, Bill Benner, Pacers Sports and Entertainment ("PS & E"), Kevin Bower, PS & E, Robert Vane, VSI, James Wallis, Visit Indy ("VI"), Chris Gahl, VI, Daren Kingi, VI, Jerry Semler, VI, and members of the media. A copy of the list of those who signed in upon arrival is also attached hereto.

The first agenda item was **Approval of Minutes** for the Monday, October 13, 2014 meeting. Upon a motion by Mr. Potesta and seconded by Mr. Shane the Minutes were unanimously approved as presented.

Ms. Ornellas then presented the **Financial Update** to the Board as per the supporting documentation, which is attached and made a part of these minutes. Ms. Ornellas reported Tax Revenues were below budget in September, but year to date are \$1.6M, or 2% over budget. When revenues are adjusted for the new auto and admissions taxes, Tax Revenues are up \$2.5M, or 4.5% from 2013. Ms. Ornellas explained Operating Revenues through September are up \$3M or 16% over budget. Compared to 2013, Operating Revenues are down \$1.7M or 7%. She noted Operating Expenses through August were \$22.9M or 27% below budget, with more than \$14M of that positive variance in Repairs and Maintenance/Capital Projects. Ms. Ornellas concluded overall the CIB has a \$3.9M positive cash flow for the month and a year to date positive cash flow of approximately \$9.1M. She reminded the Board the CIB still has \$23M in Repairs and Maintenance/Capital projects to complete. Ms. Lathrop asked if there were any questions for Ms. Ornellas regarding the Financial Statements and there were none at this time.

Field House Management Report

Ms. Ornellas informed the Board there was an additional report in the packet, attached to and made a part of these Minutes, which includes financial information from

Fieldhouse Management, LLC pursuant to Section 6(b) of our agreement with the Pacers and explained this is the Statement of Revenue and Expenses for the quarter and 3 month period ending September 30th, 2014. Ms. Ornellas informed the Board this information has been certified by Fieldhouse management Treasurer, Kevin Bower. Mr. Bower was present at the meeting and available to answer any questions from the Board.

Ms. Lathrop introduced Leonard Hoops who presented the **Visit Indy Update** with the Market Share Performance report and Room-Night Production documents attached to and made a part of these Minutes. Mr. Hoops noted Visit Indy was ahead of their pace for 2014 and all the numbers looked very strong. Mr. Hoops mentioned the NCAA Planning Committee would be announcing the host cities for the next Final Four tournaments on Friday, November 14th. Ms. Lathrop asked if there were any further questions for Mr. Hoops and there were none at this time.

Mr. Levensgood presented the **ICCLOS Sales Report** which is attached to and made a part of these minutes. He noted this was a good month for the building with occupancy at 61%. He highlighted the success of several recent events including Awesome Con, the Circle City Classic and the Do-It-Best Corp. October Market. Mr. Levensgood added the Music For All- Bands of America Regionals and Music For All- Bands of America Grand Nationals event coming up later in the month has helped to make Indianapolis a primary location in the country for Band contests. He also noted the upcoming Legos Kids Fest as a noteworthy event for the building and city. Ms. Lathrop asked the Board if they had any questions for Mr. Levensgood and there were none.

The next item on the agenda was the **Close out Agreement with ISCBA** which was presented by Ms. Lathrop with supporting documentation attached to and made a part of these Minutes. Ms. Lathrop began by thanking David Frick, John Klipsch and Barney Levensgood for working very collaboratively together to resolve this and also thanked Tom Boyle for all his hard work and efforts that went into getting to this point.

Ms. Lathrop outlined the major points of the Agreement to refresh the Board's memory. These points are included below:

Introduction:

Proposed Agreement is between the CIB, ISCBA and OMB to resolve all known issues relating to the design and construction of Lucas Oil Stadium ("LOS") and the Phase V Expansion to the Indiana Convention Center ("CCE").

Background/Overview of Projects:

ISCBA was responsible to fund, design and construct both LOS and CCE;

ISCBA kept CIB informed and CIB reviewed and commented during design and construction.

Once each project was substantially complete:

- 1) ISCBA leased to OMB;
- 2) OMB subleased to CIB; and
- 3) CIB took over operation and maintenance.

November 13, 2014

Page | 3

Substantial Completion dates:

- 1) LOS – 8/15/2008; and
- 2) CCE – 1/9/2011.

Definition of Substantial Completion – buildings had reached the stage of construction where CIB could occupy and utilize the facilities for their intended use:

- 1) CIB was able to commence occupancy and use both facilities on the above referenced dates; and
- 2) No event has been cancelled or delayed in either building since they were turned over to the CIB.

Overview of Issues:

These were both large and complex projects;

There were numerous agreements and commitments between the CIB and ISCBA regarding the design and construction of the facilities;

While both projects were substantially completed by the ISCBA and turned over to the CIB:

- 1) There were some open design and construction items at the time of substantial completion;
 - A) There are always punch lists – especially on projects of this size and complexity;
- 2) There were some open items relating to certain agreements and commitments which parties had made during design and construction; and
- 3) There were some other building issues that were discovered after the facilities opened and after CIB commenced operation and maintenance.

While considerable time has passed since these buildings were turned over to the CIB, it is not uncommon for issues to arise (especially on projects of this size) and, as I will explain, the CIB and ISCBA have been actively engaged in determining how best to address and resolve the problems, while avoiding any adverse impact to the lessees, licensees, promoters and other clients of the CIB who utilize the facilities.

Approach to Address Issues:

Focus of CIB and ISCBA was to:

- 1) Identify, evaluate and determine what needed to be done to resolve the various open issues;
- 2) Instead of CIB and ISCBA pursuing claims against one another, the parties each undertook initial responsibility to resolve various issues;
- 3) Goal was to make sure that issues were addressed both promptly and properly, while ensuring that all scheduled events continued in the facilities and to minimize disruption to the ongoing operation and maintenance of the facility; and
- 4) CIB and ISCBA also agreed to keep track of how the various items were resolved and who initially took responsibility for various items, with the proper and final allocation of responsibility for all the known issues to be reserved to a later date.

Review of Agreement:

It is staff's and counsel's belief that we have now reached the point where all the known issues have been completed and/or resolved;

The Close Out Agreement included in your Board Packet is staff's and counsel's recommendation of the final allocations which should be made between the ISCBA and CIB in order to "settle" all known issues;

Brief overview of key items covered by the proposed Agreement:

- 1) As you may recall, some premature corrosion issues were encountered with the plumbing system at LOS;
 - A) ISCBA removed certain piping from LOS and replaced with another pipe material which has resolved the issues;
 - B) Under the Close Out Agreement:
 - i) ISCBA agrees that CIB has no responsibility for the cost of such remedial work;
 - ii) CIB agrees that it is satisfied with and has accepted the LOS piping system as modified; and
 - iii) CIB grants the ISCBA a complete release with respect to such system.

- 2) CIB undertook certain repairs and modifications to address and resolve various issues at both LOS and CCE – Examples:
 - A) Installed stairs at Lucas Oil Plaza to facilitate how ticket holders or other users of LOS are able to move between levels of the Stadium – vertical transportation;
 - B) Modified certain mechanical and electrical systems so that they could be operated more efficiently – enhanced control of certain lighting system and the steam superdeheater;
 - C) Limited modification and replacement of plumbing system at CCE in an effort to protect against possible corrosion at that facility.
 - D) Under the Close Out Agreement;
 - i) CIB accepts responsibility for all the changes and modifications that it has made; and
 - ii) ISCBA has agreed to make a \$535,000 payment to reimburse CIB for certain of its remedial costs.

- 3) Example of how outstanding agreements/commitments between the parties are being resolved:
 - A) Decision was made to have ISCBA install carpet in the existing Convention Center to match the CCE;
 - B) It was most economical to have ISCBA preform this work;
 - i) CIB agreed to reimburse the ISCBA;
 - C) However, CIB set-off against this payment:
 - ii) Increase utility charges;
 - iii) Cost to acquire turf inserts for soccer configuration; and
 - iv) Cost of fork lift that ISCBA was to provide to move certain seating sections in the lower bowl.

- 4) Last item deals with an open issue that still needs to be addressed – replacement of insulation installed on the chilled water pipes at LOS:
 - A) Insulation was not installed correctly – pipes sweat and have reduced insulation capacity;
 - B) Insulation needs to be removed and correctly reinstalled;
 - C) Under the Agreement:
 - i) CIB will be responsible to remove and reinstall the insulation – CIB will control the design and construction of this work – makes the most sense given that CIB operates the facility;
 - a. CIB intends to immediately commence the necessary design and to bid and award a contract for this work in 2015:

- ii) ISCBA will make an initial payment of \$1,000,000 to CIB to be used to pay design and construction costs; and
 - 1. To the extent that total costs exceed \$1,000,000, the parties shall share the additional costs 50/50, although the ISCBA's total payment under the Close Out Agreement (including the \$535,000 and all payments related to replacement of the pipe installation) is capped at \$3,000,000.
- iii) Based on preliminary estimates, the costs to both design and properly install new piping insulation on the chilled water piping should fall between \$1.5 and \$2.0 million;
 - 1. Assuming those estimates hold true, under the Agreement the ISCBA will pay between \$1,250,000 and \$1,500,000, with the CIB paying the balance.

Conclusion:

The Close Out Agreement provides for resolution of all known issues and ISCBA and CIB grant mutual releases to one another with respect to such known issues;

- 1) The releases do not extent to "latent conditions", if any.
- 2) Both parties reserve their respective rights, claims and defenses to latent claims first discovered after the approval and execution of the Agreement.

Ms. Lathrop asked the Board if there were any questions. Mr. Potesta inquired if the punch list was complete. Mr. Levengood explained the punch-list was complete with the exception of the piping insulation replacement issue and he added it was in the CIB's best interest to control the timing of this repair to be able to schedule any work around significant events and potential playoff games. Ms. Lathrop asked the Board if there was a motion to approve the ISCBA Close-Out Agreement. Upon a motion by Ms. Mays which was seconded by Mr. Potesta, the ISCBA Close-Out Agreement was unanimously approved as presented.

Ms. Lathrop introduced Mr. Levengood to present the next several agenda items. Mr. Levengood explained there was a series of Capital projects and repairs he would go through some small and some large, totaling approximately \$3.4 M and to feel free to stop and ask him questions as he presents them.

Mr. Levengood presented the **Westin Entry Drive Renovations** which is attached to and made a part of these Minutes. He explained this was the removal and replacement of a traffic membrane at the entrance drive on the east side of the Westin hotel and a collaborative effort between the CIB and the Westin. This project was estimated to cost less than \$150,000 and, therefore, the CIB solicited quotations from 3 contractors consistent with Indiana law. The lowest most responsive and responsible quote was from Water Proofing Contractors, Inc. in the amount of \$138,700.00. He added Staff and counsel have reviewed all of the documents and present it to the Board as a clean quote and would ask for the Board's approval. Ms. Lathrop asked if there were any

questions from the Board for Mr. Levensgood. There were none. Upon a motion by Mr. Shane and seconded by Ms. Mays the **Westin Entry Drive Renovations** was unanimously approved by the Board.

The next agenda item was the **ICC Halls F & G Handling Units (AHU) Replacement** of which is attached to and made a part of these Minutes. Mr. Levensgood explained to the Board these were the original air handler units installed in 1984 and the building would now be going from live high pressure steam to hot water units. Consistent with Indiana's Procurement Laws the CIB published invitations to bid for a base bid and (1) Alternate. Staff and Counsel have reviewed all the documents and strongly recommend to the Board we award the contract to General Piping Incorporated in the amount of \$2,357,000 as the lowest responsible and responsive bidder. There were no questions from the Board. Pursuant to a motion by Mr. Dora and seconded by Ms. Mays, ICC Halls F & G Handling Units (AHU) Replacement were unanimously approved by the Board.

The next agenda item was **BLF Cooling Towers** which is attached to and made a part of these Minutes. Mr. Levensgood explained this project involves the replacement of six (6) cooling towers at Bankers Life Fieldhouse and is being undertaken consistent with the recently amended Operating Agreement between the CIB and the Pacers organization. The CIB published Invitations to bid and Staff and Counsel have reviewed all the documents and strongly recommend to the Board the contract be awarded to Ellis Mechanical Inc., as the lowest responsible and responsive bidder in the amount of \$731,000. Pursuant to a motion by Mr. Shane and seconded by Ms. Mays, the BLF Cooling Towers was unanimously approved as presented and contract was awarded to Ellis Mechanical.

Mr. Levensgood then presented the **BLF Overhead Doors** agenda item to the Board which is attached to and made a part of these Minutes. Mr. Levensgood explained the same type of doors were installed previously at LOS's loading dock area and worked so well it was decided to install them at BLF as well. Because the project was estimated to cost less than \$150,000, the CIB solicited quotations from four (4) General Contractors. Staff and Counsel have reviewed all the documents and strongly recommend to the Board the contract be awarded to Harmon Construction Inc. in the amount of \$70,250 as the lowest responsive and responsible quote. Pursuant to a motion by Mr. Dora and seconded by Mr. Potesta, the BLF Overhead Doors contract was awarded and approved as presented. Ms. Mays recused herself from the vote.

Mr. Levensgood then presented the **BLF Practice Court Pads** agenda item to the Board which is attached to and made a part of these Minutes. He explained this project involved the removal of existing pad and installation of new pad in the BLF practice court area. The project was estimated to cost less than \$150,000, so the CIB published an RFP and three (3) contractors responded. Staff and Counsel have reviewed all the documents and strongly recommend to the Board we award the contract to Toadvine Enterprises in the amount of \$45,900 as the lowest responsive and responsible quote. Pursuant to a motion by Mr. Shane and seconded by Ms. Mays, the BLF Practice Court Pads was unanimously approved as presented and awarded to Toadvine Enterprises.

Mr. Levensgood then presented the **BLF Entry Pavilion Fans** to the Board which is attached to and made a part of these Minutes. He explained this project involved the installation of four (4) fans in the main entrance pavilion. The project was estimated to cost less than \$150,000 so consistent with Indiana's Public Procurement Laws the CIB solicited quotations from three (3) General Contractors. Staff and Counsel have reviewed all the documents and strongly recommend to the Board the CIB award the contract to Atec in the amount of \$79,595 as the most responsible and responsive quote. Upon a motion by Ms. Mays and seconded by Mr. Thompson, the **BLF Entry Pavilion Fans agenda item** was unanimously approved as presented.

Mr. Levensgood then presented the **Hudnut Commons Light Bollard Installation** to the Board which is attached to and made a part of these Minutes. He explained this project involved the installation of four (4) bollards along with two (2) new tree grates. The project was estimated to cost less than \$150,000 so consistent with Indiana's Public Procurement Laws the CIB solicited quotations from three (3) General Contractors. Staff and Counsel have reviewed all the documents and strongly recommend to the Board the CIB award the contract to Smock Fansler Corporation in the amount of \$36,050. Upon a motion by Ms. Mays which was seconded by Mr. Shane, the **Hudnut Commons Light Bollard Installation Agreement** was unanimously approved as presented.


Mr. Levensgood next presented the **Disposal of Obsolete Equipment** which is attached to and made a part of these Minutes. Mr. Levensgood the list of equipment has been reviewed by Staff and found to have no book value. Pursuant to a motion by Mr. Dora and seconded by Mr. Thompson **Disposal of Obsolete Equipment** was unanimously approved by the Board.

The next topic on the agenda was the November **Claims**. Ms. Lathrop presented these to the Board as per the supporting documentation, which is made a part of these Minutes. There were no questions and upon a motion by Ms. Mays and seconded by Mr. Dora, claims 538G, 537B and 537C were unanimously approved by the Board

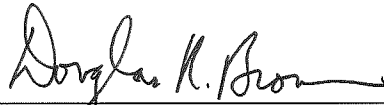
Ms. Lathrop asked if there were any **Other Business** to address. Mr. Levensgood reported back to the Board there had been a resolution to the Union contracts for the stage hands and the trades adding the meetings went well and both groups had settled within the parameters.

In response to a question from the October Board meeting, Mr. Levensgood clarified the water heater which was approved at that meeting was an instant hot water heater and thus there is no specific water capacity or size of the water heater.

There being no **Public Comment**, the meeting was adjourned.



Ann Lathrop, President
THE CAPITAL IMPROVEMENT BOARD
OF MANAGERS
OF MARION COUNTY, INDIANA



Douglas R. Brown, Secretary
THE CAPITAL IMPROVEMENT BOARD
OF MANAGERS
OF MARION COUNTY, INDIANA