

UTILITIES SERVICE BOARD MEETING

November 5, 2012

Utilities Service Board meetings are recorded electronically or stenographically and are available during regular business hours in the office of the Director of Utilities.

Board Vice President Roberts called the regular meeting of the Utilities Service Board to order at 5:00 p.m. The meeting was held in the Utilities Service Board room at the City of Bloomington Utilities Department Administrative Building in Bloomington, Indiana.

Board members present: Julie Roberts, Sam Frank, Pedro Roman, John Whitehart, Jason Banach, and ex-officio member Tim Mayer. Staff members present: Patrick Murphy, John Langley, Jane Fleig, Mike Bengtson, Michael Horstman, Mike Carter, Tom Axsom, Phil Peden, and Jon Callahan. Others present: Sue Mayer.

MINUTES

Board member Roman moved and Board member Frank seconded the motion to approve the minutes of the October 22nd meeting. Motion carried, 4 ayes, 3 members absent, (Banach, Ehman and Swafford).

CLAIMS

Board member Roman moved and Board member Frank seconded the motion to approve the claims as follows:

Vendor invoices submitted to the controller's Office on October 31st included \$415,230.69 from the Water Utility; \$771,942.03 from the Wastewater Utility; and \$195,293.07 from the Wastewater/Storm water Utility. Total Claims approved, \$1,382,871.28.

Motion carried, 4 ayes, 3 members absent, (Banach, Ehman, and Swafford).

Wire transfers and fees for the month of July:

Board member Roman moved and Board member Frank seconded the motion to approve the wire transfers and fees for the month of July in the amount of \$309,380.00.

Motion carried, 4 ayes, 3 members absent, (Banach, Ehman, and Swafford).

EXTENSION OF CONSULTING SERVICES AGREEMENT WITH LEE BALLIET:

Utilities Deputy Director Langley said this is an extension of a contract entered into with the USB and Dr. Balliet for consulting services to the LMC. It was originally entered into in August of 2001. The extension is for an additional year at \$80 per hour.

Board member Roman moved and board member Whitehart seconded the motion to approve the extension of the Consulting Services Agreement with Lee Balliet. Motion Carried, 5 ayes, 2 members absent, (Ehman and Swafford),

AGREEMENT FOR CONSULTING SERVICES WITH AMERICAN STRUCTURE POINT FOR DESIGN OF UTILITY WATER RELOCATIONS:

Utilities Engineer Fleig said this had been discussed at the meeting two weeks ago. This is an agreement for consulting services for the 17th St. and Arlington Rd. water and sanitary sewer relocation that is necessary because of a Public Works project to construct a round about at that location. The infrastructure there is very large, and there are both water mains and sanitary sewer mains that will need to be designed to be relocated as part of the road construction plans. The contract proposes that American Structure Point do that work for an amount not to exceed \$90,000. Of that \$77,100 is for the water design, and \$12,900 is for the sanitary sewer relocation design. This is on a rapid schedule. Last week notice was received from American Structure Point, who is also doing the road design project for Public Works, that they need the relocation plans by March 1, 2013. Currently the letting date for the project is July 10, 2013.

Board Vice President Roberts asked if there is an approximate start and end date for this project. Ms. Fleig said that schedule is in Exhibit C. They will submit preliminary plans by December 18th, then 80% complete plans by January 25th, and final plans by February 15th. Then by March 1st the final plans will be submitted to INDOT. Ms. Roberts asked if this would all be in advance of doing any of the work. Ms. Fleig said the letting date for the actual construction work would be July 10th.

Board member Roman moved and board member Frank seconded the motion to approve the Agreement for Consulting Services with American Structure Point for Design of Utility Water Relocations. Motion carried, 5 ayes, 2 members absent, (Ehman and Swafford).

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BLOOMINGTON UTILITIES DEPARTMENT, AND THE CITY OF BLOOMINGTON REDEVELOPMENT COMMISSION:

Utilities Engineer Peden said this Memorandum of Understanding is for the Griffy Dam project. The purpose of it is to lay out the roles for the construction phase of the project. The MOU lists that the project will be awarded to Dave O'Mara Construction. It explains that Robert Woolford with the City of Bloomington HAND Department is the program manager and certified grant administrator. He will process the payments. The last MOU stated that CBU was responsible for paying a matching fund. That has been completed, so the remaining amount will be paid out of the grant funding. Listed at the bottom of the memorandum is (1) the Utilities Service Board will approve the award of a construction contract to Dave O'Mara Contractors. (2) Since CBU has already paid the matching amount, payments will be made from grant funds, so no RDC funds will be expended for this project. (3) Invoices for payments to be made from grant funds will be reviewed and approved by the USB prior to being processed through the certified CDBG administrator, and then paid through the RDC.

Board member Banach asked if the Utility is entering a construction contract with the contractor. Mr. Peden said the contract will be approved by the USB but the Mayor is entering the contract on behalf of the City who received the grant. Mr. Banach asked if that would be the Redevelopment Commission. Mr. Peden said it would. Mr. Banach verified that the Mayor, on behalf of the Redevelopment Commission is entering the contract with the contractor, but it

must be approved by the USB. Mr. Peden agreed. Mr. Banach asked if the RDC had already approved the contract. Utilities Director Murphy said he didn't think they had. Mr. Peden said they meet at the same time as the USB, so they will be voting on the contract this evening. Mr. Banach said he doesn't understand what Utilities' role is in this. Mr. Peden said Utilities is taking the lead because they manage the dam and the facilities, but the payments and the contract go through the City. Mr. Banach asked what financial role Utilities will play. Mr. Peden said the \$54,000 match has been met, so all the funds will come out of the grant. Mr. Banach pointed out that the RDC is merely the vehicle to process grant money. They have said they will take no financial responsibility. Therefore, if the cost should go beyond what is expected, Utilities will pay the difference. Utilities Director Murphy said they would not spend beyond the do not exceed amount. Mr. Banach said he just wants to be sure if that number changes it will come back to the USB. Mr. Peden said the way it is set up, it will come back to the USB, but there are alternates set up in the contract that could be eliminated. Mr. Banach confirmed that the contract is between the RDC and the contractor. He said he is asking these questions because he wants to understand how this is set up, and make sure everyone is on the same page. Mr. Murphy said all claims will come to the USB for approval, which would give them a chance to stop something before it is approved.

Board Vice President Roberts asked if the USB, and not the RDC, would have to approve any change order. Board member Banach said that is why he asked the questions, because the contract is between the RDC and the contractor, not CBU.

Board member Roman asked if the problem was that CBU couldn't get the grant themselves. It needs to be the City because they are tax payer funded and CBU is not. CBU owns the lake and the dam, so the Redevelopment Commission gets the grant and gives it to CBU. He asked if the contract is between CBU and the people fixing the dam, or is between the people fixing the dam and the redevelopment commission. Utilities Director Murphy pointed out that on the signature page there is a place for the Mayor's signature, but also for the USB. Mr. Roman said if the money runs out, no more can be spent because this is a not to exceed contract. If more money should be needed will it go to the Mayor, the Redevelopment Commission, the USB, or all of them? Mr. Murphy said any change orders, or any specific requests for additional funds, would have to be approved by the USB before it could move forward.

Board Vice President asked if this project would be finished before the summer. Mr. Peden said it won't be ready for the summer of 2013, but must be finished by December, 2013.

Board member Roman moved, and board member Frank seconded the motion to approve the Memorandum of Understanding between City of Bloomington Utilities and the City of Bloomington Redevelopment Commission. Motion carried, 5 ayes, 2 members absent, (Ehman and Swafford).

LAKE GRIFFY DAM IMPROVEMENTS CONSTRUCTION CONTRACT:

Utilities Engineer Peden said the Engineers for this project, ms consultants, had recommended Dave O'Mara Contractors as the lowest responsive bidder. The contract has been approved by the legal department.

Mr. Peden said he would like to go over the list of tasks on the scope of work.

- 1) The project includes the demolition and replacement of the reinforced concrete tower and sluice gates.
- 2) Removal of debris and vegetation overgrowth around the dam.
- 3) Repairs to the 66" diameter draw-down conduit.
- 4) Installation of embankment trench drains system.
- 5) Repairs to the concrete principal spillway structure.
- 6) Repairs to the inboard concrete slope protection.
- 7) Security fence improvements.

Mr. Peden pointed out the contract sum is \$1,403,545.40. The total construction amount funded in the grant is \$1,410,700. The substantial completion date for the project is October 1, 2013, and final completion is December 1, 2013.

Board member Banach said this contract is contrary to what was just discussed about the MOU. Utilities Director Murphy said the signature page does include the Mayor's name, but it also says this contract is approved by the City of Bloomington Utilities Board specifically. Mr. Banach asked if it is between CBU and O'Mara. Mr. Murphy said the opening paragraph says owners are City of Bloomington Utilities Service Board. The MOU has the signature of the Redevelopment Commission because they are the administrator of funds.

Board Vice President Roberts asked if the Mayor has to be the go between to get the federal grant money. Mr. Murphy said CDBG requires the signature of the highest elected official.

Board member Roman moved and board member Frank seconded the motion to approve the Lake Griffy Dam Improvements Construction Contract with Dave O'Mara Contractors. Motion carried, 5 ayes, 2 members absent, (Ehman and Swafford).

APPROVAL OF AN AGREEMENT TO ENCROACH BETWEEN CVS AND CBU:

Utilities Project Coordinator Mike Carter said the document was drawn up by Attorney Renfrow from the City Legal Department, along with corporate attorneys from CVS. The encroachments consist of a trash compactor enclosure on the east side, and a dumpster enclosure on the west side. They are 12' by 12' masonry walls, with 10' by 12' concrete aprons, encroaching into a 20' wide sanitary sewer easement, and a 20' water line easement. Mr. Carter said it was a building forward design which forced the drive-up to go to the back of the building, which dictated the location of these two enclosures.

Board member Banach asked if the only thing this gives CVS rights to are the two enclosures. Mr. Carter agreed. Mr. Banach asked if CBU has the right to terminate the agreement at some point if desired. Mr. Carter said that would only happen if they are no longer in use, or disassembled. Any costs associated with repair in the areas, for removal or replacement of the walls, will be the responsibility of CVS. Mr. Banach asked if CBU has lines under there. Mr. Carter said they do.

Board member Roman asked if CVS knew the lines were there when they started this project. Mr. Carter said they did. Mr. Roman asked if this agreement gives them the authority to put structures in these easements. Mr. Carter said they are on the edges of the easement. Mr. Roman said it would be better if they learned to put things where they belong if at all possible. This is not the problem of rate payers, it is a problem for CVS. He said he hopes that in the future people work to do things properly so they don't have to ask for special consideration. He also doesn't like for CBU to not have the authority to terminate the agreement at will. He said without that he will not support the agreement. Not having a clause that states the agreement can be terminated at will with whatever notice is chosen, makes it impossible for him to support it. The only reason this agreement is needed is because they did not design their building properly according to the location they have.

Board member Banach commented that he is going to support this, but he agrees that Mr. Roman is correct about termination rights especially in an instance where they didn't plan correctly. There is no down-side to CBU having a right to terminate these agreements, even if it were to never happen.

Utilities Director Murphy said he is not an attorney, but when he reads the terms of this agreement it says, "This agreement will terminate upon the complete destruction of the encroachments due to any cause or action or abandonment of both the sanitary sewer easement and water line easement, which ever occurs first."

Mr. Banach said the point is that it should be explicit so there is no need to fight or litigate. There should be something that says CBU can terminate it at any time, for any reason, or no reason at all. He said he will support it because he thinks in this case the risk is low for Utilities. Mr. Murphy said if another such agreement comes up, that issue will be addressed.

Board member Frank moved and board member Banach seconded the motion to approve the Agreement to Encroach between CVS and CBU. Motion carried, 4 ayes, 1 abstention, (Roman), and 2 members absent, (Ehman and Swafford).

OLD BUSINESS:

No old business was presented.

NEW BUSINESS:

Utilities Director Murphy informed the USB that Utilities would be closed the next day for the election. Vice President Roberts asked if the Utilities Service Center was going to be a polling place. Mr. Murphy said it would be.

SUBCOMMITTEE REPORTS:

There were no subcommittee meetings.

STAFF REPORTS:

Utilities Director Murphy said there would be a CBU meeting on November 19th, the Monday before Thanksgiving. There may be a subcommittee meeting to get the contract started with Crowe Horwath on the cost of services study.

Mr. Murphy said the South Walnut Project should be done by the end of the year.

PETITIONS AND COMMUNICATIONS:

There were no petitions or communications.

ADJOURNMENT:

The meeting was adjourned at 5:28 p.m.

Julie Roberts, Vice President