
The Mandan City Commission met in regular session at 5:30 p.m. on October 18, 2016 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Helbling, Rohr, Braun, Davis, and Laber. Department Heads present were Finance Director Welch, Police Chief Ziegler, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Planning & Engineering Director Froseth, Principal Planner Decker, Assessor Shaw, and Building Official Lalim. Absent: Business Development and Communications Director Huber

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider for approval of the minutes from the October 4, 2016 regular City Commission meeting.* Commissioner Laber moved to approve the minutes as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of the monthly bills.* MONTANA-DAKOTA UTILITIES - 22,765.15; HORNER/BRUCE - 8,172.45; A-1 TREE SERVICE - 450.00; ADVANCED ENGINEERING SVC - 95,488.95; AGUIRRE/LORENA - 25.00; ALL BIRDS CONTROLLED, LL - 9,405.00; ARMSTRONG SANIT & ROLL O - 35,659.05; BANK OF NORTH DAKOTA - 616.67; BANK OF NORTH DAKOTA - 103,547.09; BIS-MAN CONVNTN & VISITOR - 3,545.42; BOB'S CUSTOM SERVICES - 90.00; CENTRAL DAKOTA FORENSIC - 105.00; CREATIVE CONSTRUCTION - 681.00; EPIC ENGINEERING - 4,424.00; FETZER ELECTRIC, LLC - 7,185.37; FRIEDIT/JIM - 383.52; GRAYMONT CAPITAL INC - 4,120.70; HUB INTERNATIONAL OF ND - 22.00; L-TRON CORPORATION - 162.00; MANDAN PARK BOARD - 11,900.00; MARKS HEATING & COOLING - 4,662.65; MORTON COUNTY AUDITOR - 6,251.74; MUNICIPAL CODE CORPORATI - 1,346.00; ND WATER & POLLTN CONTRO - 450.00; NSC MINERALS - 12,027.86; PRESORT PLUS - 2,224.45; RENNER'S LAWN SPRINKLING - 111.25; SCHLOSSER EXCAVATING INC - 1,075.00; SOUTHWEST AG INC - 122.50; TODD'S TREE & STUMP REMO - 2,500.00; MONTANA-DAKOTA UTILITIES - 35,084.34; ADVANCED ENGINEERING SVC - 3,565.07; AT & T - 803.01; BALABAN LAW OFFICE - 1,500.00; CENTRAL DAKOTA FORENSIC - 315.00; COMPANION LIFE - 10.00; DAKOTA MEDIA ACCESS - 9,704.00; DAKOTA'S BEST COFFEE - 50.00; FORT DEARBORN LIFE - 1,826.55; GLASS/THOMAS J. - 1,500.00; GRAYMONT CAPITAL INC - 12,299.69; KELSCH KELSCH RUFF & KRA - 4,000.00; ND PERS - 115,319.66; NEUBAUER/JAMES - 450.00; PRESORT PLUS - 2,060.06; TERRACON - 4,875.00; VAULT1440, LLC - 1,875.00; WELLS FARGO COMMERCIAL C - 159,066.50; MONTANA-DAKOTA UTILITIES - 24,475.95; POST BOARD - 45.00; ADVANCED ENGINEERING SVC - 23,114.12; AGUIRRE/LORENA - 25.00; ARMSTRONG SANIT & ROLL O - 47,164.96; AVENET WEB SOLUTIONS -

375.00; BANK OF NORTH DAKOTA - 200.00; BEAVER CREEK TREE SERVIC - 150.00; BIS-MDN TRANSIT BOARD - 452.50; CBI BUSINESS SERVICES - 7,506.91; COMPUTER PROFESS UNLIMIT - 93.00; CROWLEY FLECK PLLP - 4,500.00; CUSTER DISTRICT HEALTH U - 1,075.00; D & F TELEPHONE - 681.60; DAKOTA PROMOTIONS & PRIN - 354.00; DAKOTA SANITATION, INC - 33,425.06; EPIC ENGINEERING - 2,385.75; ETHANOL PRODUCTS - 1,978.30; FETZER ELECTRIC, LLC - 4,012.80; FLECK & SONS CONCRETE IN - 21,433.27; GEORGE STROH TRUCKING IN - 750.00; HUB INTERNATIONAL OF ND - 138.00; INFORMATION TECHNOLOGY D - 689.10; INTERGOVERNMENTAL SHOP - 9,692.13; JERRY'S CUSTOM CARPENTRY - 4,165.36; KADRMAS, LEE & JACKSON, - 136,870.04; LEINGANG/PAUL - 25.00; MANDAN AIRPORT AUTHORITY - 905.11; MANDAN MUNICIPAL COURT - 2,495.00; MANDAN PARK BOARD - 4,000.00; MANDAN PROGRESS ORGANIZA - 1,262.53; MARINER CONSTRUCTION INC - 600,138.66; MARKWED EXCAVATING INC - 108,936.65; MISSOURI WEST WATER SYST - 92.61; MORTON COUNTY AUDITOR - 213.15; MORTON MANDAN PUBLIC LIB - 18,813.35; MUNICIPAL CODE CORPORATI - 997.00; MY GOV, LLC - 1,050.00; ND LEAGUE OF CITIES - 4,126.45; ND STATE DEPT OF HEALTH - 320.00; ND WATER & POLLTN CONTRO - 205.00; NORTHERN IMPROVEMENT CO - 293,230.16; ONE CALL CONCEPT INC - 295.40; PETTY CASH - 237.61; PHAT BROTHERS BAKERY, IN - 625.00; PRESORT PLUS - 2,419.25; RAILROAD MANAGEMENT CO I - 1,500.88; RAZOR TRACKING - 450.00; RENNER'S LAWN SPRINKLING - 421.50; SCHLOSSER EXCAVATING INC - 5,735.57; SEVERIN, RINGSAK & MORRO - 100.00; SKEELS ELECTRIC C0 - 40,976.10; STANTEC CONSULTING SERVI - 1,274.39; STRATA CORPORATION - 0.00; TERRACON - 1,816.25.

2. *Consider closing Administrative offices day after Thanksgiving.*
3. *Consider approval of minor plat for Sylvester's Industrial Park 9th Addition.*
4. *Consider approval of Out of State Travel for International Code Council training Classes – Joe Camisa (Code Enforcement Officer) & Steve Roe (Building and Plumbing Inspector).*
5. *Consider for approval the special assessments for Weed Cutting of 2016, Sidewalks of 2016, and Health & Safety of 2016.*
6. *Consider for approval the assessment of Delinquent Utility Billing Accounts for 2016.*
7. *Consider approval of new Class F Restaurant Liquor License for Taylor Made BBQ, LLC for Nov. 1, 2016 – June 30, 2016.*
8. *Consider for approval the assessment of Delinquent Alarm System Accounts for 2016.*
9. *Consider proclaiming Nov. 26 as Small Business Saturday in Mandan.*
10. *For information item. Change orders for Street Improvement District No. 202, Project 2015-13 (Lakewood 8th Addition).*

Commissioner Laber moved to approve the Consent Agenda as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. *Consider Amendment to agreement with KLJ for an increase in Construction*

Engineering Services. Planning and Engineering Director Froseth presented a request to approve an Engineering Services Agreement with KLJ for the Old Red Trail reconstruction. The project has extended beyond the interim completion date of 8/24/16, (of the completion of the roadway up to 37th Avenue Northwest), and is now beyond its completion date of 10/15/16. Because of the delay, more construction engineering for project inspection and management is needed than was anticipated at the start of the project. He explained that liquidated damages will be assessed to the contractor when they do not meet contractual deadlines. The City will only be billed based on KLJ's fees and hours worked on the project and the amount paid is capped at the estimate unless another amendment is agreed to. Director Froseth recommended approval of the amended Engineering Services Agreement with KLJ for Old Red Trail reconstruction.

Jim Jackson, the KLJ project manager for the Old Red Trail project came forward to provide additional information as to why the agreement is being requested. He concurred with the information provided by Director Froseth. He said the actual final completion date is 7/15/17 noting there were two interim completion dates of 8/24/16 and 10/15/16. The contractor did not meet the first completion date which was finally completed on 10/7/16. The second interim substantial completion date of 10/15/16 has not been met. The only items that do not need to be completed until next July are the seal coat on the asphalt, the trees, the seeding and the permanent erosion control. There are 45 days of liquidated damages at \$2,100 per day which comes out to approximately \$90,000. That amount will get withheld from the contract when it comes time to pay the contractor. A meeting was held today with the contractor at their weekly meeting. These meetings are being held in order for the contractor to submit a schedule of the outlook of what they anticipate. Today, they showed a 2-week ahead of schedule wherein they are proposing to have the full roadway paved throughout the whole project and opened up to through traffic by October 31, 2016. They propose the trail will be paved by that time and the lighting should be completed after those items are in place. He explained the baseline schedule showed completion of the project by September 5, 2016. As the weekly meetings were occurring it was apparent that they were not meeting the timeline of completion. So, because of that happening, a more frequent schedule was requested from them. They further condensed the project, and in July it was obvious the project would not be completed in a timely manner. The only consequence was to enforce the liquidated damages.

This is a federally funded project which requires a representative of the owner of the project (City of Mandan) to be on site fulltime. He explained that funds are required to be held back in projects such as these. He believes that due to the amounts being held, the contractor will complete the project. It also affects the contractor from bidding on future Department of Transportation (DOT) work if there are issues for completing the project and closing it out. The liquidation of damages is determined by the DOT, set forth in the spec book. The contractor has submitted three NOI (notice of intents) all related to weather delays. But they have been quickly denied by KLJ and DOT. When a contractor signs a contract, the spec book becomes a part of that contract on these projects. In the spec book, it clearly states that for the completion date contracts, there will be no forgiveness for weather delays. One of the main purposes of the liquidated damages is to compensate for the additional engineering that is required when a contractor does not meet the deadlines. Thus as far as the City of Mandan (residents) gaining a benefit, that benefit would be that the additional engineering costs should be covered.

Commissioner Davis questioned whether there were any factors other than the weather problems

that contributed to the completion of the project. Mr. Jackson stated that possibly the (slow) production of the project may have attributed to the delays and possibly not bringing in additional staffing to assist in completing the work. There was only one week that the contractor brought in an extra crew, which is an indication they were aware they were not meeting the completion deadline date. He clarified that this is based on an hourly project fee, so if the contractor becomes more efficient and the project is closed out sooner than anticipated it will cost the City less money.

Commissioner Laber moved to approve the amended Engineering Services Agreement with KLJ for Old Red Trail reconstruction. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

I. RESOLUTIONS AND ORDINANCES:

1. *First consideration of Ordinance 1252 amending and reenacting Section 20-7-15 of the Code of Ordinances of the City of Mandan relating to group health insurance.* City Administrator Neubauer stated that during the recodification there were some revisions that were made that are in need of correction in order to restore code as it existed prior to the municode revisions. He explained that this is a technical correction to the ordinance. One of those changes was to modify the percentages of family health insurance that the City would pay based on length of service. The chart is being adjusted to reflect the previous ordinance. City Attorney Brown clarified that this Amendment reverts the health insurance policy back to “the way that it has always been”. The deductions from the employees have not changed. These Ordinances can be amended at any time by the City Commission. The omissions occurred sometime in 2003, and this amendment puts the code back to the way it was previously. Commissioner Laber questioned why health insurance is paid for a month after employee separation. Administrator Neubauer commented that it is his understanding that in 2003, the City went from its own Blue Cross Blue Shield self-insurance plan to joining PERS and this version may have been a requirement of the PERS plan. Commissioner Laber requested Administrator Neubauer check that out and provide further explanation.

Commissioner Laber moved to approve the First consideration of Ordinance 1252 amending and reenacting Section 20-7-15 of the Code of Ordinances of the City of Mandan relating to group health insurance. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

J. OTHER BUSINESS:

1. Commissioner Davis provided his viewpoint of the situations occurring with the DPL protest going on. He offered encouragement and peacefulness until the matter is resolved. He extended a thank you to law enforcement for their work in keeping all residents involved safe. Mayor Helbling stated that law enforcement have the rights to set up road blocks, but only when there is a concern for safety of our residents. He extended a thank you to Commissioner Davis, the Police Department and all the other resources for their ongoing efforts to keep the situation under control over the last several weeks.

L. ADJOURNMENT:

There being no further actions to come before the Board of City Commissioners, Commissioner Braun moved to adjourn the meeting at 6:00 p.m. Commissioner Laber seconded the motion. The motion received unanimous approval of the members present. The motion passed.

/s/ James Neubauer

James Neubauer
City Administrator

/s/ Dennis Rohr

Dennis Rohr
Vice-President
Board of City Commissioners