

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

OCTOBER 23, 2006

A meeting of the Pennichuck Water Special Committee was held on Monday, October 23, 2006 at 7:02 p.m. in the Aldermanic Chamber.

Alderman Richard LaRose presided

Members of the Committee present: Alderman Mark S. Cookson  
Alderman-at-Large Fred S. Teeboom  
Alderman-at-Large Brian S. McCarthy

Members not in Attendance: Alderman Michael J. Tabacsko

Also in Attendance: Paul Doran, R.W. Beck  
Jack Henderson, Tetra Tech  
David Connell, Esq., Corporation Counsel  
Carol Anderson, Chief Financial Officer/Comptroller

DISCUSSION

*Professional Services Agreement with R.W. Beck*

Chairman LaRose

You've received in your packet Friday the Professional Service Agreement. Mr. Doran and Mr. Henderson are here to answer any questions that you may have. Before we start, the questions shall be on the Professional Service Agreement only. No questions on strategy will be entertained. If either gentleman or the City Corporation Counsel or Mrs. Anderson feel that we're getting into the field of strategy, the question will not be answered. I open it up to members of the committee.

Alderman Teeboom

Before we start Mr. Chairman, how does this professional services relate to another Memorandum of Understanding that I received in the mail?

Chairman LaRose

That is a separate issue. When we discuss that, we will go into non-public session.

Alderman Teeboom

Are we going to be discussing that?

Chairman LaRose

This evening?

Alderman Teeboom

Yes.

Chairman LaRose

If you wish to we will.

Alderman Teeboom

I'm just trying to figure out the relationship. I'm just trying to have to understanding Mr. Chairman. I received this Memorandum of Understanding dated 12<sup>th</sup> of May and it involves Beck and the City of Nashua. It is not signed by the Mayor, and it mentions some language here that is of some concern to me about some allegations within this Memorandum of Understanding. I don't understand how this relates to this Professional Service Agreement. So I need to understand that. If you're going to discuss this in public session, I will not further question it. But if we don't, I'd like to know the relationship between these two proposed agreements. None of them have been signed by the City.

Chairman LaRose

The relationship is too different relationships.

Alderman Teeboom

I understand that. Could you explain the relationships? I understand they're different. Obviously it's different documents. You need to explain to me – somebody, maybe an attorney can explain to us if you can't what that relationship between these two documents is.

David Connell, Esq.

They relate to two different scopes of services. If you recall some history to both of them, particularly the one you got called the Memorandum of Understanding. That would be the topic for a non-public session.

Alderman Teeboom

So this Professional Service Agreement we're discussing now in open session it seems to be dealing with the contractual relationship proposed between the City and Beck. It has nothing to do with another agreement between the City and Beck that I earlier referred to. They are two totally different and unconnected agreements?

David Connell, Esq.

They are both with the same outfit, and one depends on the other but they are for different services.

Alderman Teeboom

Different services?

David Connell, Esq.

Yes.

Alderman Teeboom

Okay. And we're going to discuss the other one in non-public session tonight?

David Connell, Esq.

That would be much more fruitful, yes.

Alderman Teeboom

Okay. Thank you.

Chairman LaRose

Anyone have any questions on the Professional Service Agreement.

Alderman Teeboom

Well let's talk about the Professional Service Agreement that I have before me. First of all, there's a part that I could not read because it doesn't write copyright, but let's just talk about the part. I don't know what this is about. I started reading it. It looks like it's an agreement to help in litigation support with Pennichuck and eminent domain taking. I'd like somebody to explain and then maybe we can talk about some – if she could just explain this agreement and also why does this agreement appearing before this committee as opposed to (inaudible) separate discussions. Why this agreement is not appearing before the Finance Committee if money is asked for? But if money is asked for, we can talk about it here as well I suppose. Could you just explain to us what this agreement is all about?

Chairman LaRose

It was felt that this committee should have a look at it and have an understanding, and make a possible recommendation to the Finance Committee. You are right. The Finance Committee is the only committee that can sign off on the contract.

Alderman Teeboom

All right, can somebody explain what this is about then?

Paul Doran

Thank you Mr. Chairman. Alderman Teeboom this agreement covers the consulting engineering support services that R.W. Beck and Tetra Tech would be providing support for the City for the PUC proceedings to include meetings with the PUC, preparing testimony for the PUC, responding to data requests from the PUC and Pennichuck, preparation for depositions and items like that. Ultimately ending up with support and being present at the hearing this January.

Alderman Teeboom

Now that support was not bid when you bid the proposal and you were selected winner on this proposal that all for providing the service if we ever prevail in this litigation?

Paul Doran

I believe if memory serves me correctly, we participated and competed against seven firms. That particular service would be provided as far as the PUC support we would be provided by the firm that ultimately was selected by the City for representation. We were the firm that was selected, so this purview for that particular service to represent the City and PUC support. To respond to maybe technical issues that the attorneys would receive from Pennichuck and maybe the PUC staff. We would be supporting that.

Alderman Teeboom

We have consultants on this job. I don't see the consultant here, but one of them is Sansoucy. The other

one is our Attorney Upton. The last I looked at the request for proposal last year it mentions, maybe Attorney Connell maybe help me out here, I remember an RFP mentioned that the consultants would be Sansoucy and would be Upton. They would help us select a winning bidder who could get a contract predicated on winning, prevailing in a lawsuit. I don't recall any discussion or mentioning in this RFP about getting additional consulting services or needing any additional consulting services with Beck. Also, I don't remember seeing any consulting services with Veolia. Unless memory serves me right, I don't think we have an agreement like this with Veolia. Therefore, I don't know why we have a consulting agreement like this proposed for Beck.

David Connell, Esq.

The memory is not serving you that well. There was a point when the various phases of this thing after the RFP were discussed and it was acknowledged that the commission and the other parties in this case would be very interested in involving the contractors Beck and Veolia in the discovery process in the case in order to explore the relationship bid for their purposes in the litigation. That's what this covers as opposed to the obtaining of the contract or the operating of the water system. This is the mid phase. They have been – actually had a deposition. They will be testifying in January during the trial most likely. To some extent on the tactics and the decisions that are made about how much time to allocate to different issues in the case.

Alderman Teeboom

I understand that, but do we have an agreement like this with Veolia?

David Connell, Esq.

I don't remember.

Alderman Teeboom

That supports the contract with Veolia for litigation support? I don't recall having an agreement with Veolia. I remember Veolia coming up here. We talked about something. We never signed an agreement with them. Maybe you can refresh my memory on that.

Carol Anderson

I don't actually recall an agreement with Veolia on that. I do just recall what Attorney Connell said about Beck working with us through this period in time.

Alderman Teeboom

How can they work through this period of time if Veolia doesn't have a contract and Beck doesn't have a contract? What basis did they expect to get paid if they have no agreement? The City code requires an agreement with any organization before they can get paid for services. So would they do any services on the (inaudible).

Carol Anderson

If my memory serves me correct, and actually Alderman McCarthy or Alderman LaRose, in the beginning of the year if you recall, in fact, it was probably more along March when we were talking about the Memorandum of Understanding – the expenses that had already been incurred. At that point in time, it was talked about expenses that we would be incurring through a certain time period – through that time period with Beck and Veolia. That's where we had the \$50,000 that was being discussed at that time at those meetings. I cannot recall if that was a special Board of Aldermen or if it was this particular committee. I do know at the time that I was trying to arrive at a budget, and I know that Alderman Rootovich was there at

that time too because it was a meeting in this chamber, and we talked about \$100,000 in total with about 50/50 going to both Beck and Veolia. That's all I recall on that.

Alderman Teeboom

I recall that.

Carol Anderson

So there was a general understanding that that was going to be incurred.

Alderman Teeboom

That's right. That's why my confusion about this Memorandum of Understanding. I believe the \$50,000 that we voted in the Finance Committee. I think would cover this Memorandum of Understanding we can talk about in a non-public session. I'm not aware that this would cover professional services agreement you're asking us to execute at this point. Maybe you could clarify that point?

Carol Anderson

I can't offer more than what I did. I believe that the \$50,000 was not for the previous work that was done. It was for the work that would need to be done this year. That was my understanding. Anyone in this chamber can correct me if I'm wrong on that.

Alderman Teeboom

The Memorandum of Understanding is also executed for this year 2006. The \$50,000, I think, applies to the Memorandum of Understanding as I understood it – May 12<sup>th</sup>. I see an agreement here that I think takes us forward. I can't quite tell when the agreement is supposed to start. Does it say when the start date of this agreement is?

Unidentified Male Speaker

Alderman Teeboom, I'd like to go back in the Pennichuck Special Water Committee minutes of 1/30/06. George Sansoucy your consultant discussed this and told at that time that Beck has put pre-filed testimony on behalf of the City and that I expect to anticipate that they will be continued to be called on to testify on behalf of the City. They do have their depositions of their people scheduled for February 16<sup>th</sup> at this time by Pennichuck of the Beck people. So they are into the process on behalf of the City at this time. A discussion ensued very detailed on that 1/30/06 Pennichuck Special Water Committee. The \$50,000 for those services, as you see in that agreement before you, was mentioned at that time.

Alderman Teeboom

So that \$50,000 that we budgeted applies to this agreement before us?

Paul Doran

That's correct and it's on the record as of 1/30/06.

Alderman Teeboom

So you're asking us to sign an agreement retroactive to 1/30/06 is that correct?

Paul Doran

Due to the circumstances that have developed, yes that's what we are asking for.

Alderman Teeboom

And I have to ask the attorney a question on that one. Are we allowed in the city law to retroactively agree to an agreement that provides services back in January 30, 2006?

David Connell, Esq.

You're allowed to do that.

Alderman Teeboom

We can do that? So we agree to this, we go back to 1/30/06. All right. I'm trying to keep this all clear because I don't see a date here. Is there a date that says when you start on this job?

Paul Doran

Yes. If you look on page of the agreement, it is dated January 3, 2006.

Alderman Teeboom

What page is that?

Paul Doran

Page number 1 of the Professional Service Agreement.

Alderman Teeboom

Okay. January 3, 2006. How much of this \$50,000 has been spent so far?

Paul Doran

With our sub-consultant Tetra Tech and R.W. Beck, approximately \$36,000. I don't have the exact figure. I was trying to get that today before I came. Approximately \$36,000.

Alderman Teeboom

Is that correct Ms. Anderson - \$36,000?

Carol Anderson

In fact Mr. Doran just told me that today. We hadn't had that number confirmed.

Paul Doran

I can get you the exact figure from our accounting system.

Alderman Teeboom

So what is the implication if we don't agree to this agreement Mr. Attorney Connell? There's an agreement here that hasn't been executed by the City nor agreed to by the Finance Committee at this point except for budgeting. So what happens if this doesn't get signed?

David Connell, Esq.

There would be an outstanding claim and we can go into greater detail in a non-public session.

Alderman Teeboom

All right. Then I have a couple final questions. Where is this peak to not to exceed \$50,000?

Paul Doran

Could you repeat that again Sir?

Alderman Teeboom

Yes. I'm looking through this Agreement and I admit that not all of it I can read, but where does it say that this agreement is not to exceed \$50,000?

Paul Doran

At the top of page 2 about the middle of that first paragraph on the top of page 2 of the Agreement – for owner's support for public utility – on the top of the page in italics. Then you go down about 6 or 7 lines – and will not exceed the amount of \$50,000 without obtaining the prior written authorization of the owner. When the consultant has incurred 75 percent of the fee, the consultant will notify the owner and determine if an amendment is necessary. See that Alderman Teeboom?

Alderman Teeboom

Okay 75 percent of \$50,000 is \$37,000. So you're just about there.

Paul Doran

Almost. That's correct Sir.

Alderman Teeboom

So this is practically notification?

Paul Doran

If you want to take it that way I could get the...

Alderman Teeboom

(inaudible).

Paul Doran

Well it would be followed up in writing Sir. But no I wouldn't come back in person.

Alderman Teeboom

So whatever – because you know we're going to go to trial next January.

Paul Doran

Right. That's correct Sir.

Alderman Teeboom

We were left to believe during our finance committee discussions that the limit on the services would be 50 – for that services. It must have made it in the agreement. I didn't vote for that. But for those services we would spend \$50,000 and no more. So are you prepared to say that this would be the limit of expenditure through the entire litigation into next year?

Paul Doran

I wish I could say that, but if you continue on at the end of the scope of services, we are working under the pleasure of 3 entities. Your Corporation Counsel David Connell, the George E. Sansoucy firm, and the Upton Law firm. We are working at the pleasure, and whenever we are asked to do our professional services based on one of those 3 entities, we respond accordingly when we are asked. That's the way we've been doing it since January 3<sup>rd</sup> for this PUC support piece on behalf of the City. So I really do not know what's in store not having been through a PUC hearing before or the whole procedure that we've gone through so far between depositions, and data requests, and responses. I don't know what's in store for us. All I can do is respond to when we are needed and called upon by those 3 entities Sir.

Alderman Teeboom

Well the PUC is got all barrels loaded. You're aware of that right?

Paul Doran

I don't have any comment.

Alderman Teeboom

All right. Final point. The 10 percent thing here. Is that standard that whatever the subcontractor to spend that you charge them 10 percent of their costs? Is that a standard arrangement?

Paul Doran

That's a typical arrangement for sub-consultants, but if you note Mr. Teeboom, it says excluding Tetra Tech. Tetra Tech has been representing the City right along with Beck as our sub-consultant. We will not mark up Tetra Tech's contract by 10 percent. We'd be just passing those costs through and another savings for the City.

Alderman Teeboom

So Tetra Tech is part of this contract?

Paul Doran

They are our sub-consultant. Where it says sub-consultant, that's referring actually to Tetra Tech.

Alderman Teeboom

So Tetra Tech is a signature to this? They are...or can they bill us separately?

Paul Doran

No. As soon as I have this agreement approved, I will have an agreement written up and drafted and signed with Tetra Tech. Mr. Henderson is here representing Tetra Tech. You might want to comment on that.

Alderman Teeboom

Yes why don't you comment on that?

Jack Henderson

Yes. To reiterate what Mr. Doran has said is that we've been providing services on as requested basis and would continue to provide those services and are looking forward to the finalization of a contract so that we can be compensated for those services.

Alderman Teeboom

So are within the \$50,000 limit by virtue of being a subcontractor?

Jack Henderson

That's correct.

Alderman Teeboom

So they write a review?

Paul Doran

That totals, Alderman Teeboom that I quoted you approximately 36. Again, I can get the exact figure includes Tetra Tech also. That's correct.

Alderman Teeboom

Okay. Now do you have any other subcontractors besides Tetra Tech at this point?

Paul Doran

No. Absolutely not at this point in time no.

Alderman Teeboom

So the 10 percent really case you need somebody else?

Paul Doran

It could but it is doubtful that we will be using anybody since the hearing is almost upon us and Tetra Tech is the consultant and our teammate when we put together our proposal and actually were selected by the City.

Alderman Teeboom

Where does it say termination date in this contract or does it say it just keeps going until...is there a termination clause? It shows a start clause, but does it show a termination clause?

Paul Doran

Page number 5, termination 18, paragraph 18. Either party may terminate this agreement upon 30 days or prior written notice, etc. I refer you to that paragraph. We did not intent to have a stop dead date because, again, we did not know when the actual hearing would be because the hearing has been a moving target. I guess we are adhering to the January date of '07 now. I think that's pretty much cast in stone. Other than the termination provided in 18, until the PUC support services are no longer needed, and that's determined again by the 3 entities that can direct us to perform our services.

Alderman Teeboom

There's an unlimited endpoint. No defined end point to this?

Paul Doran

As far as time goes?

Alderman Teeboom

Yes.

Paul Doran

No.

Alderman Teeboom

Well that brings a question Attorney Connell that this thing apparently they'd be charging since the 30<sup>th</sup> of January right?

Paul Doran

The 3<sup>rd</sup>.

Alderman Teeboom

The 3<sup>rd</sup> of January I wrote down. Am I correct? I remember an agreement came before the Finance Committee, I didn't check the dates, but around April or May that this question of the \$50,000 budgeting came up.

David Connell, Esq.

I don't have any memory of that.

Alderman Teeboom

It was after January but yet they are charging for time prior to that agreement at the Finance Committee.

Paul Doran

Correct me if I'm wrong Mrs. Anderson, this agreement has not been brought forward to the Finance Committee yet?

Carol Anderson

Not this agreement, no.

Alderman Teeboom

No, no but we talked about the \$50,000 that this budget is for Beck and \$50,000 budget is for, which is the first time we actually come to grips with these questions. That was in – Alderman Cookson was that in March, April, May when this came up? Around that area. So here's my concern. That came in lets say May. Now superior prior to that from January to May that apparently we're being charged even though there was absolutely no agreement or any discussion, no vote on anything yet they are charging us for that period. I don't understand the basis for charging us for that period. Now we're dealing with an open-ended agreement that goes forward but they're saying we're going to come back to you for an authorization for \$50,000. So I need to understand why are we being charged for a period before the \$50,000 was budgeted, and what's the situation after this if we go beyond the \$50,000 here?

David Connell, Esq.

The second part is easy. We won't go beyond the \$50,000 without making arrangements.

Alderman Teeboom

What about prior?

David Connell, Esq.

Well technically anyone in administration can contract for \$10,000 of services from either of these entities, I guess, without Finance Committee approval if you're looking at the technicalities of it. I don't really know when the services were generated. I think towards the spring or summer, maybe if either of you could remember.

Paul Doran

I think Alderman Teeboom that there's confusion here just like there are similar names on this project with Veolia. There's a Mr. Noran and I'm Mr. Doran from Beck. There's a little confusion here. There are two \$50,000 figures that seem to be bantered about. I believe the April \$50,000 figure that you may have been talking about was with Veolia because they were assigned a \$50,000 figure also. Our agreement was – other than the 30<sup>th</sup> minutes, and I've been following the minutes since January 3<sup>rd</sup> of the City, our agreement of \$50,000 has never been brought before the Finance Committee. Other than discuss with this committee, as I said on 1/30/06 per the minutes. So the \$50,000 that you refer to that was brought up in April could have been the Veolia. It was not the Beck.

Alderman Teeboom

No. It was Beck and Veolia. I remember the discussion distinctly. Obviously you'll have to straighten this one out.

Carol Anderson

What I would say is when you're saying about the discussion about the two \$50,000; at that time we knew though that Beck was running up some costs to do some of that work already. That's why in January when it was discussed we had a \$50,000 amount that we were talking about then. That was for this phase of the work. Then afterwards, we talked about the Veolia one because we were trying to work with budgeted numbers. In total, it was a \$100,000. I know that it was before April that the Board knew that the Beck Corporation was doing work.

Alderman Teeboom

You're saying it was \$50,000 for Veolia that capped at \$50,000? Veolia said we will not exceed \$50,000 if I recall. Veolia had a time period specified. This is open-ended. I don't recall any discussion. Maybe we need to check the minutes on that about the discussion at the Finance covering them prior to that date. I thought we covered them from the date forward.

Carol Anderson

I'm not even sure that it was discussed in Finance. It seems to me – because we had discussions about the budget. The whole budget. We had put monies aside. We had some money left in the '06 budget, and then we were discussing what we were going to have in '07. At that time, we upped the '07 budget because we were covering it through, I think I had put in \$500,000 or 550 through January but then added an extra \$350,000. So it was all through that time period that we were talking about what we needed for everybody. For all the consultants and contractors including Beck and including this \$50,000 for this particular work.

Alderman Teeboom

That was in the June discussion dealing with the '07 budget.

Carol Anderson

No but that was long before that that we were talking about Beck's work and then also Viola's came later on.

Alderman Teeboom

Personally I want to see the minutes on that. I don't see how we can back date agreements without agreements and pay for time prior to expenditure when we have no agreements in place. I understand if we assign it saying sure. We can assign it to whatever we agree to but this had not been signed. So now we are faced now an agreement brought to us in October dealing with services provided to us in January in budgetary discussions we had back in June. This is a very confusing situation. I'm very unclear on it. I'm much more clear on Veolia because I asked them Veolia and they were going to cap it. They also said when the start date was. Some of the money that they spent they said they would not charge us for it. I remember that very distinctly. This is different, and this is uncertain to me as far as even under the ordinances that we can agree to it. Well if we agreed to it, we can agree to it. The expenditures so far are on their own nickel as I see it. The budgetary does not make an agreement. Is that true Mr. Connell when budgetary makes an agreement?

David Connell, Esq.

What do you mean by budgetary?

Alderman Teeboom

Setting up a budget for '07.

David Connell, Esq.

No that's not an agreement.

Alderman Teeboom

Right.

Carol Anderson

The only thing I would say is when I say budgetary, that was just one of the discussions. I'm not saying that that's when the decision was made. I'm saying that that was one of the points one time that it came up for a discussion was during that process.

Alderman Teeboom

I'll let somebody else speak, but I've been upset about the whole process. This whole Beck/Veolia process. It was not in the RFP to start with. We have consultants on board so apparently we can't handle the job and look for help, way over their heads. The consultants aren't even here. Where is Sansoucy tonight? They're not even here. Now we're into this financial stuff. I'd like to see the minutes to see more clearly exactly what we committed to prior to the \$50,000 discussion and exactly we did commit for the other \$50,000 discussion. I do remember the discussion before Finance. I remember we voted to reconsideration actually to pass some stuff, but no means a unanimous vote. I'll pass at this point Mr. Chairman.

Alderman Cookson

Thank you. This is for CFO Anderson please. January 3, 2006, that is part of the fiscal year '06 budget?

Carol Anderson

When we were talking about the budget at that time, it was overlapping years. This one because that's a capital improvements it does overlap. It carries over. So we were trying to come up with the budget of what we needed to get through at that time through January of '07.

Alderman Cookson

Okay. So we're not worried about fiscal years with regard to this contract of \$50,000?

Carol Anderson

No. The only thing, if I may Alderman Cookson, the only thing I do recall is there had been some discussion about well if the costs is incurred and we didn't have enough money in the '06 budget that we could pay those costs in '07. My reaction was that if the costs are incurred in that year and they are due and payable, then you would charge it to that particular year. That was the only thing that I had brought up.

Alderman Cookson

Thank you. Mr. Doran, you had indicated that this is the first time that you have gone before the PUC or been involved in any sort of these proceedings? Is that correct?

Paul Doran

Through a PUC proceeding. That's correct.

Alderman Cookson

Okay. Very good. Can you help me understand how an amount of \$50,000 was determined to be an appropriate value for the services that you are going to provide or have been providing and will continue to provide through the PUC proceedings?

Paul Doran

Yes, I would answer that question. Skip Sansoucy is the one that determined the budget. We did not come up with that \$50,000 figure. That was predetermined by Mr. Sansoucy as was the \$50,000 for Veolia.

Alderman Cookson

Okay. Can you tell me what your bill rate was prior to July 1, 2006?

Paul Doran

It was approximately \$168 or \$166 or something. In that range.

Alderman Cookson

Okay. So post July 1<sup>st</sup> you got a fixed rate of \$175 per hour?

Paul Doran

That's correct, which no time basically has been spent on that – or maybe one hour. Most of our work was performed by the end of April.

Alderman Cookson

What about this evening? Are you charging for this evening?

Paul Doran

No. This is on my nickel.

Alderman Cookson

Is that the same for Tetra Tech?

Jack Henderson

That's correct.

Alderman Cookson

Okay. Thank you. CFO Anderson – there's a statement in this document on page 2. It says: "the owner shall pay the consultant in US dollars within 30 days of receipt of invoices less any disputed amounts." I know in business and industry it's typical that it's more like a 45-day cycle. Is there anything that keeps us to a 30-day cycle?

Carol Anderson

Is there anything that keeps us to a 30-day cycle? I mean we certainly do our best to keep it to a 30-day cycle. In all honesty a lot of the bills that we have had for this project it has taken longer than that because by the time it goes through – for the most part it will go through Attorney Connell. I review it, and some of the bills Attorney Upton reviews. Then ultimately the Mayor and then the internal committee will review them too. So it's a long process of review. So it generally does run longer than 30 days.

Alderman Cookson

Okay. So this final paragraph is interesting on page 2 as well. "Additional charges for interest shall become due and payable at a rate of 1 percent per month." So am I reading it correctly to say that if we don't pay within that 30-day cycle that we've got a 1 percent additional charge?

Carol Anderson

It would appear that way. I'm not sure how I missed that one. I would request that that would be removed because the process itself, like I indicated, can take longer than 30 days depending on when we received that bill and when the warrant runs.

Alderman Cookson

Okay. There are many references to Exhibit B. Well not many. There are a few references to Exhibit B, which should be the billing rates. The consultants billing rates. It's not actually included in this document. Is there a reason?

Paul Doran

It should have been. It appears on the final copy that I have here. There are two billing charts in R.W. Beck and in Tetra Tech. I forwarded the City, Alderman Cookson, the same.

Alderman Cookson

Does anybody else within this committee have Exhibit B. So Attorney Connell does. Does anybody else?

Carol Anderson

I do.

Alderman Cookson

It's not on the final page.

Alderman Teeboom

I don't have it.

Alderman Cookson

I'd like to see Exhibit B. Also Exhibit A, which I think – well it actually goes back to page 6, page 7, and then upon Exhibit A pages 10 and 11. I'm curious. Is this Professional Services Agreement supposed to be in final form? I'm seeing edited or edited comments off to the side where it includes Attorney Connell.

Chairman LaRose

If I may. I had it copies that way so that you would know where the changes were made. I did that at my discretion.

Alderman Cookson

Good. Thank you. That explains a lot because I didn't understand if this evening was meant to be a further edit of this Professional Services Agreement or in this case it looks like it is a final document. But you've provided where the edits have taken place.

Chairman LaRose

Right. That's the edited one instead of the clean one.

Paul Doran

Alderman Cookson if I could respond to that just to clarify further. We were asked by the Mayor's assistant and CFO Anderson to come in and speak with the City and during a meeting that we had, I believe if it was a Monday or a Tuesday of last week, we went over and some of the edits that you see, especially the addition of the Corporation Counsel, was at their request at that time.

Alderman Cookson

So was the opportunity for continued edits as CFO Anderson suggested?

Paul Doran

I believe, if I'm not mistaken, that's why I think we decided to come to this committee first before going to Finance Committee.

Carol Anderson

Right.

Alderman Cookson

That was all my questions. Thank you.

Alderman LaRose

Thank you. Do you have anything Alderman McCarthy?

Alderman McCarthy

Yes. Let me go back a little ways. The characterization of our consultants brought these people in because they are over their heads and can't handle it is, in my opinion, fairly absurd. It's like criticizing your general contractor because he hires a plumber to do the plumbing. These are specific consultants who will participate in our management of the utility and are being brought in as experts to testify before the PUC on management of utilities. While they have not appeared before the New Hampshire PUC before, they have vast amounts of experience with the management of these kinds of utilities and they are the right people to bring in. So I just want to make that clear.

I think as to how we find ourselves in this position, there's work that had to get done. There's a schedule that wasn't going to wait for what happened in the City. So the folks at Beck agreed in good faith to continue doing work for us while we negotiated an agreement. Frankly, that happens fairly frequently in times where there's an approval process that is slower than the real world needed to get worked on that people will do things on good faith that an agreement would be negotiated under which they could be paid. Like it or not, I think that's how this happened. I do recall some discussion of the fact that Attorney Upton could in fact have simply hired them as consultants under his contract. We chose not to do that and to come to the board for approval of a secondary contract. That is more for purposes of clarity than anything else. I think what we are here to do is to straighten out the agreement that's before us.

Chairman LaRose

Thank you Alderman McCarthy. My recollection was that every time we had a discussion of the committee of the whole, not once that I can recall that somebody objected to the manner that we were going. There were a lot of questions, but it was always kind of left that yes we should continue the route we are going.

Alderman Teeboom

Yes. First of all let me answer Alderman McCarthy about why I've said I think our consultants are over their head. I reviewed the agreement with Mr. Sansoucy carefully. Nowhere in the agreement with Mr. Sansoucy does he say he wants to have the consulting services or the two bidders would eventually be selected. Nowhere in the RFP is that represented. The RFP by Mr. Sansoucy represented he will handle the case together with Mr. Upton. So that's why I say he's over his head because it was not contemplated quite frankly. He's come up with this since then. As you can see, he came up with the \$50,000 apparently. It's his number not your number. So that's why I'm saying what I said.

I have another problem here. You mentioned your services. Is there a statement of work attached to this agreement that says what it is you're doing on this job?

Paul Doran

Yes it is. It begins on page 10 Alderman Teeboom.

Alderman Teeboom

So you're going to support before the Public Utility Commission. Now have you already appeared before – you haven't appeared, but have you done depositions before the Public Utility Commission?

Paul Doran

Yes Sir.

Alderman Teeboom

All right. So most of the \$36,000 you've spent on deposition kind of work?

Paul Doran

No that's not correct. As I said in my opening statement that we had a meeting as a team here at the City and on the 10<sup>th</sup> of March of '06 we had a meeting with the staff of the PUC. We prepared testimony for the PUC with the Upton firm that was filed on the initial filing. We reviewed that testimony, prepared final drafts, we prepared for our deposition, and we were deposed by the Pennichuck Water folks. We answered the PUC staff questions and the Pennichuck Water discovery questions and the data requests as directed by the Sansoucy firm and the Upton firm. We did have conference calls and meetings on conference calls. So that's where the services that we've come up with so far.

In addition to that, Tetra Tech was involved from July and August and the beginning of September I believe or I think it was just through July and August because that data request was filed based on the water shed issues that surfaced. Attorney Richardson from the Upton firm asked Tetra Tech to respond with their watershed experts to answer those questions on those data requests from the PUC staff.

Alderman Teeboom

So you've done this before the PUC staff came out with their finding as well as after the PUC staff?

Paul Doran

That's correct.

Alderman Teeboom

Have you read the PUC staff report?

Paul Doran

I have read the PUC staff report, yes.

Alderman Teeboom

Well just on the final point Mr. Chairman. I remember in particular expressing my concern when we had a discussion about these two agreements - \$50,000 each. The same concern I have now I expressed then. So you can't say we didn't discuss that. We did discuss that.

Chairman LaRose

I never said we didn't. I just said that we did discuss it and that the committee of a whole more or less told the consultants to continue on the way that they are going.

David Connell, Esq.

Just a little context on what was the original and then the amended approach to the case. I think it is true that at the beginning Sansoucy did not foresee the need for the heavy involvement of the contractors at these proceedings. The original idea was that the discussion would center on the rates and the assumption would be that the contractors would be in place. It became pretty clear a year or so ago that the commission was going to be extremely interested in the identity of the contractors and there were going to be questions posed to them. So it was not any longer be an abstraction. It was going to be a central issue and that's why they are much more involved than was originally believe.

Alderman Teeboom

You must agree Mr. Connell; there was nothing in the original RFP that contemplated putting Beck or Veolia on the contract?

David Connell, Esq.

Yes that's what I just tried to explain.

Alderman Teeboom

There's nothing in the contract. Yet they knew that they were going to fact PUC questioning. I mean Sansoucy has experience before the PUC. So it was reasonable to assume that there might be interest on just exactly what the contractual arrangement would be.

David Connell, Esq.

There's never been a contested water taking in this State. So we're breaking new ground.

Alderman McCarthy

Yes I just want to re-emphasize that this is new ground. It was clear that we did not anticipate that the PUC would ask, particularly at Pennichuck's prompting, the scope and depth of questions about the contractors that were asked. The original strategy did not anticipate having them bring the contractor or even having to have a contractor on board already by the time the PUC proceeding took place. That became obvious later on, which is why we moved up the process to select the consultants and Mr. Sansoucy during that process said it will be necessary to bring them on board and have them testify before the PUC. In fact when we discussed the selection of Beck, Mr. Sansoucy was of the opinion that one of the advantages to that consultant was, in fact, the testimony that could offer us before the PUC. I think it's been obvious that that strategy changed through that during the PUC proceeding and that that's what we've been going forward with for some time. It is impossible to have Mr. Sansoucy testify in a more authoritative manner than the contractor about how the contractor is going to execute the contract.

Alderman Teeboom

Apparently he didn't do a very convincing job with the staff.

Alderman Cookson

Does somebody know what percent of municipalities within the State of New Hampshire have municipally owned water systems?

Alderman McCarthy

I can't speak for all of the towns. We are the only City that does not have a municipally owned water system.

Alderman Cookson

Okay. So your statement Alderman McCarthy with regard to this is new ground is it a more accurate statement would be that it is new ground for the City of Nashua whereas many of the municipalities already have water?

Alderman McCarthy

No that's not correct. What I said was the PUC has never entertained a disputed taking of a water system before. All of the other cities have had municipal water systems that were unregulated by the PUC since their inception. We have the only PUC regulated water utility in the State for a city.

Alderman Cookson

Thank you for that explanation.

Alderman McCarthy

We also have the highest water rates in the State of any city. I would mention that.

David Connell, Esq.

As I recall in researching the history of these things, in the 50s Laconia instituted eminent domain and came to a settlement of almost right away. They took over their system as recently as that but there was no major contest. Most of the other ones were turn of the century vintage or even earlier.

Alderman Teeboom

I'm still puzzled by this whole thing because when we started we didn't think we were going to eminent domain. The City decided to take the eminent domain around with consultants in tow. Did we have consultants and contractors before we decided to go to eminent domain or did the consultants come aboard after the eminent domain?

David Connell, Esq.

It was after.

Alderman Teeboom

So wouldn't we expect the consultants to know what they are getting into?

David Connell, Esq.

Yes. We hope they bring all their knowledge and experience to bear. Nevertheless, they're plowing new ground.

Alderman Teeboom

When do you expect, Mr. Chairman, at this point? We have no authority to approve a contract. When I'm on finance I can deal with the contract. What do you expect us to do with this payment?

Chairman LaRose

What I expect is to give a favorable recommendation to the Finance Committee on the Professional Services Agreement, unless somebody has any changes they want to make to it.

Alderman Cookson

I certainly won't be providing a favorable recommendation or voting for a favorable recommendation until CFO Anderson has an opportunity to either strike the final paragraph on page two or amend it in some fashion. Also with regard to the 30 days of receipt. I'm not sure if she's prepared this evening to make those edits or amendments to this document. Even if Beck is agreeable to those edits. So I have no idea what your process would be in mediating any said edits with Beck.

Paul Doran

Thank you Mr. Chairman. Alderman Cookson, what would be your proposed edits if you could have...?

Alderman Cookson

At a minimum, I believe that on page two of the PSA it's been stated that in the fourth paragraph of six under "Payment" it indicates that the owner shall pay consultant in US dollars within 30 days of receipt. We've already said that based on the City's bureaucratic process that 30 days isn't an appropriate number of days. It needs to be greater than 30 days.

Paul Doran

What would be appropriate then Sir?

Alderman Cookson

I don't know. In my estimation what I'm familiar with is a 45-day cycle, and I don't know if that meets CFO Anderson's needs.

Alderman McCarthy

With respect to that historically, I believe that we have a number of agreements that actually specify 30 days. I don't think we've ever run into a problem with that because people don't exert those clauses unless there's a problem. However, I will say that when we sat down and looked at the process for the construction of the high schools we did, in fact, write those contracts up as 45 days because that was reasonable in terms of what we could do with the turn around through the architect for certification of payment through the Joint Special School Building Committee and then on to the warrant. I would suggest that changing that number to 45 days probably solves that problem for us.

Carol Anderson

That would work for me. The other thing that I am concerned is the additional 1 percent interest. We have other contracts and we do not pay any interest if it is late. I'm not sure if Beck would be willing to.

Alderman McCarthy

We, on the other hand, charge 1 ½ percent a month of course.

Carol Anderson

That's another story.

Alderman Teeboom

Changes that I want to see to the contract – I want to see a not to exceed. I want to see 10 percent charge to subcontractors. That's on the contract not to exceed to be stated irrespective – just like Veolia did. They said they would not exceed no matter what would happen. Now Veolia is a much larger company than Beck, but that's what they said – not to exceed 10 percent. The other problem is I want to see the minutes of what I talked about earlier. (inaudible) when we started talking about it and what it is that we said that we paid for before our June or July discussion – June discussions on this issue. I haven't seen invoices, but I question very seriously that we shouldn't pay anything prior to even discussion the \$50,000 item when it first came up. So any invoice before June should be wiped out. Those are my reservations just as a start. Until I see all that, I can't concur with a vote for a ...

Paul Doran

Alderman Teeboom it does say "and will not exceed the amount of \$50,000".

Alderman Teeboom

Period.

Paul Doran

I would ask you Sir then what if we're in the middle of the hearing and we exceed the \$50,000? Do you want the rest of our services or should we just not show up at the hearing?

Alderman Teeboom

That's your choice. See what bothers me about all these things, and I've been involved in many proposals in my lifetime, when you propose a job – especially a job which is eminent domain, right in the RFP and you bid a job. You spend a substantial amount of your money on that proposal. I guess Veolia spends huge amounts of money. I think you spent a substantial amount of money. When you do a proposal like that, you guys know what you are getting together whether it's eminent domain – it's clearly stated. You had a discussion with our consultant Sansoucy. All of that stuff. You knew what you were getting into. You're big boys. If you had these reservations, you should have pointed out these reservations about wanting to get paid for the consulting service in your proposal. I looked at your proposals. I didn't see any of those reservations in your proposal. When asked for by Sansoucy and it wasn't put it and your terms and conditions. Here we are facing \$50,000 payments. Now you're telling us gee I can easily go \$50,000. Well you've already spent \$36,000 going back to (inaudible) that finding question. But going to the next \$14,000 is almost a certainty. Going into litigation from January forward you'll go well past the \$50,000. I want to see it capped. If you say you can't do it, you can't do it, but that's the risk of doing business.

If you should prevail and then we sign a contract, maybe we can amend the contract. I think Veolia has some deal by which I think if we signed a contract they have some conditions in there. Short of us prevailing, we are all in risk together. That's how I see it. That's how I do my proposals. That's how I always worked in my business. Thank you.

Alderman Cookson

Just a quick math note for everybody out there. With approximately \$14,000 left out of the \$50,000, that's about 2 weeks of your time and your time alone. That's 80 hours period. So if you think you can complete this – the PUC proceedings and the trial and everything that is going to take place in November, December and January in 80 hours?

Paul Doran

Alderman Cookson I would like to reiterate again for the record that R.W. Beck did not come up with the \$50,000 figure. That was arrived at by the City's consultant George E. Sansoucy. Number two Alderman Cookson and Alderman Teeboom, I'd like to respond also to say we respond to the services that we are asked to do. I do not know what is left in the process to do. Your specialty consultants of the Sansoucy firm and the Upton firm do know. They do know what we are expected to do and we have acted up until this point October of 2006 without being paid one dime. I am sure that everybody here has worked for a firm. They'd like to get paid for their work.

Alderman McCarthy was correct when he made the statement that there was a short time frame. We acted in good faith with the City to go forward as not to delay the PUC process. Your consultants determined this planning process. Your consultants. We were asked by your consultants to respond with our professional services and enhance the City's position as we are going forth. We still acted in good faith up until this point in time. Your consultants were supposed to bring our contracts before you. They did not. We kept our word that we would not have contact with the City direct, but as of last week the City contacted us realizing that it had gone too far. Up until this point, we have acted right along, continued to do the work, given you the good service, and you can ask Attorney Upton, Attorney Richardson, and George Sansoucy if the City has not received beneficial use that has paid our fee over 10 to 50 times. I'm asking you before you tonight the issues that we have before this committee we brought it here before we were going to Finance Committee. I think the issues are clear. The minutes, which I have been following since the beginning of this year is clear that the City has been well informed at various meetings. I quoted one this evening – January 30<sup>th</sup> **...end of Tape 1, Side A ...** to change to 45 days. Okay. I'm willing to put 10 percent. We are not having any other consultants in this particular agreement, so the 10 percent point because it already excludes Tetra Tech, I'm willing to even do that. There will be no 10 percent mark up because we don't plan on using anybody else but Tetra Tech.

The other paragraph I have to really concede here in thinking about how fairly we've been treated so far. I will bring your concerns back and think about it. If it warrants an amendment, then I will forward that to Attorney Connell and CFO Anderson.

Chairman LaRose

Thank you. From my perspective, I think...

Alderman Cookson

He was replying to my question. Do I still have the floor?

Chairman LaRose

I'm sorry.

Alderman Cookson

Thank you. I just want to say we've never questioned your good faith and you have provided goods and services. I think it is unfortunate that Mr. Sansoucy didn't bring your contract to the City earlier. I'm glad that you're here this evening. I understand your defensiveness. This is really one of the first opportunities we've had to ask these questions with regard to R.W. Beck and the work that you've done. So the work that you've done and everything that's been presented to the PUC, and your findings, and your reports, and so forth no question at all with regard to the work that you've done. It is certainly appreciated by some members of the Board of Aldermen regardless of their position. I apologize if you took this as us being offensive to you. It wasn't intended to be that way at all.

Paul Doran

Thank you for your comments Sir.

Alderman McCarthy

I guess I just have to say that saying you shouldn't pay for any of those services because they were done before the agreement, while it may not constitute questioning the good faith or R.W. Beck certainly doesn't establish the good faith of the City.

Chairman LaRose

From my perspective, I don't think we can handcuff Beck. If we want top rate consultants at the PUC to answer questions that need to be answered for us to be able to prevail, I don't think we can say that you've got \$14,000 and you've got to do the job with \$14,000. I think that we have to realize that depending how much time has to be spent and what is being asked, that we are going have to pay some more fees. It's not any different than if you're personally suing someone and it's taking longer than the attorney thought it was going to take, he certainly is not going to say – well I'm not going to charge you any more. I think we have to be realistic. We have to understand where Beck is. We have to understand where the City is. If we want to prevail, then we have to pay the bills.

Alderman McCarthy

I just want to go on record as saying with the two amendments that have been proposed and accepted on the 10 percent and the 30 days to 45 days, I'm quite happy with the agreement that's in front of us.

Carol Anderson

Thank you. I just wanted to set the record straight. I don't want anything to be unsaid. When we were talking about the agreement coming forward from Beck and what Mr. Sansoucy had provided, on June 29<sup>th</sup> there's a letter that he had sent to the City attaching the agreement. However, there were questions – these little stickies have been here for quite some time. I know that everyone gets busy and for some reason, it was like it didn't get resolved. So because it didn't get resolved, they kept sitting there. Then that's when we started on the City side pushing because this needed to get resolved. I did want you to know he had sent it to us. He sent it on June 29<sup>th</sup> but because of the issues, it couldn't come forward. That's why with Attorney Upton's firm they are the ones who had spoken to us. We had spoken to Mr. Sansoucy, probably now it's a little over a month ago, and then we took it upon ourselves to approach Beck and get this resolved.

Alderman Teeboom

I still want to see the minutes. If I were the Beck CEO, I'd be a little peeved also. But the situation is this, where you do a proposal that proposal is not paid for. You do support in that proposal that support is not paid for. I've been in many proposals and asked to go to all kinds of places that's proposed to support whether this is what we did. Nobody has ever paid our company. It's understood when you work on a proposal you're in to that proposal because the gain at the end of the rainbow, the goal at the end of the rainbow justifies that expenditure. In this instance apparently there were representations made, in my opinion, unauthorized by Mr. Sansoucy. Maybe even Mr. Upton for trying to track some of this documentation going back to this controversy taking place all the way up to the point of its final was discussed in this committee.

There was a Finance Committee decision made to fund \$50,000 for Veolia, \$50,000 for Beck and that should be it. So I can maybe see going along with the agreements of \$50,000 but that's it. In my opinion over generous. You can say all about good faith and bad faith, but we are all grown men in this situation. Are we going to a contractual relationship. We know what a contract is and we know what not a contract is. We know what representations are if they are not authorized. We also know what we're getting into when we write proposals. That's very clear to me.

Paul Doran

Thank you Mr. Chairman. Alderman Teeboom this was not part of our proposal. We were asked to do these services after our proposal by your consultants.

Alderman Teeboom

He was not authorized Sir to ask you for that unless he was prepared to pay for that out of his pocket. Now he is not paying for this out of his pocket. He made a representation to use Sir and I've been tracking the record, and I've been complaining about this since before I became an alderman. In fact, I elected to this board because I said representations are made that you are not authorized to make. Then Upton mumbles and Sansoucy mumbles and he's not even here, and then on we go. The first time we had this substantial discussion on this point was I think in that discussion on the \$50,000 for each. That's why I want to see the minutes. I want to see what it is what was represented by Mr. Sansoucy at that point because he was there. That's it. You should know Sir that if somebody makes you a representation either that person has to pay for it, or you have to ask are you authorized to make that representation. Apparently that kind of due diligence was ...

Chairman LaRose

Alderman Teeboom, Alderman Teeboom – I don't think you're in a position or should not be in a position to tell Mr. Doran how to run his business.

Alderman Teeboom

Well then don't bring this agreement to us Mr. Chairman unless you're prepared to answer the questions.

Chairman LaRose

He did answer the questions and you're going into a philosophy on how a business should be run. You have the right to your thoughts, but I don't want to get into a contest here on how Beck should operate their business. I think that he's been put into a position that is unique. He is doing what he has been asked to do and no more. It's not much different than when you hire somebody to do something for you and you decide you want to extend the contract. That's what's sort of happening here.

Alderman Teeboom

Mr. Chairman, if Mr. Sansoucy asks the Beck firm to do some work without authorization from the City that says yes you do that work, then Mr. Sansoucy should pay Mr. Beck. This agreement should be presented to Mr. Sansoucy and he can work it out.

Chairman LaRose

Take it up with Mr. Sansoucy.

Alderman Teeboom

He's not here.

Alderman McCarthy

I just want to point out that the reason Mr. Sansoucy isn't here is that costs us a good deal of money every time he comes down here for a meeting.

Chairman LaRose

Right.

Paul Doran

I just want to respond to that to let the record show that I live 5 miles away. Nashua has been my hometown for 21 years. I don't charge you for meetings when I come here. Thank you.

Chairman LaRose

What is the pleasure of the committee? I'm assuming that you want to take this back and revive it or do you want...

Paul Doran

Mr. Chairman it's with the pleasure of what your committee wants. I've agreed to make the change of the 45 days and eliminate the 10 percent issue. The 1 percent interest charge I really don't know the last time Beck has executed that clause with any municipality to be honest with you. It is more or less in there for our private clients. If you want it changed, if someone can give me language to propose, I will consider it and be in touch with Attorney Connell and CFO Anderson and see what we could do there. If there are any other changes to this agreement, I would probably like to have them entertained at this point so if and when it is ultimately brought to the Finance Committee that we have the document that's gone through this committee.

Alderman Cookson

I was just going to suggest, I believe that this committee will meet next Monday the 30<sup>th</sup>?

Chairman LaRose

Right.

Alderman Cookson

If a week's not too long of a time span, that we can come back next Monday and provide a recommendation on this contract with all the amended paragraphs.

Paul Doran

We're used to responding in 24 hours for our services for this project so far, so a week is plenty of time. I can get those changes. I just need the proposed language from the City's point of view. The exact edit is what I would need. The others that I mentioned are easy. You and I can figure that out but the other paragraph that you had mentioned, Alderman Cookson, the last one there with the 1 percent if you could edit that as...

Alderman Cookson

Could I defer to CFO Anderson for preferred language?

Carol Anderson

Either delete the first 2 sentences – the additional charges, then the section that says that if the owner fails to pay undisputed invoices within 60 days. I would imagine...

David Connell, Esq.

That's not unreasonable.

Carol Anderson

No it isn't unreasonable.

Paul Doran

Well if you would like to think about it over night or tomorrow get in touch with me at the office that would be fine. I'd be more than happy to – because I know that there's a non-public session coming up. I do want to respond to any questions that remain. That's important. If it is just eliminating the first 2 sentences, I don't see an issue with that. Why don't you propose the changes and we can talk tomorrow? Thank you.

Carol Anderson

You're welcome.

Alderman McCarthy

I would suggest that if those changes are acceptable to Beck, the 3 that we've discussed, that we simply agree to forward the end result to the Finance Committee. We have asked for 3 specific changes. I see no reason to bring it back here to see that those 3 specific changes were made when it seems likely that they will be made exactly the way we requested.

Alderman Teeboom

Yes. I asked for a change that said not to exceed \$50,000. I don't know how many of you.

Alderman LaRose

It's in there.

Alderman McCarthy

It's in there.

Paul Doran

It's already in there.

Alderman Teeboom

No, no. Not to exceed \$50,000 and you won't come back. Meaning not to exceed \$50,000 period.

Chairman LaRose

Alderman Teeboom, that's impossible to agree to something like that.

Alderman McCarthy

I absolutely don't want that clause in there that way. If the consultant believes that to do the job requires more resources that we have negotiated, then I certainly want them to come back and tell me that. I certainly would not want to move into my house and try to use the plumbing upstairs and found out it didn't work. The answer being I ran out of pipe and we didn't want to come back and tell you that you needed to pay for more.

Alderman Teeboom

Well originally you paid \$2 million for your house, maybe it's time for you to move out of your house Mr. McCarthy.

Alderman McCarthy

I haven't paid \$2 million for my house either.

Alderman Teeboom

Right, but there won't be if you keep your head together. What I'm saying is if unless I see a not to exceed \$50,000, just like Veolia. We can review the language from the Veolia contract that has similar language. Veolia agreed not to come back to this committee for \$50,000. Mrs. Anderson can check the record on that, that would be fine. That's the way I remember. I want to see a similar provision.

Alderman McCarthy

I want to respond to the last remark because it has nothing to do with the house being overpriced. It has to do with telling the contractor if he can't finish it, just leave the job undone. That is an absolute waste of the taxpayers' money. If we're going to engage in that kind of waste, I want no part of it. If the job can't be done, I want to know that at the first possible opportunity and make remedy to it. The remedy may be to tell them don't finish it. The remedy may be to tell them finish it and we don't want to pay any more for it. But I certainly want that to be our decision and not one that's made simply because the language in the contract says when you get to this point quit.

Alderman McCarthy

Apparently Mr. McCarthy's never worked with a fixed price contract before.

Chairman LaRose

Alderman McCarthy I can't agree with you more.

Alderman McCarthy

I have worked on many fixed price contracts.

Chairman LaRose

Wait a minute. Let's not start getting into a debate about our own personal...Mr. Doran, are you comfortable that those 3 changes can be made?

Paul Doran

I can say definitely for the first 2. The third one I don't really see an issue, but I will give Mrs. Anderson tomorrow and Attorney Connell the answer, but I really don't see a problem with that.

Chairman LaRose

Okay. I guess my next question is do you feel that we should wait until next week to make some kind of a recommendation or are you comfortable enough that we can make some kind of a recommendation this evening on way or another?

Paul Doran

From my standpoint if these changes are made, then I guess the tennis ball is back in your court Mr. Chairman on how you feel as though you would want to act on that. I think that with those 3 changes I would put this forth again to you to act on that document.

Alderman Cookson

It's been 10 months. I don't think another week is going to hurt anybody.

Carol Anderson

The other thing – next Wednesday is the Finance meeting so rather than – I'm sure it can all be resolved tomorrow or the day after, then we can have it on the agenda for Friday for the Finance meeting on November 1<sup>st</sup>, so there wouldn't be any delay. It's difficult sometimes with 2 meetings in one week trying to forward it.

Alderman McCarthy

I just heard two conflicting things. I heard you want to go to the Finance Committee on November 1<sup>st</sup>, which requires that it be in the packet on Friday, and I heard this committee wants to approve it again before that.

Chairman LaRose

No. What's she saying is that because we're having a meeting Monday the 30<sup>th</sup>, we're saying we're going to do some action on it that evening that it would go to the Finance Committee that Wednesday.

Alderman McCarthy

What happens if this committee decides that it doesn't like the language that it essentially is approving this evening and doesn't want it to go to the Finance Committee after it's been...

Chairman LaRose

Then we got a parliamentary procedure to go through.

Carol Anderson CFO

What I meant is that tonight given these changes if these are the changes that can be completed and not have to come back to this committee next Monday night, then we can have it in the packet for Friday. If you can take that action saying that all of this would meet with the approval of this committee.

Alderman Teeboom

Mr. Chairman if you're looking for a consensus you need to take a vote. There's no such thing as a consensus without a vote.

Chairman LaRose

That's where I'm going.

Alderman Teeboom

You have to make the motion in terms of whatever you think you want to stick in this agreement. It will be contingent on having that in this agreement. Other than that, I won't support it no matter what you agree to.

Alderman McCarthy

I'm not sure I understand exactly what authority we are acting on at the moment. We have it on our agenda, but it isn't something that's before the board referred to us. It will be put before the independent Finance Committee, but I will move to give the committee's approval with the 3 changes that were discussed this evening. One of removing the 10 percent clause, changing the 30 days to 45 – the changes would be deleting the words "plus 10 percent" in the first paragraph of 6 payment, changing 30 to 45 in the fourth paragraph of payment, and deleting the first 2 sentences in the 6 paragraph of payment.

**MOTION BY ALDERMAN MCCARTHY THAT THE CHANGES WOULD BE DELETING THE WORDS  
"PLUS 10 PERCENT" IN THE FIRST PARAGRAPH OF 6 PAYMENT, CHANGING 30 TO 45 IN THE  
FOURTH PARAGRAPH OF PAYMENT, AND DELETING THE FIRST 2 SENTENCES IN THE 6<sup>TH</sup>  
PARAGRAPH OF PAYMENT  
MOTION FAILED**

**MOTION BY ALDERMAN TEEBOOM TO SEND THE BECK CONTRACT BACK TO FINANCE WITHOUT  
A RECOMMENDATION**

ON THE QUESTION

Chairman LaRose

My question to you Mr. Teeboom is when you say to send to the Finance Committee without a recommendation that would be the original without the amendments, correct?

Alderman Teeboom

Mr. Chairman it doesn't matter what you do. It is without recommendation. So it is up to the Finance Committee to deal with this. I can also make a motion without a negative recommendation. I don't want to make too difference to Mr. Doran. Mr. Doran came all the way down here, we might at least - we're not moving to say no recommendation. I'm just making the motion without a recommendation period. That does not speak to the amendment in this committee.

Alderman Cookson

I want to see the edits. That's primarily the reason why I didn't move for a favorable recommendation because I hadn't had the – what I understood from Mr. Doran was based on language, and I thought that you were going to do it over the evening, or is that the language of the final paragraph resolved that you have come up and agreed upon and everything is set now?

Carol Anderson

Right. The first two sentences, if you remove that, then we would not be subject to the 1 percent. As long as Mr. Doran would agree to that, that would be an appropriate paragraph at that point.

Paul Doran

Yes. I would agree to that. I would agree to all 3 changes tonight. If you would like to see the final copy and actual changes be made, obviously that's your prerogative, but I agree to those 3 changes Alderman Cookson.

Alderman Cookson

So the motion on the floor now is from Alderman Teeboom to send to Finance without a recommendation from this committee. If that is the motion, will it include the edits or no?

Alderman Teeboom

The motion is just the motion period.

Alderman Cookson

What happens to any agreements that have been made this evening with regard to the edits to this particular (inaudible). Will they be included from this date forward, or will it be negotiated at the Finance Committee?

Alderman McCarthy

If we send it forward without a recommendation, I would believe that they are free to submit whatever version of the contract they like to Finance.

Alderman Teeboom

That's correct. This came to us in our packet. I presume it came to us in our packet because the Chairman put it in our packet. I originally thought we're going to talk in here about ordinances tonight about the water supply. So I didn't even pay that much attention. I paid a lot more attention to the thing we're going to talk about next and then we talked about this. My motion is to send it back without a recommendation. That means whoever generated this can do whatever they want to do. I guess it generated by Mrs. Anderson – who generated this? This is generated by Beck. They can do whatever they want to do, send it back to Mrs. Anderson, who sends it back to Finance where it belongs in the first place, and it has no recommendation from this committee. That's my motion.

Alderman McCarthy

I'm not going to support that. I think the amendments that have been proposed are important. My first choice is to send it forward with those amendments. My second choice is to bring it back to this committee again. This is not my choice at all.

Alderman Cookson

I would concur with Alderman McCarthy. I think the edits that have been made this evening are appropriate and should be included in the contract. I'm just not sure as to what motion needs to be made in order to make sure that those edits move forward from this committee.

Chairman LaRose

The motion would be to advance it with those 3 changes.

Alderman Cookson

But with a favorable recommendation or with...

Chairman LaRose

With a favorable recommendation.

Alderman Cookson

The motion that Alderman McCarthy made earlier was to move it forward with a favorable recommendation based on the 3 edits. Therefore, that failed.

Alderman McCarthy

That motion can be renewed after intervening business.

Alderman Cookson

Very good.

**MOTION FAILED**

Chairman LaRose

What's the pleasure of the committee now?

**MOTION BY ALDERMAN MCCARTHY TO FORWARD A FAVORABLE RECOMMENDATION TO THE FINANCE COMMITTEE DEPENDENT UPON STRIKING "PLUS 10 PERCENT" IN PARAGRAPH 1 OF SECTION 6 - PAYMENT, CHANGING 30 DAYS TO 45 DAYS IN THE 4<sup>TH</sup> PARAGRAPH OF THE SAME**

**SECTION, AND STRIKING THE FIRST 2 SENTENCES OF THE 6<sup>TH</sup> PARAGRAPH OF SECTION 6 –  
PAYMENT**

ON THE QUESTION

Alderman Cookson

A question through you to Attorney Connell. Does this motion that's on the floor currently need to include a recommendation of favorable or not favorable – does the motion require a recommendation to be favorable? Therefore, could we move this to the Finance Committee with the 3 recommendations without a favorable recommendation?

David Connell, Esq.

Yes. The policy committee you can structure them motion as you please. The motion that's pending indicates that the recommendation would be favorable if these 3 changes were made. If that's not what the committee wants to vote, then it shouldn't vote that.

Alderman McCarthy

I guess from a pragmatic standpoint returning it without a recommendation is one thing. Returning it with a motion that says if you change these 3 things, then we have no opinion on it. It doesn't seem to make sense to me on its face.

Alderman Cookson

What I'd like to do is move it forward with the recommendation of the 3 edits without necessarily saying it's favorable or unfavorable.

Alderman Teeboom

Point of order. I think the motion can be made any way. This committee has very little affect on the Finance Committee. I'm not really sure why it is before us. But you can make the motion anyway. Is there a motion on the floor? The motion is to recommend favorably contingent upon these changes. I won't support it, but it is a perfectly fine motion. He can also say a recommendation without a recommendation contingent on these changes. That doesn't make a lot of sense. You can always say no recommendation contingent on these changes. It doesn't make any sense at all. The motion is a legitimate motion. I won't support it, but it's the only one that makes sense.

**MOTION CARRIED**

Chairman LaRose

Thank you Mr. Doran and Mr. Henderson.

Paul Doran

Thank you Mr. Chairman.

City's Draft Water Ordinance

NON-PUBLIC SESSION

**MOTION BY ALDERMAN COOKSON THAT THE COMMITTEE GO INTO NON-PUBLIC SESSION BY ROLL CALL PURSUANT TO RSA 91-A:3,II(e) TO CONSIDER A PENDING CLAIM OR LITIGATION WHICH HAS BEEN THREATENED IN WRITING OR FILED AGAINST THE CITY OR ANY SUBDIVISION THEREOF OR AGAINST ANY MEMBER THEREOF BECAUSE OF HIS MEMBERSHIP IN SUCH BODY SECONDED BY ALDERMAN MCCARTHY**

ON THE QUESTION

Alderman Teeboom

Has litigation been threatened? That was in the motion. Has litigation been threatened Mr. Attorney?

David Connell, Esq.

We've been in litigation with Pennichuck for several years. This is part of that.

Alderman Teeboom

So this applies to that litigation?

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman LaRose, Alderman Cookson, Alderman Teeboom. Alderman McCarthy,

4

Nay:

0

**MOTION CARRIED**

Chairman LaRose

This Memorandum of Understanding I guess we can start off with questions from the committee.

Alderman Cookson

I thought Alderman Teeboom's question right up front was absolutely appropriate. What is the difference between the Memorandum of Understanding for \$68,000 I believe and then this professional services agreement with Beck for \$50,000? What is the difference between services provided?

David Connell, Esq.

Here is the connection; you will recall early last winter, mid winter perhaps, there was big controversy about the fact that once the two had been selected, Beck and Veolia, then there was a need to reduce the proposal to an actual contract with Veolia. Veolia and I am speaking from memory so you can correct me if I am wrong, Veolia then began to bargain rather hard with the city. Beck was brought in to use its national expertise to point out to the people doing the negotiating which was the Upton firm and Sansoucy what needed to be in this contract with Veolia to make it efficient for the city.

They all worked I guess pretty much non stop for 6 weeks, which is something that had not been anticipated I don't think when the proposals were first chosen, but the net result was the contract that we had with Veolia. Beck then said okay we are ready to be paid for all of this assistance, and you will remember this dispute. There was this thing well Upton said it was okay and the board said well no we never said it was

okay. At that point, Sansoucy was charged with pulling a rabbit out of the hat and said go make peace with Beck make sure they are on board for the next phase, and see what you can do.

The result he was not able to get Beck to back off a whole lot from their insistence on being paid the \$68,000. The best apparently he could come up with was to say once we get up into the operating phase we will forgive \$12,000. Now this has come forward at this time because well I am guessing, but I guess Beck saying we want to have this in place too. Sansoucy, again I am guessing, but he was groping for that rabbit for months and couldn't pull it out of the hat. Now Beck is saying we want you to acknowledge that we did \$68,000 worth of work, which by the way from what I am told by Sansoucy and Upton they did more than that. What he said is not off the mark, 50 times value. The reason that the Veolia contract is good and that the rates will be good with the Veolia contract is that Beck pinpointed for the city all of the points where Veolia needed to have their feet held to the fire. They went from an initial two page appendix to lie 30 pages all of which created terms that were favorable to the city which Veolia was just going to kind of do the once over and not really ensure the kind of savings that the 32 page job does.

Anyone who has more specific recollections about this piece of history pitch in.

Carol Anderson

I don't have anything more specific, but I do know that having spoken with Attorney Upton and Attorney Richardson they both confirm the same thing that Beck went way above and beyond to get a contract from Veolia that is much more beneficial to the city and that this is really a very small amount that we are paying for what we are reaping in the future on that Veolia contract.

Alderman Cookson

Thank you. So is it my understanding that Mr. Sansoucy has the authority to represent the wishes of the Mayor without necessarily getting confirmation from the Mayor prior to making a decision? The fact of the matter is that here are two cases where R.W. Beck has performed work without a signed contract in place and you may not agree with the fact of Alderman Teeboom's statement earlier, but people don't do business without a signed contract in place or you don't get paid period.

Now we have budgeted \$50,000 for R.W. Beck but instead R.W. Beck is coming back saying I don't want \$50,000 I want \$118,000. It is irresponsible of R.W. Beck to be doing any of this business without a signed contract in place it is irresponsible of Mr. Sansoucy to move forward with this without written authorization. Someone help me out with this because who is leading this effort is it Mr. Sansoucy, is it the Mayor? Who is making the decisions?

Carol Anderson

If I could, I would say that the portion of the contract that we just dealt with, that the committee of the whole understood there were more costs that were being incurred. The signed contract didn't come through but they knew that there were more costs to come through. On this particular \$68,000, I would have to say that the administration was not really aware that all of that work was being done and when we did find out it was being done we really had no idea what the magnitude was but then we thought it was in the magnitude of maybe \$35,000 and then it seemed to be growing. But that was when we were trying to pull back on things too.

Precisely what you are saying Alderman Cookson is precisely why in the new contract we have the part about Beck coming to the city and that is why we put Attorney Connell in that mix because I think Beck was between a rock and a hard spot. Everyone has told me and even our financial consultants have said they are the best consultants you can get in the industry for this. They are very very good. They are one of like the top 5 in this line of work. But unfortunately they were caught in that they were told they needed to be doing this and I think not to defend them because it is not my place to do that and I don't have firsthand

knowledge, but I believe that they believed they were acting on behalf of the city. I think that is what happened...

Alderman Cookson

I am sure they do.

Carol Anderson

...and I understand what you are saying we would not, under normal circumstances you would not perform work without having a contract in place. It has been an unfortunate turn of events.

Alderman Cookson

Just two additional questions; one is how much are we forecasted for Mr. Sansoucy in FY07?

Carol Anderson

We had the \$15,000 fixed charge that went through September. That was the last payment. After that, we don't have a real final number for him, but I believe right now we are looking at about \$200.00 and Alderman McCarthy you were in that meeting right...

Alderman Cookson

It is well in excess of the \$15,000 a month that we have been paying him.

Carol Anderson

...yes it has been. We ran into the time and materials portion of the contract so now the contract is all time and materials so for us to try to project that amount...I believe the amount we were talking about the other day just for the next four months or so would be about \$200,000.

Alderman McCarthy

That was the estimate.

Carol Anderson

Right.

Alderman Cookson

That is a pretty healthy income. With regard to the contract that we just sent forward to the Finance Committee, the addition of Attorney Connell into certain paragraphs and so forth there is this statement "or" so it is Sansoucy, Upton, or...not necessarily in that order but you know it doesn't indicate who the decision maker is it says one of these three people can provide you direction. Is that correct?

Carol Anderson

It is meant to be and maybe there is a misunderstanding on how the terminology is because it was on our end of it we were of the understanding on all of the work that would be done there would be some sort of connection to Attorney Connell so that the city would be aware of what Beck was involved with, not on a day-to-day operation, he certainly will take direction from Sansoucy and Upton...

Alderman Cookson

Right.

Carol Anderson

...but that there would be a link to the city.

Alderman Cookson

Attorney Connell is there a link, is there an oversight on your part?

David Connell, Esq.

The language in question is that which was inserted right?

Alderman Cookson

Correct.

David Connell, Esq.

I saw that for the first time last week. I have not worked directly with Mr. Doran at all.

Alderman Cookson

It is unfortunate we didn't have this non-public session before we discussed the other...

David Connell, Esq.

Well that might have been...

Alderman Cookson

It may have been because you know now what this committee has done for however good or bad it is is provided a favorable recommendation onto the Finance Committee and I don't know how much debate there will be in Finance on Wednesday the first of November.

Alderman Teeboom

There will be lots of debate.

Alderman Cookson

I certainly hope so because somebody needs to take accountability for this and right now there is no accountability, there is no the buck stops here. There is no oversight at all period. We get invoices and we pay, but it is a never ending flow of tax money that is going towards this and there is nobody that can say this is what we are paying for this is who is involved because there is always someone else in the background. It is just irresponsible.

Alderman Teeboom

I tell my kids about every other day I say there is a sucker born every day. First of all I don't understand why this is marked confidential. This has nothing to do with litigation. This is not different than the

discussion we just had in open session. It is a contractual issue. Can you explain to me why we are in non-public?

David Connell, Esq.

Someone else drafted it and put it in confidential. It should be discussed in confidence like we are doing now, but obviously the agreement itself is not...

Alderman Teeboom

Why are we discussing this in non-public and the other one in public? What is the difference between this, which seems to be an unauthorized action and the other one that was a non-authorized action?

David Connell, Esq.

I guess we could have talked about the other one too. I didn't realize that was going to go in that direction, but this one clearly relates to the major brouhaha of a year of 9 months ago. They are linked. Veolia played hardball with us and that is why Beck ran up these charges and now they are playing a hardball to some extent.

Alderman Teeboom

I am not talking about hardball or whatnot I am talking about unauthorized action that violates our ordinances. That is my problem with the other contract same thing. Mr. Connell we have ordinances, they have a defined procedure and that is to protect us and have you protect us and Mrs. Anderson protect us and those...

David Connell, Esq.

I never told anyone to exceed \$10,000 without Finance Committee approval.

Alderman Teeboom

That's right. How can it come back with the other one we talked about, which I didn't agree with and I will never agree with, I am on the Finance Committee, you are not but I am...

Alderman Cookson

I will be there.

Alderman Cookson

...but how can we do this when we have protection that says you can't do this? First of all why is it even coming before us? This ought to be flushed down the toilet. I would hide it before it goes to the A.G. office because it is clearly unauthorized activity. For Beck to come down here for whatever purpose – they are writing a proposal to win. They probably spent maybe \$100,000 on that proposal and I suspect Veolia spent close to a million. I asked of the chief when he was here and he didn't deny they spent a million dollars on the proposal. I asked him why is he spending a million and he said well there is not that much business and we try to grab all we can. Same with Beck. The big boys and they are coming back through the back door slimy as you can get and then in confidential you know they go up to Alderman LaRose and say stamp this. I talked to him on the phone today and said why would you stamp this just because someone says to you stamp it, if someone says stamp your forehead are you going to stamp your forehead? I don't even understand why this is in non-public. Clearly it is a contractual matter it is not a litigation matter.

David Connell, Esq.

But the context...

Alderman Teeboom

I have a problem with that.

David Connell, Esq.

The context is, which is a litigation effort has now got all of these people linked in train; Veolia and Beck are now essential.

Alderman Teeboom

Well that is a different argument, but I don't know why we are arguing this in non-public.

David Connell, Esq.

Because we want to bring it back to the contracts, which is we can't afford to lose these people. That is just something you need to know.

Alderman Teeboom

That is the other thing I don't quite really need to have understand because ever since I stopped being an intervener I have lost track of this case. I have gotten no information and they throw it out of the Mayor's Office where they have the monthly meeting that McCarthy attends, LaRose attends, the Mayor attends and the two of you attend, and Rootovich attends to talk about the other situation or whatever and I got thrown out. The rest of the Aldermen I can tell you we are all in the dark. Then you throw this under the transom and say on top of the other \$50,000 and if that agreement with Beck gets signed it is going to be a lot more than \$50,000 by the time they are done. They are seeing some very heavy activity coming in in January.

David Connell, Esq.

Actually the calculations are interesting. I don't know if they can go that high because all they have to do now is testify. Again it becomes a question of if they are going to emphasize their part that much.

Alderman Teeboom

At \$295 an hour...

Alderman Cookson

I think the 80 hours; two weeks worth of work in the next three months is probably and underestimate...

Alderman Teeboom

...anyway let me finished I am not quite finished yet. This ought to be thrown in the transom. I don't like dignifying this even with a discussion frankly. How they dare to come up and say \$68,000 invoices we have never seen for work that was never justified. Again, if Sansoucy wants to be a big shot and I think he did some very irregular things even in hiring these two consultants because I talked to Mrs. Tremblay about it since we are in non-public and we were talking about Mr. Sansoucy here, Mrs. Tremblay washed her hands of the whole thing and said I have never seen such irregularities. Those two companies were teamed by Mr. Sansoucy. He teamed Beck and Veolia. There is nothing in the RFP that says I am going to make the teaming arrangement. He told Tremblay to disappear effectively because that is what she told me, and he took over the whole process including telling her what to do, but when it comes around to getting paid for what they did he turns to Uncle Sugar, us because Sansoucy aint paying this bill.

Why are we even considering this? Just throw it back at him. Are you saying Beck is going to walk we gave him \$50,000 more if we don't give him this they are still going to walk?

David Connell, Esq.

I have not heard that directly, but I have heard that inference...

Alderman Teeboom

Well let them walk. I am tired of extortion because that is what it is extortion. Someone writes a proposal, you hire the guy in good faith by whatever irregular means it was done, hire them in good faith then he comes back here and what did he say successful result, misunderstandings, put a confidential stamp on, take \$68,000 of taxpayer money on unauthorized activity, what are we getting into here? I feel like I belong to the mafia. I'm serious.

Alderman Cookson

Our agreement was with Sansoucy. Sansoucy should owe these people \$68,000. I don't know whose authority it was that he was given to go ahead and engage R.W. Beck and accumulate \$68,000 worth of expenses. You said Alderman McCarthy confirmed that he is making \$200,000 in the next couple of months. He is very well capable of distributing and paying this \$68,000 that R.W. Beck is asking for. This is absolutely ridiculous.

Carol Anderson

I just want to clarify, the \$200,000 that is an estimate that we are looking at and I would say that is for the next 4 months or so. I just wanted to make sure that was clear. The other thing is on this when we had met with Mr. Doran last week I wasn't here last Thursday and Friday I was at a conference, but the understanding was that, and I am sure that they will agree to it, but I can work with them on this, was that the Sansoucy and Upton were you know the two consultants, but it would be I would say the language looking at it should say in conjunction with Attorney Connell, and then at that point I think...and I know that is where they understood this was coming from. It wasn't an and/or situation. When you read it I understand what you are saying Alderman Cookson I can see where that would be...

Alderman Cookson

They struck out the "and" and they replaced it with an "or". Where you could read it Sansoucy, Upton, and Connell it is now instead of all three of them agreeing to it now it is just one of the three.

Carol Anderson

And we don't want to go back to that because before we had either Upton or Sansoucy, but we want to make sure that at all times Attorney Connell would be involved in that.

Alderman Teeboom

Is that what it says now?

Alderman Cookson

It does.

Carol Anderson

It should be in conjunction with.

Alderman Teeboom

You should change that too then.

Alderman Cookson

Absolutely.

Alderman Teeboom

How come we didn't catch that?

Carol Anderson

I actually thought that had been stated correctly, but when you look at the language that is...

Alderman Teeboom

He mentioned that. He said I am being directed by Sansoucy and Mr. Connell and Upton...

Carol Anderson

Right he understands it...

Alderman Teeboom

And how about the local janitor, how about the McDonalds salesman?

Alderman Cookson

Okay. Someone help me out because I don't know if we can go back. This committee has already made a favorable recommendation...

Alderman Teeboom

We can make a motion to reconsider.

Alderman Cookson

...can we make a motion to reconsider?

Alderman Teeboom

Sure we can.

Alderman Cookson

Okay. Once we come out of non-public. Okay fine.

Carol Anderson

And Mr. Doran he said as he was leaving on November 1<sup>st</sup> he is not available that evening so if it ends up being delayed to the following one, we were just trying to get this resolved so that we have a contract that is signed and in place. This is definitely meant to be in conjunction with.

David Connell, Esq.

This has to be resolved.

Carol Anderson

Right.

Alderman Teeboom

It has to be resolved by inaction.

David Connell, Esq.

That is a possibility. I would suggest before you take any action, this is a good session, you have to get the lay of the land that maybe you want to hear from, although they have been through it before it was almost a year ago, hear from Sansoucy and Upton.

Carol Anderson

I would agree.

Alderman Teeboom

What was that now?

David Connell, Esq.

You might want to hear directly from Sansoucy.

Alderman Teeboom

What do we want to hear from him for? He is going to pay for this is that what you are going to tell him or is he going to come with the little song and dance that he usually does?

David Connell, Esq.

You might want to hear from Mr. Upton about the importance of the contract just so you can have more to think about.

Alderman Teeboom

I think you ought to put this under the transom and hide it with shame. Are we suppose to take action – I vote a no vote nothing. I recommend we leave non-public session and I would like to reconsider that “or” because he didn’t mention who will direct him. He will take every inch he can the way that Beck operates. I don’t like Beck even on the contract with Beck. If this is the way the company operates who wants to do business with them? Do you?

Alderman Cookson

Did Alderman Teeboom make a motion to come out of non-public?

Alderman Teeboom

Yeah I am getting to a motion to come out of non-public.

David Connell, Esq.

Are you finished talking? I just want to...

Alderman Teeboom

I will reconsider. Do you have a point?

David Connell, Esq.

Do you want to consider bringing the other people down? I would strongly recommend that you not come out and make any violent statements about this memorandum, just keep it under your hats.

Alderman Teeboom

We have to make a motion to seal the minutes.

David Connell, Esq.

Yeah.

Alderman Teeboom

By the way do we do that motion in session or out of session? That came up last time in Finance.

David Connell, Esq.

I can’t remember. I have it in my desk.

Alderman Teeboom

It doesn’t say. I looked it up.

Carol Anderson

I think you make it after you come out.

Alderman Teeboom

I have seen it both ways David and I have gotten confused about it. As long as you are here we might as well use you or pick your brain. I don't think you come at \$295 an hour. I couldn't find it defined anywhere in the Right-to-Know Law.

David Connell, Esq.

The reason you have seen it in both places is it is not very clear.

Alderman Teeboom

We can do it either way. What do you advise?

David Connell, Esq.

I think I would just assume have you do it in public session.

Alderman Teeboom

In public session, okay.

David Connell, Esq.

Just for the generic reason that the motions and information would render the course of action ineffective.

Alderman Teeboom

The school board routinely does all of that in non-public session, but I prefer to do it outside.

**MOTION BY ALDERMAN TEEBOOM TO COME OUT OF THE NON-PUBLIC SESSION AND RETURN TO THE REGULAR MEETING OF THE PENNICHUCK WATER SPECIAL COMMITTEE**

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman LaRose, Alderman Teeboom, Alderman McCarthy, Alderman Cookson

4

Nay:

0

**MOTION CARRIED**

**MOTION BY ALDERMAN TEEBOOM THAT THE COMMITTEE SEAL THE MINUTES OF THE NON-PUBLIC SESSION BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED**

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman LaRose, Alderman Cookson, Alderman Teeboom, Alderman McCarthy

4

Nay:

0

**MOTION CARRIED**

**MOTION BY ALDERMAN COOKSON TO RECONSIDER THE RECOMMENDATION THAT THE COMMITTEE MADE EARLIER ON THE R.W. BECK PROFESSIONAL SERVICES AGREEMENT  
MOTION CARRIED**

Alderman Cookson

I'd like to make a recommendation that, and maybe Attorney Connell can help me, do a global replacement for this. I'm seeing some specific points, especially in page 10, exhibit A. There's a point in the agreement, which indicates Corporation Counsel, Upton, or Sansoucy in the owner's best entrance. That should be replaced with "Corporation Counsel in conjunction with Upton and Sansoucy"?

Alderman McCarthy

I would agree with Alderman Teeboom and just leave it as Corporation Counsel. If basically he has to be the clearinghouse for the requests, then it's his direction that will be important.

Alderman Cookson

I would turn to Attorney Connell for any – any hesitation in that request?

David Connell, Esq.

No.

Alderman Cookson

Therefore I move that any place in the professional services agreement in total where it states Corporation Counsel, Upton, or Sansoucy should be stricken and replaced only with Corporation Counsel.

Chairman LaRose

I don't know if you want to do that. My question is on if you look at number 2, it says as directed by Corporation Counsel, Upton, or Sansoucy participate in the PUC discovery process by...okay.

Alderman Teeboom

It's a global replacement. Where it says direction, this is a litigation issue. Direction can only be provided by Attorney Connell and nobody else wherever that appears in this agreement. Is that your motion Alderman Cookson?

Alderman Cookson

That's correct. I'm just perusing the rest of the professional services agreement to see if there is any other language or any other order that might be affected by that motion.

David Connell, Esq.

I don't think so.

Alderman Cookson

Could we take a look at paragraph 20 – administration by the owner? It's on page 6 of the PSA. I'm looking at paragraph c – “the consultant shall send all correspondence and reports to Upton, to Sansoucy, and to the Corporation Counsel”. That doesn't necessarily fit.

Alderman McCarthy

That one should stay the way it is.

Alderman Cookson

That should stay as is. I believe that the motion I suggested is appropriate, and I don't see any other conflict within the PSA.

David Connell, Esq.

I don't think there is. I think it's only where the edits that were indicated in the margin.

**MOTION BY ALDERMAN COOKSON THAT A GLOBAL REPLACEMENT IN THE PROFESSIONAL SERVICES AGREEMENT IN TOTAL WHERE IT STATES CORPORATION COUNSEL, UPTON, OR SANSOUCY SHOULD BE STRICKEN AND REPLACED ONLY WITH CORPORATION COUNSEL  
MOTION CARRIED**

Chairman LaRose

Now are we going to do anything on the Memorandum of Understanding?

Alderman McCarthy

We haven't disposed of the professional services agreement yet. We've made an amendment to it.

**MOTION BY ALDERMAN MCCARTHY MOVES TO RECOMMEND FAVORABLY TO THE FINANCE COMMITTEE WITH THE AMENDMENTS PROPOSED BY ALDERMAN COOKSON AND THE THREE THAT WERE MADE IN THE PREVIOUS MOTION  
MOTION CARRIED**

ADJOURNMENT

**MOTION BY ALDERMAN TEEBOOM TO ADJOURN  
MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 9:11 p.m.

Alderman Mark S. Cookson  
Committee Clerk