SPECIAL COUNCIL MEETING

TUESDAY JULY 24, 2012 @ 5:30 PM

IN THE COUNCIL CHAMBERS @ CITY HALL

Mayor Doug Roll called the meeting to order @ 5:30. In attendance were Mr. Bischoff, Mrs. Williams, Mrs. Desch, Mrs. Lawrence, Mrs. Benson, and Mr. Olsen.

Also present were City Attorney Jim Reintsma, City Administrator Jim Hammons, and representatives from Morrison & Maierle Inc, Terry Richman and Ryan Jones.

Ryan Jones spoke to the council regarding the upcoming mediation between the city and Shannon Industrial regarding issues during the start up of the screw press at the WWTP. Ryan stated that Shannon was asking above what the contract amount was to be paid to them. They were asking for an additional $30.962.16. The city also has damages as out lined in the contract.

The city had assessed liquidated damages in the amount of $500 a day until the screw press was up and running properly. Also there is unscheduled employment from M&M at the WWTP. This totals $79,219.41.

Ryan stated that when he spoke to the council at a regular meeting, he recommended to with hold the $79,219.41 from Shannon’s final pay request. And pay the remainder of $16,020.40. Ryan then said that the contractor (Shannon) is claiming they are owed additional money for unscheduled trips from Huber to come and work out the problems with the polymer.

Ryan also mentioned that the certificate for substantial completion has not been issued and we need to get that taken care of. Also the city needs to send a letter to Shannon stating what the damages are owed to the city and why.

Ryan then explained more to the council about how we ended up with this issue. Mainly it was due to the contractor not meeting the performance requirements that were in the bid contract. Huber had to come and try different polymers in order to make the screw press work with the sludge at the plant. Ryan stated that Shannon is asking for the additional charges because they felt the polymer that was already used by the city would work, and in the new press it would not, so they spent a lot of time and testing to find one that would work with the screw press.

Further discuss was brought up about the liquidated damages cost to the city and the unscheduled work cost from M&M and also the dates when these costs were assessed.

City Attorney Jim Reintsma, stated that in the contract the city is obligated to get the unscheduled work cost to M&M. Mr. Reintsma said he understood the cities damages but had a hard time with understanding where Shannon was coming up with their figures.

Mr. Reintsma pointed out that in mediation that there will be a lot of back and forth as to who is at fault and why. Mr. Reintsma said a date has been set for September 19th 2012 for the mediation. Questions were brought up of cost for the mediation, and Terry Richman responded saying that the parties share the cost. It could cost up to a couple thousand dollars a day.

There was more discussion regarding the mediation and a settlement and also the letter Shannon’s attorney had sent the city requesting their final payment in full. Mr. Reintsma said that the city is bound by the contract and that the letter did not lessen our case. He stated that if we pay the amount owed we still could go to mediation and get that back. Mr. Reintsma said that there is no reason why we should not try to settle.

There were questions brought up regarding what might happen if we don’t settle and what would be next. Mr. Reintsma said it could go to litigation and that would be costly. Mr. Bischoff asked M&M if the city was interested in reducing a percentage of the damages would M&M be willing to do the same. He was concerned that the city would have to pay additional cost if this could not be resolved. Terry Richman commented that they were willing to participate to help get it resolved.

Discussion was brought up on how mediation works and what the city would have to do to settle. There was input from the council on what would be a good starting point and a percentage the city could reduce the damages by. There was more discussion on how the figures in the damage amounts came about. Ryan explained how liquidated damaged were assessed to Shannon through language in the contract of $500 a day.

The Mayor asked the council what would be a reasonable offer in a settlement? After more discussion on how to come up with a number for a settlement offer, Terry Richman asked the question why does the city have to offer a figure for a settlement? It was discussed more and the consensus was to send a letter to Shannon to see if they would like to settle. The city would explain how much we have in damages and they could come back to the city with an offer if they so chose.

Discussion was brought up about the substantial completion date. Shannon was requesting a partial substantial completion because the UV system was running a few months before the screw press. The council was in agreement not to have a partial substantial completion date separate from when the screw press was brought on line.

Jim Reintsma asked Ryan for some final dates for when the substantial completion date was for his letter to Shannon and Ryan stated that he will get that information to Jim.

Ryan then discussed with the council the Flower Creek Dam interim financing. There was an issue with the interim financing with Intercap. They could not finance the total amount without a letter from RD stating they would fund the project. RD cannot send a letter stating this until they receive their final budget.

Ryan said that RD found another way for funding the interim through a bank in Minneapolis. The name of the loan company is called Co-Bank. They do infrastructure financing like Intercap. Ryan stated that they would fund the project, with a letter of intent from RD. He said this would keep the project moving forward.

The council felt we don’t have a choice but to move forward. Ryan also mentioned that Anna Miller from DNRC let him know they will fund the interim financing on the water distribution system. Ryan said that the city owes about $465,000 to date on the project. There was discussion on the interest rate from Intercap and Co-Bank. Co-Bank would be slightly higher. Ryan said another source of interim financing that is being looked at is from the Coal Board tax but he has no new information regarding this.

Mayor Roll mentioned that the council has already passed a resolution to use IP funding to help pay until the interim financing becomes available to pay the contractors. Terry Richman said that it would be nice if they could get their contractors paid soon. The meeting ended at 6:24 pm.

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Mayor Doug Roll

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City Clerk Glena Hook