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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING

4

COMMITTEE ON PARKS, RECREATION

5

AND CULTURAL AFFAIRS

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, January 27, 2005
1:10 p.m.

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RESOLUTION 040912 - resolution authorizing
the Committee on Parks, Recreation, and
Cultural Affairs to hold hearings to
investigate the reasons for millions of
dollars in outstanding payments to
subcontractors who took part in the
construction of Lincoln Financial Field...

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PRESENT:

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COUNCILWOMAN BLONDELL REYNOLDS BROWN, Chair
COUNCILMAN W. WILSON GOODE, JR.

17

COUNCILMAN RICHARD T. MARIANO

18

COUNCILMAN FRANK RIZZO

19

COUNCILMAN JACK KELLY

20

COUNCILWOMAN JANNIE BLACKWELL

21

COUNCILWOMAN MARIAN TASCO

22

COUNCILMAN FRANK DICICCO

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2 COUNCILWOMAN BROWN: Good afternoon
3 and welcome to the City Council Committee on
4 Parks, Recreation and Cultural Affairs.

5 I recognize the Members of
6 Committee. To my right is W. Wilson Goode.
7 The record should reflect that Councilman Rick
8 Mariano, sponsor of the resolution, will be
9 speaking this afternoon.

10 I would now ask the Clerk to read
11 the title of the resolution.

12 THE CLERK: Resolution 040912, a
13 resolution authorizing the Committee on Parks,
14 Recreation and Cultural Affairs to hold
15 hearings to investigate the reasons for
16 millions of dollars in outstanding payments to
17 subcontractors who took part in the
18 construction of Lincoln Financial Field; and
19 further authorizing the Committee to issue
20 subpoenas to compel the attendance of
21 witnesses and the production of documents and
22 other evidence.

23 COUNCILWOMAN BROWN: Thank you.

24 We will now move to our witness
25 list. The following individuals will be

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2 called in this order, unless I'm advised
3 otherwise.

4 Luis Cruz of Cruz Construction, if
5 you would please come forward. We welcome you
6 to the witness table.

7 COUNCILMAN MARIANO: Councilwoman,
8 if I may make a statement before we start.

9 COUNCILWOMAN BROWN: Absolutely.

10 Councilman Rick Mariano will offer
11 remarks prior to opening testimony.

12 COUNCILMAN MARIANO: Thank you.

13 I just want to take this time, since
14 I was the sponsor of this resolution and the
15 person calling for these hearings, to say
16 there's nothing archaic or mid-evil about
17 these hearings.

18 Being a person that has a background
19 in construction, I think I understand
20 construction. But if I understood it a lot
21 better I wouldn't be sitting up here. I'd
22 probably be sitting on the other side of the
23 railing and would still be in the business.
24 Believe me, it is a tough business. The
25 contractors here that have issues understand

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2 what kind of business it is.

3 This isn't a shot at the Eagles.

4 We're all happy for the Eagles. My problem is

5 I want to make sure Terrell Owens plays in the

6 Super Bowl, and Mr. Banner assures me he will

7 make sure he plays there if he's well.

8 I think that's it. We just want to

9 make sure everybody gets a fair shot here. We

10 went through a lot of blood, sweat and tears,

11 these two Councilpeople sitting next to me and

12 some other Members who can't make it today.

13 Some are listening downstairs.

14 These stadiums were a vision for

15 this City, and we want this City to do well.

16 But this has to be an all inclusive package of

17 goods.

18 Councilman Rizzo, thank you for

19 joining us.

20 We want to see everyone have a piece

21 of the pie. We don't want to come back years

22 later and say, it's a shame.

23 It's good for us that the Eagles are

24 doing so well right now.

25 This is a very confusing process,

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2 the way this is structured, and who is paying
3 who and who is not getting paid. Nobody is
4 going to happy today. There's no way that
5 everybody is going to leave here happy. Now,
6 I can put that in vernacular that's better for
7 me and these construction workers. I won't.
8 But you can't please all the people all the
9 time.

10 We're just trying to make sure
11 there's a fair shake so people like Luis Cruz,
12 who is a genuine part of the community, and
13 many of you other people out there understand
14 that it's important that a guy that looks like
15 Luis, sounds like Luis, talks like Luis gets
16 his fair share of the economic pie. If he
17 doesn't, there's no sense for us building
18 stadiums.

19 Nothing against the players. They
20 deserve every penny they get. I'm not one of
21 those Monday morning quarterbacks. I know I
22 can't play professional football, or I'd be
23 playing it because the money is great. They
24 earn every penny they make. You earn every
25 penny you make. But if we decided not to pay

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2 Donovan McNabb or Terrell Owens his money,
3 guess what? You couldn't get out of these
4 Chambers. It would be crowded.

5 Luis Cruz and the rest of the people
6 in here deserve all the money they can. This
7 isn't all the Eagles. I'm not blaming it on
8 the Eagles. The Eagles have been very
9 forthwith with what they've been telling us
10 with Judge Lord. We appreciate his
11 representation and McKissack and Turner and
12 Keating. We're going to find out no matter how
13 long it takes to make sure the Luis Cruz's of
14 the world get a fair shake.

15 Louie, you're on now. Thank you.

16 COUNCILWOMAN BROWN: Thank you,
17 Councilman Rick Mariano.

18 Allow me to acknowledge the presence
19 of our majority leader, Councilwoman Jannie
20 Blackwell, and the presence also of the new
21 State Representative, Representative Tommy
22 Blackwell. Welcome.

23 (Applause.)

24 COUNCILWOMAN BROWN: I am told that
25 there are contractors in the audience of my

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2 gender who will be invited to speak on this
3 very, very important issue. So with that, we
4 will proceed.

5 Luis Cruz, Cruz Construction.
6 Please state your name for the record and
7 please proceed with your testimony.

8 MR. CRUZ: Good afternoon,
9 Councilwoman and Members of the Council. My
10 name is Luis, L-U-I-S, Cruz, C-R-U-Z. Thank
11 you, Councilwoman.

12 Good afternoon, distinguished
13 Members of City Council. I would like to
14 thank you all for the opportunity to speak on
15 this matter that has quite literally placed my
16 business, my family and myself in serious
17 financial jeopardy.

18 I especially want to thank my
19 Councilman, the Honorable Richard T. Mariano,
20 who has shown great courage and commitment by
21 standing up for me and the other contractors
22 who helped to build the Lincoln Financial
23 Stadium for the Eagles, against the
24 recommendation of political insiders not to
25 get involved.

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2 (Applause.)

3 MR. CRUZ: I just would like to
4 start by saying that I am very proud of our
5 team and what they have accomplished in our
6 building that we helped build for them. No
7 one could be happier about their success and
8 the way the stadiums have contributed to the
9 strengthening of this franchise. We support
10 this team. I support this team, and we are
11 some of the Eagles' biggest fans.

12 I am the president of Cruz,
13 Incorporated, a second generation business
14 that was founded by my father over 25 years
15 ago. In 1989, I started my own business with
16 the dream of becoming the largest Latino
17 construction company and the largest employer
18 of minorities in the area. I have paid my
19 dues economically, socially and politically
20 and have earned the right to participate in
21 the building of the new stadium.

22 The importance of access to
23 contracts on publically funded projects
24 remains a serious issue for the minority
25 firms, and it is even more painful when you

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2 land a contract, meet and exceed the
3 expectations, and then do not get paid for
4 successfully completing ahead of schedule the
5 terms and commitments required of us.

6 Cruz, Incorporated was contracted by
7 TKM, KUD and the Eagles management to provide
8 various site work projects, bulk excavation
9 demolition, paving curbs, utilities, et
10 cetera, required to complete the Lincoln site
11 by August 1st, 2004. The work was completed
12 on July 17th, 2004, two weeks ahead of
13 schedule, so that they could accommodate the
14 world soccer game and the Bruce Springsteen
15 concert.

16 There were flaws in the original
17 site drawings, which led to grade and
18 reengineering. We had to redesign the parking
19 lots, et cetera and additional paving
20 modification. These change orders were
21 approved and signed off on by Turner
22 Construction and acknowledged by KUD and the
23 Eagles management. We were instructed to do
24 whatever needed to be done with additional
25 labor and premium time and were assured that

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2 it would be approved and paid for by Turner
3 Construction and the Eagles management. I
4 have all the appropriate signatures and
5 documentations to substantiate the approved
6 work orders.

7 Based on our confidence and the
8 directive given by Turner Construction we
9 completed the work on time. At the completion
10 of the project, when our companies expected to
11 receive the benefit and fruits of our labor,
12 Turner Construction transformed into, let's
13 make a deal. And the games began. We asked
14 for payments, punch lists appeared, mostly of
15 irrelevant issues. Although more money is due
16 than the value of the punch list, payments
17 were stalled until we completed them. Now we
18 must spend more money just to get paid less
19 profits now.

20 When the first punch list was
21 completed, a second one got published, even
22 more irrelevant than the first and unrelated.
23 And the war began. Letters go back and forth.
24 Weeks zoom by and interest on borrowed funds
25 rises, and still there are no responses, at

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2 least partial payments, on the undisputed
3 items because it would disavow the ultimate
4 agenda to confuse and delay payments. Now
5 that the owners have issues with TKM, all the
6 contractors' payments are being held up
7 because Turner Construction Company will not
8 pay anyone until they can assure themselves
9 that their own payments from the owners are
10 assured.

11 Now we are negotiating pennies on
12 the dollar in order to get the money that is
13 due to us.

14 Thank you.

15 COUNCILWOMAN BROWN: You're welcome,
16 Mr. Cruz.

17 You care to make any comments,
18 please?

19 Please state your name for the
20 record.

21 MR. MATOS: Carlos Matos.

22 Luis Cruz is a neighbor and
23 businessman in my ward district. It's
24 shameful that when they talk about minority
25 contractors and how we need to get them

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2 involved and that there's been certain
3 allocations of federal dollars and state
4 dollars that have been allocated for projects
5 such as this type of magnitude. I don't know
6 how many millions and millions of dollars
7 they've got, but some of that money was
8 supposed to assure that minority construction
9 folks could participate in it.

10 Knowing their financial ability not
11 to be able to carry jobs of that magnitude,
12 you pair off with people that can, so that
13 they can meet the minority standards. After
14 all that is said and done, the minority folks
15 are hired.

16 Then there's certain payments that
17 are agreed to. Then they're forced into
18 getting further squeezed about the money
19 they've bidden for the project. If there's
20 other needs, then other squeezes are put onto
21 these minorities to do other relationships
22 with people of multi-million dollars who
23 happen to have a wife or a niece or someone
24 who can qualify some minority person to then
25 force them to do business with those people as

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2 well.

3 In the situation here with Cruz
4 similar circumstances have happened to him,
5 where he as a minority was forced to do
6 business with other people, and now he's in
7 debt to these people who can afford the loss.
8 But if doesn't get paid, he can't pay these
9 people, and these people are going to come
10 after him, and they can very well do without
11 it.

12 What this venture has done, thinking
13 that it was something that was going to help
14 our community, because Luis does employ people
15 from our neighborhoods, is now costing our
16 brother here to go out of business, which
17 means that we've lost about eight or 10 jobs
18 and he has had to let these people go.

19 What is the benefit of all this that
20 we're doing? Because we're not really gaining
21 from it. No matter what the game is played,
22 whether it's Banner, whether it's Turner or
23 Keating, they got the political friends. This
24 is how they get these jobs. Then their
25 favorite contractors get these jobs. In order

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2 to qualify they have to pair off with some
3 minorities to do this and to do that. For
4 them to try squeeze a brother who is for real,
5 who is creating jobs, who is bringing economic
6 development into our communities -- because
7 when we have people working in the community,
8 that means they're going to buy from the
9 grocery store, that means that they're going
10 to be able to afford a house. They're going
11 to better keep our neighborhoods and so on.
12 That harmony of life has been disrupted
13 because someone wants to be a pig and not pay
14 for work that was done. I think that that's
15 shameful and disgraceful and I think that
16 people should be held accountable to that.
17 That's what I have to say.

18 Thank you.

19 COUNCILWOMAN BROWN: We thank you
20 for your testimony and we want to welcome to
21 our Council hearings Councilwoman Marian
22 Tasco.

23 Councilman Rick Mariano.

24 COUNCILMAN MARIANO: Thank you.

25 Luis, a couple questions. Explain

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2 to me for the people here that may not
3 understand all the ins and outs of the
4 construction industry, did you do all the work
5 that you want your money for? I mean, you're
6 not asking for something that you didn't do?

7 MR. CRUZ: That's correct. Our work
8 was completed. They're parking on our parking
9 lots. They're getting revenue from it, you
10 know, from the day that the concerts came in.

11 That they have a few issues,
12 absolutely. But the thing is, is nobody is
13 coming to the table and saying, okay, X, Y, Z.
14 Let's go back and forth. None of these things
15 are being done. It's just confusion,
16 confusion, confusion. You know, mixing it all
17 up, pointing fingers this way. Nobody knows
18 who. But the fact of the matter is that it's
19 on my dime. Instead of saying, okay, X amount
20 of dollars is going to be allocated for this,
21 we're going to pay you everything else, I'm
22 being held up all my money. But yet the work
23 that we did is being benefited by the Eagles.
24 They're making money on those parking lots.
25 They're getting those fees. I'll easily

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2 switch. We can use the parking lots.

3 COUNCILMAN MARIANO: This isn't work
4 that's not finished?

5 MR. CRUZ: This work has been
6 completed.

7 COUNCILMAN MARIANO: It's not work
8 that we can be arguing about over whether you
9 should have hired workers for premium time or
10 anything like that? It's stuff that was in
11 the general scope of the original contract, or
12 was it extras?

13 MR. CRUZ: That's right. The
14 dispute is the extra work that we were
15 directed to do so they could be able to have
16 these additional events.

17 COUNCILMAN MARIANO: Who gave you
18 authority to do the extra work?

19 MR. CRUZ: Turner Construction gave
20 us the directive to proceed and do this work.
21 We got what they call an SIS, which is a
22 Superintendent's Instruction to
23 Subcontractors. They get an order by KUD, who
24 gets an order from Eagles. Eagles tell KUD, I
25 want this done. KUD tells Turner to get it

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2 done. Turner comes to us and tells us, we
3 want it done.

4 COUNCILMAN MARIANO: Luis, the
5 people that are authorizing this, to do this,
6 and you pay your workers the next week -- you
7 have union workers. You have to pay them and
8 you have to pay them the union rate. These
9 are authorized people. It's not just somebody
10 that shows up one day. It's not the guy that
11 dresses in the swoop outfit. It's actually a
12 guy that you've been dealing with and he says,
13 I'm authorized, Luis. You need to do this
14 work. Please do it. Is that how it went?
15 Help me, because I don't know.

16 MR. CRUZ: We had specific
17 instructions. In fact, we would get our
18 instructions from their executive, who would
19 tell their field person -- we were only
20 allowed to acknowledge one person on the
21 field.

22 COUNCILMAN MARIANO: Who was that
23 person?

24 MR. CRUZ: It was Mr. Bob Hoffman
25 who would direct his field superintendent.

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2 COUNCILMAN MARIANO: Bob works for
3 Keating?

4 MR. CRUZ: Bob works for Turner.

5 The additional work that we did
6 would dig into my pocket. In other words,
7 when we were asked to expedite the schedule,
8 we were on schedule. I don't have no
9 documentation and they don't have any
10 documentation that said, Luis, you need to
11 expedite. You need to put more workforce.
12 You need to put more men on the job because
13 you're behind schedule.

14 COUNCILMAN MARIANO: You lived up to
15 your end of the contract and you had
16 authorized signatures to do this work?

17 MR. CRUZ: That's correct.

18 COUNCILMAN MARIANO: Because you're
19 smart enough.

20 I was in this business. My first
21 job I ever did, I thought I was doing the
22 contractor well, and somebody signed
23 something. I learned that lesson in 1977,
24 that you can't do that stuff. It's a trick
25 that people do to people. Who was that guy?

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2 I don't know. He's gone. She's gone right
3 now.

4 You're smart enough to know, I'm not
5 questioning you. I just want to state that
6 for the record.

7 MR. CRUZ: That's correct. In fact,
8 at this moment I've been told by Turner
9 Construction, who said as early as Friday that
10 there is no issue with the dollars that are
11 owed to us. It's having the Eagles management
12 acknowledge that they're going to cut the
13 check for it.

14 In other words, Turner Construction,
15 TKM and KUD acknowledged on our amount and the
16 work that we did. They acknowledge it. And
17 they say, no, we understand that we owe them
18 that money. It's we're waiting for Joe Banner
19 from the Eagles to say we're going to cut the
20 check.

21 COUNCILMAN MARIANO: Luis, what's
22 that figure? Do you have a figure?

23 MR. CRUZ: \$457,000.

24 COUNCILMAN MARIANO: That's Cruz
25 Construction alone?

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2 MR. CRUZ: That's Cruz AP Joint
3 Venture.

4 COUNCILMAN MARIANO: We're not
5 talking about any of these other guys here
6 beside you and AP?

7 MR. CRUZ: Just Cruz AP Joint
8 Venture.

9 COUNCILMAN MARIANO: Do you know the
10 ballpark figure for everybody besides you and
11 AP?

12 MR. CRUZ: No, sir.

13 COUNCILMAN MARIANO: Does anybody
14 know that number?

15 MR. CRUZ: There's numbers flying
16 all over the place.

17 COUNCILWOMAN BROWN: Point of
18 information, Councilman.

19 At what point did the delay in your
20 payments commence?

21 MR. CRUZ: As soon as we were done
22 the work.

23 COUNCILWOMAN BROWN: Give us a more
24 definitive date. Was it a year ago? Was it
25 18 months ago?

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2 MR. CRUZ: We've been done for about
3 18 months. About 16 months ago the delays
4 started.

5 COUNCILMAN MARIANO: Was it August
6 of '03, before that soccer game?

7 MR. CRUZ: That's correct.

8 COUNCILMAN RIZZO: Point of
9 information.

10 COUNCILWOMAN BROWN: One follow-up.
11 Please define for me, for persons like myself
12 not in the business, what is a punch list?

13 MR. CRUZ: A punch list is, in other
14 words, you complete your project, but you
15 might have not screwed in that little corner.
16 It doesn't affect you moving forward with the
17 project, but little things that didn't get
18 done that you have to go back and correct.
19 You might not put a cap on that lid. You
20 might need to paint that little stripe that
21 you missed. That's what a punch list is.

22 They got that their certificate of
23 occupancy. They were able to use the stadium.
24 Our punch list didn't stop them from being
25 able to use the stadium, use areas that we

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2 worked in. It was just things that we had to
3 go back and take care of, but minimal items.
4 It's been minimal items. Unfortunately, it's
5 been used as a tactic to hold payments.

6 COUNCILWOMAN BROWN: And that tactic
7 began again, as you say, August '03?

8 MR. CRUZ: That's correct.

9 COUNCILWOMAN BROWN: Follow-up,
10 Councilman Rizzo?

11 COUNCILMAN RIZZO: Thank you.

12 Good afternoon.

13 MR. CRUZ: Good afternoon,
14 Councilman.

15 COUNCILMAN RIZZO: Obviously you
16 most likely have never run into a situation of
17 this magnitude of a slow pay. Would normally
18 in lesser number, if there was a delay, would
19 you calculate interest in for the delay and
20 would that be appropriate to do that here
21 where when you are eventually paid, that there
22 should be some add-ons because of the delay,
23 or does your contract prohibit you from doing
24 that?

25 MR. CRUZ: Councilman, that door is

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2 open. But unfortunately, then you have to go
3 through legal means. I've basically just
4 taken the road that I'd just like to get paid
5 my money. Am I out a considerable amount of
6 money from borrowing money against this? I
7 am. Over \$100,000 dollars.

8 COUNCILMAN RIZZO: I appreciate your
9 compassion, but I think you should be made
10 whole, if that legally is possible.

11 MR. CRUZ: It's hard enough getting
12 paid.

13 COUNCILMAN RIZZO: I understand.
14 We're getting there. But don't surrender too
15 quickly.

16 Thank you.

17 COUNCILWOMAN BROWN: Councilman Rick
18 Mariano, continue your line of questioning.

19 COUNCILMAN MARIANO: Councilwoman
20 Blondell Reynolds-Brown brought up a good
21 point. The punch list, I'm very familiar with
22 punch lists, again.

23 What punch lists do, Councilwoman,
24 is, proceed, but we've got to go back to this
25 stuff. The punch list, you usually come back.

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2 But for something like this it would be open,
3 a hospital, an office building. People would
4 be in there, then workers would come in under
5 a little better conditions and do the stuff.
6 That doesn't keep you from getting your
7 certificate of occupancy.

8 COUNCILWOMAN BROWN: And proceed
9 without pay?

10 COUNCILMAN MARIANO: Well, hopefully
11 everybody is paid at that point.

12 MR. MATOS: If I may add,
13 Councilman, the punch list is when you've
14 finished the job, they go back and see there's
15 a couple items that may need to be patched up
16 again. We're talking a considerable amount of
17 money here. We're talking about 450-some
18 thousand dollars versus a punch list that may
19 be \$10,000, or even -- let's go to a \$100,000.
20 It doesn't mean that you have the right to
21 hold all of the money for work that hasn't
22 been accomplished.

23 The purpose for holding that money
24 would be so that if he doesn't come back and
25 finish that punch list and they have to get

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2 someone else to come in and do it, that money
3 that they held would be enough to cover the
4 list that needs to be finished.

5 COUNCILWOMAN BROWN: I understand.

6 COUNCILMAN MARIANO: Mr. Cruz, let
7 me go a little further on in this long and
8 winding tale here.

9 You helped them and you helped the
10 people get the stadium opened quicker for
11 Bruce Springsteen and the soccer game, and
12 then when you're done, that's it? It's all
13 done? They don't need Luis anymore? You take
14 your trucks and your front-end loaders and you
15 leave and then suddenly you don't get a check?
16 Take me down that road. What happens? Like
17 you were expecting, this is good. Things are
18 getting slow, but I have checks coming in.
19 What happens?

20 MR. CRUZ: We expected to have that
21 money.

22 COUNCILMAN MARIANO: When did you
23 expect that, Luis, like right after August?

24 MR. CRUZ: At least within 60 days.

25 COUNCILMAN MARIANO: So that would

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2 have been by October of '03? By the time the
3 team played their first regular season game
4 you thought you would be sitting in the stands
5 enjoying this, right?

6 MR. CRUZ: At least 95 percent paid
7 off of everything that was still outstanding.

8 MR. MATOS: We won't get into the
9 fact that they wanted the minority contractors
10 to buy a season box. We won't even get into
11 that. That's another animal.

12 COUNCILMAN MARIANO: It's not good
13 to talk about boxes in this building.

14 Luis, keep going. So what happens?
15 Who do you go to? What do you say?

16 MR. CRUZ: We would go back to
17 Turner because they were the point people.

18 COUNCILMAN MARIANO: Who at Turner?

19 MR. CRUZ: Mr. Hoffman.

20 COUNCILMAN MARIANO: The same guy
21 that signed the extra work orders?

22 MR. CRUZ: Yes.

23 COUNCILMAN MARIANO: Is Mr. Hoffman
24 in here today?

25 MR. CRUZ: Yes, he is.

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2 COUNCILMAN MARIANO: Mr. Hoffman,
3 raise your hand so I can see who we're talking
4 about. Don't hide behind the pole. This is
5 your shot. 15 minutes of fame. You're going
6 to be famous.

7 So you go to him and you don't get
8 paid?

9 MR. CRUZ: We wouldn't get paid.
10 Their position was the Eagles haven't paid us.
11 We're waiting for payments from KUD and the
12 Eagles.

13 COUNCILMAN MARIANO: Did you ever
14 deal with the Eagles directly? You never did,
15 right? Always Turner?

16 MR. CRUZ: They cut us a few checks
17 directly in the beginning of the project.
18 Since it was such a substantial project for
19 us, we were having some cash flow problems.
20 We had about 25 men on the site. We're really
21 rocking and rolling and they weren't
22 processing our paperwork, in fact, in time.
23 But they needed us to get the work. They
24 expedited a check within a week for us and we
25 were able to get some cash flow. In fact, I

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2 have copies of that check because it was a
3 handwritten check straight from the Eagles.

4 COUNCILMAN MARIANO: But you never
5 really had a contract with the Eagles, right?

6 MR. CRUZ: That's correct.

7 COUNCILMAN MARIANO: But suddenly
8 they pay you?

9 MR. CRUZ: They cut us a handwritten
10 check so we could be able to continue and not
11 delay the process. Now there's no incentive
12 because we're done. They're using our work.

13 COUNCILMAN MARIANO: Let me get back
14 to where we were. So you don't get paid. You
15 go to Mr. Hoffman and you say, where is my
16 money? Is that what you said?

17 MR. CRUZ: That's right. Basically
18 he would quote me, our contract reads, pay
19 when paid. So when the Eagles pay Turner,
20 then Turner will pay us.

21 COUNCILMAN MARIANO: But, Luis, how
22 do you know when the Eagles pay Turner?

23 MR. CRUZ: I don't.

24 COUNCILMAN MARIANO: You don't. Do
25 you know it today if the Eagles ever paid

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2 Turner?

3 MR. CRUZ: I don't know where that's
4 at.

5 COUNCILMAN MARIANO: So what
6 happens? Then you just start trying to get
7 other work somewhere? You have to pay back
8 banks. You already paid off union operating
9 engineers and laborers, who, by the way, make
10 30-some bucks an hour or more. So you're
11 hitting into the kids' college fund at this
12 point, or you didn't get that far? What do
13 you do?

14 MR. CRUZ: We're past the kids'
15 college fund. We're breaking every piggy
16 bank.

17 COUNCILMAN MARIANO: So what goes on
18 here?

19 MR. CRUZ: What's happened is,
20 fortunately we were able to have a financial
21 institution give us a line of credit because
22 of how our company was growing and how it was
23 expanding.

24 COUNCILMAN MARIANO: With your
25 trucks and your equipment and your garage and

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2 stuff?

3 MR. CRUZ: The house and everything
4 else. Basically that's what we've been living
5 off of because the last year we haven't been
6 able to get any work because we don't have the
7 funds to be able to run the work. Because
8 it's just at the end of the day not every
9 client is going to cut you a check every week.

10 We're out here fighting two wars;
11 one, trying to find work where the client is
12 going to pay you quickly, and, two, is trying
13 to get paid by the Eagles so we could be able
14 to at least exist and keep living. Right now
15 we're at the verge where -- no offense --
16 you're going to lose the contractor who's
17 invested 15 years of his life building his
18 company here.

19 Little by little we were structured
20 to fail. We were taken and said to, we're
21 going to look out for you. We're going to
22 work with you. We're going to take care of
23 you, and at the end of the day we're out to
24 hang. It's an oxymoron.

25 MR. MATOS: That's why I'm angry and

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2 that's why I'm here today. We're talking
3 about trying to develop the community.

4 COUNCILMAN MARIANO: He still lives
5 in Norris Square.

6 MR. MATOS: He lives right in my
7 neighborhood. He's in my neighborhood. He
8 employs people from the neighborhood. I'm
9 telling you, it's an economic factor that has
10 affected the whole entire community, whether
11 people want to believe that or not.

12 He is an asset to our community
13 because he employs people from the community.
14 He is a legitimate guy who's trying to make
15 legitimate money and hire people and give
16 people an opportunity that other people aren't
17 willing to do. He's done that. And because
18 of somebody's inability to get this thing
19 straightened out, they've taken a legitimate,
20 hard-working brother -- because he also
21 contributes to the community in other ways.

22 The thing is, like, you have people
23 who do business. If somebody in the community
24 needs a little help with their house because
25 their heater broke or something broke, you

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2 call a guy like Luis up and you say, come
3 here, Papi. You're benefiting from the
4 community. We need a little help here. This
5 woman needs a water heater or whatever. But
6 we're losing all that, the good that we have,
7 because of somebody's greed not to settle on a
8 debt that's been paid. It's been paid. For
9 the life of me I don't understand it.

10 I can't figure this out. They're
11 hurting. They're hurting my people. They're
12 hurting them. We can't allow that to continue
13 to happen. You got Joe Blow over who's got a
14 wife --

15 (Applause.)

16 MR. MATOS: -- who's got a million
17 dollar business and she's considered a
18 minority because she's a woman. Nothing
19 against women, my God, but I'm sure we have a
20 lot of poor that can qualify for those kinds
21 of things.

22 COUNCILMAN MARIANO: You're saying
23 that Luis is a legitimate minority contractor.
24 He's from the neighborhood. He's done
25 everything.

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2 MR. MATOS: There are legitimate
3 women in our community, legitimate women,
4 poor, black, Hispanic, white female that could
5 qualify for these jobs but don't have the
6 financial ability that other women have
7 because of their husbands or their brothers or
8 whomever to set them up in business. So the
9 real women that should be getting these jobs
10 are being deprived of those opportunities.
11 That's what I'm trying to say.

12 COUNCILMAN MARIANO: Thank you, Mr.
13 Matos.

14 I want to thank the Councilman and
15 Councilwoman. I've been monopolizing this.
16 They're going to have things to say. No
17 matter how long this takes, we're going to
18 find out where this road takes us. If it's
19 the Eagles, it's the Eagles. If it's not the
20 Eagles, we want everybody to know that. If
21 it's the people in the middle, if it's Turner,
22 we're going to find that out. We have some
23 powers here. We're going to exercise those
24 powers to make sure.

25 I've been around this business since

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2 I was 20 years old. I know the game. I go up
3 in business and I hook up with Carlos, and
4 Carlos is a minority front. You're not a
5 minority front. You are actually the kind of
6 person that we should be fighting for here.
7 We want white guys in business and women.
8 That's why I stress that Carlos loves women.
9 We know that. We just want to make sure that
10 you have a chance to keep building and helping
11 your community.

12 Thanks for staying in the City in
13 Norris Square. We're going to help you here
14 as much as we can.

15 MR. CRUZ: Just one point,
16 Councilperson.

17 Turner Construction got this job
18 because of their size. They're one of the
19 largest construction management firms in the
20 country. They're a billion dollar
21 organization. They have the financial
22 resources to be able to do the right thing.
23 They themselves have said, we all agreed that
24 this money is due. What I can't understand
25 for the life of me is, then if everybody

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2 agrees that that money is due, why don't they
3 just cut it and then continue down the road,
4 keep negotiating with the Eagles, and then
5 they'll hash it out down the road? Why
6 destroy me for 18 months when it's always been
7 due?

8 I never lied about the amount. I
9 never lied about what we had done, where we
10 were at. It's like I'm being punished. It's
11 like I'm the sacrificial lamb. It's okay. I
12 mean, our 15th anniversary was last year and
13 I'm back to the stage I was 10 years ago in
14 capacity. That's sad, because we had gotten
15 to a point where we had evolved to be able to
16 make a difference, to be able to go out there
17 and become a GC and to be able to help our
18 people.

19 I belong to the Contractors
20 Roundtable Council. I've been an MBEC member
21 for about 15 years. I believe in the cause.
22 But if the powers that be just don't help us,
23 I don't know where everything is going.

24 Thank you.

25 COUNCILWOMAN BROWN: Let me say that

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2 we will underscore and echo Councilman Rick
3 Mariano's remarks. It's imperative that we
4 get to the core of this. And it is not okay.
5 You say it is okay. It is not okay that we
6 have to have this kind of discussion 18 months
7 later. We thank you for your testimony.

8 MR. CRUZ: Thank you, Councilwoman.
9 (Applause.)

10 COUNCILWOMAN BROWN: We have a
11 sequence here. I have to now ask you to have
12 a seat.

13 Councilwoman Blackwell would like to
14 offer some remarks.

15 COUNCILWOMAN BLACKWELL: Thank you
16 very much. We are very happy to be at this
17 hearing and certainly to be one of the people
18 who signed on to this legislation and who
19 joined Councilman Mariano sometime ago to make
20 this press statement.

21 Let me say that we want to say that
22 we have worked with Cruz Construction and Luis
23 Cruz for quite some time. We know of his
24 commitment to his community. We know of the
25 professionalism of his company, and we feel

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2 that it is absolutely unconscionable that any
3 small company should have to come to us and
4 continue to appeal over and over and over
5 without their issue being revolved. It is so
6 unfair.

7 It reminds me -- I always go back to
8 Lucien Blackwell -- when we started set-asides
9 in the City. We're almost back where we
10 started, and there's no reason for it. This
11 is a City that's supposed to be about
12 inclusion. Minorities make up a great part of
13 this City, a great part of City Council, and
14 it is absolutely unfair that Lou Cruz has to
15 come to a hearing to try to get other
16 contractors and other interested community
17 people to come here so that he can get paid.

18 I'm hoping that, Madam Chair and Mr.
19 Chairman, that before our hearings end, that
20 we will hear from the Eagles and find out just
21 what we have a right to expect and try to
22 resolve the issue of Lou Cruz and Cruz
23 Construction Company and the others getting
24 their money, getting paid. That's what it's
25 all about.

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2 COUNCILWOMAN BROWN: Thank you,
3 Majority Leader.

4 (Applause.)

5 COUNCILWOMAN BROWN: We are going to
6 hear from everyone. We ask that you respect
7 the proceedings that we have underway. Every
8 single person will get the opportunity to
9 register their sentiments on the record.
10 However, it's imperative that we do it in an
11 orderly fashion. I have a script that I'm
12 going to follow.

13 I'm now going to ask State
14 Representative Tommy Blackwell to please come
15 forward because he is on a schedule, give him
16 the opportunity to speak.

17 You gentlemen will certainly have
18 the opportunity, but I must do it in the order
19 that has been presented.

20 I would like to ask the former
21 witness, Luis Cruz, to please come forward and
22 just answer a question for clarification on
23 the record for my colleague, Councilwoman
24 Marian Tasco.

25 COUNCILWOMAN TASCO: Hi. How are

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2 you? I just want to be clear for the record
3 of what the amount that's due in terms of the
4 total amount of the contract.

5 You were paid for the majority of
6 the work. What is the balance due and what is
7 that for? I'm not real clear about that.

8 MR. CRUZ: The balance due to us is
9 \$457,000. Now, that's Cruz AP Joint Venture
10 that did the project. There's other
11 contractors here that are owed substantially a
12 lot more than that. But I can only speak for
13 ourselves here.

14 COUNCILWOMAN TASCO: How much was
15 your contract?

16 MR. CRUZ: Our contract was about
17 \$18 million.

18 COUNCILWOMAN TASCO: Okay. Was that
19 a sufficient amount for you to do the work?

20 MR. CRUZ: If we would have gotten
21 paid all our money, I'd be fine.

22 You've got to understand, you grow
23 with that amount. Remember, it was a joint
24 venture, so my partner got some of it. We got
25 some of it. Our company grew. We were one of

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2 Philly's top 100 in 2003. Our company grew a
3 couple hundred percent like that. So what I
4 had to do, I had to buy newer equipment. I
5 had to upgrade our offices. I had to get more
6 staff. There's a lot more money involved
7 that. Now, all of a sudden, the job is done.
8 You're out there looking for more work because
9 you've got all these bodies to feed. You have
10 all these notes to pay for and you're not
11 getting paid.

12 COUNCILWOMAN TASCO: So this balance
13 is to help keep you going until you go to the
14 next job?

15 MR. CRUZ: That's correct.

16 COUNCILWOMAN TASCO: So the balance
17 you are is the 400-some thousand dollars out
18 of the \$18 million contract?

19 MR. CRUZ: That's correct.

20 COUNCILWOMAN TASCO: Thank you. I
21 just wanted to be clear on what the issue was.

22 COUNCILWOMAN BROWN: And that has
23 been since August '03, correct?

24 MR. CRUZ: That's correct.

25 COUNCILWOMAN BROWN: Thank you for

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2 your testimony.

3 Any other questions from Members of
4 the Committee?

5 (No response.)

6 COUNCILWOMAN BROWN: Allow me to
7 please recognize Councilman Frank DiCicco, who
8 has joined us as these hearings.

9 Thank you again.

10 Please welcome State Representative
11 Tommy Blackwell.

12 Offer your remarks.

13 (Applause.)

14 MR. BLACKWELL: Good afternoon. I
15 am State Representative Thomas W. Blackwell,
16 IV. I'm here to offer my support and my
17 comments for the minority contractors because,
18 in essence, that's where I come from. We come
19 from the same backgrounds.

20 I, as a former chief negotiator for
21 a union, it boggles my mind how you can have a
22 contract consummated, hand shakes all around
23 on it, and yet when you complete the job,
24 everybody is satisfied but the people who
25 actually did the work. That boggles my mind.

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2 I think in some ways when you have situations
3 like this, you're not just looking at the
4 contractors themselves. There are families
5 involved here, people that they hire that they
6 have to feed.

7 (Applause.)

8 MR. BLACKWELL: Now, I support the
9 Eagles. I want to see them win just as much
10 as anyone else. Probably more so because I
11 was around last time and I suffered through
12 that 27 to 10 loss.

13 But let me say this to you: I
14 watched my father for many, many years sit
15 right here, second seat, fighting for the very
16 same thing that we're here talking about
17 today. It's a sin before God that this same
18 question comes up again. I, for one, am
19 sitting here thinking, they got state money,
20 they got City money. They get money from
21 everywhere. Big contractors.

22 It seems to me, because of what's
23 happened here, that there needs to be another
24 clause in these contracts, that when a job is
25 completed, if everyone is not paid, those

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2 primary contractors that are on the job do not
3 get an opportunity to join another job where
4 there is state money, City money or federal
5 money until everyone is paid.

6 (Applause.)

7 MR. BLACKWELL: The only way
8 minority contractors get another job is they
9 have to put bids in. If they don't have the
10 money to put bids in, they can't get the job.
11 They won't even qualify to bid.

12 I mean, you're not talking about
13 people who did not complete their work. We're
14 talking about the American dream here. You
15 have primary contractors killing the American
16 dream. And you know what you have? Modern
17 day slave labor. This was done free because
18 they haven't been paid. That's a sin before
19 God.

20 This is why a lot of minority
21 contractors don't like to deal with the City
22 or the state or any government because we
23 don't protect them once they have the job
24 done. Someone has to speak up for these
25 people. I, for one, am going to do that.

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2 Because like I said, that's where I come from.

3 I've negotiated many contracts that
4 have affected lives of thousands, not only in
5 the City and state, but across this country
6 and some parts of this world.

7 My union took very good care of me.
8 I've been gone from them for 10 years. They
9 call me, I'm going back. Because they gave me
10 a good living. These are good people.

11 Remember, these same people have to
12 pay the water bills that are going up. Their
13 gas bills are going up. The electric bills
14 are going up. If they do their part in trying
15 to earn a living completing their jobs, why
16 aren't they being paid? It's a simple
17 question. I've done my job. Now pay me. If
18 you hire me, I shouldn't have to wait until
19 you to get paid in order for me to get paid.
20 That's not the American way.

21 I'll say this in closing, unless
22 everyone is paid when a job is completed,
23 those people involved do not get another
24 contract.

25 Thank you very much.

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2 (Applause.)

3 COUNCILWOMAN BROWN: We thank you
4 for your testimony and are just encouraged,
5 delighted and thrilled to see the Blackwell
6 tradition continue.

7 Any questions from Members of the
8 Committee?

9 (No response.)

10 COUNCILWOMAN BROWN: Thank you,
11 Representative.

12 MR. BLACKWELL: Thank you.

13 COUNCILWOMAN BROWN: Next up we
14 invite Mark Rosenberg, APG America.

15 The panel will include Tom Cirignano
16 of Hispanic Ventures. Paula Milbourne of Seal
17 Tite Company. Please come to the witness
18 table.

19 We welcome you to these Committee
20 hearings. As the sponsor of this resolution
21 has indicated, we do have a woman of color who
22 seeks to participate in this world of
23 construction as well, so we welcome you to
24 these proceedings.

25 (Applause.)

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2 COUNCILWOMAN BROWN: We ask each of
3 you to state your full names for the record
4 and proceed with your testimony. We will hear
5 all the testimony first and then we'll open it
6 up to questions.

7 Mark Rosenberg, APG.

8 MR. ROSENBERG: I'm Mark Rosenberg
9 with APG America.

10 MS. MILBOURNE: Paula Milbourne,
11 Seal Tite Company, Inc.

12 MR. CIRIGNANO: Tom Cirignano,
13 Hispanic Ventures, Inc.

14 MR. ROSENBERG: Thank you,
15 Councilmembers. My name is Mark Rosenberg, as
16 I just said. I'm chief operating officer of
17 APG America, the subcontractor who did the
18 glass and glazing work on the Philadelphia
19 Eagles stadium, the project known as the
20 Lincoln Financial Field. I'm privileged to
21 have the opportunity to speak to you today on
22 behalf of dozens of local subcontractors who
23 performed work on the stadium and who are
24 still owed millions of dollars for the work
25 they completed in a skillful and timely manner

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2 more than 18 months ago.

3 The construction of Lincoln
4 Financial Field was a process that spanned
5 over four years and cost over \$500 million,
6 including a taxpayer subsidy of over \$175
7 million, \$85 million from the taxpayers from
8 the State of Pennsylvania and \$90 million from
9 the taxpayers of the City of Philadelphia.

10 The hard work of thousands of
11 individuals produced a world-class stadium
12 enjoyed by the Philadelphia Eagles and people
13 from all over the region. But with those
14 taxpayer subsidies came a reciprocal promise
15 from the Eagles organization of new jobs, of
16 new revenue for the City, of new and paying
17 construction contracts for the local union
18 contractors.

19 As the Committee is aware, Kajima
20 Urban Development, or KUD, was hired by the
21 Philadelphia Eagles in 2001 as the stadium
22 development company for the Lincoln Financial
23 Field. Subsequently, KUD hired Turner
24 Construction, Keating Building Corp. and the
25 McKissack Group, collectively known as TKM, as

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2 the primary contractors to manage the
3 construction. The subcontractors on whose
4 behalf I speak to you today performed the
5 actual construction work. We dug the holes.
6 We poured the concrete. We erected the steel.
7 We glazed the walls. We painted the walls.
8 We laid the carpet and rolled out the grass.

9 All of these subcontractors
10 unfortunately have similar issues in getting
11 paid. Based on the information collected
12 today, the total sum due in owing
13 subcontractors is in excess \$54 million.
14 Rather than parade each subcontractor up to
15 make a statement for the record, we ask for
16 your indulgence to hear a prepared summary of
17 the common harm suffered.

18 At this time I would like to read
19 into the record and submit the following joint
20 statement that has been signed by 20 of the
21 region's leading construction companies, a
22 number of whom are minority-owned businesses
23 and each of whom is still owed significant
24 money on the Lincoln Financial Field project.

25 The lack of payment has created real

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2 financial hardship for not only these
3 companies, but for the people within these
4 companies, people who have wives and husbands
5 and children and mortgages and monthly bills
6 to pay. This is real people's lives.

7 If you will, I'll read that
8 statement.

9 COUNCILWOMAN BROWN: Yes, please.

10 MR. ROSENBERG: This is entitled,
11 Subcontractors Joint Statement of Facts
12 Concerning the Lincoln Financial Field Stadium
13 Project.

14 "Whereas the undersigned companies
15 generally understand these facts to be true
16 and correct based upon our knowledge and
17 belief at this point in time.

18 Whereas each of the undersigned
19 companies, which are 20 in total, collectively
20 the subcontractors, contracted with or
21 received direction from joint venture, formed
22 between Turner Construction Company, Keating
23 Building Corporation and the McKissack Group,
24 known as Turner/Keating Joint Venture in
25 association with McKissack Group, TKM, or any

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2 of them, or contracted or received direction
3 from the Philadelphia Eagles, Kajima Urban
4 Development, or any of their respective
5 related companies, agents, employees or
6 servants or served as a subcontractor and
7 performed and furnished certain work materials
8 to construct the Lincoln Financial Field,
9 located at 11th Street and Pattison Avenue in
10 Philadelphia, Pennsylvania, known as the
11 project.

12 Whereas, despite many disruptions on
13 the project, the subcontractors, many of which
14 were local small businesses and minority
15 contractors, expended extraordinary efforts
16 and costs so as to allow the stadium to be
17 substantially completed on schedule at least
18 by August 2nd of 2003.

19 Whereas, the stadium has been open
20 for over 18 months and has generated
21 significant revenue for the owner and
22 reportedly has increased the value of the
23 Eagles franchise by more than \$200 million,
24 yet the undersigned subcontractors have not
25 been fully paid for the valuable work

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2 performed and materials furnished for the
3 project.

4 Whereas, funding for the stadium was
5 derived in significant part from City and
6 state taxpayers, and construction of the
7 stadium was accomplished by the subcontractors
8 through the dedicated effort of the local
9 union labor.

10 Whereas the subcontractors have
11 suffered and continue to suffer substantial
12 financial hardship as a result of failure to
13 receive payment in full for materials and
14 services provided under their respective
15 contracts or at the direction of TKM, KUD or
16 the Eagles.

17 Whereas each subcontractor generally
18 had the following common experiences on the
19 project: Number one, throughout the course of
20 the project the subcontractors expected that
21 they would be provided accurate, detailed and
22 sufficient information as to design of the
23 project and the scheduling of the work so as
24 to allow them to build the project in an
25 orderly and efficient manner. However, many

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2 of the subcontractors were provided incomplete
3 schedules and designs. As a result, numerous
4 change orders and change directives were
5 issued, all of which unnecessarily complicated
6 the subcontractors' work and caused excessive
7 and extra cost.

8 Number two, to accommodate and meet
9 the aggressive project completion timetable
10 set by the Eagles, KUD and TKM, the
11 subcontractors expended extraordinary efforts
12 to keep up with all of the design changes and
13 building scheduling problems. In spite of
14 these problems, and as a direct result of the
15 subcontractors' hard work, the stadium opened
16 on schedule.

17 Number three, in July 2003 the
18 Eagles held numerous open houses attended by
19 tens of thousands of people, and on August
20 3rd, 2003 the stadium held its first sporting
21 event. The Eagles were able to use and enjoy
22 the stadium for multiple uses, including
23 soccer games, concerts, Eagles home games and
24 other events. Nonetheless, to this day, the
25 undersigned subcontractors have not been fully

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2 paid for contract retention on the base
3 contract work for change orders provided on
4 the project. These monies are due to the
5 subcontractors.

6 Number four, after the stadium
7 opened, numerous lists were given to the
8 subcontractors asking that the subcontractors
9 perform additional task items outside the
10 scope of the subcontractors' contracts. These
11 lists were in many cases excessive, untimely
12 and otherwise improper.

13 For example, many of the
14 subcontractors were directed to perform
15 routine maintenance and repair work or to
16 address damage due to normal wear and tear
17 that was beyond the scope of the work required
18 under the original contracts.

19 Number five, many of the undersigned
20 subcontractors were also assessed unsupported,
21 untimely, excessive and otherwise improper
22 back charges that were apparently being used
23 to reduce or to avoid altogether the amounts
24 owed to the subcontractors.

25 For example, for some of these

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2 subcontractors, a significant amount of these
3 back charges were assessed in the summer of
4 2004, nearly one year after the stadium
5 opened.

6 Number six, failure to pay the
7 subcontractors for their work for over 18
8 months has caused extreme financial duress to
9 all subcontractors."

10 That's the end of the statement.
11 I'll just finish up with my general statement.

12 COUNCILWOMAN BROWN: You're welcome
13 to.

14 MR. ROSENBERG: Thank you.

15 The subcontractors have been told
16 that their claims for money owed would be
17 addressed in a non-violent mediation scheduled
18 to occur sometime in early 2005. We obviously
19 want our claims to be resolved as quickly as
20 possible and are willing to participate in
21 such mediation, but frankly are skeptical,
22 given that the stadium has been open for more
23 than 18 months, has been enjoyed by millions
24 of fans, has been the home to two NFC seasons,
25 home to two NFC championship games and the

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2 proud home of the NFC champions, the Eagles.

3 All of this and the subcontractors still have
4 not been paid.

5 There were promises made by the
6 state to help fund this stadium. Promises by
7 the City to help fund this stadium. Promises
8 by subcontractors to build a quality facility
9 in a certain amount of time. All of these
10 promises have been kept.

11 On the other hand, there were
12 promises made to the state and to the City and
13 to the workers of this region by the
14 Philadelphia Eagles organization. The promise
15 to pay your obligations or to make certain
16 that these payment obligations are addressed
17 have gone largely ignored. These promises
18 have either been broken or have yet to be
19 kept. We hope by shining some sunlight on
20 this problem that people of goodwill can see
21 their way to honoring their promises.

22 I thank you for your time.

23 COUNCILWOMAN BROWN: Thank you, Mr.
24 Rosenberg.

25 Again, we will hear all of the

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2 testimony and then move to questions from
3 Members of the Committee. Thank you.

4 Ms. Paula Milbourne.

5 MS. MILBOURNE: Good afternoon,
6 Council. My name is Paula Milbourne, and I'm
7 with the Seal Tite Company. We've been in
8 business for approximately 20 years. It was
9 started by my dad. He had another company
10 prior to that. My dad is 78 and he still kind
11 of works in the business, or keeps me working
12 anyway.

13 Seal-Tite and myself personally have
14 been hurt financially by not being paid for
15 the work that was completed and accepted by
16 TKM Management, et al, all those other folks,
17 BBJ and KUD.

18 To take on a project such as the
19 Eagles stadium was prestigious for our
20 company, a representative of the minority
21 community. My concerns are that these
22 construction management companies need
23 minority participation. However, if Seal Tite
24 had had any key insight or working knowledge
25 that TKM did not pay their bills, Seal Tite

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2 would not have signed a contract to work on
3 such a project.

4 What it has caused is financial
5 strife. Seal Tite's goal was to pay our trade
6 payables and make a modest profit. However,
7 this has been impossible. It is a shame that
8 I have to beg for Seal Tite's money to try to
9 stay in business at the same time.

10 It appears that the one way to get
11 rid of minority participation is to eliminate
12 minority businesses.

13 (Applause.)

14 MS. MILBOURNE: Let me say this in
15 closing: All of us, we do have bills, et
16 cetera, et cetera, but the financial impact of
17 not being paid, we can't go to the same
18 resources or have the same lending
19 institutions that many of the large companies
20 have.

21 I've gone to many meetings and
22 things like that and I know that people have
23 said the lending institutions here support
24 minority businesses. They don't support
25 construction businesses. I've been told that

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2 to my face. I've gone to Wharton SBDC, Temple
3 SBDC. Don't believe any of that stuff. I've
4 been through that. Put together financial
5 packages. It don't work. I don't care how
6 good your credit is. You ain't going to get
7 the money.

8 The bottom line is, is that for
9 minorities being in business -- and that's
10 where I'm speaking from -- it is very, very
11 difficult for us not only to stay in business,
12 but to maintain a status quo.

13 I really plead to Council to really
14 help us to get paid so that we can continue to
15 be a viable part in the construction projects
16 that are ongoing in the City.

17 At this point, I'm at the same point
18 as Luis Cruz. I've had to cut back and not be
19 able to participate in many of the projects.
20 Where am I going to get the funding? Can't
21 get the funding, can't get paid. You can't
22 show your PNL to a bank and it's negative.
23 And that's what has happened.

24 The other thing is that for many of
25 us, yes, we have families and what have you,

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2 and I can really speak to this, that my mother
3 is in a nursing home. Me not getting paid is
4 impacting my keeping her in that nursing home.

5 THE AUDIENCE: Turner has got to
6 pay.

7 COUNCILWOMAN BROWN: Please.

8 MS. MILBOURNE: I would just like to
9 say thank you for letting me say what I had to
10 say.

11 Thank you very much.

12 COUNCILWOMAN BROWN: Again, as
13 Councilman Rick Mariano pointed out, the
14 purpose of these hearings is to get all the
15 information on the record. Much work was done
16 by his office to work this through and work
17 this out prior to us coming here today. We're
18 here. Every opportunity is to get all the
19 information on the record so that, as
20 Councilman Mariano said, we get to the core
21 and center piece of this problem. So stay
22 tuned for questions.

23 I want you to pronounce your name so
24 that I don't butcher it. Thank you.

25 MR. CIRIGNANO: Good afternoon,

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2 Members of City Council. My name is Tom
3 Cirignano. I'm with the minority firm of
4 Hispanic Ventures, and performed the painting
5 at Lincoln Financial Field. I'm here today
6 for one simple reason: To ask your help to
7 get us paid. To ask you to look into the
8 situation, to stop the finger pointing between
9 the Eagles, KUD, TKM and get the people who
10 did all the work and gave the Eagles, the City
11 of Philadelphia, the fans a class A stadium
12 done on time to get them paid.

13 To us it seems simple. We had a
14 contract. There were authorized, signed and
15 approved changes. The work was satisfactorily
16 performed, and then no money.

17 It is not the case where we are
18 being told it is an issue with the work or the
19 paper trail, but we are told that TKM, KUD and
20 the Eagles are having their own issues. That
21 is not our problem. It has gone on long
22 enough. We need to be paid.

23 As a minority firm who has climbed
24 the ladder for over 23 years, who has managed
25 to miss the pitfalls, who has made personal

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2 and family sacrifices to get what we believe
3 was a great honor, the painting of the
4 stadium, dealing with Mrs. Lurie and the color
5 changes, meeting the challenges of scheduling,
6 putting on more manpower than ever before, in
7 excess of a hundred men at crunch time, and
8 then to be left hanging for hundreds of
9 thousands of dollars is not right.

10 For some contractors, they are no
11 longer, and it's no fault of their own. They
12 could just not hang in any longer. For us
13 it's a nightmare. The years of climbing the
14 ladder, building relationships with banks,
15 bonding companies, suppliers and the men has
16 been seriously damaged. We are no longer
17 looked at as favorably as we once we are. To
18 say the least, it has taken the wind out of
19 our sails.

20 People need to be paid so they can
21 take care of their responsibilities, to pay
22 the benefits to the guy who broke his back and
23 worked all kinds of hours so they can get
24 what's rightfully theirs and their families.
25 We respectfully ask for your help. We have

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2 hit a road block. We ask nothing more than
3 what we deserve, to be paid. Thank you.

4 (Applause.)

5 COUNCILWOMAN BROWN: Hello. We love
6 and need your enthusiasm, but we will have
7 order.

8 I started with Luis Cruz. His
9 outstanding non-payment is \$457,000. What is
10 it for each of you so that we can keep a
11 running record here?

12 Mr. Rosenberg, the total unpaid as
13 it stands, to your knowledge, is what?

14 MR. ROSENBERG: Currently \$700,000.

15 COUNCILWOMAN BROWN: And again, that
16 commenced around August the 3rd, to your best
17 knowledge?

18 MR. ROSENBERG: Yes.

19 COUNCILWOMAN BROWN: Paula
20 Milbourne?

21 MS. MILBOURNE: \$103,000.

22 COUNCILWOMAN BROWN: \$103,000.

23 Approximately the same time?

24 MS. MILBOURNE: The same time.

25 COUNCILWOMAN BROWN: And Mr.

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2 Cirignano?

3 MR. CIRIGNANO: In excess of
4 \$650,000.

5 COUNCILWOMAN BROWN: \$650,000.
6 Commencing also around the same time?

7 MR. CIRIGNANO: Yes.

8 COUNCILWOMAN BROWN: Thank you.

9 Questions from Members of the
10 Committee?

11 Councilman Rick Mariano.

12 COUNCILMAN MARIANO: Thank you,
13 Councilwoman.

14 \$650,000? You must sleep well at
15 night thinking about all that and paying your
16 bills.

17 I've met many of you before, in and
18 out trying to work this out so we didn't have
19 to go through this whole dog and pony show,
20 but I guess that's what's going to happen.

21 It is hard for us that don't do this
22 every day. And as hard as it is, for people
23 in here to be emotional, we understand that.
24 The Councilwoman is doing a great job letting
25 everybody being heard.

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2 I think, ma'am, when you started
3 talking about your mother and how it affects
4 the quality of life for the people that you
5 are a caregiver for -- and there's stories
6 probably from each one of these gentlemen on
7 each side of you that they probably don't want
8 to get into.

9 When you started this process --
10 this is the same question I asked Mr. Cruz --
11 you never had any dealings with the Eagles
12 personally, did you?

13 MS. MILBOURNE: No.

14 COUNCILMAN MARIANO: It was all
15 through Turner?

16 MS. MILBOURNE: Yes. We were
17 certified by MBEC and MBEC recommended us and
18 we signed with Turner.

19 COUNCILMAN MARIANO: Your contracts
20 -- again, this is another question I asked Mr.
21 Cruz -- this is the basic contract. Are we
22 talking about any extras like Cruz was talking
23 about?

24 MS. MILBOURNE: Basic contract.

25 COUNCILMAN MARIANO: And you do

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2 what?

3 MS. MILBOURNE: We do caulking and
4 waterproofing. But we did the sealing work.

5 COUNCILMAN MARIANO: His company
6 puts the windows in and you seal them?

7 MS. MILBOURNE: We sealed, yes.

8 COUNCILMAN MARIANO: And he paints
9 everywhere else that's not a window?

10 MS. MILBOURNE: That's right.

11 COUNCILMAN MARIANO: Through many
12 color changes and scheme changes. We'll get
13 to that later.

14 So you met that same handsome guy
15 hiding behind the pole over there, Hoffman --

16 MS. MILBOURNE: Yes.

17 COUNCILMAN MARIANO: -- who signed
18 your work orders, said everything was fine,
19 come for the big pay day. You said you were
20 into \$103,000?

21 MS. MILBOURNE: Yes.

22 COUNCILMAN MARIANO: You thought
23 that was going to be the cherry at the end of
24 this apple pie, this great American apple pie
25 that you fought so hard by being -- you know,

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2 taking care of your mom and your dad and your
3 being a woman of color and having a chance to
4 get a piece of this economic pie, that's the
5 piece you were going to use to build your
6 business and advertise possibly, use the
7 money.

8 A lot of people who aren't in
9 construction, it's not free to bid on jobs.
10 It costs some money, and the bigger jobs, you
11 have to get prints and draft things and things
12 printed up, that costs money. You can't be an
13 entrepreneur like one of my sons, you go
14 around, you drop a flyer here and a flyer
15 there about being a D.J. You have to have
16 architects that are shielded and they have to
17 know what they're drawing. It costs money to
18 make money.

19 You're to the point now where you're
20 probably not going to be able to make any more
21 money until this nightmare goes away. Am I
22 correct?

23 MS. MILBOURNE: That's correct. I
24 think one of the biggest risks that all of us
25 face, our subs, is reputation risk. I think

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2 that if you don't have your reputation to
3 stand on, you don't have anything. I don't
4 care how much money you have in the bank.
5 We're all failing, and now we don't have the
6 reputations that we so built up through the
7 years. People don't look at us in the same
8 light. Would you?

9 COUNCILMAN MARIANO: No. I do get
10 it.

11 Councilman Rizzo whispered in my ear
12 when you were speaking. He said, we tend to
13 refer to this as the Linc because we tend to
14 butcher things in Philadelphia with names.

15 Lincoln Financial Stadium, maybe
16 Lincoln Financial Group, who has a big
17 reputation, that paid a lot of money to
18 somebody -- it wasn't me and I don't think it
19 was anybody at this table who has the naming
20 rights for this thing -- might want to have
21 something to say about their name being
22 basically drug through the mud with a part of
23 the community that we should be helping.

24 I went to that game last week. That
25 was a great game. It was a pride to know that

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2 my brother actually worked as an electrician
3 on that stadium. He got paid. Because if he
4 didn't get paid, he wouldn't have come back
5 the next week. That's one of the good things
6 of being a member of a union. You
7 unfortunately pay those workers, and you have
8 to pay them no matter what happens, even if
9 you don't collect your money.

10 MS. MILBOURNE: Exactly.

11 COUNCILMAN MARIANO: I think
12 Councilwoman Brown said it the best. State
13 Representative Blackwell, it was an honor to
14 hear him speak. We need to find out something
15 here so that this never happens again.

16 I will tell you, I'll be 50 years
17 old in July. I was enamored being a
18 Councilman my first four years. The Governor
19 that was the then Mayor, at the end he had to
20 push to build two stadiums. Sometimes I like
21 to say things that aren't necessarily true,
22 but I think if I keep saying them, they become
23 true. I used to say, Mayor, we need to build
24 two stadiums; one for the Phillies and one for
25 the Eagles. Because we were briefed one time

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2 down at Senator Fumo's office -- Councilman
3 DiCicco was with me -- with people from the
4 Eagles. They made a whole lot of sense that
5 they should build two stadiums just in the
6 pure sense that you can't watch a football
7 game the same way you watch baseball. At the
8 end -- and Councilman DiCicco of course will
9 speak for himself -- we were pushing for that.

10 At the end of the Rendell
11 Administration it looked like this was going
12 to happen for two stadiums. It never quite
13 happened. Then when the Street Administration
14 came in, it came. And it's like yesterday to
15 me.

16 Again, I'm excited as a Councilman.
17 But I'm in my second term and I'll think, oh,
18 we're going to build stadiums. My brother,
19 Luis Cruz, all these people are going to be
20 getting jobs, and this is a good thing. Now,
21 we're cherries in all this.

22 Maybe Councilman Cohen will be here,
23 but I won't be here for the new stadiums when
24 they build new ones. So now I understand that
25 we gave a lot of stuff away. One of my big

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2 things was, we should possibly name the whole
3 complex Veterans Stadium Complex, Lincoln
4 Financial. They got their money for Lincoln
5 Financial. They got their money for Citizens
6 Bank. That was the deal the Phillies and the
7 Eagles made. We were happy to let that
8 happen.

9 We could argue all night that some
10 Members of this Council wanted to put roofs on
11 the old stadium, Veterans Stadium, while there
12 were pipes leaking and rats running around.
13 We didn't want that. We wanted that, but we
14 gave the store away. I thought we should
15 honor veterans by making sure that it was
16 Veterans Stadium Complex. I was told
17 specifically by then Solicitor Nelson Diaz. I
18 wrote him a letter. I talked to him on the
19 record, off the record. We negotiated that
20 away too. So maybe next time -- and this is
21 not being facetious -- there's not going to be
22 a next time in my lifetime -- these stadiums
23 better last.

24 We have to make sure that you get
25 your piece of this pie, no matter what happens

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2 here.

3 Now, the way the process and the way
4 that the Councilman has this set up, we're
5 doing this on purpose. The reason we're
6 taking the workers, we want to get to KUD
7 after we talk to Turner and we want to talk to
8 the Eagles last because the process is working
9 up. It's coming from Luis Cruz and your group
10 up to TKM, to KUD, to the Eagles. The buck
11 doesn't move down. It moves up here.

12 Again, I'm not blaming the Eagles.
13 When it gets time for Mr. Banner and his
14 associates to get up here, and Judge Lord and
15 the lawyers, we need to have some answers to
16 these questions. So if everyone sticks around
17 and we get through this process through the
18 auspice of the good Councilwoman, we're going
19 to find out just why you didn't get paid, or
20 we'll just keep having hearings and hearings
21 and hearings.

22 I will tell you, a lot of these guys
23 over here wanted to picket that game last
24 weekend. We asked them not to picket. I
25 said, look, if you are going to picket, I'll

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2 be there with you. I'll stand there with you
3 because I love you and it's the right thing to
4 do, but let's let the Eagles have this day.
5 Let's let the Eagles have their championship.
6 I was so sure they were going to smoke
7 Atlanta. I was positive. Just as I'm sure
8 they're going to beat New England. I'm
9 positive.

10 But Carlos Matos, Luis Cruz and the
11 three people up here, I don't think either of
12 you can afford to go to Jacksonville now to do
13 any picketing down there. But maybe we'll
14 just hop in that Crown Victoria I have and
15 we'll all go down. We can fit six people in
16 that and we'll split the gas money.

17 We've got to figure this out. We're
18 serious. Let's figure this out.

19 Thank you for your help.

20 (Applause.)

21 COUNCILWOMAN BROWN: I have been
22 very remiss. I failed to acknowledge the
23 presence of Councilman Jack Kelly, who's been
24 hearing the testimony at least for the last
25 half hour. Please recognize Councilman Jack

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2 Kelly.

3 (Applause.)

4 COUNCILWOMAN BROWN: Any other
5 questions from Members of the Committee?

6 (No response.)

7 COUNCILWOMAN BROWN: We thank you
8 very, very much for your testimony.

9 I'll say again for the record,
10 Councilman Rick Mariano did all that he could
11 do so that we would not have to get to this
12 juncture. It's unfortunate that it's
13 redundant because we've heard like stories.
14 I've heard them for the past five years.

15 The purpose of the hearing is to get
16 everything on the record and hear from all
17 sides so that we can move to a resolution
18 that's a win-win for all parties involved.

19 Thank you for your testimony.

20 COUNCILMAN MARIANO: Can I ask just
21 one question, something I forgot?

22 Did you guys reduce the price of the
23 money you would have took in order to settle?
24 Did anybody say, look, instead of taking
25 \$600,000 dollars, I'll take \$500? Did anybody

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2 do anything like that out of you three?

3 MS. MILBOURNE: Not me.

4 MR. CIRIGNANO: No. It didn't get
5 to that point.

6 MR. ROSENBERG: Unfortunately, as
7 you know, in construction that occurs. For
8 ourselves, we'd be thrilled if that process
9 started to take place.

10 COUNCILMAN MARIANO: Did TKM or KUD
11 or the Eagles or anybody ask you to do that?

12 MR. ROSENBERG: We were never
13 offered to settle it out with real money.

14 COUNCILMAN MARIANO: What are they
15 going to give you, Eagles hats? What are you
16 getting? What else could they give you?

17 MR. ROSENBERG: They couldn't
18 promise us any money, so that's not a
19 negotiation.

20 COUNCILMAN MARIANO: In other words,
21 it's always about the Benjamins. That's what
22 it's about here. So don't take less.

23 MR. ROSENBERG: Everyone in this
24 room, I think every contractor is willing to
25 take a cut. That's just construction,

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2 unfortunately.

3 COUNCILWOMAN BROWN: Mr. Rosenberg,
4 thank you very much for your testimony.

5 I want to take the liberty of the
6 Chair and invite up Jihad Allal (ph),
7 Contractors Roundtable, and Jamal Johnson,
8 Contractors Roundtable, so that we can hear
9 your testimony prior to bringing up TKM and
10 KUD.

11 Please state your full name for the
12 record and who you represent.

13 MR. JOHNSON: Jamal Johnson from the
14 Contractors Roundtable, Councilwoman.

15 MR. ALLAL: I'm Jihad Allal, the
16 chairman of the Contractors Roundtable.

17 COUNCILWOMAN BROWN: Please proceed
18 with your testimony.

19 MR. JOHNSON: Your honorable
20 Councilwoman Blondell Reynolds Brown and your
21 colleagues, we just want to bring to your
22 attention that Philadelphia has been very
23 unfriendly to the African-American
24 construction community, Hispanic.

25 If you don't believe me, you can go

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2 out and look at the public works jobs. You
3 can look at the private sector jobs. You can
4 look at Corporate American Retrofits down
5 Center City. We've been excluded on a
6 substantial basis from these jobs,
7 particularly the public works jobs, because
8 these are the jobs that we usually get
9 opportunities to work in. Even the public
10 works jobs now over the last, I'd say, under
11 Rendell's Administration and under John's
12 Administration, we've been pretty much
13 involved in the lack of participation.

14 These reasons may be a lack of
15 reaching out. It could be a lack of public
16 officials vying for us. It could be just
17 blatantly racism. Probably all of the above.
18 All we know is we're suffering from lack of
19 progress in the construction community. If it
20 continues, this trend continues, we're
21 actually suffering from genocide on the
22 construction.

23 We can't learn state-of-the-art
24 construction technologies in the high-rise
25 buildings going up. We won't be able to hand

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2 our skills down to our children.

3 We're asking the public sector,
4 public officials, we're asking the private
5 sector, the large contractors to let's turn
6 this trend around. Because if we continue it,
7 we're going to be pretty much left out of the
8 construction industry businesses.

9 It's not like we're doing swell in
10 Philadelphia when it comes to construction.
11 You see the sites going up. We're asking you
12 to turn this trend around.

13 Right now our Contractors
14 Roundtable, we have a sponsor where we sponsor
15 the Tools for Guns initiative. If we don't
16 have these opportunities to do these
17 construction projects, particularly the
18 multi-residential projects -- if you go down,
19 for instance, Richard Allen, if you go down to
20 Lucien Blackwell, we're not working there on a
21 substantial basis. You might see one or two
22 of us, if that many. But in terms of seeing
23 large volumes of youth working, we can't hand
24 them skills. We can't hand them tools. We
25 can't hand them hammers. We can't hand them

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2 meters because we're not on there.

3 Businesses, it is a known fact, hire
4 people that look like them. We're not out
5 there on those jobs. They don't look like us
6 on a substantial basis.

7 We haven't particularly been on the
8 private sector jobs, but the public works jobs
9 are the ones that we really try to go after,
10 but we just haven't been on them. The
11 economic impact of the public works jobs,
12 we're not feeling them.

13 You go to the Lucien Blackwell
14 Homes, you don't see an economic impact of the
15 African American community on those jobs,
16 particularly public works. You go down to
17 City Hall projects, Constitutional Center, a
18 lot of us didn't feel an economic impact of
19 that job.

20 I'm not anti-white. I'm not
21 anti-union. But Rick Mariano, his people are
22 working. Mr. Rizzo, his people are working.
23 South Philly is working. Northeast is
24 working. But when it comes to the inner City
25 of West Philadelphia, the inner city of North

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2 Philadelphia, our youth are not working. Our
3 youth are going around shooting people for a
4 \$50 loan because when they come to us and ask
5 us, could we get on this job, do you have any
6 work for us, or can we get a job, we can't
7 even give them no employment because when we
8 go to get these jobs, we've got all kinds of
9 obstacles. We've got all kinds of hindering
10 issues that prevent us from doing this work.

11 We have the skills. We have the
12 expertise. We have the knowledge. We have
13 the skills. We got the wherewithal to do
14 these jobs. But when it comes down to us
15 actually getting on them, the public works
16 jobs, mind you, we're not on them.

17 We're asking you as the Philadelphia
18 public officials that represent us to stop
19 this trend, because everything is not fine and
20 dandy in our community. We can come here and
21 we can laugh and joke and smile. But our
22 community, we're not doing fine and dandy at
23 all.

24 When it comes to these economic
25 contracts, we're not just suffering on a

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2 construction level, in professional services,
3 legal services, accounting services,
4 engineering services, all across the board.

5 In Philadelphia we're not really
6 doing that well, black Philadelphia. So we
7 don't need to be down here smiling,
8 handshaking, like everything is fine and dandy
9 when you look at our community. We're trying
10 to for the sake of our future, for our youth,
11 because we're in our 40s and 50s.

12 It hasn't been looking good for us
13 for the last eight years under the Rendell
14 Administration and the years under John.
15 Construction has been very unfriendly to us.
16 We was working when Goode was here. We were
17 getting public works jobs. We were on those
18 sites. All of a sudden, soon as Rendell came,
19 the jobs started going to groups that don't
20 look like us. I'm not anti-union either. I'm
21 just pro African-American.

22 There's enough work in this City for
23 everybody. Keating used to reach out for us,
24 Dumus (ph), Dale (ph). All of them used to
25 reach out to us. Now there's only a few

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2 select contractors involved with negotiating
3 deals. But us in terms of a wide spectrum of
4 African American contractors, we're not
5 involved in these deals.

6 COUNCILWOMAN BROWN: To your
7 knowledge, are any members of the Contractors
8 Roundtable involved in any activities
9 specifically at the stadium?

10 MR. JOHNSON: Just one or two. And
11 the one or two that was there suffered
12 financially and are on the brink of going out
13 of business. So it's not just the Eagles.
14 We're talking about construction across the
15 whole board.

16 We're just here to ask you to turn
17 this trend around, because if you don't, 10,
18 20 years from now you're just going to see 2
19 percent of us on these construction sites. We
20 need the public officials. We need the
21 private sector. We need Keating. We need
22 Dale, all you guys, to reach out.

23 They got this cliché going around,
24 one City, one dream, one town. Well, let's
25 make that cliché a real cliché instead of just

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2 what it is, a cliché only.

3 That's all I wanted to say as a
4 representative of the Contractors Roundtable.
5 We want to see Philadelphia as a whole benefit
6 from the public works jobs, particularly on
7 the construction level.

8 COUNCILWOMAN BROWN: We thank you
9 for your testimony.

10 (Applause.)

11 COUNCILWOMAN BROWN: For the record,
12 that was Jamal Johnson.

13 Mr. Allal, are you prepared to offer
14 your testimony, please?

15 MR. ALLAL: Yes, ma'am. Thank you
16 for giving me the opportunity to come and
17 speak to you this afternoon.

18 I'd also like to remind all the
19 leaders here that when this project was funded
20 and they came and they asked for over \$300
21 million dollars to do these two stadiums, the
22 City Council was here to support that. At the
23 last minute they came in with an MBE plan and
24 said that they were going to assure that
25 minority businesses were included in this

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2 project. That happened at the last minute.

3 On this project, on Turner's job, I
4 personally had a company, A-Plus Construction.
5 They called us to come when they first put the
6 office trailers there. They asked us to
7 supply a carpenter to do something, maybe put
8 up some drafting tables. So we went down
9 there to do something that should have took
10 one man one day's worth of work and ended up
11 turning that to \$12,000 on drafting tables and
12 miscellaneous stuff around the offices.

13 But that wasn't my first business
14 relationship with Turner. That was my second.
15 My first business relationship with Turner
16 almost occurred the same way. Turner was
17 doing West Park, a PHA project, and they
18 called us in to do almost something similar,
19 to do some miscellaneous construction work.
20 That contract turned from maybe \$100 to maybe
21 \$100,000. But it took two years for me to get
22 my money. And that was after the carpenters
23 union closed on my bond, my fringe benefit
24 bond, which we always talked about union and
25 contractors.

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2 One of the most significant things
3 about unionized workers are for a company, a
4 company has to put up a bond to ensure that
5 those fringe benefit hours are paid to the
6 union. Well, my bond was put up by the GBCA,
7 General Building Contracts Association, and
8 that subsequently got called because Turner
9 didn't pay me. I had to go to a PHA board
10 meeting, every board meeting, for, I think,
11 almost six months when they finally had them
12 pay me. If it wasn't for Carl Green taking
13 the lead, I wouldn't have been paid.

14 I'm really here today not just to
15 relate my story to you, but to stand up for
16 Luis Cruz. Because Lou Cruz, one thing that
17 is significant that I want you all to focus on
18 is that Luis is from a Latino community and
19 I'm from the African American community. When
20 Luis was riding high and the Eagles and Turner
21 Organization had him in the paper as a
22 minority contractor, Luis reached back for us.

23 (Applause.)

24 MR. ALLAL: At that time in our
25 history in Philadelphia we were the

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2 Contractors Roundtable, members that you see,
3 along with Ms. Sacaree Rhodes, we were taken
4 in all across the City. We did the
5 Constitution Center. We did this and did
6 that.

7 It wasn't a coincidence that they
8 were touting Luis as one of their success
9 stories. But we were going to picket them.
10 However, because Louie asked us to give this
11 process an opportunity -- which I fully
12 support because I think it takes that type of
13 leadership. Nobody likes to fight, but
14 somebody has to know how. Nobody likes to be
15 put on the burner, but somebody has to pay the
16 cost when things go wrong.

17 One thing that's significant about
18 Luis Cruz is when he was on top he didn't
19 foresee none of these problems. None of us
20 did. But he was willing to reach back. He
21 personally funded the Contractors Roundtable
22 to get organized where we are today. And that
23 says a lot.

24 One other thing that we need to
25 think about. If Luis goes out of business --

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2 which will happen if he doesn't get paid. I
3 know the attorney said that there's some
4 settlement offered maybe sometime in 2005.
5 But that might as well be 2015. Because when
6 you need money to settle all your outstanding
7 debts -- he needs it now.

8 What we need this leadership to do
9 is tell Turner, look, this is unacceptable. I
10 want this man paid. Or we as a body, we want
11 this man paid. Let them go to the bank.

12 (Applause.)

13 MR. ALLAL: On all these contracts,
14 they have contingency and general conditions
15 and they have a profit line. Let Turner pay
16 him from their profit. TKM and Keating, let
17 them pay him now, arrange for a bank to pay
18 all these outstanding bills and let them
19 dispute that when that arbitration comes up
20 and let them take the hit.

21 Furthermore, if they're not going to
22 do that, then let's give them a taste of their
23 own medicine. Let's put them out. Let's ice
24 them from all City work.

25 (Applause.)

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2 MR. ALLAL: Madam Chairwoman and
3 Members of Council, Turner, on their web site,
4 they build this up as a City. Turner isn't
5 just a United States large construction
6 company. They are a global construction
7 company. They do over \$5 billion a year in
8 construction. They are big business. Now,
9 they've come a long way since there was a Mr.
10 Turner, believe it or not, and he was a member
11 of this association on 18th Street. But
12 they've come a long way since that.

13 But this City that Turner
14 constructs, is a City that they have. That is
15 a City where racism is allowed. That's the
16 City where discrimination is tolerated, and
17 that's the City where the poor are treated
18 unjustly. We cannot have that.

19 We are not here talking about what's
20 good. We're talking about the taxpayers
21 dollars that they took from us to build the
22 stadium. We're talking about how they teach
23 this guy. Luis Cruz, he'll suffer another
24 loss if this company fails.

25 By the way, it's a second generation

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2 company. That's a lie. He's a second
3 generation company and his company is located
4 in the neighborhood. I've been in his office.
5 When you ride there in the summer, there's
6 little kids playing in the street, young boys
7 walking up and down, young girls walking up
8 and down. They see those guys coming up with
9 those trucks. He's an example. He's an
10 example for those future generations that
11 won't go to college, that don't want to lead a
12 life of crime. He's an example of a
13 successful businessman.

14 We talk about crime every day. We
15 talk to drugs. One of the things that leads
16 -- and I can tell you this from my own
17 example. Almost 30 years ago, I met Jamal
18 when I got out of the service. I can tell
19 you, when I got out the service, one thing I
20 learned was that you lead by example. By him
21 being a businessman, that is an example that
22 young kids will never say anything to him,
23 maybe even go up and shake his hand, but they
24 will see that and they'll know that and they
25 become businessmen and business women. We've

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2 got to make sure that survives.

3 We're here to implore you to say to
4 Turner, your City that you built, the type of
5 business that you do is unacceptable and
6 whatever you got to do, straighten this out.

7 (Applause.)

8 COUNCILWOMAN BROWN: Thank you, Mr.
9 Allal. We want to thank both of you gentlemen
10 for your very, very important testimony.
11 Thank you very, very much.

12 If we can please invite to the
13 witness table, Michael Kuntz of TKM, Dennis
14 Biggs of KUD International and Bob Hoffman of
15 KUD.

16 COUNCILWOMAN BROWN: Good afternoon,
17 gentlemen. I called three names and we have
18 five, so I need to ask each of you to state
19 who you are and let's start with that, please.
20 And identify who you representing.

21 MR. BIGGS: My name is Dennis Biggs.
22 I represent KUD International.

23 (Audience outburst.)

24 MR. LEE: Christopher Lee, counsel
25 for KUD.

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2 COUNCILWOMAN BROWN: We are now
3 going to continue with the testimony.

4 Thank you, gentlemen. I would ask
5 that you please state your name for the record
6 and your affiliation.

7 MR. BIGGS: Dennis Biggs with KUD
8 International.

9 MR. KUNTZ: Michael Kuntz, vice
10 president and general manager, Turner
11 Construction.

12 COUNCILWOMAN BLACKWELL: Excuse me,
13 Madam Chair. Can I ask one question so that
14 they can respond to it?

15 COUNCILWOMAN BROWN: Surely. As
16 soon as we get who they are on the record.

17 MR. LEE: I'm Christopher Lee. I
18 represent KUD International.

19 MR. MCILVANE: Brad McIlvane. I
20 represent TKM.

21 MR. HOFFMAN: Robert Hoffman, Turner
22 Construction Company.

23 COUNCILWOMAN BROWN: Thank you,
24 gentlemen.

25 We want to ask Councilwoman Majority

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2 Leader Jannie Blackwell --

3 COUNCILWOMAN BLACKWELL: Thank you.

4 COUNCILWOMAN BROWN: We have not
5 heard testimony from these gentlemen, I should
6 state.

7 COUNCILWOMAN BLACKWELL: Alright. I
8 hope that somebody today will answer the
9 question of why the prime and the minority
10 contractors -- why everybody is being asked to
11 lower their prices. They still haven't gotten
12 paid. I just want to know why should they?
13 Why is everybody being asked to lower their
14 prices? That's everybody who's appeared and
15 everybody who's owed money. That's what I'm
16 told. They're all being asked to reconsider
17 prices and I want to know why.

18 COUNCILWOMAN BROWN: Thank you.

19 Mr. Biggs, would you please proceed
20 with your testimony. Do you have written
21 testimony? State who's offering testimony.

22 MR. KUNTZ: Good afternoon. Thank
23 you. As I stated, I'm Michael Kuntz. I'm the
24 general manager from Turner Construction
25 company here in Philadelphia.

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2 TKM, a joint venture of Turner
3 Construction Company and Keating Building
4 Corporation, in association with the McKissack
5 Group, is proud to have built a world-class,
6 state-of-the-art stadium for the City of
7 Philadelphia and the NCF Championship
8 Philadelphia Eagles.

9 Lincoln Financial Field has been
10 widely recognized as the best stadium in the
11 National Football League, being called the
12 jewel of the NFL by Fox Sports' Chris Cullen.
13 Notwithstanding a large number of last minute
14 changes by the Eagles and its development
15 manager, Kajima Urban Development, and some of
16 the worst weather for construction in
17 Philadelphia's history, TKM and its
18 subcontractors delivered the stadium nearly
19 two weeks ahead of the scheduled completion
20 date. TKM is seeking payment from Kajima and
21 the Eagles for the work performed by TKM and
22 its subcontractors.

23 TKM and Kajima have been working
24 through the dispute resolution of these funds
25 through the dispute resolution procedures

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2 provided in the contract between TKM and
3 Kajima. Unfortunately, these procedures have
4 not resulted in the payment of funds from
5 Kajima and the Eagles as we had anticipated.

6 The failure of Kajima and the Eagles
7 to pay all the funds for TKM for work
8 performed by our subcontractors, including
9 base work and retainage that is not in
10 dispute, has resulted in direct impacts to TKM
11 subcontractors, as we've heard today, in their
12 contracts with TKM.

13 Each of the subcontractors agreed
14 that the subcontractor would not be paid until
15 TKM had received payment for the
16 subcontractors' work from Kajima. As a
17 result, their failure to pay hurts both TKM
18 and our subcontractors. Simply put, TKM and
19 our subcontractors provided an outstanding
20 facility to Kajima and the Eagles, and TKM and
21 its subcontractors are entitled to be paid the
22 money for the work we performed.

23 We are in a dispute resolution
24 process, as contractually allowed. We have
25 made some progress in recent weeks, and I

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2 applaud Mr. Biggs for coming to the table with
3 us in trying to work through the process. We
4 hope to continue that process after these
5 hearings.

6 Thank you.

7 COUNCILWOMAN BROWN: Thank you, sir

8 Is anyone else prepared to testify?

9 Mr. Biggs, KUD International.

10 MR. BIGGS: Good afternoon. My name
11 is Dennis Biggs with KUD International.

12 KUD International and its role as
13 program manager for the Eagles was contracted
14 to deliver the project on time and on budget.
15 As with all major construction projects, there
16 are contractual requirements that must be met
17 by each and every party in order to declare
18 that the project has been successfully
19 completed.

20 As many of the subcontractors are
21 infinitely aware, the completion of Lincoln
22 Financial Field was marred by a rush to finish
23 that we believe can be attributed to certain
24 parties within the construction team. The
25 acts of those parties have probably damaged

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2 many other subcontractors as well.

3 Unfortunately these claims and counter-claims
4 exist primarily within the construction team
5 led by TKM.

6 Our contract with TKM required them
7 to deliver the project, meeting all of the
8 conditions outlined in the agreements by a
9 certain date for a guaranteed maximum price.
10 Although the project was safe for occupancy
11 and able to be utilized for the holding of the
12 Eagles events, items remain that still need to
13 be completed.

14 KUD and TKM led extensive efforts on
15 the project to employ local contractors, and
16 in fact, helped this project to exceed the
17 goals that were set within the EEOP. We
18 believe that, for the most part, the
19 subcontractors who worked for TKM on the
20 project did so with diligence and
21 professionalism commensurate with the industry
22 standards required for a major project of this
23 type.

24 Unfortunately, there appear to be
25 circumstances that exist on the project that

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2 have affected some of them negatively. KUD is
3 committed to continue to work within the terms
4 of the agreements, including the required
5 process for dispute resolution, in trying to
6 resolve the outstanding issues on the project
7 so all of the parties involved can receive
8 what they are contractually due.

9 As Mr. Kuntz stated, a mediation
10 process is currently underway. It is
11 currently underway. It is not delayed until
12 the summer of 2005, as some have suggested.
13 It is currently underway to address the issues
14 that are being discussed today. The process
15 is ongoing, and recently, as Mr. Kuntz has
16 stated, we have begun to make progress.

17 You've listened to people today who
18 have probably created as much confusion in
19 your mind as answers. And we find that that's
20 somewhat symptomatic of what we've been
21 dealing with over the last six to eight
22 months. I believe one of the groups said that
23 they believe that the total of claims on the
24 project total \$54 million --

25 COUNCILMAN GOODE: Excuse me, sir.

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2 Are you saying that we are confused by the
3 testimony that came before?

4 MR. BIGGS: No. I just think there
5 are several issues that might not have --

6 COUNCILMAN GOODE: It sounded like
7 you said we were confused by the testimony
8 that came before.

9 COUNCILMAN MARIANO: That's what he
10 did say.

11 MR. BIGGS: Yes. I'm sorry.

12 COUNCILMAN GOODE: Okay. So we're
13 not confused. We'll get to you later.

14 MR. BIGGS: The number that the
15 subcontractors stated that are owed to them is
16 \$54 million, approximately \$54 million was one
17 of the testimonies. KUD is only aware of
18 approximately \$12 to \$12-and-a-half million of
19 issues that exist.

20 COUNCILWOMAN TASC0: How much?

21 MR. BIGGS: \$12 to \$12-and-a-half
22 million that exist. Of that amount, \$6.4
23 million is for contract work and retainage to
24 subcontractors.

25 COUNCILMAN MARIANO: Can you explain

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2 retainage to the people in here?

3 MR. BIGGS: Retainage was amounts
4 withheld in the final completion of the work.

5 COUNCILMAN MARIANO: Luis Cruz
6 finishes his work. The parking lot is ready
7 to roll. What can't be finished about that?
8 They park cars on it. It's striped. The
9 drains drain. Where is the money for Luis
10 Cruz? I'm just starting with Luis Cruz.

11 (Applause.)

12 COUNCILMAN MARIANO: What retainage
13 does Mr. Cruz have for 200-some thousand
14 dollars? What retainage?

15 MR. BIGGS: I am not sure of the
16 amount.

17 COUNCILMAN MARIANO: Let me ask you
18 a question. I wanted to wait, but I just
19 can't take it anymore. Where does KUD come
20 from? Is it a minority held firm? Who is
21 KUD?

22 MR. BIGGS: No, it's not.

23 COUNCILMAN MARIANO: It's not a
24 minority held firm?

25 MR. BIGGS: No.

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2 COUNCILMAN MARIANO: Where does KUD
3 come from?

4 MR. BIGGS: KUD is located in
5 California, and we're a subsidiary of Kajima
6 Corporation.

7 COUNCILMAN MARIANO: They're from?

8 MR. BIGGS: They're from Japan.

9 COUNCILMAN MARIANO: So guys come
10 from Japan, go to San Francisco, come here and
11 don't pay Luis Cruz, right? Is that pretty
12 much it?

13 MR. BIGGS: No.

14 COUNCILMAN MARIANO: You saw what
15 happened over there. What bull crap are we
16 dealing with here? Where is Luis' money?
17 Where is his money? Do you have his money?
18 Do you have Luis Cruz's money?

19 MR. BIGGS: No, I do not.

20 COUNCILMAN MARIANO: Who has Luis
21 Cruz's money?

22 Does Mr. Banner have it back there?

23 MR. BIGGS: There is money held out
24 by the Eagles on the balance of the project.

25 COUNCILMAN MARIANO: So the Eagles

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2 have Luis Cruz's money? I can send everybody
3 else here home. The Eagles have Luis Cruz's
4 money. Is that what you're telling me?

5 MR. BIGGS: There are amounts due
6 Luis Cruz from the contract balance.

7 COUNCILMAN MARIANO: Why don't we
8 pay him?

9 You're saying there are monies for
10 Luis Cruz on his contract balance. So in the
11 vernacular of people who don't do this every
12 day and don't screw people with contracts,
13 basically you owe Luis money.

14 Your company from San Francisco to
15 Japan owes Luis from Norris Square money.
16 Luis, who I know. Luis, who gives money to
17 everybody that needs help in my community, not
18 a Hispanic community, not a white community,
19 not a black community. A community. You're
20 coming from Japan to San Francisco to
21 Philadelphia and you're not going to give Luis
22 from Norris Square his money? Come on, man.
23 It could be Luis from South Philly, but it's
24 Luis from Norris Square.

25 Where Luis' money? Do you have Luis

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2 money? Does the Eagles have Luis' money?

3 That's the answer we need here.

4 MR. BIGGS: I understand that, sir.

5 COUNCILMAN MARIANO: Do you have
6 Luis' money?

7 MR. BIGGS: As I stated, no.

8 COUNCILMAN MARIANO: The Eagles have
9 it, right? Are you saying the Eagles have it?
10 Now, Mr. Banner and his guys are coming.
11 They're going to tell us the Eagles have it or
12 they don't have it.

13 Before we did this stuff, I told
14 everybody, do not come in here and bullshit
15 me. Don't waste my time.

16 (Applause.)

17 COUNCILMAN MARIANO: This isn't for
18 the audience. This is so they understand that
19 I and the rest of these people are stone
20 serious. I'm just the guy that knows the
21 words, okay? That's where I came from. Where
22 is his money?

23 COUNCILWOMAN BROWN: Who has the
24 money? If you don't have the money, who has
25 the money?

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2 MR. BIGGS: As I said, part of the
3 money is from a contract balance amount that
4 we are aware of.

5 COUNCILMAN MARIANO: Contract
6 balance amount, that's money that you owe
7 Luis, right?

8 MR. BIGGS: That's money that is
9 owed from the Eagles to KUD to TKM to Luis.

10 COUNCILMAN MARIANO: But it's not
11 money for work that Luis hasn't finished,
12 correct? He's done? He did his work?

13 MR. BIGGS: That is correct.

14 COUNCILWOMAN BROWN: Point of order
15 by Councilman Goode.

16 COUNCILMAN GOODE: I have a series
17 of questions to ask before you conclude your
18 testimony, if we allow you to conclude your
19 testimony.

20 The first is, your business is not
21 in danger going out of business, is it?

22 MR. BIGGS: No, sir.

23 COUNCILMAN GOODE: You made profit
24 off this project; is that correct?

25 MR. BIGGS: That is yet to be seen.

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2 COUNCILMAN GOODE: That is yet to be
3 seen. When do you anticipate closing the
4 books on this project?

5 MR. BIGGS: I do not know the
6 answer.

7 COUNCILMAN GOODE: You have no
8 answer whatsoever as to when you plan on
9 closing the books on this project?

10 MR. BIGGS: We had hoped to close
11 the books on this project by this time. The
12 level of disputes between the parties --

13 COUNCILMAN GOODE: How long do you
14 usually leave the books open on a project?

15 MR. BIGGS: Projects of this type,
16 major construction projects for virtually all
17 kinds of clients are open a year, 18 months
18 after completion.

19 COUNCILMAN GOODE: They generally
20 have some conflict resolution built into them
21 contractually and there are several parties
22 who sign off on it, as you stated in your
23 testimony. Who in that process represents the
24 taxpayers? Is it paid?

25 MR. BIGGS: Not that I'm aware of.

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2 COUNCILMAN GOODE: You can't answer
3 that question? You do know that there were
4 tax dollars in the project?

5 MR. BIGGS: Yes.

6 COUNCILMAN GOODE: Essentially if
7 you're not aware of anyone representing the
8 taxpayers in the dispute to close the books on
9 the project, what you're saying is you spent
10 the taxpayers' money first to keep the profits
11 for yourselves?

12 MR. BIGGS: No, I'm not saying that.

13 COUNCILMAN GOODE: What we're saying
14 is that you didn't spend the taxpayers' money
15 first. We all participated in the project,
16 and some of that money that is owed to these
17 contractors is our money that we put in the
18 project. Do you disagree with that?

19 MR. BIGGS: I understand that.

20 COUNCILMAN GOODE: Who represents us
21 in this process?

22 MR. BIGGS: PAID has represented the
23 project throughout the process.

24 COUNCILMAN GOODE: Did PAID close
25 their books?

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2 MR. BIGGS: I don't know the answer
3 to that.

4 COUNCILMAN GOODE: Thank you.

5 COUNCILWOMAN BROWN: Councilwoman
6 Tasco.

7 (Applause.)

8 COUNCILWOMAN TASC0: You talk about
9 the disputes that you all are in arbitration
10 about. Was it at all possible to settle the
11 disputes as they came up, or were they just
12 all piled on the back end of the project to be
13 dealt with at the end? Was there a process
14 where they could have been settled on an
15 ongoing basis?

16 MR. BIGGS: The vast majority of all
17 the issues along the course of the project
18 were solved on a timely basis.

19 COUNCILWOMAN TASC0: What are the
20 disputes that are outstanding?

21 MR. BIGGS: The disputes that are
22 currently being discussed are related to
23 acceleration to complete the project and they
24 are related to claims that came at the end of
25 the project.

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2 COUNCILWOMAN TASC0: As related to
3 cost?

4 MR. BIGGS: Cost, claims from
5 subcontractors who believe that they should be
6 getting more money from either TKM, the Eagles
7 or from KUD.

8 COUNCILWOMAN BROWN: Should be
9 getting more versus money that they earned and
10 deserve?

11 MR. BIGGS: Well, that's the purpose
12 of the mediation process, is to determine if
13 their claims are valid.

14 COUNCILWOMAN TASC0: If a
15 subcontractor was asked to respond to a change
16 order, what is the process for issuing that
17 request? Is there a contract? Is there an
18 amendment to the contract? Are the specifics
19 spelled out in a way that they understand it?
20 Is there documentation to support it?

21 If there's documentation to support
22 the change and the cost associated with it,
23 what is the dispute? Did not the contractor
24 understand what they were agreeing to? Or is
25 there something in writing that says that you

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2 asked them on the change order to perform
3 something different than they were asked to
4 originally? Is there a contract?

5 MR. KUNTZ: Yes, there is.

6 COUNCILWOMAN TASC0: So what is the
7 dispute?

8 MR. KUNTZ: The dispute is on the
9 reasons for the change.

10 COUNCILWOMAN TASC0: But the change
11 is done.

12 MR. KUNTZ: Yes, I realize that.

13 COUNCILWOMAN TASC0: Who raises the
14 issues about the reasons? Who is raising the
15 issue?

16 MR. KUNTZ: There's a dispute
17 between KUD and ourselves over the validity --

18 COUNCILWOMAN TASC0: Who made the
19 request for the change?

20 MR. KUNTZ: It comes down from KUD
21 to Turner, to TKM, and then we instruct the
22 subcontractors.

23 COUNCILWOMAN TASC0: You discussed
24 changing maybe how the windows are going to
25 look?

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2 MR. KUNTZ: That's not something
3 that TKM would get involved in.

4 COUNCILWOMAN TASC0: Well, when you
5 got into the dispute, when you got into the
6 request for change, you had a discussion with
7 KUD, and you decided you were going to do B
8 and not A.

9 MR. KUNTZ: I'm not sure I
10 understand what you're saying, Councilwoman.

11 COUNCILWOMAN TASC0: Well, if there
12 was a request for a change, and KUD agreed --
13 did they agree at the time?

14 MR. KUNTZ: Yes.

15 COUNCILWOMAN TASC0: Alright. Who
16 signed the agreement?

17 MR. KUNTZ: A representative from
18 KUD.

19 COUNCILWOMAN TASC0: Okay. So what
20 is the dispute?

21 MR. KUNTZ: There is no dispute with
22 the entitlement. The dispute centers around
23 this: KUD instructed us to change the
24 contract work, change something in the
25 stadium. We then issued an SIS, as Luis said

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2 earlier, a subcontractors' instructions, to
3 have them do the change work. The
4 subcontractor followed what he was doing. We
5 authorized that. Kajima authorized us. Now
6 we sit here and those funds are in dispute.
7 Most of them center around the overtime and
8 the acceleration to finish the building on
9 time.

10 COUNCILWOMAN TASC0: None of that
11 request was discussed when you were making
12 your request for the change? You all are
13 experienced contractors. You know what goes
14 into that.

15 MR. KUNTZ: That's why we go through
16 a process where I get written authorization
17 from KUD.

18 COUNCILWOMAN TASC0: What is the
19 dispute? If you said that they asked you to
20 do something and you did it, what is the
21 dispute?

22 MR. KUNTZ: That's why we're going
23 through the resolution process because we
24 don't understand that in a lot of cases.

25 COUNCILWOMAN TASC0: You don't

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2 understand why they're questioning what you
3 changed?

4 MR. KUNTZ: That's correct.

5 COUNCILWOMAN TASC0: KUD, why are
6 you questioning it, if you said you would
7 agree with the change?

8 MR. BIGGS: Councilwoman, this is
9 exactly the dispute. The format that was used
10 to authorize the work that Mr. Kuntz is
11 discussing was conditional upon review of the
12 contracts. So in order to resolve the issues,
13 we need to have a dispute resolution process.

14 COUNCILWOMAN TASC0: The question
15 is, as Councilman Goode said, both of your
16 companies are not going to have any financial
17 impact negative? Neither company will have a
18 significant financial impact. You will not go
19 out of business because of this dispute.

20 But your dispute has a significant
21 impact on the subcontractors who don't have
22 the support and the wherewithal to continue in
23 their business. They just make it from
24 contract to contract when you all are in
25 dispute because you couldn't decide when you

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2 made the change. You should have settled the
3 issues at that point, the impact you have on
4 the subcontractors.

5 COUNCILWOMAN BROWN: Does that
6 matter at all?

7 MR. BIGGS: It does matter.

8 (Applause.)

9 MR. BIGGS: That is exactly why
10 we've elected to proceed in the mediation
11 process.

12 COUNCILWOMAN TASC0: See, you all
13 are sitting in the office building in
14 California and Philadelphia. You go to work
15 every day and your families are fed and you
16 don't have any financial impact. While you
17 all are taking time to do that, this poor
18 contractor can't make the next payroll. So
19 you all need to find some way.

20 (Applause.)

21 COUNCILWOMAN TASC0: You all just
22 can't sit there and say, well, we'll settle
23 this between now and next year. These people
24 will be out of business.

25 MR. LEE: Councilwoman, may I

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2 interject for one moment?

3 COUNCILWOMAN BROWN: State your name
4 for the record.

5 MR. LEE: My name is Christopher
6 Lee, and I'm counsel for KUD.

7 The mediation process has been
8 ongoing. As a result of this Committee and
9 Councilman Mariano's involvement, the
10 mediation process, through the mediator, who
11 is probably the best mediator, I think, in the
12 eastern part of the country, we've been
13 working diligently to address these issues.

14 The whole focus of the mediation has
15 been shifted to address precisely what your
16 concerns are. We have made substantial
17 progress over the last several months, as I've
18 indicated to Councilman Mariano's office. We
19 are not quite there yet in terms of getting
20 the kinds of results that you are looking for.

21 COUNCILWOMAN TASCO: We're just
22 looking for you all to find the money to pay
23 these people that you have stated that you owe
24 them. That's all.

25 MR. LEE: I understand that.

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2 COUNCILMAN MARIANO: If I may,
3 Councilwoman.

4 On the attorney here, he's right.
5 We did speak. Just bear with me one minute.

6 I told you, once we open Pandora's
7 box, and we start getting here, everything is
8 going to break loose.

9 Now, just one last thing. I'm going
10 to ask everyone to abide with me, since we
11 have everybody sitting here. It all seems to
12 be blamed on Mr. Banner and the Eagles. Can
13 we get them up here to answer questions at the
14 same time? Maybe if we all sit at the same
15 table we can get these people their money and
16 we can do stuff.

17 What I just heard Councilwoman Tasco
18 go through -- and that was a legitimate
19 question from her -- you asked them to do
20 something. They do something. They go to the
21 worker. The worker does it. They come back
22 to you and say, I'm done. Where is my money?
23 You go to him and say, where is the money.
24 You say, well, let's talk about the money.
25 It's not my fault. It's the Eagles.

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2 (Applause.)

3 COUNCILMAN MARIANO: Can we get the
4 Eagles up here now?

5 COUNCILWOMAN BROWN: Councilman Rick
6 Mariano, the answer is yes.

7 I just need you to please define
8 substantial progress. What does that mean,
9 given the testimony we've heard and where
10 we're not with regard to payment to these
11 subcontractors?

12 MR. LEE: First let me say that
13 mediation by Pennsylvania statute is a
14 confidential process. It is the basis of
15 mediation. I am a mediator. Most
16 construction cases these days are resolved
17 through mediation because it involves open and
18 frank discussions in the safety of an umbrella
19 of confidentiality so that there is not
20 posturing, and reasoned minds can come
21 together and have a practical resolution.

22 I will say that is what we have been
23 doing. There is a contractual chain from the
24 Eagles to my client, KUD, to TKM, and TKM then
25 in turn contracted with subcontractors. So

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2 there's issues between all of them. They are
3 very complicated.

4 We have been focussing on a process
5 to agree what we owe to TKM with respect to
6 the work done by them, sometimes on their own
7 or through their own subcontractors, so that
8 we could allow that money to go to them, to
9 meet with the subcontractors.

10 COUNCILMAN MARIANO: But I think you
11 missed the point of Councilwoman Tasco, her
12 point. It was a very deep and important
13 point.

14 While we're sitting here in Council
15 and having hearings and you're back in your
16 office building here, in California, Japan --
17 that's where you're from. That's great.
18 We've talked. I like this. Can't we get a
19 bank? Can't we pay these people and then work
20 it out? Can't we trust them?

21 Luis Cruz isn't going anywhere.
22 That cute lady right there, she's not going
23 anywhere. She's been around. She's worried
24 about her mother in a senior citizen home.
25 Let's have a heart. How about if we do this:

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2 How about if we take your salary from KUD and
3 pay her mother's bills up?

4 (Applause.)

5 COUNCILMAN MARIANO: Why don't we do
6 that? You don't want to do that. You'd be a
7 fool to say that. You're not going to take my
8 salary. I've got bills to pay. I work for
9 this. You work. She worked. She did it.
10 Let's pay her. Where's the money? Where's
11 the money?

12 COUNCILWOMAN BROWN: Councilman
13 Kelly has a question.

14 COUNCILMAN MARIANO: I just want to
15 pay these guys.

16 COUNCILMAN KELLY: I have a quick
17 question.

18 In your negotiations, are the Eagles
19 included with these negotiations, the
20 mediation process?

21 MR. LEE: As I informed Councilman
22 Mariano's office, they have attended the
23 sessions. They are not parties at this point.

24 COUNCILMAN KELLY: They are not
25 parties, but they have attended?

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2 MR. LEE: They have had a
3 representative present for some --

4 COUNCILMAN KELLY: What timetable
5 are you on, if there is any? This can go on
6 and on and on.

7 It seems to me almost like England.
8 Once they get something, they never, never
9 give it up. They'll go and have meetings
10 after meetings after meetings until it takes
11 someone like the IRA to blow up a couple
12 buildings and then they do something. This is
13 the thing, if you're going to just
14 procrastinate, it will never be solved.

15 COUNCILMAN MARIANO: This is the
16 best part. The subs aren't a part of these
17 meetings either, the guys that are owed the
18 money. She's not in that meeting.

19 Are you in that meeting? It's your
20 money. It's your mother in the home. Give
21 the lady her money.

22 MR. LEE: The subs have been invited
23 into the process by the mediator. A large
24 number of them have agreed to participate in
25 the process. They are in the process with the

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2 mediator.

3 COUNCILMAN MARIANO: They're in the
4 process with the mediator. Are there any subs
5 here who can dispute that?

6 Nobody invited you, Luis? I guess
7 they don't know where Norris Square is. It's
8 way left of Japan, Norris Square.

9 COUNCILWOMAN BROWN: Councilwoman
10 Marian Tasco, pose a question.

11 COUNCILWOMAN TASCO: May I ask a
12 question? You said that the Eagles are not in
13 the meetings. Who is the dispute between? Is
14 the dispute between TKM and KUD?

15 MR. LEE: The present mediation
16 which has been commenced is to resolve issues
17 between KUD and TKM in the mediation process.
18 What I will tell you is there are issues that
19 go over the place.

20 COUNCILWOMAN TASCO: Can I ask you a
21 question, KUD? Have you been paid for the
22 work done on the stadium? Have you received
23 all of your money from the Eagles?

24 MR. BIGGS: No, we have not.

25 COUNCILWOMAN TASCO: Is that in

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2 dispute?

3 MR. BIGGS: The amount that's due
4 will be paid to the subcontractors for the
5 work that's still yet -- to complete their
6 contracts.

7 COUNCILWOMAN BROWN: What's the base
8 price of the contract? Let me finish. You're
9 the contractor.

10 MR. BIGGS: I'm the development
11 manager.

12 COUNCILWOMAN TASC0: You're the
13 development manager. The contract was between
14 the Eagles and Kajima?

15 MR. BIGGS: Our company. And then
16 our company to TKM.

17 COUNCILWOMAN TASC0: So the Eagles
18 pay you?

19 MR. BIGGS: Yes.

20 COUNCILWOMAN TASC0: Then you pay
21 TKM, and TKM pays the subcontractors. Now,
22 you got your money to pay TKM?

23 MR. BIGGS: We do not have the money
24 that we're discussing today.

25 COUNCILWOMAN TASC0: Where are you

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2 going to get that money from?

3 MR. BIGGS: It's the balance of
4 money that is owed from the Eagles.

5 COUNCILWOMAN TASC0: Which is not in
6 dispute?

7 MR. BIGGS: Yes.

8 COUNCILWOMAN TASC0: It's not in
9 dispute?

10 COUNCILMAN MARIANO: Now I'm
11 starting to wonder who's really confused. We
12 were confused.

13 I think you're confused, and now I'm
14 confused because you're the guy holding the
15 money. Who's confused here? I think your
16 client is confused.

17 COUNCILWOMAN TASC0: What is the
18 dispute?

19 MR. LEE: Please. Mr. Biggs is
20 trying to honor his statutory obligations with
21 respect to the mediation process and --

22 COUNCILMAN MARIANO: And we're
23 trying to honor Luis Cruz, and her bills that
24 are due.

25 MR. LEE: Councilman, we have spent,

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2 well, the better part of the last month --

3 COUNCILMAN MARIANO: And if your
4 client had done his job we wouldn't be here
5 today wasting everybody's time. Let's call it
6 what it is. You're wasting our time because
7 you're shucking and jiving for some money.

8 There's no cameras here. I'm not
9 playing to anybody. I don't do that.

10 Let me tell you what's happening.
11 You got money. You're holding it. You're
12 holding the guy's money. In the neighborhood
13 I came from, you hold my money too long,
14 somebody is going to get cracked on the side
15 of the head. Now, we can't really crack you
16 on the side of the head, but we're going to
17 beat you up in here.

18 I told you before you came in here,
19 don't bullshit us. Somebody is lying.
20 Somebody is lying. What's going on?

21 MR. BIGGS: The monies that we've
22 received, which are part of the process that
23 has been reviewed by PAID every month --

24 COUNCILMAN MARIANO: Do you owe her
25 or Luis Cruz any of that money?

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2 MR. BIGGS: Yes.

3 COUNCILMAN MARIANO: Pay them.

4 MR. BIGGS: No. The money we
5 received, we do not owe them. It's pending.

6 COUNCILMAN MARIANO: Where is that
7 money that you owe to Luis and that lady
8 there?

9 MR. BIGGS: I told you it's in the
10 contract balance due from the Eagles.

11 COUNCILMAN MARIANO: When are the
12 Eagles going to give you that money? If the
13 Eagles owed me money, I'd certainly be at Mr.
14 Banner's door every day. I'd be standing
15 outside that stadium saying, give me my money
16 so I can pay this lady, whose mother is in an
17 old-age home. Come on.

18 MR. BIGGS: But when we look at the
19 total amount of money that the subcontractors
20 say is being owed, it is much greater than the
21 contract amount that is due from the Eagles or
22 due from us to TKM. We're trying to ascertain
23 why that is.

24 COUNCILMAN MARIANO: You know in the
25 basic contract how much Cruz and she is owed,

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2 don't you, and what you owe him? Do you owe
3 him or her money that wasn't from the basic
4 contract?

5 MR. BIGGS: We do not know the
6 issues between TKM and the subcontractor.

7 COUNCILMAN MARIANO: That's really
8 convenient, isn't it? Because you're the guy
9 holding the money.

10 MR. BIGGS: We don't want it to be
11 convenient.

12 COUNCILWOMAN BROWN: Please let us
13 hear from Councilwoman Tasco and then
14 Councilman Goode.

15 COUNCILWOMAN TASCO: I lost my train
16 of thought.

17 I want to go back to the accounting
18 process. Where are the record keepers? Who
19 kept the records? Who's reviewing the
20 contracts? Who's reviewing the change orders?
21 Who is trying to balance this out? Is there
22 someone trying to do that?

23 Business people normally don't do
24 business without signed contracts and
25 documentation and accounting systems in place

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2 to account for what you're asking for. Is
3 that taking place?

4 MR. BIGGS: Yes. As a matter of
5 fact, there are many of these people involved
6 in the process.

7 COUNCILWOMAN TASCO: So if you asked
8 Mr. Kuntz, a subcontractor based on his
9 request to make a change, and you gave him a
10 change order, there was a cost associated with
11 that change order. The contractor did the
12 work. You ought to have a clear record of how
13 much each contractor did at the end of the
14 day. I mean, you just don't run a project and
15 don't monitor the cost.

16 Back to the lawyer. If the Eagles
17 owe you money, and it's the money that belongs
18 to the contractors, why don't you just ask the
19 Eagles to pay the subcontractors, then take
20 that away from the money that they owe you?

21 (Applause.)

22 MR. LEE: Well, I can't fully speak
23 for the Eagles. We have been focussing all of
24 our efforts on a mechanism to get the people
25 in this room paid the legitimate amounts that

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2 they are found to be due.

3 COUNCILWOMAN TASC0: At what point
4 do you think that's going to take place?

5 MR. LEE: I will tell you, as a
6 mediator, one of the issues is to try to
7 control people pointing fingers at each other.
8 He's asked us to try to refrain from that.

9 You have legitimate questions.
10 There is no doubt about that. And we are
11 trying to be very forthright. We've worked
12 with Councilman Mariano to try to keep him
13 abreast of our efforts. I sincerely hope that
14 they will be very successful in the next
15 couple of weeks. The mediator has a process
16 to hopefully conclude by the end of March. I
17 think he's a little bit optimistic.

18 COUNCILWOMAN TASC0: We do not want
19 you to point fingers. We're just trying to
20 get a process that happened that we seem to
21 think -- maybe government can be really
22 disorganized, but we never expect private
23 industry to be disorganized.

24 You all count your dollars, every
25 penny. You don't waste anything. It seems to

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2 me that there ought to be some clear
3 documentation on what happened. I think it's
4 unfortunate that we're in this place. We did
5 build two stadiums. We built the stadium, and
6 we end up with the people we wanted it to help
7 the most are the ones who are getting hurt.

8 (Applause.)

9 COUNCILMAN GOODE: Mr. Biggs, did
10 you state in response to a question that you
11 believe that all the contract balance is owed
12 to subcontractors? I believe I heard you say
13 something to that effect.

14 MR. BIGGS: My contract balances?

15 COUNCILMAN GOODE: All the Eagles'
16 contract balance is owed to the
17 subcontractors?

18 MR. BIGGS: They're on the schedule
19 of values that is prepared --

20 COUNCILMAN GOODE: Did you made that
21 statement? If you made it, you made it. If
22 you didn't, you didn't.

23 MR. BIGGS: I'm sorry. I don't
24 know.

25 COUNCILMAN GOODE: Let me start at a

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2 different point. Do you believe that the
3 contract balance held by the Eagles is
4 sufficient to satisfy all the claims by the
5 subcontractors?

6 MR. BIGGS: No, sir.

7 COUNCILMAN GOODE: Do you believe
8 that all of the contract balance held by the
9 Eagles should go to the subcontractors?

10 MR. BIGGS: Yes. As it relates to
11 the subcontractors, yes.

12 COUNCILMAN GOODE: Let me ask the
13 question again to make sure that you actually
14 said yes. Do you believe that all of the
15 contract balance held by the Eagles should
16 actually go to the subcontractors?

17 I'm talking about the amount of
18 money held by the Eagles as a contract
19 balance, which is not sufficient to meet all
20 of their claims. But even it being not
21 sufficient, do you believe that the total
22 contract balance that exists now should go to
23 the subcontractors?

24 MR. LEE: We can't really answer
25 that.

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2 COUNCILMAN GOODE: Of course you
3 can. You have an opinion. I didn't ask you
4 whether it will go there, I didn't ask you how
5 the dispute will end up. I asked for your
6 opinion.

7 Do you believe that all the contract
8 balance should go to the subcontractors,
9 knowing that the contract balance is not
10 sufficient to meet all their claims? Do you
11 believe that amount that does exist as a
12 contract balance should in fact -- the 100
13 percent of that total -- go to the
14 subcontractors to meet their claims?

15 MR. BIGGS: Yes. I believe that the
16 contract balance that is currently owed by the
17 Eagles will eventually go to all those
18 contractors.

19 COUNCILMAN GOODE: I said, do you
20 believe that all of it should go, not whether
21 it will go. Do you believe all of it should
22 go?

23 I know your lawyer doesn't want you
24 to answer the question.

25 MR. BIGGS: The value that's in the

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2 balance will end up being paid to those
3 subcontractors.

4 COUNCILMAN GOODE: I understand
5 exactly what you're saying, and you understand
6 exactly that you're not being responsive to my
7 question. My question is not whether all the
8 money will go there, but whether all the
9 should go there. And now your lawyer can
10 answer for you about whether your position is
11 when a contract balance can't meet all the
12 claims of the subcontractors, whether all of
13 it should be dedicated to those claims?

14 MR. LEE: Well, there's books
15 written on that.

16 COUNCILMAN GOODE: I'm asking your
17 opinion and I'm asking the position of your
18 company.

19 MR. LEE: I will tell you that there
20 are subcontractors that are owed money.
21 There's no question about that. Turner had a
22 contract with them. Turner could pay them.
23 They say that we owe them something. KUD says
24 the Eagles owe us something. That is being
25 sorted out.

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2 COUNCILMAN GOODE: So you know what
3 the next question is. After we figure out not
4 just how much money there is, which we may
5 know in terms of contract balance, whether we
6 go above that contract balance, whether we go
7 below that contract balance, the issue is also
8 not how much, but who gets paid?

9 MR. LEE: Yes, very much so.

10 COUNCILMAN GOODE: My question is,
11 are you trying to take part of that contract
12 balance or are you dedicating it to the claims
13 of the subcontractors? That's a question that
14 you can answer if you just choose to be
15 honest.

16 MR. BIGGS: The contract balance
17 that exists is designated for all those
18 subcontractors. All that money is going to go
19 to those subcontractors. We know that there
20 will be additive change orders, either funded
21 by the Eagles or funded by KUD or funded by
22 TKM that will be required to make up the
23 balance, should it not be there for all those
24 subcontractors. That's what we're going
25 through right now with the mediator.

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2 COUNCILMAN GOODE: I'll ask one more
3 question in that context then. So in
4 addition, as I said before, to answer the
5 question how much that goes above the contract
6 balance or not, the mediator will decide who
7 gets paid?

8 MR. BIGGS: Can I defer to the
9 person --

10 COUNCILMAN GOODE: If you're
11 confused, you certainly can.

12 MR. LEE: The reason mediation is
13 used so much in construction, particularly on
14 large, complex projects, it is enormously
15 complicated. Mediation is much quicker than
16 arbitration, which if there is no voluntary
17 agreement between the parties, will last
18 years. And it's not a fun process. It's not
19 recommended by anybody.

20 Precisely for that reason, the
21 mediator has been focussing on a mechanism to
22 focus on subcontractors who have balances owed
23 and provide a mechanism for money to flow to
24 them. That process is not complete.

25 With all due respect to the Council,

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2 some of the questions I know should be asked,
3 and they are very legitimate questions, but it
4 will force the participants, the witnesses, at
5 least at this level to start fighting among
6 themselves.

7 COUNCILMAN GOODE: Which wouldn't
8 disturb us at all.

9 COUNCILWOMAN TASCO: We're used to
10 that.

11 MR. LEE: The mediation will fail
12 and then you're looking at two or three more
13 processes. We do not want that. I don't
14 think the Eagles want it. Nobody wants that.
15 We want a quick process to get the subs paid
16 amounts that they are legitimately owed.
17 We'll sort out the rest after the fact.

18 COUNCILMAN GOODE: Maybe you can
19 answer the question that I asked Mr. Biggs
20 before. What role is PAID playing in this
21 process and what role is PAID playing in the
22 mediation?

23 MR. LEE: I do not know. I don't
24 think Mr. Biggs knows. That's probably a
25 question for the Eagles.

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2 COUNCILMAN GOODE: I asked another
3 question with reference to the contract
4 balance. What percentage of that money do you
5 consider to be taxpayer money?

6 MR. BIGGS: We're not aware of how
7 the funding mechanism occurs. I'm not aware
8 of how the funding mechanism occurs between
9 the different entities.

10 COUNCILMAN GOODE: So you don't
11 know? You have no conception whatsoever what
12 percentage of that should or is considered to
13 be taxpayer money?

14 MR. BIGGS: Well, other than the
15 public information about the amount that the
16 City and the state participated in the overall
17 project.

18 COUNCILMAN GOODE: I understand
19 that.

20 Your lawyer has said that the
21 mediation process is an extremely complicated
22 process, and I'm assuming he was not just
23 talking about how you come to a resolution,
24 but also the process that was followed
25 throughout the project. I'm asking whether

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2 you took into consideration at all throughout
3 that process what public benefit was supposed
4 to come out of this project?

5 In other words, you didn't decide to
6 use the subcontractors out of the kindness of
7 your heart.

8 MR. BIGGS: The subcontractors were
9 hired by TKM.

10 COUNCILMAN GOODE: We put it in the
11 deal and that's why we put our money in the
12 deal. At what point did you take it out? Or
13 is our money still in there? Or is there
14 still a public benefit that is due? In other
15 words, should we be suing to be part of the
16 mediation?

17 MR. BIGGS: I don't know the answer
18 to that.

19 COUNCILWOMAN BROWN: Councilman
20 Frank DiCicco, please.

21 COUNCILMAN DICICCO: Thank you.

22 Do any of you happen to know when
23 the contracts were developed and the
24 agreements or when the City agreed to do the
25 financial structure for the stadiums? Maybe

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2 this is a question for someone from the Law
3 Department or maybe it's a question for the
4 City representative.

5 Following up on Councilman Goode's
6 line of questioning, was there any waiver that
7 you would know of that would prohibit us from
8 filing any sort of a lien, mechanics lien or
9 something to that effect?

10 MR. BIGGS: I'm not aware.

11 COUNCILMAN DICICCO: I didn't know
12 if you would be. I just wanted to raise that
13 question. Maybe we need to ask the Law
14 Department about that.

15 MR. KUNTZ: Are you referring to the
16 City filing a lien, Councilman DiCicco?

17 COUNCILMAN DICICCO: Yes.

18 MR. KUNTZ: I wouldn't be aware of
19 that.

20 COUNCILMAN DICICCO: We'll discuss
21 that with the City's Law Department.

22 Thank you.

23 COUNCILWOMAN BROWN: You're welcome.

24 Any other questions from Members of
25 the Committee?

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2 (No response.)

3 COUNCILWOMAN BROWN: We want to ask
4 you gentlemen to please stay close.

5 We want to invite up Mr. Joe Banner,
6 Philadelphia Eagles, please, to the witness
7 stand.

8 COUNCILWOMAN BROWN: Good afternoon.
9 If you all would please state your name for
10 the record and your affiliation, please.

11 MR. BANNER: Joe Banner, president
12 of the Philadelphia Eagles.

13 MR. LORD: My name is Craig Lord,
14 representing the Philadelphia Eagles.

15 COUNCILWOMAN BROWN: Thank you.
16 Proceed with your testimony.

17 MR. BANNER: Thank you very much.

18 I have to admit I came down here not
19 really looking forward to this. It may shock
20 you to hear me say this, I'm actually glad
21 we're having these hearings, because the truth
22 is, there's much that I'm learning that I
23 didn't know before today.

24 I had some prepared remarks.
25 Frankly, most of them are irrelevant. I'm

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2 going to read two sections because I think now
3 they are relevant to what I've heard today.

4 You have my word. I will sit here
5 as long as you want me to and give you a
6 direct straight answer, whether you like it or
7 not. You may not like all of them. So ask me
8 anything you'd like to ask me for as long as
9 you'd like to ask me.

10 Here are the two sections I do think
11 are relevant, having listened to this, that
12 I'd still like to read you from my prepared
13 marks.

14 We recognize that there wouldn't be
15 a Lincoln Financial Field and there wouldn't
16 be an NFC championship Philadelphia Eagles
17 team without the support of City Council, the
18 City of Philadelphia, Mayor Street and the
19 State Legislature. So we're greatly
20 appreciative of that.

21 We accepted some responsibilities
22 and made some commitments in return for that,
23 and we want to tell you that we feel like
24 we've kept those commitments and just give you
25 a little detail on that and then I'll answer

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2 all your questions.

3 As part of our commitment to the
4 City for the development and the construction
5 of Lincoln Financial Field, the Eagles adopted
6 ambitious goals for participation for MBE, WBE
7 and DBE, generated and supported by City
8 Council and something we were anxious and
9 happy to cooperate with. I am pleased to
10 report to you that more than 50 percent of the
11 contracts awarded on this project were given
12 to qualified firms, and approximately 30
13 percent of the workers were minorities and
14 women.

15 We were also successful in achieving
16 minority hiring goals for the operations of
17 our stadium, which continue to this day. We
18 believe our percentages in fact exceed those
19 achieved by the City in its own contracting
20 directly for its own projects. We're very
21 proud of this.

22 To have this project portrayed,
23 including these unfortunate disputes, as a
24 project that has been anything other than
25 successful in terms of minority and female

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2 workers would not be fair to the project or
3 the Members of City Council and the State
4 Legislature who supported this project, and
5 part of the reason was for those reasons. We
6 have been successful there. We do need to
7 close this project out and resolve these
8 disputes, and be able to say that without any
9 qualification that this has overwhelmingly
10 been a successful project in these areas.

11 As I am sure you all know, the
12 Philadelphia Eagles are not in the business of
13 building football stadiums. For this reason,
14 five years ago the Eagles hired KUD
15 International, a company that was experienced
16 in building sports facilities to carry out the
17 design and construction of Lincoln Financial
18 Field.

19 One of the reasons we hired Kajima
20 was because they built the San Francisco 49er
21 baseball park and they produced the highest
22 minority participation in construction
23 projects for anything that had been built in
24 the United States at that time.

25 We also put together the

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2 Turner/Keating partnership and were greatly
3 influenced, especially by the Keating part of
4 that partnership, having at that point an
5 outstanding record of minority participation
6 in projects throughout the City. So the
7 original team that we put together was put
8 together very conscious of this being an
9 important agenda to the people who were
10 supporting our project and the commitments
11 that we made that we felt obligated to keep.

12 Pursuant to an agreement that has
13 been furnished to City Council with KUD, the
14 Eagles would hire KUD, who would then hire the
15 architect to design the stadium, and KUD would
16 hire the general contractor to construct the
17 stadium. That agreement called for the
18 stadium to be fully completed by a certain
19 date, and to pay all stadium construction
20 costs for a guaranteed maximum price. In
21 fact, our stadium lease with the City, which
22 you all approved, obligated us to build the
23 stadium with a guaranteed maximum price.

24 Pursuant to its agreement with the
25 Eagles, KUD hired an architect for the

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2 stadium, and KUD contracted a partnership, as
3 you've heard, of Turner/Keating/McKissack to
4 be the general contractor to build the
5 stadium. As you know, that's a joint venture
6 of Turner Construction, Keating Building
7 Corporation and the McKissack Group.

8 Pursuant to this contractual
9 arrangement, it was TKM that hired and
10 contracted the subcontractors to engage and do
11 the work at Lincoln Financial Field. As of
12 today there is substantial work that remains
13 to be completed at the stadium or that needs
14 to be corrected because it was not constructed
15 correctly. It is our belief that TKM should
16 pay the subcontractors that you heard testify
17 today, as well as others that are owed money.
18 They should also immediately remedy the
19 incomplete and defective work at our stadium.

20 We agree with the testimony of the
21 subcontractors that you heard earlier today.
22 Our contracts with KUD and TKM provide them
23 legal recourse in arbitration and mediation to
24 recover the money, if it turns out that it
25 isn't owed. But if the money is owed, there's

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2 no reason in our opinion that money shouldn't
3 be paid. If Turner thinks they didn't owe the
4 money, their contracts provide ample
5 opportunity for them to recover that money.

6 It was stated earlier, this is a
7 global multi-billion company that has
8 contracts with these people. We believe they
9 should be getting paid. As of today the
10 amount of money that the Eagles hold as
11 retainage is considerably less than the
12 estimated cost of completing what we consider
13 to be unfinished work and conducting the
14 defective work that was done in the stadium.
15 Any further payments by the Eagles at this
16 time would be in excess of this guaranteed
17 maximum price. Accordingly, the Eagles'
18 position is that we do not owe any money at
19 this time.

20 I'm sure you'll ask me some specific
21 questions on this when I'm done, and I'm going
22 to be happy to give you all the details about
23 Luis Cruz and any other people you'd like to
24 ask about. Like you, the Eagles are concerned
25 that these subcontractors with legitimate

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2 claims may not be getting paid in full.

3 However, the Eagles must retain the
4 money they have in order to correct the
5 defects that still exist in the stadium,
6 unless Turner is going to come in and correct
7 those defects on their own, at which point in
8 time we would be more than happy to release
9 the retainage that we currently hold.

10 Once again, let me just state for
11 the record that the Eagles contracted with
12 KUD, and that the retainage held is
13 significantly less than the cost to complete
14 the current outstanding issues. The Eagles do
15 not owe additional money to this project at
16 this time.

17 I thank you for the opportunity to
18 present this opening statement. I welcome
19 whatever questions you'd like to ask me.

20 COUNCILWOMAN BROWN: Thank you for
21 your testimony.

22 Did you have testimony, sir?

23 MR. LORD: I do not. I'm just here
24 as a lawyer.

25 COUNCILWOMAN BROWN: Very well.

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2 Could you please tell us what the retainage
3 amount is?

4 MR. BANNER: We believe the
5 retainage is a little over \$5 million. Turner
6 and Keating and the Kajima Group think that
7 it's closer to \$6. We agree it's in that
8 range.

9 COUNCILWOMAN BROWN: I want to make
10 sure I heard what you said.

11 MR. BANNER: Excuse me. Can I just
12 paint the complete picture? The whole
13 contract was for \$368 million. We have paid
14 \$363 million to the parties that you heard
15 here earlier who are not in a position
16 theoretically to pay these subs the money that
17 they seem to agree is owed.

18 COUNCILWOMAN BROWN: The base amount
19 of the contract you say was \$368?

20 MR. BANNER: \$368, of which we paid
21 \$363.

22 COUNCILWOMAN BROWN: You did say
23 that the Eagles agree with the testimony of
24 the subcontractors?

25 MR. BANNER: We don't know exactly

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2 if the amounts they're quoting are the right
3 amounts. We agree with the position that they
4 should determine with Turner whether it's
5 \$500, \$700 or \$100. They should rectify those
6 numbers. Turner should pay those amounts. If
7 Turner believes they have a claim against
8 either KUD or the Eagles, as has been stated,
9 there's already a process that has begun.

10 I heard the question asked. The
11 Eagles are not even a part of that process.
12 It's between those two parties. We've been
13 allowed to sit in and observe, but that is a
14 dispute between those two parties. So we've
15 been allowed to sit in and give information
16 we've periodically been asked to provide or
17 questions so that the arbitrator is getting
18 the full picture. But as you heard them
19 agree, this is a dispute between the two of
20 them.

21 The part that we agree with is that
22 Turner should sit down with these
23 subcontractors, come to a legitimate
24 understanding as to what they're owed and they
25 should pay them. If they didn't owe them the

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2 money, they have recourse with either KUD or
3 KUD and the Eagles to prove that they didn't
4 owe that money, and then they'll get
5 reimbursed. But we don't see any reason that
6 those people shouldn't be getting paid by them
7 at this time.

8 (Applause.)

9 COUNCILWOMAN BROWN: Councilman Rick
10 Mariano.

11 COUNCILMAN MARIANO: Is Turner still
12 here?

13 COUNCILWOMAN BROWN: Yes.

14 COUNCILMAN MARIANO: Why don't you
15 do that so we can go home?

16 MR. KUNTZ: Turner doesn't have the
17 money to pay them.

18 COUNCILMAN MARIANO: Where is the
19 money that Mr. Banner says you guys have?

20 MR. KUNTZ: We do not have the
21 remainder of our contract retainage money. I
22 cannot pay the subcontractors.

23 COUNCILMAN MARIANO: What are we
24 talking about, the retainage money that Mr.
25 Banner just said was \$5 million?

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2 COUNCILWOMAN BROWN: \$5 to \$6
3 million.

4 MR. KUNTZ: The total that we think,
5 the base contract money and retainage all owed
6 is \$7.7 million. We have not been paid that.

7 COUNCILMAN MARIANO: Do you have any
8 money that the Eagles gave you that you owe
9 Paula, Luis or anyone else that you could pay
10 them?

11 MR. KUNTZ: Out of \$363 million that
12 the company has been paid, which Mr. Banner
13 alluded to, is the cost of the stadium.

14 COUNCILMAN MARIANO: Do you have
15 that money?

16 MR. KUNTZ: No. It's been paid out
17 to the subcontractors. We have \$400,000 left
18 out of \$363 million.

19 COUNCILMAN MARIANO: Where is the
20 rest of the money?

21 MR. KUNTZ: It was paid to the
22 subcontractors.

23 COUNCILMAN MARIANO: Then where does
24 all this other money come from for Paula and
25 Luis and all those people?

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2 He made it pretty clear. He's
3 sitting right there two people away from you
4 and the judge. What's the story?

5 MR. KUNTZ: I have not been paid all
6 the contractor retainage money from KUD.

7 COUNCILMAN MARIANO: Where is KUD?
8 Is KUD still here?

9 COUNCILWOMAN BROWN: Yes.

10 COUNCILMAN MARIANO: Would you step
11 over here?

12 MR. BANNER: Can I just add
13 something that's relevant? We also entered
14 into -- as KUD can acknowledge and I think the
15 people from Turner -- because we were in this
16 exact same position in June.

17 Our position at that time also was
18 that we were retaining less money than we
19 needed to fix the stadium. We were approached
20 in the interest of trying to resolve these
21 subcontractor issues and get some of the
22 things fixed at the stadium, to enter into an
23 interim agreement in which we released \$6.6
24 million with the understanding that that would
25 be used to resolve these subcontractor

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2 disputes.

3 COUNCILWOMAN BROWN: To whom?

4 MR. BANNER: We released it I think
5 in that case directly to Turner.

6 COUNCILMAN MARIANO: Now I'm
7 confused. Everything we do, Mr. Banner, is
8 from you to KUD to Turner, and maybe to Paula
9 and Luis, but they don't get there stuff. Now
10 all of a sudden you give money -- you forget
11 KUD and you give it right to him?

12 MR. BANNER: That money was paid, as
13 we understood it, to finish some work at the
14 stadium and to resolve at least some of these
15 problems with the subcontractors. I suspect
16 if you bring the subcontractors back up and
17 ask them if they've been paid any money in
18 June or July -- and I'd be happy to provide
19 the proof that we paid the \$6.6 million --
20 you're not going to get any yeses to that
21 question.

22 COUNCILMAN MARIANO: KUD, can you
23 come up here?

24 COUNCILWOMAN BROWN: Again, Mr.
25 Banner, so that I'm following this, \$6.6

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2 million you paid directly to Turner?

3 MR. BANNER: Yes. And that was
4 unusual, because of the nature and the purpose
5 of that money, like I said, was to finish some
6 items in the stadium and to resolve some of
7 these subcontractor disputes in that one
8 instance.

9 COUNCILMAN MARIANO: And that was at
10 the end in order to get going in August of 03,
11 correct?

12 MR. BANNER: No. This was in June
13 of '04. This has been going on for a year and
14 these guys aren't getting paid and we're not
15 getting our stadium fixed.

16 COUNCILMAN MARIANO: KUD, where is
17 the money?

18 MR. BANNER: We paid that money
19 directly to Turner. We paid to it Turner, who
20 was supposed to fix items in the stadium and
21 pay the subcontractors.

22 COUNCILMAN MARIANO: Short of having
23 walnut shells, these are shells. This is
24 Eagles, KUD, TKM. I'm going to put a quarter
25 under there and I'm going to take that and

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2 move it around. It's called a shell game.

3 Every con artist on the avenue knows that

4 game. I knew it when I was six years old.

5 This is a shell game. Where is their money?

6 She needs the money. He needs the money. Do

7 you have his money?

8 MR. KUNTZ: Mr. Banner is correct.

9 The Eagles paid us \$6.6 million under the

10 interim agreement. We distributed that to the

11 subcontractors, except for \$400,000 of the

12 \$6.6 million.

13 COUNCILMAN MARIANO: Do you have a

14 list of that?

15 MR. KUNTZ: Yes, we do.

16 COUNCILMAN MARIANO: Could we have

17 that?

18 MR. KUNTZ: Absolutely.

19 COUNCILMAN MARIANO: Can we have

20 that now?

21 MR. KUNTZ: We don't have that now.

22 COUNCILMAN MARIANO: You came here

23 and you don't have the list and he's

24 testifying for something that he did? He

25 seems like a very nice guy, but somebody is

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2 BSing somebody here.

3 MR. KUNTZ: We can get it for you.

4 COUNCILMAN MARIANO: Would you?

5 Like, in ten minutes? Can we get it before
6 anybody leaves and goes home?

7 Now, before Mr. Banner told us about
8 the money that he gave directly to Turner,
9 Keating and McKissack -- usually they go
10 through you guys.

11 KUD, are you holding any money.

12 MR. BANNER: Yes. We're holding
13 this retainage.

14 COUNCILMAN MARIANO: I know the
15 Eagles are. I got you with the retainage.

16 KUD, are you holding any money that
17 you've got to give to them to give to Paula
18 and to Luis?

19 MR. BIGGS: We are holding no cash.
20 We are holding no money.

21 COUNCILMAN MARIANO: Judge, I'm
22 confused. Where's the money?

23 MR. LORD: I think what you heard
24 was that the Eagles paid the money to TKM.
25 You're elevating the form over the substance.

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2 It really went through the KUD contract, but
3 this was paid directly to TKM. It was
4 supposed to be paid so that work would be
5 completed, and I think Mr. Banner should
6 really advise you what happened.

7 COUNCILMAN MARIANO: Judge, is this
8 a shell game?

9 MR. LORD: I don't think it's a
10 shell game.

11 COUNCILMAN MARIANO: I don't think
12 Banner is lying. I don't think he's lying. I
13 think there's some confusion here, but I know
14 Paula don't have the money and Luis doesn't
15 have his money.

16 MR. LORD: To try to simplify, start
17 with the subs. Starting with the subs, there
18 are some disputes between the subs, I assume,
19 and Turner.

20 COUNCILMAN MARIANO: Is that true,
21 Turner? Are there disputes? Are there
22 disputes with Paula over her work? Is there a
23 dispute with Luis Cruz?

24 MR. KUNTZ: Councilman, there's
25 approximately 60 subs on the project. I don't

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2 have the detail off the top of my head.

3 COUNCILMAN MARIANO: You're not
4 prepared to answer any questions that I ask
5 you.

6 MR. KUNTZ: I've been answering all
7 your questions.

8 COUNCILWOMAN BROWN: Councilman, I
9 want the judge to provide this overview for
10 us, and then further questioning by you,
11 Councilman Goode and Councilman Frank DiCicco.

12 MR. LORD: I just wanted to try to
13 explain. We've identified there's disputes
14 between some of the subs and Turner. The
15 Eagles don't really know exactly what those
16 are. That wasn't their job to work with the
17 subs. I suspect that there are some disputes
18 between Turner and KUD. And we will see
19 whether there's any disputes in the future
20 between KUD and the Eagles.

21 But all of those levels of dispute
22 have to be resolved, and there are thousands
23 and thousands of pages of documents and work
24 orders and records, and that's -- you asked
25 for a simplified description.

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2 I don't think it's a shell game, Mr.
3 Councilman. I think what you're hearing
4 people testify to is disputes at various
5 levels.

6 COUNCILMAN MARIANO: Okay. It's not
7 a shell game. Turner could not tell me if we
8 owed Paula for something she may or may not
9 have done. But I think he told us that Luis
10 Cruz doesn't owe you any work, correct,
11 Turner? Does Luis Cruz owe you any work?

12 MR. KUNTZ: No. Well, there's a
13 couple outstanding punch list items, but
14 they're minor in nature.

15 COUNCILMAN MARIANO: Couldn't you
16 have paid him \$200,000 so he can feed his
17 family?

18 MR. KUNTZ: I offered to give Luis
19 \$100,000.

20 COUNCILMAN MARIANO: And he said no?

21 MR. KUNTZ: Yes, he did.

22 COUNCILMAN MARIANO: How much did
23 you offer him?

24 MR. KUNTZ: \$100,000.

25 COUNCILMAN MARIANO: Out of how

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2 much?

3 MR. KUNTZ: Out of \$457.

4 COUNCILMAN MARIANO: You're a real
5 sport, aren't you?

6 MR. KUNTZ: That wasn't the final
7 settlement. I offered to do that while we
8 went through the dispute.

9 COUNCILMAN MARIANO: Was that for
10 him to not come to this hearing, to not do
11 anything? What about the guys that have been
12 with him all along that are sitting back
13 there? Are you going to offer them something?

14 COUNCILWOMAN BROWN: Point of order.

15 COUNCILMAN DICICCO: Point of order,
16 Madam Chair.

17 I'm just trying to get back on track
18 with the statement Mr. Kuntz had made relative
19 to the statements that Mr. Banner made, that
20 the \$6-and-a-half million was turned over to
21 Turner, either through KUD or directly. That
22 to me, if I do my math right, makes the
23 project of \$368 million somewhat whole in
24 terms of dollars and cents.

25 MR. BANNER: There's still the \$5 to

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2 \$6 million out there in addition to that.

3 COUNCILMAN DICICCO: Mr. Kuntz, if I
4 heard you correctly, you said that you believe
5 after the \$6-and-a-half million had been
6 spent, there's a balance of \$400,000. What
7 does that represent? Because that's when the
8 debate began and I kind of lost you.

9 MR. KUNTZ: Mr. Banner is correct.
10 It was an interim payment in an effort to get
11 money to the subcontractors. We distributed
12 those funds. Of the \$6.6 million that we were
13 given, we currently still have \$400,000 of
14 that that was not distributed. There is still
15 an outstanding balance of \$7.7 million in
16 contract and retainage that we do not have
17 from KUD.

18 COUNCILMAN DICICCO: Now I
19 understand. The numbers weren't adding up.
20 If you got \$6-and-a-half million and the subs
21 were paid and you only have \$400,000 left,
22 based on today's testimony, we are going to be
23 way short.

24 Is it safe to say that the majority
25 of that disputed amount, whether it's the \$5

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2 million or the \$7-and-a-half million that is
3 due the subs, is it primarily for change
4 orders and others, or is it change orders and
5 work that has, in the opinion of TKM and
6 others, has not yet been completed to the
7 contractual agreements?

8 MR. KUNTZ: Councilman, as we sit
9 here today, we think that there's \$15.5
10 million, rough numbers, owed to the
11 subcontractors.

12 COUNCILMAN DICICCO: Based on TKM's
13 --

14 MR. KUNTZ: Based on our accounting,
15 yes. TKM is owed another -- we feel -- \$3.3
16 on top of that. We're not talking about that.
17 We're talking about the subcontractors. Of
18 that \$15.5 million, there are \$7.5 million --
19 once again, round numbers, but pretty close --
20 in change orders that we are in the dispute
21 resolution process with KUD. That leaves a
22 balance of roughly \$7-and-a-half million of
23 base contract work and retainage -- work is
24 complete -- that is not in dispute that we
25 have not been paid.

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2 COUNCILMAN DICICCO: Thank you.

3 COUNCILWOMAN BROWN: You're welcome,

4 Councilman DiCicco

5 Councilman Goode.

6 COUNCILMAN GOODE: Thank you, Madam

7 Chair.

8 Mr. Banner, thank you for your

9 testimony. I think you cleared up a lot. I

10 don't believe that the other gentlemen at the

11 table are going to dispute a lot of what you

12 said. But just to review some of what you

13 just said, you have paid out maybe 99 percent

14 of the maximum contract amount?

15 MR. BANNER: That's about right.

16 COUNCILMAN GOODE: And you're not

17 going to go above your maximum contract

18 amount, and you're not obligated to go above

19 the maximum contract amount?

20 MR. BANNER: If there were Eagle

21 approved change orders we would be obligated

22 to pay them.

23 COUNCILMAN GOODE: If there were

24 Eagle --

25 MR. BANNER: Eagle approved change

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2 orders above and beyond that somebody could
3 demonstrate originated by us, change of scope,
4 change of work, we would be obligated to pay
5 those. Some of those have happened and we
6 paid them. Our own position is we paid in
7 full on that basis.

8 COUNCILMAN GOODE: The assumption is
9 if you've paid out almost all the monies
10 you're obligated to pay under the contract
11 amount, that the public money is spent?

12 MR. BANNER: I meant to say this
13 because it's come up obviously a couple of
14 times. The nature of the structure of the
15 Phillies deal and the Eagles deal were quite
16 different. The Eagles received \$85 million
17 from the state towards the construction of the
18 stadium. From the City we received the land
19 and the money to clean up the land, which is
20 obviously the very first money spent, and that
21 was audited extensively by PAID. We were
22 required to have people on site, produce
23 extensive paperwork, bills, et cetera. There
24 was no more City money in the construction of
25 our stadium.

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2 There's some future operating money
3 that would have been spent at the Vet that's
4 getting transferred over as part of our
5 contribution. So the City part of the
6 contribution was spent on the clearing of the
7 site, and at that point was fully spent. And
8 it was monitored very closely and extensively.

9 COUNCILMAN GOODE: And you believe
10 that you fulfilled all the public benefit
11 criteria that was attached to that public
12 investment?

13 MR. BANNER: I do in the broader
14 sense. But I'm certainly not sitting here,
15 even though I believe that this responsibility
16 at this point is ours, thinking that we can
17 wash our hands of this and say we've done
18 everything until this is resolved. But yes, I
19 do. I believe that we, from the attractions
20 and the events and the quality of our team and
21 our building, to the minority hiring that we
22 committed to, I believe we kept the
23 commitments that we made.

24 COUNCILMAN GOODE: Out of \$363
25 million you paid out, do you know how much of

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2 that KUD has paid out?

3 MR. BANNER: I do not. I have no
4 reason to think it isn't all of it, but I
5 don't know that.

6 COUNCILMAN GOODE: Can KUD respond
7 to that question? Of the \$363 million that
8 the Eagles gave you, how much have you paid
9 out?

10 MR. BIGGS: We would have paid
11 everything except for our --

12 COUNCILMAN GOODE: How much of the
13 \$363 million?

14 MR. BIGGS: I don't have that
15 number.

16 COUNCILMAN GOODE: Alright. Are
17 tens of millions of dollars left?

18 MR. BIGGS: No.

19 COUNCILMAN GOODE: There are not
20 tens of millions of dollars that have not been
21 paid out?

22 MR. BIGGS: No.

23 COUNCILWOMAN BROWN: You were about
24 to say all but what?

25 MR. BIGGS: We paid out all of the

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2 amounts to TKM, which went to the
3 subcontractors, except for what was included
4 in our contract that had to be paid to
5 architects, to other design professionals,
6 consultants involved with the project.

7 COUNCILMAN GOODE: So you paid out
8 all the money the Eagles gave you?

9 MR. BIGGS: Yes.

10 COUNCILMAN GOODE: Okay.

11 TKM, of the money that the Eagles
12 gave to KUD, and KUD gave to TKM, have you
13 paid out all the money?

14 MR. KUNTZ: Everything we have, yes.

15 COUNCILMAN GOODE: You've paid out
16 all the money?

17 MR. KUNTZ: Yes, we have.

18 COUNCILMAN GOODE: Okay. I think in
19 the end the record may not reflect that all
20 the money is not in fact spent.

21 MR. KUNTZ: I'm sorry. Except for
22 the \$400,000 I alluded to earlier under the
23 interim agreement.

24 COUNCILMAN GOODE: Is all of it
25 obligated or is all of it paid out?

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2 MR. KUNTZ: Yes.

3 COUNCILMAN GOODE: All of it is
4 actually paid out in cash?

5 MR. KUNTZ: Everything that I have
6 except that \$400,000.

7 COUNCILMAN GOODE: Everything that
8 you got from KUD you've paid out?

9 MR. KUNTZ: Except the 400,000, yes.

10 COUNCILMAN GOODE: Okay.

11 Going back to Mr. Banner for a
12 second. The Eagles have paid and are willing
13 to pay all change orders that were Eagles
14 approved?

15 MR. BANNER: Yes.

16 COUNCILMAN GOODE: KUD, are you
17 willing to pay all change orders that were
18 approved by KUD?

19 MR. BIGGS: What we haven't done is
20 finalized the change orders. That's the
21 process that's ongoing right now. As soon as
22 we can close those, yes.

23 COUNCILMAN GOODE: Repeat that for
24 me. Repeat your answer. My question was, are
25 you willing to pay out all change orders that

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2 were approved by KUD?

3 MR. BIGGS: And I said that what we
4 were doing right now in the process of
5 mediation is creating those change orders so
6 that they can be paid.

7 COUNCILMAN GOODE: And that money is
8 going to -- without giving a definitive answer
9 or having to -- that money is going to exceed
10 the whatever little amount of money that the
11 Eagles may owe you?

12 MR. BIGGS: If it does not create a
13 change order to the Eagles then it would
14 create an excess demand, which would require
15 us to fund that amount.

16 COUNCILMAN GOODE: Do you expect
17 that it's going to exceed whatever small
18 amount of money the Eagles may owe you?

19 In other words, they're change
20 orders that were approved by KUD that the
21 Eagles are not responsible for that is not
22 going to come from whatever money the Eagles
23 owe you. Are you going to pay that money?

24 MR. BIGGS: If when we get done with
25 the process of issuing change orders the

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2 answer is yes.

3 COUNCILMAN GOODE: Mr. Banner has
4 been very helpful in his testimony in terms of
5 saying what he's paid, what he's responsible
6 to pay, what's outstanding. There's not much
7 of a dispute between what he says is
8 outstanding, what you say is outstanding.
9 He's been very clear about what change orders,
10 that they didn't approve all the change
11 orders. It's very clear that somewhere
12 between KUD and TKM there were change orders
13 that were approved.

14 As you said, you thought that we
15 were confused by the testimony from the
16 contractors. You purposely tried to confuse
17 this panel by suggesting that you were going
18 to pay for the change orders that you approved
19 from the Eagles money.

20 (Applause.)

21 MR. BIGGS: The change orders that
22 are approved through the mediation process,
23 some will flow to the Eagles.

24 COUNCILMAN GOODE: I'm talking
25 change orders that were approved in the

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2 subcontracting process. I know you claim
3 you're all still working on the mediation, but
4 you did in fact approve some change orders.

5 MR. BIGGS: Change orders that we
6 have executed, change orders that we have
7 executed, have been through the process and
8 have been funded by both the Eagles and KUD in
9 the part of the \$363 million that Joe
10 mentioned that he has paid. All of those have
11 been paid.

12 COUNCILMAN GOODE: I understand all
13 that. My question to you -- and I don't know
14 whether you're going to answer it directly or
15 not, but we can get some answer from you that
16 will be helpful in this process.

17 I'm assuming you know that there are
18 change orders that you approved as KUD that
19 will exceed the amount that is owed to you by
20 the Eagles. Are you then responsible for that
21 and will you then in fact pay it?

22 MR. BIGGS: We have not executed
23 those change orders.

24 COUNCILMAN GOODE: Thank you.

25 COUNCILWOMAN BROWN: Councilman Rick

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2 Mariano.

3 COUNCILMAN MARIANO: We're getting
4 somewhere, but we're obviously not getting
5 Paula's or Luis Cruz's money. There's more
6 questions.

7 I'd like to thank everyone for being
8 as honest as they can. I'm not totally
9 satisfied, but I'm going to ask Councilwoman
10 Brown to reconvene this when we're done here,
11 when she says it's time for it to be done.
12 We're going to come back in about three weeks.

13 Will the Eagles, KUD, TKM, will you
14 guys come back in three weeks, if she picks a
15 date? If it's two weeks and three days maybe,
16 whenever she can get us a date? Because this
17 is total BS.

18 Tempers are hot in here. The
19 brother is right. It is a shell game. I
20 wanted to blame Joe Banner, but I'm not. I
21 think he's being pretty honest here. Like
22 Councilman Goode says, it looks like you got
23 that little pea under that shell. You got it,
24 KUD. We don't have to be rocket scientists.
25 We don't have to be team leaders. We don't

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2 even have to be Councilpeople to understand
3 this. You contracted with her, Paula, Luis
4 Cruz and everybody else, not the Eagles
5 directly, not you directly, them. But they
6 work for you and you work for them and the
7 Eagles gave you the money, right?

8 MR. BIGGS: And we have a guaranteed
9 maximum contract with TKM as well.

10 COUNCILMAN MARIANO: Okay. Then why
11 would you approve work orders or anything
12 that's over that amount?

13 Mr. Banner already said that they
14 were Eagle approved change orders, and I
15 suspect they are ones that the people that
16 work for the Eagles or someone working for
17 them says, we don't like this here. We want
18 to change that. There were changes down
19 there. I know there were changes down there.
20 My brother worked on the job. There was
21 changes a lot. All of those changes are being
22 taken care of?

23 MR. BIGGS: All of the changes that
24 have been brought to the table by the Turner
25 organization were either part of a change

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2 order already or in the process and have been.
3 We have disputed a lot of those change orders,
4 that they are owed by Turner under their
5 contract to us.

6 COUNCILMAN MARIANO: So you're
7 saying Turner approved those change orders
8 that you may not have approved, correct? Is
9 that a safe assumption?

10 MR. BIGGS: Every one of these could
11 be a different story. There are items where
12 Turner's people signed approvals to go ahead.

13 COUNCILMAN MARIANO: Okay. Now,
14 that means that Turner's on the ball for that
15 one, correct?

16 Turner, are there changes that you
17 approved that he's saying, we're not giving
18 the money for these? Why did you approve
19 these? This is totally ridiculous. And if
20 there is, how are you still in business? Why
21 would you ever do a change order that you know
22 you're not going to get the money from him,
23 unless you know down the road you're going to
24 screw him? Did you know that?

25 Did you say, I'm going to screw

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2 Paula and Luis? I hate to use that word, but
3 with my limited vocabulary. Are you going to
4 screw him? Are you going to screw her? Did
5 you sit down and say, let's sit down and hurt
6 these people; let's not pay her so she can't
7 pay for her mother in the senior citizens
8 home; so Luis' kid can't have whatever Luis
9 wants to give him; so Luis can't help Mr.
10 Matos' community; so Councilman Mariano has a
11 headache for three weeks worrying about this
12 nonsense; you didn't do that, did you?

13 MR. KUNTZ: No, we did not.

14 COUNCILMAN MARIANO: Are you a
15 terrible businessman?

16 MR. KUNTZ: No.

17 COUNCILMAN MARIANO: Then why would
18 you help someone do work for you that you knew
19 you were going to have to pay eventually,
20 because you hoped he would go away and never
21 back? Because his skin color is a different
22 tone than mine? Does it have anything to do
23 with that? Because that question has to be
24 answered.

25 MR. KUNTZ: No, sir. Emphatically

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2 no.

3 COUNCILMAN MARIANO: When you're
4 here testifying, the next process somewhere is
5 probably a court case, so everything you say
6 here is probably admissible in some court
7 case. I was smart enough not to be an
8 attorney because then I could say anything and
9 I'd say, I don't know. I'm not bright enough
10 to be an attorney. But there are some
11 attorneys around here that got that figured
12 out. You didn't do that, did you?

13 MR. KUNTZ: I'm not attorney either.
14 And I'm not nearly smart enough to be an
15 attorney.

16 COUNCILMAN MARIANO: Who did that?

17 MR. KUNTZ: Councilman, we've been
18 in business for 97 years in this City. We're
19 not bad business people.

20 COUNCILMAN MARIANO: I worked on
21 jobs with Turner. They're a decent firm.
22 They're a decent firm. They're not the worst,
23 they're not the best, but they're getting
24 better. I worked with them in the '80s and
25 the '90s. They're good. I thought they were

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2 good. So I don't understand why you wouldn't
3 pay a Luis Cruz or Paula. I'd pay it out of
4 my own money. Because didn't somebody here
5 say -- whatever the fancy word was -- if they
6 pay them the money, they get reimbursed
7 anyhow? Didn't I hear that somewhere?

8 Mr. Banner?

9 MR. BANNER: That's my view. This
10 stuff I learned today that I didn't know and
11 there's probably a lot more I don't know.

12 I'm not prepared to sit here and
13 tell you exactly who owes the money. The
14 subcontractors subcontracted with Turner, and
15 they did the work for Turner and Turner needed
16 that work to complete their contractual
17 obligations. So my belief is Turner should
18 honor those contracts and pay them.

19 I understand there's a loophole in
20 the subcontracting, that they technically
21 don't need to pay them until they get paid,
22 but that's what it is, a loophole. So they
23 could pay them. If either of us owed any of
24 that money or all of that money, they have
25 recourse. And then instead of those guys

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2 being the ones holding the bag, one of us is
3 holding the bag in the meantime. That's the
4 way it should be.

5 COUNCILMAN MARIANO: Did the
6 subcontractors do work without authorization?
7 Is that what happened?

8 MR. KUNTZ: No. We gave them
9 authorization.

10 COUNCILMAN MARIANO: Then you're
11 responsible, correct?

12 MR. KUNTZ: Yes, we are.

13 Sir, we gave the subcontractors
14 authorization and we felt we had full
15 entitlement from KUD for that. Otherwise I
16 would be out of business.

17 COUNCILMAN MARIANO: Is that the
18 magic phrase, you felt you had full
19 entitlement from KUD?

20 KUD, does he have full entitlement
21 from you? Were you entered in a contract with
22 him?

23 MR. BIGGS: No.

24 COUNCILMAN MARIANO: Say that real
25 loud so she can get that on the record.

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2 MR. BIGGS: No.

3 COUNCILMAN MARIANO: No. What's the
4 disagreement here? It has to be this simple.
5 I feel like I'm dealing with 12-year-olds. I
6 mean, come on.

7 MR. KUNTZ: I have written
8 authorization from KUD for those changes.
9 \$7-and-a half million. I have written
10 authorization for \$5.5 million.

11 COUNCILMAN MARIANO: Then, Mr.
12 Businessman, you made a mistake, didn't you?
13 Did you make a mistake? Did you authorize new
14 work changes that you had money to authorize?
15 Did you do that? Because if you did, then
16 it's on you.

17 MR. KUNTZ: I had authorization from
18 KUD to authorize the subcontractors.

19 COUNCILMAN MARIANO: KUD? Are we
20 going to go back and forth all night?

21 They did, KUD, or didn't they?

22 The Super Bowl is only two weeks
23 away. I can wait.

24 MR. BIGGS: Subject to the terms of
25 our agreement, some of the documents were

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2 approved. Others with not.

3 COUNCILMAN MARIANO: Some were
4 authorized?

5 MR. BIGGS: Some were, some were
6 not.

7 COUNCILMAN MARIANO: Do we have a
8 list of what's authorized and what wasn't?

9 COUNCILWOMAN BROWN: Could you
10 please answer that question, sir? Do you have
11 a list of that which was authorized and that
12 which was not?

13 MR. BIGGS: I'm not sure we have it
14 in that fashion, but we could --

15 COUNCILMAN MARIANO: At this point
16 this is the street we've gone down. It comes
17 down, Banner's telling the truth it looks
18 like. You're his guy. They hired you.
19 Strictly it was a smart decision on their part
20 because they didn't want to deal with this
21 great foresight.

22 Besides signing Andy Reid and
23 Terrell Owens, that was probably your third
24 great decision.

25 Now you've got that. You're the

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2 guy. You're holding the bag. It's not
3 Turner. It's not the Eagles. You're in the
4 middle.

5 MR. BIGGS: You have made that
6 conclusion. Contractually, that is not a true
7 statement.

8 COUNCILMAN MARIANO: Then what is
9 it?

10 MR. BIGGS: Contractually that
11 document that he's referring to that is
12 executed does not accomplish that task.

13 COUNCILMAN MARIANO: What does it
14 accomplish?

15 MR. BIGGS: It tells us that the
16 work has to be completed at the site for the
17 job to be complete.

18 COUNCILMAN MARIANO: Is the work
19 completed or not completed? That's the
20 argument, correct?

21 MR. BIGGS: That is the argument
22 that relates to the subcontractors. That is
23 not the argument as it relates to TKM and KUD.

24 COUNCILWOMAN BROWN: Let's move the
25 questioning to Councilman Jack Kelly.

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2 COUNCILMAN KELLY: I just want to go
3 back to Mr. Banner.

4 Just clear something up for me. You
5 presently are holding up \$6 million, is that
6 true -- \$5 million perhaps?

7 MR. BANNER: In that range.

8 COUNCILMAN KELLY: And that is for
9 what? For work not being completed or change
10 orders that you would like to see or what?

11 MR. BANNER: It's either work that
12 was not completed at all or work that was not
13 done correctly to begin with that we now have
14 to go get fixed.

15 COUNCILMAN KELLY: Do you know how
16 much they would cost if they were implemented
17 by Turner, of the \$5 million?

18 MR. BANNER: We think that number
19 significantly exceeds \$5 million. We believe
20 it's multiples of \$5 million.

21 COUNCILMAN KELLY: Okay.

22 I believe Turner, you have
23 \$7-and-a-half million? Is that what you're
24 saying.

25 MR. KUNTZ: We feel there's \$7.7

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2 million in base contract and retainage that
3 has not been paid by KUD to us.

4 COUNCILMAN KELLY: So you're short
5 \$7-and-a-half million?

6 MR. KUNTZ: Yes.

7 COUNCILMAN KELLY: And Mr. Banner
8 wants to see change orders or changes to the
9 stadium which exceeds the \$5 million that he's
10 holding. It looks like someone is going to
11 lose on this thing. We just don't know who it
12 is at this point. The subcontractors, it
13 looks like they're the ones not paid. But
14 someone is going to have to take this up
15 somewhere, probably in court.

16 Thank you.

17 COUNCILWOMAN BROWN: You're welcome,
18 Councilman Kelly.

19 Back to this question of the
20 unauthorized list. Who has the list?

21 MR. BIGGS: We have a list of
22 outstanding estimates that leads up to a
23 potential change order attached to those, so
24 any documentation that relates to that
25 particular item would be attached.

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2 COUNCILWOMAN BROWN: Has that list
3 been shared with the other party in this
4 dispute, namely TKM?

5 MR. BIGGS: They're being addressed
6 on a per change estimate by changes estimate
7 basis, yes, as we review them with the
8 mediators.

9 COUNCILMAN MARIANO: I want to ask
10 TKM -- and if I asked you this before, bear
11 with me. I'm starting to lose my mind.

12 I just realized I've been sitting in
13 front of Councilman DiCicco's sign all along.
14 If he's here, I'm sorry, Councilman for my bad
15 behavior. I hope they don't think it was you.

16 How much does TKM think they owe on
17 the change list? How much do you owe the
18 subcontractors? What do you think?

19 MR. KUNTZ: \$7.5 million on the
20 change list.

21 COUNCILMAN MARIANO: \$7.5 million.
22 And the Eagles are holding \$5, maybe \$6 for
23 the retainage.

24 MR. KUNTZ: The \$5 that Mr. Banner
25 was referring to is contract work.

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2 COUNCILMAN MARIANO: So you're \$7.5
3 million above that extra that you owe?

4 MR. KUNTZ: That's correct.

5 COUNCILMAN MARIANO: Now, somewhere
6 along the line, somebody authorized some work.
7 Now, the Eagles get a 100 for being smart
8 business people for hiring them, in my simple
9 book.

10 You two guys, TKM and KUD, the San
11 Francisco guys from Japan, you guys are going
12 to eat this. Between you, you're going to eat
13 this. Somehow you've got to decide. I know
14 you can't say, fine. We'll split this up
15 today. You will be fired by the time you get
16 out to your car.

17 And the same for you, right?

18 As State Representative Blackwell
19 said, this is a sin against God. This is a
20 sin against humanity -- I'm serious -- to not
21 pay that woman the money that she earned, to
22 not pay that man the money that he's owed and
23 all them other guys. They have to pay this
24 stuff to people. They have families.

25 Let's step back here and think about

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2 how we're going to do this. This is going to
3 go on for years and years and years.

4 Your lawyer was right when he came
5 to my office. He said, let's do this in
6 mediation. I had hoped we would get this done
7 with just the threat of this hearing, because
8 I know I'm missing something else today.

9 What are we going to do, guys? Put
10 yourself in her place. What does she do? I
11 don't want you to lose your job, but I
12 certainly don't want Luis Cruz to lose his
13 wife and his family and his house. Because
14 Luis Cruz can vote for me. You can't. That
15 makes it real simple for me.

16 COUNCILWOMAN BROWN: Over the next
17 three weeks, what can we expect from each one
18 of the parties? What can we expect to happen
19 and transpire over the next three weeks?

20 COUNCILMAN MARIANO: Judge Lord,
21 what do you think? You're like Yoda in this
22 Council. You should be able to figure this
23 out.

24 MR. LORD: You're putting me in a
25 tough position here, my counsel to City

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2 Council or to my client?

3 COUNCILMAN MARIANO: Well, your
4 client. But your client happens to be a good
5 corporate leader in this town. We have a wing
6 dinger parade set up for him. He doesn't want
7 us to talk about it because he doesn't want us
8 to jinx him. We don't want that parade to be
9 interrupted by protesters. And believe me, it
10 will be interrupted.

11 MR. LORD: I agree with Mr. Banner
12 that Turner ought to pay these subs now and
13 look to the KUD and the Eagles for adjustment.
14 They're a big company. They can afford it.
15 They're the only ones who don't have a GNP.
16 He has a GNP. We have a GNP. He doesn't.

17 COUNCILMAN MARIANO: Mr. TKM, can
18 you go back to Mr. Turner, Dan Keating and
19 Barbara McKissack and work something out? Can
20 you do that?

21 COUNCILWOMAN BROWN: Before you
22 answer the question, are all parties of TKM,
23 have they been kept informed of every single
24 step and move that it appears to be Turner as
25 the lead person in this triad, have they been

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2 fully aware of every single agreement along
3 the way leading up to these hearings?

4 MR. KUNTZ: Yes.

5 COUNCILWOMAN BROWN: Are there
6 members of TKM here who would like to speak on
7 that or not?

8 COUNCILMAN MARIANO: Turner, Keating
9 or McKissack are not here, are they?

10 MR. KUNTZ: I'm Turner. I don't
11 believe Keating is represented here.

12 COUNCILMAN MARIANO: Barbara is
13 here.

14 Anybody here from Keating?

15 (No response.)

16 COUNCILMAN MARIANO: Nobody, I
17 guess.

18 COUNCILWOMAN BROWN: So your answer
19 is yes, all parties of your partnership were
20 adequately, completely informed of every
21 single step made leading up to today's
22 hearing? Is that what I'm hearing?

23 MR. KUNTZ: Yes, they've been
24 informed.

25 COUNCILMAN MARIANO: State

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2 Representative Blackwell was right again. We
3 should make it so that you guys can never do
4 business with any City money or anything to do
5 in this City again.

6 I like Turner. I came from a union
7 house. My brother is a union electrician. I
8 get it. Guys have to be paid.

9 COUNCILWOMAN BROWN: Please, if you
10 would, step to the table. State your name for
11 the record.

12 COUNCILMAN MARIANO: Excuse me,
13 Councilwoman. Before we do that, can we get
14 the guy from Turner.

15 Can you answer me? Will you go back
16 to Turner and say, look, this looks bad; if
17 Tommy Blackwell or Rick Mariano or any of
18 these people have their way, we may never be
19 able to do business in the City of
20 Philadelphia?

21 I'm not 50 yet. Almost. I'm going
22 to be around for a long time. I'll protest
23 every one of your construction jobs for the
24 rest of my natural life, unless you step up to
25 the plate and try to do something. That's not

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2 a threat because I'm not making threats.

3 Will you go back to your bosses and
4 say, look, we look bad here? We look like
5 fools. These reporters are writing stuff
6 down. We look like fools. We'll do this
7 every three weeks. It might come down where
8 the Eagles don't have to come anymore. Maybe
9 they won't have to come. It will just be us
10 and TKM. I know Sheryl doesn't want to do
11 this because I've had conversations with her.

12 MR. KUNTZ: My boss is certainly
13 understanding the seriousness of this. We
14 take it very seriously. We're working hard to
15 try and get it resolved.

16 COUNCILMAN MARIANO: Well, work a
17 little bit harder to resolve it, please.

18 MR. KUNTZ: I'll work as hard as I
19 can, Councilman.

20 COUNCILMAN MARIANO: Thank you.

21 COUNCILWOMAN BROWN: Please state
22 your full name for the record and your
23 affiliation.

24 MS. MCKISSACK-FELDER: Sheryl
25 McKissack-Felder. I have a twin. She's not

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2 Barbara. I am the president of the McKissack
3 Group.

4 The McKissack Group is a junior
5 partner with Turner and Keating to provide
6 construction management services for the
7 Eagles stadium. As a junior partner,
8 basically all we do is review information as
9 it comes to us. We don't make decisions with
10 respect to how contracts are purchased, with
11 respect to subcontractors, who gets paid or
12 anything like that.

13 I have to say that I have worked
14 with Turner on other projects and am currently
15 working with Turner on other projects. And I
16 have not seen that they do not know what they
17 are doing. Obviously they do. They have had
18 a tremendous, 100-year track record in
19 maintaining a database of information for all
20 of their projects.

21 This is a situation, however, where
22 we are the construction manager holding
23 contracts, and as we get paid, we pay the
24 subcontractors.

25 As a joint venture partner on this

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2 project with Turner, McKissack provided staff
3 for which we were reimbursed for every hour
4 that they worked, and reimbursed for their
5 direct salary, plus whatever benefits came
6 with that salary.

7 Then in addition to that, there was
8 a fee that would cover our overhead and then
9 whatever profit was in the job. Our initial
10 fee for the whole group was close to \$10
11 million, of which McKissack's fee would have
12 been \$1.7. Of that fee, we have been paid
13 \$600,000 and are still owed another million,
14 but it has been decreased to \$500,000.

15 COUNCILWOMAN BROWN: Decreased by
16 whom?

17 MS. MCKISSACK-FELDER: Decreased by
18 TKM for the fact that we have not been paid
19 by, whether it's KUD or the Eagles. It has
20 been reduced, because as a small business,
21 whatever we put on our books as earned income,
22 we have to pay taxes on. So right now we have
23 paid taxes on over \$500,000 that we have not
24 been paid. So we are in a similar situation,
25 and I'm sure Turner is and so is Keating.

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2 There is no reason for TKM to go and
3 do extra work to benefit the Eagles and the
4 Eagles stadium unless we're going to get paid
5 for it. So the extras that we're talking
6 about benefit who? The Eagles. Not Turner,
7 not Keating, not McKissack or any of the
8 subcontractors.

9 And so we're looking at two issues
10 here. We're looking at a base contract, and
11 the little that I know of this -- because I am
12 not very close to the details -- the stuff
13 that Mr. Banner is saying that he wants us to
14 come back and correct is after the stadium has
15 been played in for two years. How do we go
16 back and correct issues or problems in a
17 stadium that's had 67,000 fans in it?

18 So my frustration, from the way that
19 I can see it, is that we have not been paid
20 for the base contract and we have not been
21 paid for the changes that we've had to make.
22 Some in particular that I know of just from
23 being on site, including adding 5,000 extra
24 seats. Do you think TKM did that because
25 we're going to benefit from those seats?

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2 Maybe we should own those seats right now.

3 Maybe that would be an income situation for
4 our group, and maybe we can pay the
5 subcontractors if we owned the 5,000 seats.

6 Everybody read in the paper about
7 the change in the boxes. There were
8 additional boxes added because the Eagles had
9 to have more boxes. And these are just big
10 things that everybody knows about. Then there
11 were all the small things, rushing to get the
12 job done so that the stadium would be ready
13 for the Eagles to play in. This doesn't
14 benefit TKM. This benefits the Eagles.

15 So our stand and where we are now is
16 we need to be paid for our base contract and
17 we need to be paid for our changes. That's
18 the bottom line.

19 COUNCILWOMAN BROWN: Any questions
20 from Members of the Committee?

21 Councilwoman Jannie Blackwell.

22 COUNCILWOMAN BLACKWELL: Thank you
23 very much.

24 Certainly, again, as we spoke this
25 morning and talked about working with

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2 contractors, we know of the fine work that
3 Sheryl McKissack does, not only in our City,
4 but across our state and country. And I think
5 that she has articulated the issue well.
6 We're at the core of it.

7 It's not just minority contractors.
8 Nobody is getting paid. I still don't
9 understand why they've all been asked to take
10 lesser money for an agreement. Can we have an
11 answer to that issue and can we come to a
12 conclusion today on when people will be paid?

13 Thank you.

14 (Applause.)

15 COUNCILWOMAN BROWN: Mr. Banner.

16 MR. BANNER: There's been a of
17 couple things said here recently that I'd like
18 to at least respond to.

19 The characterization that was given
20 of the stadium and the status and the repairs
21 was very far from reality. There were seats
22 added. It was 2,000. It was a change paid
23 executed and has been paid 100 percent. There
24 were 10 suites added. The change order was
25 executed and it's been paid 100 percent. So I

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2 don't know what that was about.

3 I'll bet there are people that have
4 been in this stadium since it opened. The
5 escalators haven't worked from the day we
6 opened the building. Our score board has
7 broken down about 25 percent of the games that
8 we've played from the first game. We've been
9 trying to get them to fix it for two years.
10 We're not waiting for 67,000 people to be in
11 the building for two years to get them fixed.
12 We've been begging to get them fixed from the
13 first day the building opened.

14 Some of you probably sat in a suite
15 on a cold day and know that the heat doesn't
16 work properly in the suites. We've been
17 trying to get that fixed from day one when we
18 opened the building, not from two years later.
19 That was a characterization that doesn't match
20 with the facts.

21 COUNCILMAN MARIANO: Somebody is
22 shaking their head over there.

23 MR. BANNER: He can respond. I'll
24 bet there are people in this room who have
25 been on the escalators in our stadium when

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2 they've broken down.

3 COUNCILMAN MARIANO: Mr. Banner, no
4 disrespect to you, but I suspect most of the
5 people in this room can't afford a ticket to
6 see the Eagles. I'm serious. I go someone
7 because takes me. My brother.

8 MR. BANNER: The other point that I
9 wanted to respond to. The term keeps being
10 used that these people aren't being paid at
11 all. I understand there's a legitimate
12 dispute here, and I it's unfortunate and it
13 should be corrected right away. But I also
14 think it's only fair that we say that
15 correctly.

16 I mean, I think Luis Cruz himself
17 testified to that, that he's been paid \$18.6
18 million out of \$19 million. And I think it's
19 wrong that there's still \$400,000 owed.
20 You've already heard my view on how that
21 should be resolved. But I still think when
22 people refer to people aren't getting paid at
23 all, there's a balance due. It's in dispute.
24 We've got to accelerate, get everybody at the
25 table, be objective, get this resolved. There

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2 is significant amounts of money that have been
3 paid and very significant participation on
4 this project.

5 COUNCILMAN MARIANO: Has this come
6 down to, like, a personality crisis between
7 the Eagles and TKM? Am I correct?

8 MR. BANNER: We have almost
9 literally no dealings with TKM whatsoever and
10 we haven't almost throughout the project.

11 If I can kind of recap my view on
12 what I think is simple, there is a legitimate
13 dispute at the moment between two parties.
14 There's a chance that it could take a turn
15 that engages us, but at the moment I think
16 there's a legitimate, honest dispute between
17 two parties.

18 It's a very complicated dispute, as
19 you already heard. An arbitrator and a
20 mediator is looking through thousands of
21 documents and requested information and
22 probably had to study 30 years to even follow
23 the thing. So I'm not sure there's a way to
24 cut through that part of it.

25 So then the question is, is there

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2 something that could be done in the meantime
3 so that the people that are stuck in the
4 middle aren't stuck in the middle any longer.
5 And that's why I believe the only reasonable
6 answer to that question -- because the clear,
7 direct authorization of the work and the clear
8 contract that the subcontractors had was with
9 TKM. If there was an additional authorization
10 of that work from either KUD or the Eagles, as
11 you've heard us both say, effectively
12 established we'll pay it. So TKM gets
13 reimbursed in that scenario.

14 COUNCILMAN MARIANO: How can you go
15 two years without your score board working
16 right? Who do you talk to about that, TKM?

17 MR. BANNER: TKM was involved
18 obviously in its placement in the electrical
19 work. But I will tell you that the company
20 who installed it recently on their own
21 volunteered --

22 COUNCILMAN MARIANO: Johnson
23 Controls?

24 MR. BANNER: Johnson Controls is a
25 different part of the stadium. Dactronic (ph)

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2 is the company that did the stadium. They on
3 their own came to us and offered to extend the
4 warranty a year and leave staff at their
5 expense at site for an additional year because
6 they agreed that it's still not working right
7 and they or TKM or anybody else involved can
8 figure out what's wrong. A company doesn't
9 come in and make that kind of offer.

10 COUNCILMAN MARIANO: Did you take
11 them up on that offer?

12 MR. BANNER: Yes, we did.

13 COUNCILWOMAN BROWN: Ms. McKissack
14 had a response.

15 MS. MCKISSACK-FELDER: I've just
16 been informed that what Mr. Banner said is not
17 true. We have not been paid for those seats
18 and we have not been paid for those suites,
19 number one.

20 Number two, I think if we got paid
21 we could fix whatever the issues were. It's
22 hard to get contractors out to a job that they
23 haven't been paid on in two years. That's a
24 tremendous issue.

25 COUNCILMAN MARIANO: What do you do

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2 about the score board that he says the company
3 called?

4 MS. MCKISSACK-FELDER: He still has
5 67,000 fans that come out there and has played
6 two additional games this year. He needs to
7 get it fixed if he doesn't want to pay the
8 contractors who he hired to do it.

9 MR. BANNER: If it was done right
10 the first time I don't need to hire anybody.

11 MS. MCKISSACK-FELDER: The
12 construction is not done right, maybe. There
13 are always issues in the field.

14 MR. BANNER: I agree.

15 COUNCILMAN MARIANO: Can we ask
16 about the heat? What happened with the heat?
17 Why don't the boxes have heat?

18 MS. MCKISSACK-FELDER: This is not
19 even a TKM issue, as I'm hearing right now.
20 This is a side issue. We're talking about
21 what's wrong with the base contract.

22 Why can't Luis Cruz get paid for his
23 parking lot? Why can't Paula from Seal Tite
24 get paid for what she has done in caulking?
25 All that is there.

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2 COUNCILMAN MARIANO: So you're
3 saying that money is there for them?

4 MS. MCKISSACK-FELDER: The work has
5 been done. The only people benefiting from it
6 right now are the Eagles.

7 COUNCILMAN MARIANO: I have no more
8 questions.

9 COUNCILWOMAN BROWN: Councilman Jack
10 Kelly.

11 COUNCILMAN KELLY: Madam Chair, this
12 is probably for you and everyone else in the
13 room.

14 It seems to me that the total cost
15 for the stadium is \$368 million. And that
16 cost seems to be capped. I don't know if it
17 was the City or this Council that approved it,
18 put the cap of \$368 million on it. Now, it
19 certainly cost more than that evidently, from
20 the testimony I heard today, that there's at
21 least \$7 or \$8 million short to pay all of the
22 contractors who were hired to actually
23 construct this facility. \$368 million is a
24 capped amount. I think somewhere along the
25 line someone has to come up with an additional

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2 \$7 million.

3 Now, I don't know if the City is
4 involved in this. From the testimony I heard
5 today, they're not. So I think it has to come
6 from someone at that table. I think we could
7 go on and on and on. And I think this is what
8 it is, regardless of the innovations or the
9 change orders and everything else that went
10 into that stadium. I think that somewhere
11 along the line someone has to come up with
12 additional millions of dollars to pay, not
13 only the subcontractors, but also the main
14 contractors. And I think that somewhere along
15 the line someone is going to have to do it,
16 and who, I have no idea at this point.

17 COUNCILWOMAN BROWN: That remains
18 the mystery question. That goes back to the
19 question I posed, and I heard from the Eagles
20 representative.

21 I need to hear from TKM and KUD per
22 the Councilman's recommendation that we return
23 here in the next 21 days, what can we expect
24 to have transpired over the next three weeks?
25 I need to hear from TKM and KUD as we move

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2 toward closing.

3 Thank you for your testimony, Ms.

4 McKissack.

5 MR. KUNTZ: What we expect to

6 transpire over the next three weeks in

7 anticipation of coming back here is that we

8 will continue to work on settlement of

9 subcontractors.

10 To date, Mr. Biggs and I worked

11 together and we have come to settlement

12 agreements on 14 subcontractors. We would

13 continue along those lines to continue to

14 settle more.

15 COUNCILWOMAN BROWN: Out of a total

16 of what?

17 MR. KUNTZ: 14 out of 60.

18 COUNCILWOMAN BROWN: 14 out of 60?

19 MR. KUNTZ: Yes, ma'am. We will

20 continue along those lines. When we settle on

21 the subcontractor for a final amount, we then

22 need to be paid. If we do that, then the

23 subcontractors will be paid.

24 MR. BANNER: I hope you are

25 listening carefully. He's saying that they're

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2 settling on who's putting up the money.

3 That's a great position to take. We're not
4 going to be in a better place three weeks from
5 now if you accept that answer.

6 COUNCILWOMAN BROWN: Councilman
7 Kelly, do you have a comment?

8 COUNCILMAN KELLY: No.

9 COUNCILWOMAN BROWN: KUD, in your
10 estimation what do you expect to transpire
11 over the next three weeks?

12 MR. BIGGS: I think Mr. Kuntz is
13 correct. The ongoing work that we're doing to
14 try and reconcile amounts that are due to the
15 subcontractors is paramount. That's number
16 one. The issue about getting the
17 subcontractors paid comes back to the amount
18 that's owed from the Eagles to us, to TKM.
19 And right now, as Joe has pointed out, there
20 are deficiencies that can't allow the Eagles
21 to distribute more money. So from our
22 standpoint the money has to come from TKM.

23 COUNCILMAN MARIANO: TKM pretty much
24 just said they ain't giving the money. Didn't
25 I just hear that?

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2 MR. KUNTZ: I don't have the money,
3 sir.

4 COUNCILMAN MARIANO: Well, you're
5 going to bring in a paper and go, we owe him,
6 her, him, him so much, and we admit that we
7 owe to you. Hey, Lou, we owe you money, but
8 we're never going to pay you. We can't pay
9 you because we don't have it. So we wasted
10 three hours here today basically. He doesn't
11 have any money in his pocket, she don't and
12 them guys back there don't. Why waste our
13 time? Somebody is going to have to eat this
14 or you will never do business in the City of
15 Philadelphia again.

16 (Applause.)

17 COUNCILMAN MARIANO: That's the end.

18 COUNCILWOMAN BROWN: I should just
19 mention for the record that we have one more
20 testifier after this, Charles Ang, so we want
21 you to stay with us.

22 We do know that you want to put
23 remarks on the record.

24 To all the parties at the table, are
25 you prepared to submit weekly progress reports

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2 to the Chair to be shared with all Members of
3 this Committee on the record?

4 MR. KUNTZ: Yes.

5 MR. BIGGS: Yes.

6 MR. BANNER: Yes.

7 COUNCILWOMAN BROWN: With that said,
8 then we will expect to begin to receive weekly
9 reports from each of you, starting next
10 Friday. Then I and Members of the Committee
11 will make a determination as to whether or not
12 you will be called back. You all will be
13 recessed to the call of the Chair.

14 Is that understood? We're tabling
15 at 21 days initial suggestion.

16 MR. KUNTZ: Understood.

17 COUNCILWOMAN BROWN: Thank you,
18 gentlemen.

19 We now invite up Charles Ang of Ang
20 Associates Structural Engineers.

21 Thank you for waiting, Mr. Charles
22 Ang. We appreciate your patience. We want to
23 ask you to please state your name for the
24 record and provide your testimony.

25 MR. ANG: My name is Charles Ang.

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2 I'm president of Ang Associates.

3 COUNCILWOMAN BROWN: Before you get
4 to your testimony, are you one of the
5 subcontractors involved in this process?

6 MR. ANG: I'm a different one.
7 That's why I think I have this great
8 opportunity to be able to express myself here.

9 COUNCILWOMAN BROWN: I only ask
10 because if that was the case I wanted to ask
11 the members of TKM and KUD to stay.

12 MR. ANG: I have to appreciate that
13 I had this opportunity to come here because
14 the labor group spoke up.

15 I'm from the professional section,
16 which is the weakest, as far as myself, is the
17 weakest organization among the parties
18 involved with the Eagles stadium. Now, I'm
19 from the engineering section. My firm is a
20 28-year-old minority firm, and I was one of
21 the earliest members of the MBEC. I was
22 really going forward for the people here, for
23 the minority groups, and I've come down here
24 and worked for it and finally for 28 years I'm
25 still in it.

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2 The reason I come here today, as I
3 said, I'm very thankful that the labor group
4 has brought up this issue to open it up to the
5 public. I have the same problem getting paid
6 as a minority professional.

7 We as structural engineers, we did
8 the job from the concourse level all the way
9 down to foundation. This is my structural
10 design work. The thing is, I work under a
11 sub-consultant and I'm three tiers down.

12 You have heard that the MBBJ as
13 being the architect. HUD hired them to do the
14 architectural design. MBBJ has to use
15 engineers, and they hired OV (ph). These are
16 all western state professionals. MBBJ is from
17 Seattle and OV is the structural engineer
18 hired to do all the structural work.

19 Now, as you know, the stadium itself
20 has the super structure, which is the steel
21 structure above and the substructure was all
22 the concrete work. As I mentioned before,
23 from the concourse level all the down to the
24 foundation, we always can say we did half of
25 the work.

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2 When the workers presented to Ang
3 Associates, we had to go through competitive
4 bidding, even as a minority structural
5 engineer. So they, by obligation, have to
6 offer work to subcontractors, I guess, across
7 the line.

8 OV, being the prime sub-consultant
9 structural engineer to MBBJ, they would come
10 to Philadelphia and try to interview different
11 minorities. We, because of our
12 qualifications, we got selected by them to
13 work with them.

14 Now, in working with them, I have to
15 give them a proposal to the sub. The sub here
16 now is OV that we work for. MBBJ is the
17 principal architect. They had the prime
18 design contract from HUD.

19 COUNCILWOMAN BROWN: I see.

20 MR. ANG: When we got a contract we
21 had some preliminary drawings. Naturally the
22 job is very complicated. We know it's going
23 to be fast tracked. I hope you understand the
24 word fast track. It's alerted that this is
25 going to be high speed. You have to put a lot

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2 of people in to crank it out to meet the
3 deadline. They have a very short-term
4 schedule to complete all this work.

5 As you know, we do all this work
6 ahead of the construction people. And fast
7 track is that they even want to prime the
8 thing out so that the packages can be
9 processed right after the first part of the
10 design is done. The construction foundation
11 is the first one that has to go out. We
12 happen to be the one to start from the bottom
13 up. We are the ones caught in that.

14 In my proposal to OV, I was very
15 careful to say that I had to put a 30 percent
16 contingency on my job. Engineers, usually we
17 have to work on good faith. We took a job
18 even when somebody says verbally or in
19 writing, just a letter of agreement, we have
20 to agree to go ahead, we move in and we start
21 working. So the 30 percent was kind of
22 ignored by OV. They are kind of using the
23 words in saying that, well, this will be made
24 up by doing the construction phase. Maybe
25 when the thing gets piled we will resolve

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2 that.

3 So for you people just at this
4 moment, I still do not have an official
5 contract, just to show you the good faith
6 here. The stadium is already delivered. And
7 here I still don't an official contract for my
8 design. So to cut it short, the money that
9 should be earned shortfalls in the design
10 phase of \$190,000.

11 People were talking around here. I
12 was here. You know the change orders and this
13 and that, and we are involved from behind
14 because they can talk a typical case.

15 There's this underground pit, they
16 built it wrong. The contractor put it in
17 wrong. So we were alerted. We as a
18 structural engineer have to run down there.
19 And because there's going to be future damage
20 or whatever, it can bounce back to us because
21 it wasn't built as it was designed. So this
22 is a typical case. That of course is not
23 written in the contract anywhere, so we have
24 to say, I myself was involved.

25 Our top engineer had to be down

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2 there all this time to record. We want to get
3 paid. This is one of those cases. So I was
4 dividing them into a construction phase and a
5 design phase. The design phase, because of
6 all this fast track, we are not honoring
7 without 30 percent contingency. Cover that
8 amount.

9 The construction phase again, the
10 certain part that they did honor, like they
11 mentioned about those approved change orders,
12 we did, like, 20-some items. Do you know of
13 those approved items, we only get 50 percent
14 of the dollar? They negotiated you to death.

15 COUNCILWOMAN BROWN: So that goes to
16 your point, Councilwoman Jannie Blackwell.

17 MR. ANG: So they're partner
18 involved McKissack, Turner, that group. They
19 were the ones doing the construction
20 management, watching the job.

21 COUNCILWOMAN BROWN: I see.

22 MR. ANG: As I mentioned, this is
23 just one of the cases that we have to go down
24 there to do it, to make corrections. And they
25 say, you didn't do it. Now, will the water

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2 still hold. What happened there. There's a
3 certain pipe that's going through there. We
4 have to check it to see if it will still be
5 safe to leave them in there. This kind of
6 thing happens.

7 COUNCILWOMAN BROWN: Any questions
8 from Members of the Committee?

9 Councilwoman Jannie Blackwell.

10 COUNCILWOMAN BLACKWELL: I only
11 wanted to thank Mr. Ang for helping to clarify
12 some of this. Maybe if we had his testimony
13 earlier we would understand a little bit more
14 about what happens. It amazes me that it
15 seems like so many other things in some ways
16 non-negotiated -- hazardous is too extreme a
17 word -- but arbitrary in some ways, like so
18 many other aspects of what we do.

19 I met Mr. Ang many, many years ago
20 with Lucien, many, many many years ago, I
21 would say 25 or 30 at this point. It's
22 certainly a pleasure to see him again and to
23 know he's still doing good business in our
24 City.

25 Thank you.

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2 MR. ANG: Just to show you again.

3 Now, this is a tough business. I was one of
4 the earliest Minority Council members and I
5 came down here to rally for it. I know that's
6 the best thing for the City. Unfortunately I
7 was the only minority among the minorities
8 when we were starting with belly hoppers and
9 all that. It's a long struggle up to now.
10 You can see how we can move from a small
11 project to a big project. We still suffer.
12 We're still not out of the woods.

13 COUNCILWOMAN BROWN: Councilman Jack
14 Kelly.

15 COUNCILMAN KELLY: Mr. Ang, I just
16 have a question here. You had mentioned you
17 had many change orders that you had to make
18 for the stadium. Who approved those change
19 orders?

20 MR. ANG: This is very interesting.
21 We're three tiers down. I am working for a
22 sub, a sub structural engineer, and the sub
23 structural engineer, he's a sub for MBBJ.

24 COUNCILMAN KELLY: But it was
25 approved by the three higher ranking

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2 organizations?

3 MR. ANG: Of course. I report to
4 OV.

5 COUNCILMAN KELLY: Now, I want to
6 ask you something. You mentioned something
7 about you had to accept 50 percent -- I don't
8 know if the amount was approved or the work
9 was approved -- on the amount that you
10 submitted for those change orders. Was that
11 every approved?

12 MR. ANG: Those were approved.

13 COUNCILMAN KELLY: But you
14 negotiated 50 percent of the approved amount;
15 is that correct?

16 MR. ANG: With OV all together, I
17 was the minority part of OV Group hired to do
18 the structural work. OV also has change
19 orders, hundreds of items. Ang's office has,
20 like, 50-some items. So they would go
21 negotiate with them on my behalf.

22 COUNCILMAN KELLY: They did the
23 negotiating, you didn't?

24 MR. ANG: On my behalf.

25 COUNCILMAN KELLY: And they accepted

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2 the 50 percent which came down to you?

3 MR. ANG: 50 percent.

4 COUNCILMAN KELLY: You answered my
5 question. Thank you.

6 COUNCILWOMAN BROWN: We thank you
7 again for your patience and for staying and
8 for offering your testimony and another
9 example of what has not happened with the
10 subcontractors.

11 Did you hear what our next steps
12 will be? Each one of the partners has put on
13 the record that they will provide us with
14 weekly reports, and then the sponsor of the
15 resolution will make a determination as to
16 whether or not they are sufficient and direct
17 us on whether or not we will reconvene.

18 This City Council Committee on
19 Parks, Recreation and Cultural Affairs is
20 recessed to the call of the Chair.

21 Thank you for your attendance.

22 MR. ANG: I thank all the Members
23 here of the City. I thought that is my duty
24 to do that.

25 (Council adjourned at 4:55 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Thursday, January 27, 2005,
were reported fully and accurately by me, and
that this is a correct transcript of the same.

RE: COMMITTEE ON PARKS, RECREATION AND
CULTURAL AFFAIRS

Lisa C. Bradley, RPR