

ITEM	11
MANAGER'S REPORT NO.	42
COUNCIL MEETING	June 21/76

Re: CONSTRUCTION - MANAGEMENT AND POSSIBLE CONTINUING USE

Following is a report from the Chief Building Inspector regarding the construction - management technique.

RECOMMENDATION:

1. THAT action not be taken now to set up the Construction - Management company, but that such a method be considered when Construction - Management operations may resume for the construction of municipal buildings.
2. The Construction Manager, Mr. E. Hibbs, whose contract with the Corporation expires July 1, 1976, but who has been serving both the Library Board program and the Art Gallery Extension program, be retained on an hourly/daily basis as the need may be, at the present rate, until design stages of both programs are fulfilled.

\* \* \* \* \*

June 16, 1976.

Mr. M.J. Shelley,  
MUNICIPAL MANAGER.

Subject: Construction-Management and  
Possible Continuing Use

On March 8, 1976, Municipal staff met with Messrs. Giles and Murphy of Farris, Vaughan, Wills & Murphy, Barristers and Solicitors, to discuss the Corporation's use of Construction-Management technique in the light of observations made by the Labour Relations Board in its decision: THE CORPORATION OF THE DISTRICT OF BURNABY AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 23, AND CONSTRUCTION AND GENERAL LABOURERS' UNION, LOCAL 1070.

The background to the meeting was the hearing held by the Labour Relations Board at the application of the Canadian Union of Public Employees for a ruling under Section 34 of the Labour Code to the effect that certain persons were employees of the Corporation, that they were within the bargaining unit for which CUPE is certified and were subject to the Collective Agreement between CUPE and the Corporation. These certain persons referred to in the application were members of the Construction and General Labourers' Union, Local 1070; and the B.C. Council of Carpenters. The reason for the application being made by CUPE came

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as a result of sewer, water main, and road installation being undertaken on Corporation property during the summer of 1975 under the Construction-Management form of contracting, as a continuation of that form of contracting embarked upon by the Corporation late in 1974 in the commencement of renovations to the Municipal Hall.

A panel of the Labour Relations Board concluded that the persons in question were employees of the Corporation, but were not covered by the Certification granted to CUPE. Accordingly, the panel of the Board found there had been no violation of either the Collective Agreement between CUPE and the Corporation, nor of the provisions of the Labour Code in the Construction-Management arrangements made.

The panel, however, did comment that in the contract between the Corporation and its Construction Manager, Mr. Edward Hibbs, there may not be sufficient disassociation of Mr. Hibbs from the Corporation to constitute Mr. Hibbs as an employer separate from the Corporation, and therefore a risk was present that the Corporation could be alleged to have violated Certification rights or the Collective Agreement held by the CUPE bargaining agent for Corporation permanent employees. With these considerations in mind, the panel of the Board had observed the Corporation might be advised to create a separate employer and accord him the greatest possible degree of independence in order that he might be seen to operate in an unfettered way in labour relations matters.

Against the above background, the meeting convened on March 8 to discuss the possibility of the Corporation causing the incorporation of a company for the purpose of carrying out Construction-Management form of contracting. The Municipal Act, Section 17, Subsection 3, presently authorizes a municipality to incorporate a company for such a purpose, and also allows for officials of the municipality to be both directors and officers of such a company. However, in the formation and operation of such a company, it is of the utmost importance that the activities and business carried out by a company in no way involve the business or activities of the municipality, and equally important that company operations would not involve work regularly done by municipal workers and employees. To achieve such a clear distinction of activities and business of the company from those of the municipality, the company's objects should be structured to prevent it from engaging in business or activities of the municipality. Further distinction of the company from the municipality can be achieved by limiting regular employees of the company to simply one Construction Manager. In turn, the company would draw employees from time to time for specific construction from appropriate unions of the Building Trades Council. Such employees would need to be paid by cheque drawn on the company account with the company making all deductions and remittances required by law. Should the company require accounting, payroll, computer, purchasing, or other services maintained by the municipality, it could obtain same by a specific contract

with the municipality and thus maintain the independence of operation as an employer for purposes of the Labour Relations Act.

In summary, Construction-Management can be undertaken by the municipality, but care has to be exercised in structuring the Construction-Management system to avoid any infringement of the Labour Code.

The question now is whether or not to follow the suggestion made by the Labour Relations Board and advice received from Farris, Vaughan, Wills & Murphy, to restructure the Construction-Management system to the form of a separate company. The work of the Municipal Hall renovations and site development will be finished by the end of June. Mr. Hibbs' contract with the Corporation expires at the end of June 1976.

At this time the activity and business of Construction-Management for the Corporation is winding down. An examination of other building projects being considered by the Corporation shows them to be in very early stages of planning, and not to a stage where construction input can be incorporated by design consultants.

The Library Board program for the design of three branch libraries, including the headquarters branch, in preparation for Money By-Law to be voted upon at the 1976 Civic election, has been proceeding with Construction-Management input as a result of Council's approval to the request of the Library Board in July 1975 for the use of Construction-Management on this building program and the recommendation for retention of a Construction Manager by the Corporation on behalf of the Board.

The Art Gallery Extension project is the other building program which received approval of Council in December 1975 for Construction-Management technique, but which at present is still in the stage of preliminary design.

Both of the above programs have faced delays for various reasons, and the programs at this time cannot utilize the productive value of a Construction Manager full time. Consequently, the programs alone cannot carry the expense of a Construction Manager until they reach the construction phase. However, both programs should continue to receive Construction-Management input through the design stages, and that input can be arranged for on an hourly or daily consulting basis.

In conclusion, and in consideration of the foregoing, it is RECOMMENDED that:

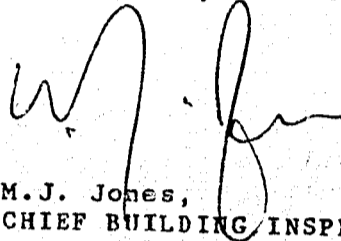
- (1) Action not be taken now to set up the Construction-Management company, but that such a method be considered when Construction-Management operations may resume for the construction of municipal buildings.

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- (2) The Construction Manager, Mr. E. Hibbs, whose contract with the Corporation expires July 1, 1976, but who has been serving both the Library Board program and the Art Gallery Extension program, be retained on an hourly/daily basis as the need may be, at the present rate, until design stages of both programs are fulfilled.

Respectfully submitted,



M.J. Jones,  
CHIEF BUILDING INSPECTOR.

MJJ:lm

c.c. MUNICIPAL SOLICITOR  
CHIEF LIBRARIAN  
PARKS ADMINISTRATOR  
PLANNING DIRECTOR  
MUNICIPAL TREASURER