

COUNCIL PROCEEDINGS

Council Pre-Meeting

October 20, 2015

6:00 p.m.

A Pre-Meeting of the City Council of the City of Gillette, County of Campbell, State of Wyoming, was held on Tuesday the 20th day of October 2015, in the third floor conference room, pursuant to due notice and call. The Presiding Officer called the meeting to order and upon roll call the following were found to be present:

Council Members present: Robin Kuntz, Kevin McGrath, Dan Barks, Tim Carsrud, Ted Jerred, and Mayor Louise Carter-King

Staff present: J. Carter Napier, City Administrator; Charlie Anderson, City Attorney; Pamela L. Boger, Administrative Services Director; Patrick Davidson, Asst. City Attorney; Kendall Glover, Utilities Director; Dustin Hamilton, Development Services Director; Tom Pitlick, Finance Director; Levi Jensen, Utilities Project Manager; Brent Wasson, Lieutenant; Geno Palazzari, Communications Manager; Patti Davidsmeier, Community & Gov't Relations Manager; and Karlene Abelseth, City Clerk.

Warm Up Items

Mayor Carter-King asked for warm up items. Councilman Barks expressed appreciation to Staff for installing the population signs, as requested at a previous meeting.

Review October 20th Agenda

Mayor Carter-King announced that in order to allow time for proper discussion, the upcoming council agenda items would be the first item addressed on the agenda. Council discussed item M3 *"Council Consideration of a Resolution Concerning the Financing of the Construction and Equipment of a Dormitory on the Northern Wyoming Community College District/Gillette College Campus, to be Leased by the City of Gillette, Wyoming, from the Gillette College Student Housing Phase II Statutory Trust"*. City Attorney Anderson informed the Mayor that a document signing session would take place following the Council meeting, upon approval of the Resolution. The signed documents would expedite the closing on Thursday. City Administrator Napier informed Council that City Attorney Anderson and Staff have worked hard on this process. He stated that the basic idea is that the City is preparing to go to market for certificates of participation that would be underwritten by a private lending institution; in order to do that, a closing will take place on Thursday. Pursuant to that, approval of the Resolution would give the "green light" to proceed with the closing process. City Attorney Anderson reported that this project is in regard to the previously approved Memorandum of Understanding with the College in which the City agreed to work with them to finance new dormitory units at the college on Lot C of the latest re-subdivision, directly next to the Education Activity Center that the County is building. The City will lease that lot to the Trustee of the Trust who will in turn sell a lease participation certificate to another bank. The proceeds of that sale would be used to build the dorms and then the City will lease the dorms back from the Trustee. The City would make annual payments, subject to appropriation as part of the City budget, to pay off all the debt and the construction costs for the dormitory. At the end of the period of time, the City and the College will own the dormitories; the ownership will be, eventually, as a condominium; the City will own 83% and the College will own 17% to be used by the College for the students. City Administrator

Napier added that the City did try to work with private local institutions for a similar arrangement on a reduced scale and received no interest, but he wanted to point out that the effort was made. Councilman Jerred asked how much money the City will put down on the project. City Attorney Anderson stated that the City has committed one million dollars out of the budget and approximately \$800,000 has been committed to contracts with the engineer and contractors. He stated that the interest rate has been locked in at 2.48%. City Administrator Napier stated an annual net payment from the College of approximately just over \$1,000,000 would be required for ten years. He commended City Attorney Anderson and Finance Director Pitlick for all of their efforts in working through the lengthy process.

Mayor Carter-King asked for explanation of agenda item M2, *"Council Consideration of a Bid Award for the Gillette Madison Pipeline Project, Contract #2a, to Layne Christensen Company, in the Amount of \$14,027,028"*. City Administrator Napier reported that the Layne Christensen Company has been recommended to receive the award of the bid for this project. Mr. Napier reminded Council that this is a very complex project and the proposals are complex, as well. The bid award boils down to the following basic facts. It is true that the base bid for the Boart Longyear Company proposal is \$1.5 million dollars less than the Layne Christensen Company base bid. It is also true that when the base bid and alternate bid from both proposers are added, the gap between the two reduces to approximately \$100,000 in favor of Layne Christensen Company. Also note that the base bids for these proposals drill three wells; the alternate doesn't really change that fact. Mr. Napier advised Council to keep in mind the difference between the two proposals. Aside from monetary difference, which of course is important, is the notion that the Boart Longyear Company brings a different proposal to the table from the Layne Christensen Company proposal. Boart Longyear Company included a letter in their proposal that placed a cap on liquidated damages, not to exceed \$200,000. The concern is that \$200,000 is a very small amount of money for a \$14,000,000 project and should be a consideration in awarding the bid. Mayor Carter-King asked if the Layne Christensen Company placed a liquidated damages restriction with their proposal. City Administrator Napier stated that there was no restriction suggested in the Layne Christensen proposal. Councilman Kuntz recollected that the last bid award to the Layne Christensen Company resulted in a substantial amount of liquidated damages. Mr. Napier stated that via a phone conversation with Boart Longyear Company, an offer was made to drill all three wells through a GMP of 8.8 million dollars, which of course is the amount of their base bid. If that is alluring to the Council, then the reaction needs to be to reject the bids and move forward in a re-bid scenario. Mr. Napier stated that the weaknesses to re-bidding the project are that all bids have been exposed, there will be a direct impact on the project timeline, and there is no guarantee that there will be any cost savings. Mayor Carter-King asked what the timeframe would be if the bids were rejected and re-bid. City Administrator Napier stated that the entire bid process would have to be repeated, and could delay the project by several months. City Attorney Anderson added that there would be increased costs due to possible changes in the project concept that could result in reduced funding from the State of Wyoming. Councilman Kuntz asked for the length of the current contract for the three wells. Levi Jensen, Utilities Project Manager, stated that the current contract is 540 days to final completion. Councilman McGrath asked about input from the partnership of the State of Wyoming for this project. City Administrator Napier reported that the State would support the

Council's decision, and Staff's recommendation is to award the bid to the Layne Christensen Company. Councilman Jerred asked if it was standard practice to submit a proposal with a cap on liquidated damages. City Administrator Napier stated that was not common practice. He also stated that the Boart Longyear Company offered to rescind the letter, but even in that circumstance, the bids should be rejected rather than allowing a bidder to modify their proposal. Utilities Project Manager Jensen stated that the State of Wyoming was in agreement with the recommendation to award the bid to the Layne Christensen Company. He stated that the State funding agency was not convinced that re-bidding the contract as a CMAR would be acceptable to continue with State funding, and more information and justification would be required, which would take time, which would make it more difficult to meet the project timeline. Councilman Kuntz asked if the Layne Christensen Company exceeded the timeline during the drilling of the first well. Utilities Project Manager Jensen stated that he was not involved with the project at that time, but he recalled that there did seem to be substantial liquidated damages assessed to the Layne Christensen Company for that portion of the project. Utilities Director Glover stated that there were conditions encountered with the drilling of the first test well that contributed to the delays in the project. He stated that the drilling of the second test well did not encounter the same adverse conditions of the first well and there were no project delays. He didn't feel it was fair to assume that the project delays were due to negligence. Mr. Glover stated that there is no guarantee of the type of conditions the next wells will encounter that may, or may not, result in liquidated damages. Representatives from the Layne Christensen Company and the Boart Longyear Company stated their concerns with the bid process. City Attorney Anderson pointed out that a bid is not a negotiation, a bid is an opportunity to set a price for the scope of the work to be performed. Councilman Barks asked about the conditions the Boart Longyear Company wrote into their RFP; were they something that could be negotiated. City Attorney stated that he can't think of any other incidence when the City was asked to renegotiate a contract through the bidding process, he stated that this was an unusual circumstance. Mr. Anderson asked if any input was received from Burns & McDonald as to whether the bid was considered responsive for the inclusion of these extra items. Utilities Project Manager Jensen stated that Burns & McDonald alluded to that fact in their recommendation letter, if the Boart Longyear Company was in fact the low bidder, the City would have taken a very detailed look at this letter to see how it applies to the contract language. Mr. Jensen felt, in his opinion, that it would be classified as a nonresponsive bid and would be disqualified, if it was the low bid. The low bidder was the Layne Christensen Company and their bid is recommended on the combination of their base and alternate bid. The bid was evaluated and found to be complete and responsive, so, that was the recommendation that will be brought to Council for approval. Councilman Barks asked for the purpose of the argument, since the Boart Longyear Company was the high bidder. Jason Lamb, with the Boart Longyear Company, stated that based on the base bid, their company was the low bidder. Utilities Director Glover explained that add alternates encompass any unseen conditions and establish standard unit costs for different scenarios. He stated that awarding a bid based only on the base bid, without the add alternates, would not make unit pricing available for the unexpected conditions, which would result in change orders; add alternates are risk mitigation to control costs. Councilman Jerred asked if the Boart Longyear Company has drilled a well in this formation or in this area. The response was "no". Councilman Kuntz asked, knowing that the add alternates were

probable, why are the add alternates not included in the base bid. Utilities Project Manager Jensen stated that there is an optimum well design that they want to achieve, and the base bid would allow for that. Councilman Barks stated that it is possible that none of the alternates would be needed. Project Manager Jensen confirmed that there may be no add alternates needed, or they may encounter all the add alternates. Councilman Barks asked if the 14 million dollar bid was approved, would it need to be contingent upon the need for the add alternates; if the 14 million dollar bid was approved, would the City be obligated for the total amount of the bid. City Attorney Anderson commented that the add alternate is setting a price for the extra services and if they are not used, they won't be paid. Utilities Project Manager Jensen stated that this would be a unit price contract not a lump sum contract, and Burns & McDonald would be hired as Contract Manager to oversee the project and verify quantities used; payment would be based on actual quantities on the base and/or the alternate. Councilman McGrath stated that he was in favor of the bid award as long as the State of Wyoming was on board. Councilman Barks stated his main concern was the limit on the liquidated damages with the Boart Longyear Company's bid. Mr. Lamb referenced the bid article that stated, "Owner also reserves the right to waive all informalities not involving price, time, or change in the work, and to negotiate contract terms with the successful bidder". City Attorney Anderson explained that, respectfully, Mr. Lamb was recommending that we have litigation with our low bidder to benefit his position. Mr. Anderson would not recommend that, based on that language, which is broad language that has been in every contract, he felt it would be an invitation for litigation.

Councilman Barks commented that item N3, *"Appointment of City Board Member to the Boys and Girls Club Board"* would be removed from the agenda. Mayor Carter-King clarified that the item would actually be tabled.

City Administrator Napier introduced Matt Stroop, Staff's recommendation for the Parks & Beautification Board. Mayor Carter-King expressed appreciation to Mr. Stroop for his service on the board.

Bennor Estates Emergency Water

City Administrator Napier asked City Attorney Anderson to give an overview of the Bennor Estates water situation. City Attorney Anderson reminded Council that a Resolution has been passed that limited new water connections to the Gillette water system until the Madison system was in place. He stated that Bennor Estates has been approved as one of the 42 approved water districts for water service agreements; Bennor Estates is under an order from the EPA to find an alternate water source because their water source was high in radioactive materials. The construction schedule with the extension to serve the water districts on the water line is scheduled, with a little luck, to be completed by the end of this year. If so, the Resolution, that was passed limiting new additions to the water system, allows an exception for emergency conditions. If Council agrees that the water quality that Bennor currently is experiencing constitutes an emergency, approval of the item on the Council agenda would allow them to receive water now, by sharing the available water supply, since there are no new water sources coming on line at this time. Staff recommends that Council grant approval and follow the water service agreement that was previously approved, which would charge them the wholesale rate that was approved in the agreement, which would otherwise go into effect in 2016 when

the new water supply is available. Mr. Anderson stated that Staff recommends that the wholesale rate for 2016 begin now, rather than charging one rate now and changing the rate in 2016. Councilman Jerred asked Utilities Director Glover if the current water system can handle the extra load. Mr. Glover stated that with conservation methods in place, Staff was hopeful that the current water supply would accommodate the addition of Bennor Estates. Councilman McGrath asked if Bennor Estates would be subject to the same voluntary water restrictions that City customers follow. Mr. Glover stated that those issues have not been ironed out, but the residents in Bennor Estates would be made aware of the situation the City will be in to provide water to all users, and the conservation efforts that are in place. Councilman McGrath asked the Home Owners Association members in attendance if that would be acceptable. An association member commented that they are not large consumers of water, and should not make much of an impact on the water system. Councilman Barks asked if any of the other approved water service districts foresee a similar emergency water situation in the next year and a half before the Madison pipeline is in service; he is concerned that approval of this item would set a precedence. Utilities Director Glover stated that the Bennor Estates request is, by exception, based on the EPA order with the discovery of radio nuclides. The City has recently been notified by other water district subdivisions that are detecting rising levels of radio nuclides, but Mr. Glover is not aware of any other EPA orders mandating that they change their water source. Councilman Kuntz reiterated the importance of water conservation. City Attorney Anderson stated that the water service agreement does provide that anyone taking water would be subject to emergency orders that could be given under City Ordinances.

Miscellaneous Item

City Administrator Napier reminded Council that the recommendation of the applicant for the new retail liquor license is on the upcoming agenda for approval. He also stated that this approval was not the final approval for the license. This approval would allow the application process to move forward with one vendor. The next step would be a statutorily mandated public hearing for the applicant, followed by an issuing motion that, upon approval, would issue the retail license to the vendor. Councilman Jerred stated that approval of the recommended applicant implies that the license will be issued. City Attorney Anderson stated that the license is not approved until the process is completed. City Administrator Napier stated that the anticipated date for the final approval of the license would be December 3rd.

Cam-Plex 2015 3rd Quarter Update

Paul Foster, Cam-Plex General Manager, gave an update of activities at the Cam-Plex. He stated that the PGI event was a huge success with great attendance. They are hopeful the event will return in four (4) to five (5) years. He reported that the horse racing attendance was even higher than anticipated. He commented that their future strategic planning was underway and the Council would be kept updated. The ZZ-Top concert attendance was not as high as anticipated, but attendees enjoyed the concert. Mr. Foster notified Council that there were sound issues that were being addressed. Overall, he felt the quarter was very successful. Councilman McGrath commented that he was aware of the sound issues, but he thought that a new system was installed within the last few years. Mr. Foster stated that when the college was upgrading their facility, they had an acoustic technician come and look at the Cam-Plex to see what had been

done to mitigate the acoustics. He stated that they noticed that when they pack a concert into one hall it creates issues. The company that did the sound for ZZ-Top was reluctant to do some of the things that Cam-Plex Staff asked them to do, and then after the first song, they realized that they needed to listen to Cam-Plex Staff's recommendations. Acoustic panels and curtains have been installed that have helped with sound reverberations. Councilman Jerred asked if the Wi-Fi and IT issues were addressed. Mr. Foster stated that initial reviews were great, but some complications have developed that are being addressed. Councilman McGrath expressed gratitude to the Cam-Plex for the use of their parking lot for the emergency vehicle training.

Adjournment

There being no further business to come before the Council, the meeting adjourned at 6:55 p.m.

Mayor Louise Carter-King

(S E A L)

ATTEST:

Karlene Abelseth, City Clerk

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