

**COMMITTEE OF THE WHOLE**

February 28, 2018

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Members Present:

Barney (Mayor), Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky

Members Absent:

None

To the Honorable Mayor and All Aldermen:

Prior to the meeting, Mayor Barney took a moment to recognize Assistant City Engineer, Jacqueline Melcher. He thanked her on behalf of the City for her hard work and dedication throughout her career. He wished her the best on her move to Japan and presented her with the Mayor’s coin.

President Jantzer also recognized Jacqueline and presented her with the Airman’s coin as she became a Military Spouse during her tenure with the City.

Following are the recommendations of the **Committee of the Whole** meeting called to order at 4:15 p.m. on February 28, 2018:

**1. The City Council approve the Authorizing Resolution to Apply for NDDOT Section 5311 Transit Operating Grant.**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**2. The City Council approve the renewal of a three (3) year advertising agreement with ZZ Food Group, LLC dba J.L. Beers to advertise on the sides of one transit bus and authorize the Mayor to sign the contract on behalf of the City.**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**3. The City Council approve City of Minot equipment rental rates for 2018-2019.**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**4. The City Council approve the request from With Room Coffee, LLC subject to receipt of all documentation and approval by the Police Chief, Building Official and Fire Marshal.**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**5. The item relating to the Minot Air Force Base Fire Department Mutual Aid Agreement with the Minot Fire Department was withdrawn prior to the meeting.**

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- 6. The City Council consider the recommendation from the Fire Chief for the purchase of the self-contained breathing apparatus (SCBA) for the Fire Department. (FD0067)**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

- 7. The City Council consider the recommendation from the Fire Chief for the purchase of the self-contained breathing apparatus (SCBA) fill station compressor. (FD0068)**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

- 8. The City Council consider the recommendation from the Fire Chief to award the bid for the Fire Station 3 Remodel.**

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The above motion by Alderman Sipma, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

- 9. The City Council allow the Fire Department to move forward with the creation of a Fire Department Training Officer position.**

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The above motion by Alderman Podrygula, seconded by Alderman Olson.

Upon questioning by Alderman Podrygula, the Fire Chief explained that the Fire Marshal position has been vacant for six months and the department is down eight personnel. There have been issues finding good candidates for Fire Marshal. After meeting with the HR Director, they determined they need a lot of training in order to bring the young staff up to the level they need to be at to effectively perform their job. She would like to take the money that is set aside for the Fire Marshal and hire a Training Officer. It would be a lateral position on a two-year bid where they would take a Captain to that position which would allow that person to be dedicated to training. The current position has been stretched to cover Fire Marshal duties as well as other responsibilities. She said there is still a need for a Fire Marshal and an individual has been identified who can fill that gap after our Assistant Chief leaves in May. After that, the remainder of the funding could potentially be used to hire that individual on a part time basis through the end of the year. As we move forward with the budget decisions will be made regarding the Fire Marshal.

Alderman Podrygula said he is pleased it will be a lateral move for a Captain to gain some valuable expertise. He is impressed by the innovative staffing arrangements.

Whereupon a vote was taken on the above motion by Alderman Podrygula, seconded by Alderman Olson, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

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**10. The City Council award the bid to Minot Paving Co. in the amount of \$419,254.50 for the 2018 Street Patching Project. (4309)**

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The above motion by Alderman Sipma, seconded by Alderman Straight.

At the request of Alderman Podrygula, the City Manager explained the recommendation from staff. Mr. Barry said, the recommendation is to award the bid to the second lowest bidder on the project. He reminded the Committee when bids are awarded, they can be granted to not just the lowest responsive bidder but the lowest responsible bidder. They can take past practices of a poor performing contractors into account when considering who to award the bids.

Alderman Podrygula said he is impressed by the rationale and the information presented. It is an example of the consequences when a contractor has repeatedly demonstrated a poor performance on projects going back several years.

Mayor Barney said he shares the concerns, however, \$90,000 is a lot of money to send a message to a contractor on the back of the tax payers. He would have no problem awarding the bid to the second lowest bidder if the bids were closer in amount. The cost is out of his comfort zone just to send a message.

Alderman Wolsky said they received a request from Scott Knudsvig, of Keller Paving & Landscaping, to advance the item to Council without recommendation so they could respond to the decision.

Mr. Barry pointed out, the engineer's estimate for the project was \$20,000 more than the recommended bid and the third bid received was \$30,000 higher than the recommended bid. Although it is \$90,000 more than the lowest bid, at some point contractor's need to be held accountable for poor performance. There are a lot of hidden costs that get buried in low bids, for example staff time and attorney's fees.

Alderman Sipma mentioned that liquidated damages going back several months has a negative impact on the community.

Mayor Barney responded to the comment by the City Manager regarding the engineer's estimate by saying, there were times when the engineer's estimate was low and the Council had to recommend higher bids. He also said that \$90,000 is a lot of money he does not believe would be made up by staff time and attorney's fees. It is possible for the second lowest bidder to also default on the project.

Alderman Straight asked how difficult it is to collect liquidated damages.

Mr. Barry responded regarding the impacts associated with collecting on liquidated damages. Right now the City is trying to collect on \$180,000 worth of liquidated damages on the contractor who provided the lowest bid which lead to the decision to make the recommendation. He also said that when you see an uncharacteristically low bid, the differential often gets made up in the form of change orders. Good contracts, accountability measure and performance bonds play an important role in holding contractors accountable.

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The City Engineer further explained the process of collecting liquidated damages. He stated, they ensure liquidated damages are paid by withholding retainage on the contract until we know the liquidated damages will be change ordered off the final amount. They try to hold a balance to ensure all contract provisions are enforced.

The City Manager asked if it is possible the retainage held on final payment is less than the amount of liquidated damages, to which the City Engineer responded by saying, they typically try to get that addressed before they are in that situation.

Upon further clarification, Mr. Meyer said each contract is looked at as a separate entity. They reduced the project costs by the amount of liquidated damages but had to make final payment on work achieved. The project in question is the downtown project where they are working to come to an agreement on days assessed for liquidated damages. They cannot withhold money from one contract until another project is satisfied.

Mr. Meyer said, once they reach the substantial completion date, the clock starts ticking for them to complete the work within the scope. If it takes thirty days to reach substantial completion, they would be charged for thirty days. If that results in a balance of liquidated damages, they withhold that payment from their next progress payment, so what we owe for that work isn't paid until final contract time which is why liquidated damages were included on the final payment approved for the 36<sup>th</sup> Ave NW Extension to Broadway payment.

Alderman Podrygula mentioned the inconvenience for the citizens of Minot when projects are delayed. He used the Downtown Infrastructure as an example, where the project was delayed 79 days. There was an intersection at North Broadway which was delayed 123 days. There are hidden costs for the inconvenience of citizens who are impacted by these projects.

Whereupon a vote was taken on the above motion by Alderman Sipma, seconded by Alderman Straight, and carried by the following roll call vote: ayes: Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: Barney.

**11. The City Council award the bid to Asphalt Surface Technologies Corporation for the total bid of \$937,596.40 for the 2018 Street Seal Project and authorize the Mayor to sign the contract. (4310)**

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The above motion by Alderman Straight, seconded by Alderman Sipma.

Alderman Sipma asked about the location of one section of the street seal project and if it was just replaced. The City Engineer responded by saying, the project at 18<sup>th</sup> Avenue SW was staged so the paving contractors will finish putting the top lift of asphalt on and then this project will seal the street at that location and the rest of the neighborhood. That way they will not have a patchwork of sealed and unsealed streets.

Alderman Wolsky said the areas identified for this project are all relatively new. He asked about the regular maintenance for these roads. Mr. Meyer said, most of those neighborhoods are at least five years old and the industry standard is to seal within five years of its asphalt. Our average is about 18-20 years, which is the average expected life span of the roadway. We're trying to change that dynamic by sealing

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these streets before we lose them. Because of the climate in Minot, we start to have weathering issues around year three. He would be comfortable getting on a five year rotation but that goal is a long way away.

Whereupon a vote was taken on the above motion by Alderman Straight, seconded by Alderman Sipma, and carried by the following roll call vote: ayes: Barney, Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**12. The City Council award the bid to CMT Concrete and Construction, Inc. in the amount of \$306,035.00 for the 2018 Sidewalk, Curb and Gutter Project. (4311)**

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The above motion by Alderman Sipma, seconded by Alderman Straight.

Alderman Wolsky pointed out, this is another situation where the recommendation is to award the bid to the second lowest bidder.

Alderman Straight commented that he appreciates the direction we are moving in. There has been a lot of criticism on the City and he is glad to see that we are not acting like anyone's bank.

Whereupon a vote was taken on the above motion by Alderman Sipma, seconded by Alderman Straight and carried by the following roll call vote: ayes: Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: Barney.

**13. The Auditorium/Recreation Director gave a presentation about the outdoor skating program.**

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Mr. Collins explained, the goals of the outdoor skating program are to offer outdoor skating to the community free of charge. There are four locations throughout the city to maximize all of the areas within the city. They offer warming houses and a safe environment by staffing each rink with a supervisor to oversee its use.

The rinks operate through a partnership between the Minot Recreation Commission and Minot Park District. The Minot Recreation Commission is in charge of staffing and scheduling the warming houses, paying for supervisors, heat, water, and electricity. The Minot Park District is in charge of all maintenance, cleaning and flooding of the rinks.

He said, the outdoor skating season is scheduled from December 15-February 15 each year depending on weather and budget. The weekly schedule when school is in session is as follows: 4:00-9:30pm – Monday, Tuesday, Thursday, Friday, and 2:00-9:30pm – Saturday & Sunday (Closed Wednesday). The holiday schedule is 2:00-9:00pm every day during Christmas vacation, 2:00-5:00pm New Year's Eve. They are closed Christmas Eve, Christmas Day, and New Year's Day.

He continued by saying, there is approximately \$24,000 Budgeted each year for the Outdoor Skating Rinks; \$16,500 for Supervisors and \$7,500 for Water, Electricity, & Natural Gas. The City also transfers \$15,000 through the Recreation budget to offset Ice costs at the All Seasons Arena. This amount was just

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lowered this past budget year from \$28,500. The amount paid to the All Seasons Arena equals about 35 days (70 hours) of free skating for the Recreation program.

The four rink locations have a combined average of approximately 1,900 users/month but the number may fluctuate depending on shortening or extending of the skating season due to weather.

Alderman Wolsky said he requested this presentation to bring everyone up to speed on the partnership with the Park District. He said he has ideas that may allow us to add Wednesday nights to the schedule because it is such a short season. He plans to discuss ideas with Mr. Collins and will potentially bring those suggestions to Council for approval.

Alderman Straight brought up the All Seasons Arena and the need for upgrades to that facility in order to attract tournaments and events and lure more participants. He also suggested one of the outdoor rinks be used for games like curling rather than just free skating.

**14. The Public Works Director provided a written update on the Mouse River Enhance Flood Protection Project (MREFPP).**

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Mr. Jonasson said he will provide a monthly update to the Council on the progress of the MREFPP. He drew attention to the Phase 1 groundbreaking ceremony taking place March 28<sup>th</sup> at 1:30 pm at 16<sup>th</sup> St SW and Forrest Rd.

**15. The City Council request City staff develop formal policies and procedures for commercial users of the city landfill, including a formal contract (pending development of a franchise arrangement). Also, effective April 1, 2018, the City will impose a monthly interest charge of 1.75% on any commercial landfill accounts that are over 30 days due. Also effective April 1, 2018, the City will terminate commercial landfill use privileges on any accounts over 60 days due. Reinstatement of privileges will require full payment of all monies due the city. The City Council also approve a 1.75% monthly finance charge for all overdue City accounts.**

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The above motion by Alderman Podrygula, seconded by Mayor Barney.

The Finance Director clarified, there are some accounts that cannot be charged finance charges including the Federal Government, the State of North Dakota, and others. There also may be some accounts that have various payment terms through some kind of contract. He would like some latitude when crafting the ordinance change to allow for those exceptions. He also said, staff has not tested these processes in the computer system so they may run into issues there. He wanted to bring it to the Committee's attention however, this is not just a Landfill specific issue, but if we go down this path should make it a city-wide policy.

The Public Works Director came forward to request they put some thought into creating contracts with all the haulers. He said in any given month, the number of accounts varies by 350 to 700 different entities. That would involve hundreds of contracts and would be labor intensive work for his staff. Upon questioning by Alderman Jantzer, Mr. Jonasson said there are probably a dozen haulers that make up 90%

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of the income at the landfill but during the summer there are a lot of smaller companies that do demolition, lawn care, or tree trimming.

Alderman Podrygula said it is not his intent to draw up hundreds of formal contracts. He envisioned a one page agreement where the average user agrees to pay the City and obey the rules.

Mayor Barney said, staff should be able to add lines to the current form with the offer of credit to define what happens if they default on their payments. If the City is going to offer credit with the taxpayer's money then we have to have the opportunity to get that back with some interest.

The City Manager stated, what the staff can do, is develop a uniform payment agreement that includes some of the consequences for failure to pay and interest rates to create a perpetual contract that can be terminated by the City. We can be sensitive to the time of the staff while preserving the rights of the City. A policy and a draft of a contract will be brought to the Council for approval.

Whereupon a vote was taken on the above motion by Alderman Podrygula, seconded by Mayor Barney and carried by the following roll call vote: ayes: Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

**16. The City Council authorize staff to submit the downtown census tract (Census Tract 38101010100) to the Governor for Opportunity Zone Designation.**

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The above motion by Alderman Sipma, seconded by Mayor Barney.

Mayor Barney asked Mr. Zakian to explain the benefit of participating in this program. Mr. Zakian said, this is a new program developed by the U.S. Treasury. The rules and regulations which would outline the full range of opportunities and benefits have not yet been posted on the Federal Register site but the deadline to be considered is approaching. The Governor needs to submit any eligible census tracts to the U.S. Treasury for the secretary to determine those that will be eligible. In the program, any new investments by the private sector that result in significant capital advancement will get a multiple set of tax benefits in the form of either corporate, financial or personal federal taxes. This census tract encompasses our entire downtown.

Whereupon a vote was taken on the above motion by Alderman Podrygula, seconded by Mayor Barney and carried by the following roll call vote: ayes: Jantzer, Olson, Podrygula, Sipma, Straight, Wolsky. nays: none.

There being no further business, the meeting was adjourned at 5:19 pm.

Respectfully Submitted,  
Kelly Matalka,  
City Clerk