

I. CALL TO ORDER

President Scott Decker called the meeting to order at 4:30 P.M.

II. ROLL CALL

Present were: President Scott Decker, Commissioners Carson Steiner, Sarah Jennings, Klayton Oltmanns and Mike Lefor.

III. **EAST WATER TANK CHANGE ORDER AND KLJ SETTLEMENT AGREEMENT**

City Engineer Craig Kubas states the preferred solution was to lower the east water tank. City Engineer Craig Kubas presents Change order #2 which is really the document that outlines the cost for lowering that tank to the correct elevation. Change Order #3 is to deduct an amount because the painting has not started yet. Those two change orders consistent preferred solution to east water tank issue. City Engineer Craig Kubas presents the third component which is the settlement agreement. Mr. Kubas states Kadrmas, Lee and Jackson will cover the cost to lower the tank and terms outlined in settlement agreement. The other amount in agreement is difference of what was bid out and what the initial cost to construct lower tank is. Three quotes were received for what the estimated cost would have been to construct the lower tank and taking average of the three will provide the amount to be reimbursed to the City. The City is also being reimbursed through State Water Commission for this tank. Mr. Kubas is questioned on if there were any substantial differences on how this tank would have been constructed. The contractor needs to construct any tank of elevation by means and methods of construction that were similar to this tank. Considered also was the foundation construction. The foundation of the tank could have been slightly smaller. The settlement agreement does include engineering fees for mostly time spent in field that was not needed. That really covers both change orders and settlement agreement. The completion date has been extended to the end of the year and even into January. If they have to finish this tank later in spring, liquidated damages can be changed, but we feels this is ample time.

Commissioner Carson Steiner questions the final cost of tank that was supposed to be built.

City Administrator Shawn Kessel was concerned during the negotiation phase that we were not asking the right questions. He was questioning the original cost of right size tank verses the tank that was built and this question was asked of Maguire Iron, Inc.

and with the job description. Job description states city attorney is Civil Service position so it has all the rights to civil service benefits. Ordinance states it is excused from Civil Service Commission process. Mr. Kessel states that to make sure proper advice was given; "I hired firm Pierce and Dirk from Bismarck to give thoughts", the decision they arrived at states that the ordinance takes precedence over job description. Ms. Gooss is not covered by civil service and should have not had a hearing. Her rights actually go to district court. Civil service commission is essentially done with this item, but Ms. Gooss could come to the City commission to ask you for your thoughts on whether or not the attorney we hired was accurate in the job description versus ordinance. In terms of the City of Dickinson, this issue is resolved unless Ms. Gooss comes to you. If this is appealed to you, the Commission will need to make a decision on whether she is a Civil Service employee or not.

Commissioner Klayton Oltmanns questions whether the ordinance was updated when Mr. Kolling had left his employment. Mr. Oltmanns questions whether the ordinance update was done to reflect that position as a Civil Service position or not.

City Attorney Haylee Cripe states in looking back on revisions when Mr. Kolling was in house as City Attorney, he was based on contract and when he left his position the minutes reflect the new person could chose to be Civil Service or left out of process. The Job description was depicted to be Civil Service but at the time the job description was changed the code was not changed.

Commissioner Klayton Oltmanns questions whether Ms. Gooss hired as a Civil Service employee or not.

City Administrator Shawn Kessel states there is no guidance from the hiring process or the job description she was provided and that obviously, as a City Attorney, she worked intimately with the ordinance; hence, why we got the opinion. The issue is confusing.

Commissioner Klayton Oltmanns states this is all subjective if Ms. Gooss comes before the Commission.

Commissioner Sarah Jennings requests the case information.

President Scott Decker asks if Ms. Gooss comes before the Commission if the City will need other legal counsel for that issue.

City Administrator Shawn Kessel states that is an issue that was brought forward by Ms. Gooss that Ms. Cripe has a conflict of interest. I think that is something we will need to consider if we move forward.

City Attorney Haylee Cripe states it is an awkward position and if the City does prefer to have other council, Ms. Cripe would not be offended at all.

City Administrator Shawn Kessel states the original contract with Mackoff Kellogg was short term and now extended it to monthly basis with 30 days' notice to decline. Ms. Haylee Cripe is with us for as long as she wants.

V. **ADJOURNMENT**

MOTION BY: Klayton Oltmanns SECONDED BY: Sarah Jennings
Adjournment of the meeting at approximately 5:00 PM.

DISPOSITION: Roll call vote... Aye 5, Nay 0, Absent 0
Motion declared duly passed.

OFFICIAL MINUTES PREPARED AND
APPROVED BY:

OFFICIAL MINUTES PREPARED BY:

Rita Binstock, Assistant to City Administrator

APPROVED BY:

Shawn Kessel, City Administrator

Scott Decker, President
Board of City Commissioners

Date: _____ 09-06-2016