

TO: Council
FROM: Jim Preston
SUBJECT: Bleacher Agreement
DATE: July 21, 2006

At the July 12, 2006, L&F Committee meeting, a number of questions and concerns were raised to which I did not have the opportunity to respond.

The \$1,500 that entities must pay for liability coverage is too much. The Festival of Presidents paid \$750 for another \$1,000,000 in liability coverage and to include the City as an additional insured. The agreement asks for \$2,000,000 in general liability coverage. This is a minimal amount recommended by our Insurance Committee and the City Attorney's Office. The price will vary for various entities to increase their current limits to \$2,000,000, however, some may already carry the required \$2,000,000. Pricing will depend on the individual account and their respective carrier. The cost for the Additional Insured language in favor of the City runs between \$50 and \$100. The Central States Fair already carries the City as an additional insured on their blanket coverage. It does not cost them another dime for insurance when they lease our bleachers.

Why can't the City cover the liability costs? Kathy Maguire, chairman of the Insurance Committee and CEO of the Black Hills Insurance Agency, has the following thoughts on this question: "It is the intention of our Insurance Carrier to provide coverage for the City and the City's actions, not those of a third party. A landlord (the City) should be responsible only for the conditions of the property as it is leased, not the actions of the tenant. The City's insurance program contemplates a \$100,000 deductible on any general liability claim indemnity payment. A serious claim in such a lease situation will increase cost of the City's overall insurance program by much more than the initial \$100,000 deductible. The fact is it's very probable that some type of accident will occur that is not related to any negligent act on the part of the City. If the responsible party (lessee) does not carry sufficient liability insurance, a jury will look for the deep pockets as happened in the Adam Hohm incident. City taxpayers have paid for the mobile bleachers and the cost and liability to erect and recover the units. It only seems prudent that the City should pass on the financial risk. If the City chooses not to require insurance language as outlined in the current draft bleacher agreement, I'm sure the insurance carrier will increase the City's premium accordingly, both before and after a claim occurs.

Can the City purchase a Rider that would cover the Liability for anyone who would lease our bleachers? I forwarded this question to Kathy Maguire. Her response is as follows:

The City can purchase a separate General Liability Special Event policy in limits they deem acceptable and remove or transfer the exposure of the Mobile Bleachers when they are rented out of their normal insurance program. I would estimate this annual premium to be approximately \$10,000 a year with \$1,000 deductible and a \$1,000,000 limit...this assumes the bleachers are leased approximately 10 times a year. I cannot guarantee this premium range, nor can I guarantee we can find a carrier interested in providing the coverage. We currently have brokers looking and will report back to you as soon as we have an answer. If we can find such a product, the City can also include an additional insured endorsement for the third party leasing the bleachers. As the City's agent, I do not recommend this option namely because a third party outside the City should protect themselves from their activities with their own insurance. An additional insured endorsement does not guarantee protection for the Third Party...only for the named insured. Example, we have a claim with serious injury from a slip and fall on the bleachers, both City and United Downtown are sued...policy initially steps in and through discovery etc., the City is dropped or dismissed from the Claim (remember this is basically first dollar coverage so the claim is under complete control of the insurance carrier) because the accident was not caused through any negligence of the City and the judge granted summary judgment to dismiss them. The claim occurred because United Downtown had an event and they leased these bleachers and allowed people to eat ice cream cones on them and melted ice cream caused a grandmother's tennis shoe to stick and she fell all the way down the bleachers breaking her hip, pelvis, and so on so forth... by the way, grandma baby-sits her two daughters kids and also takes care of her grown son that is in a wheelchair...need I say more? Once the City's dismissed, the carrier may have no obligation to protect any additional insured, unless the contract between City and Lessee specifically requires the City to hold the third party harmless and indemnify them and the carrier views that contractual language as insurable under their policy...I can't imagine the City writing such a contract...but it would all have to be done on an individual basis (each separate contract) prior to the loss and has accepted only 100% guarantee to provide the broadest protection available to the third party is for them to buy a policy in their name or for the City to buy a policy in both City and the third party's name.

One of the City's responsibilities regarding their commercial insurance program is to "transfer" risk that doesn't belong to them, otherwise, they may erode the City's liability limits with claims that should belong to third parties, they subject the City to paying up to \$100,000 for an actual claim payment (their deductible) and, they expose the City to premium increases in future years because of unnecessary adverse claim experience.

Can the City just absorb the \$150 fee for the use of our bleachers? Certainly, the City can let other entities use the bleachers without a fee, however, it does cost time and money to transport, erect and recover the bleacher units, much of it at overtime. Civic Center and Park's personnel have been heavily tasked and have requested more funds to accomplish their current duties. Not recovering appropriate costs only adds additional costs to City taxpayers and patrons of the Civic Center. Recovering the costs associated with transporting, erecting and recovering the bleachers makes good business sense and does not require the City taxpayers to supplement the activities of other entities.

Central States Fair has leased the bleachers for an event in July that could have been held at the Civic Center. It does not make sense to subsidize the cost for an event at Central States Fair and put our liability insurance coverage at risk. The event promoter or Central States Fair will take the funds not spent on leasing the bleachers and put it in their pocket.

The Council has the authority to waive the \$150 fee upon request. I would encourage the Council to include the fee as written in the agreement and use their authority sparingly to waive the fee.

Cc: Mayor Shaw, Jason Green, Kathy Maguire, Coleen Schmidt, Brian Maliske, Jerry Cole