

**CITY OF NICKERSON
15 N. NICKERSON
NICKERSON, KS 67561**

REGULAR COUNCIL MEETING

Monday, September 21, 2015

MAYOR: Jim Gladden

COUNCIL: Jon Rohling – President, Brad Berridge, Trent Gilbert, Brian Rife,
Jane Jenkins, Angela Cottrell

ATTORNEY: Stan Juhnke

ROLL CALL: Rohling, Gilbert, Rife, Jenkins, Cottrell

ABSENT:

TARDY: Berridge,

The Regular City Council meeting was called to order by Mayor Gladden at 7:00 p.m. on Monday, September 21, 2015 at Nickerson City Hall.

APPROVAL OF MINUTES, AGENDA, & PAYABLES – each item limit to 15 minutes

Motion made and seconded by Council Member Rife and Council Member Cottrell to approve the August 17, 2015 Regular Meeting Minutes. Motion carried by the following vote: **YES:** Rohling, Gilbert, Rife, Jenkins, Cottrell **NO:** None

Motion made and seconded by Council Member Cottrell and Council Member Rohling to approve the August 17, 2015 Budget Hearing Minutes. Motion carried by the following vote: **YES:** Cottrell, Rohling, Gilbert, Rife, Jenkins, **NO:** None

Motion made and seconded by Council Member Rife and Council Member Cottrell to approve the September 17, 2015 Special Meeting Minutes. Motion carried by the following vote: **YES:** Jenkins, Rife, Gilbert, Rohling, Cottrell, **NO:** None

Motion made and seconded by Council Member Rohling and Council Member Jenkins to approve the Agenda as written. Motion carried by the following vote: **YES:** Rife, Gilbert, Rohling, Cottrell, Jenkins, **NO**

Council Member Rife confirmed the payable to Hutchinson Animal Shelter was for impoundment of a stray dog. Hutchinson is used in conjunction with Lyons for animal control based on space availability.

Motion to approve the September 21, 2015 Payables was made and seconded by Council Member Cottrell and Council Member Rife. Motion carried by the following vote: **YES:** Gilbert, Rife, Jenkins, Cottrell, Rohling, **NO:** None

ABSTAIN:

CITY ATTORNEY

PUBLIC COMMENTS – None

OLD BUSINESS

Community Center Memorial Fund – At the previous council meeting, Council had discussed setting up a memorial fund for citizens to make donations for purchasing items for the Community Center. Clerk Schmitt will also look into purchasing a plaque for donors to have their names put on.

Motion was made and seconded by Council Member Rife and Council Member Jenkins to setup the Community Center Memorial Fund for donations towards community center items. Motion carried by the following vote: **YES:** Rohling, Cottrell, Jenkins, Rife, Gilbert, **NO: Abstain**

Employee Health Insurance Quotes – At the September 9th workshop, the Council reviewed and discussed three options for employee health insurance. The option they liked most will save \$26,870 over the current insurance carrier.

Motion was made and seconded by Council Member Cottrell and Council Member Gilbert to select option B which is United Health Care with a \$1500 deductible and facilitated by Advanced Health Insurance Solutions. Motion carried by the following vote: **YES:** Jenkins, Cottrell, Rohling, Gilbert, Rife, **NO: Abstain:**

Dust Control Equipment – Superintendent Gomes asked for direction on whether or not to pursue purchasing equipment for street dust control. Currently mag chloride is being used and the storage tanks and truck for distribution are on loan from the Co-op and Reno Township. The plan is to replace the cemetery truck with an older grain truck with around 35,000 miles on it that could be used as a trash truck and a 2000 gallon tank could be put on it for distributing the mag chloride. The truck will range from \$5000 - \$10,000. The 2000 gallon tank will cost around \$3000 and the storage tanks around \$6000. The prices will be cut considerably if used tanks can be found. The mag Chloride is much less expensive than the other products that have been tested which would not add to the already allocated amount in the maintenance budget once the equipment is purchased. Council Member Rife brought discussion on which fund the amount for the equipment would come from and Clerk Schmitt and

Superintendent Gomes will look at the options based on the decision of the Council.

Motion was made and seconded by Council Member Rife and Council Member Cottrell to approve up to \$19,000 to \$20,000 for dust control equipment. Motion carried by the following vote: **YES:** Rohling, Gilbert, Rife, Jenkins, Cottrell, **NO:** **Abstain:**

NEW BUSINESS

Grade School Walking Trail Extension Grant – Amber Rohling provided information to the Council on how the City could apply for a grant through the Sunflower Foundation for the purpose of constructing new trails or expanding existing trails. The current trail at the middle school is .37 of a mile and was constructed on a \$25,000 matching grant through the Sunflower Foundation which is in heavy use by the school and residents. The idea is for the City to apply for a grant to continue the trail at the city park and eventually connect the two trails down Main Street. Amber is offering to assist with the grant writing and in any other way needed to get the project started and completed. The City would be applying for a community based trail grant of up to \$55,000 which would put the total with matching funds at \$110,000 maximum. The grant has not been released yet; the Foundation plans is to release the grant in January with a due date of March but those dates could change and the information that was given tonight is last year's grant information so the upcoming grant could be slightly different. They just wanted to give the Council as much time as possible to consider applying for the grant. Amber has already started collecting signatures and contacting people who will be willing to write letters of support that will be needed for applying for the grant. Council member Rife mentioned the fact that the City expects to have money left over from the Community Center Project in the 1% Sales tax fund but will not know the available amount until January or February. Amber feels that the information could be pulled together quickly since they already have experience with the grant process.

Community Center Change Order – Sid with BG Consultants presented a change order for the replacement of the small single sink in the community center with a double sink and sprayer faucet for the amount of \$1343. The Council was extremely unhappy with the amount of the cost for the sink and faucet and the fact that the double sink was a request during the initial meetings with the community center project committee but was over looked in the specifications even though it was in the drawings., The Council reluctantly approved the change order and those voting yes wanted it noted that they only passed the motion because the sink change out was necessary for the kitchen to be usable.

Motion was made and seconded by Council Member Jenkins and Council Member Rife to approve change order #3 of the community center project.

Motion carried by the following vote: **YES:** Cottrell, Gilbert, Jenkins, **NO:** Rohling, Rife, **Abstain:**

Council Member Berridge arrived at the meeting.

Completion of Work Certificate – Sid explained that the certificate of substantial completion was signed as of August 24, 2015 by BG Consultants and A&A Builders. Sid then presented the final completion of work certificate for approval, per his recommendation, to be set as of September 21, 2015. Sid also explained that the completion of work certificate does not mean that the builder will no longer address any issues that arise. There is a two year warranty period for correcting any items that were not done during construction or turn out to be faulty. There are specific warranties on the furnace and other fixtures as well. Sid said there are still some surface imperfections in the cement floor that BG Consultants would like to see the contractor address a little better which would be under the warranty work. Council member Rohling confirmed that today is final completion. Sid said the two year warranty period would start as of today or as of the substantial completion date of August 24th but he thought it would be the August 24th date. Mayor Gladden confirmed that the back parking lot was to be completed by the City but the builder was to cut the drainage for the building.

Motion was made and seconded by Council Member Rife and Council Member Cottrell to have the Mayor sign the Completion of Work Certificate dated September 21, 2015. Motion carried by the following vote: **YES:** Berridge, Jenkins, Rife, Gilbert, Rohling, Cottrell **NO: Abstain:**

A&A Builders Final Payment Request – Sid presented the final pay request from A&A Builders without retainage or liquidated damages for the amount of \$130,665.30. Sid explained that the substantial completion date of August 24th was beyond the contracted completion date of August 1st which is 23 days over the due date. The contract stipulates for liquidated damages in the amount of \$500 per day for everyday the project is not completed past the August 1st date. The purpose of liquidated damages is to protect the City if they have a building that they are planning on using August 1st and they don't get it August 1st, then there is a cost associated with not having the building available for the functions and the use of the public. Sid stated that they did not have a hard fast formula for figuring liquidated damages to be at \$500 a day or \$750 a day or \$1000 a day; it was just an amount they identified as the amount of rent the City might lose, the inconvenience to the public, and the potential cost if the City incurred additional inspection fees. The Council will need to decide what amount would be levied, if any, against the project. Council Member Rife confirmed it was 23 days past the contracted completion date. Council Member Rohling asked why the liquidated damages do not go up to today's date and Sid explained that once the building is considered at substantial completion the building is able to be used at that point. Rohling disagreed with the substantial completion date, stating that the City could not have rented the building before the open house

on September 10th since they were still replacing counter tops and rushing to get things completed for the open house. Sid explained that the architect and the contractor identified that the building was substantially complete on August 24th and available for the City to occupy and use as intended. Council Member Rife asked what caused the delay between August 1st and August 24th and Larry with A&A Builders reported that they had issues with a couple of subcontractors who caused the delay. The roofer was the one that caused most of the delay because they could not hang drywall without the roof being completed plus a couple of subcontractors were behind on their schedule and did not show up when they were supposed to. Larry confirmed that if they end up with liquidated damages then A&A Builders will charge the subcontractors who caused the delay. Rife asked why the burden would be put on the City for the subcontractors failure to meet the deadline and Larry stated that he is not saying it isn't a burden on the City but the amount needs to be discussed since the amount of \$11,500 would not have been lost in rentals. Mayor Gladden suggested the Council talk to the City attorney before making any decisions about an amount to withhold. Council Member Berridge proposed bringing up the issue about the change order for the sign as well when they speak to the attorney. Larry mentioned that even though the sign was left out at the beginning, the amount still would have been paid even if it had been included in the bid. Sid stated that the sign was discussed at the beginning and because of the tight budget the thought was that the local sign maker would make the sign. Rohling again pointed out that that discussion happened after it was discovered that the sign was left out of the bid. Sid came back to the final payment discussion and stated that if there are going to be liquidated damages, they would want to indicate that in the final pay request, meaning that the final pay request that is currently in front of the Council would need to be revised. If there is going to be a delay then the final pay request would need to be paid with retainage in order to get A&A Builders paid what is due. Mayor Gladden asked Superintendent Gomes to weigh in and Gomes stated that the real issue here is the liquidated damages and the contract and as Sid mentioned before the Council can withhold a certain amount from the final payment in order to determine the liquidated damages. Larry confirmed, at Gomes', request that his subcontractors will be sharing in the costs if liquidated damages are withheld. Gomes explained that the contractor had no control over the unforeseen issues and the Council can make a fair decision on the amount of liquidated damages based on days lost. Larry stated that if the Council is going to go by the legal contract, word for word, the amount would be \$11,500 but if the Council is going to do a reasonable amount, they have to look at the loss in rentals and the inconvenience which makes the \$11,500 way more than any cost to the City. Larry is not expecting to get out with no liquidated damages but is asking the City to assess a reasonable amount that reflects the actual damages.

Motion was made and seconded by Council Member Cottrell and Council Member Berridge to confer with the City attorney about the amount to withhold

for liquidated damages. Motion carried by the following vote: **YES:** Rife, Gilbert, Rohling, Cottrell, Berridge, Jenkins, **NO: Abstain:**

Motion was made and seconded by Council Member Rife and Council Member Jenkins to withhold \$11,500 from A&A Builders' pay request of \$130,665.30. Motion carried by the following vote: **YES:** Gilbert, Rife, Jenkins, Berridge, Cottrell, Rohling, **NO: Abstain:**

Larry will generate a new pay request with the \$11,500 withheld.

Ordinance 2015-05 – An ordinance rezoning block 41; lots 1-3, 11, 12 and block 42; lots 7-13 from C-2 Highway Service District to I-2 Heavy Industrial.

Motion was made and seconded by Council Member Rife and Council Member Berridge to adopt Ordinance 2015-05. Motion carried by the following vote: **YES:** Jenkins, Berridge, Cottrell, Rohling, Gilbert, Rife, **NO: Abstain:**

Ordinance 2015-06 – An ordinance to allow for Nickerson High School to hold pep assembly bon fires with special permission from the fire chief.

Motion was made and seconded by Council Member Berridge and Council Member Cottrell to adopt Ordinance 2015-06 Motion carried by the following vote: **YES:** Rohling, Cottrell, Berridge, Jenkins, Rife, Gilbert, **NO: Abstain:**

Ordinance 2015-07 – An ordinance setting the City Municipal Court costs at \$140.00.

Motion was made and seconded by Council Member Cottrell and Council Member Rohling to adopt Ordinance 2015-07 Motion carried by the following vote: **YES:** Jenkins, Berridge, Cottrell, Rohling, Gilbert, Rife, **NO: Abstain:**

Ordinance 2015-08 – An Ordinance changing the cemetery monument setting permit fee to \$35.00.

Motion was made and seconded by Council Member Rife and Council Member Cottrell to adopt Ordinance 2015-08 Motion carried by the following vote: **YES:** Berridge, Rohling, Gilbert, Rife, Jenkins, Cottrell, **NO: Abstain:**

OFFICER REPORTS

Rife – reported a mobile home at Sunview Mobile Home Park that has been in need of repair for a year and half and has received complaints about it. Received calls about two semi-trucks being parked on the paved City streets.

Berridge – thanked the Chamber of Commerce for sponsoring the city wide garage sale this year which will be held October 3rd. Thanked the City crew for the tremendous job done on the street striping. Will get with Aryn Hedrick and the Zoning committee about a complaint he received about a home outside of the city limits but within the 3 mile radius.

Gilbert – thanked the City crew for everything they are doing to keep the city looking great.

Cottrell – reported she may have received a complaint on the same property Berridge was speaking of. Has received multiple phone calls about the broken sidewalk near the grade school. Clerk Beshears reported that she has been in contact with the property owner about the sidewalk and will follow up.

Superintendent Gomes – brought discussion about the 118 cubic yards of parking area behind the community center. The architect calls for AB3 as the material to be used in the parking area which costs about \$27 per ton. Three inch milling only cost about \$19 per ton and can be almost like an asphalt parking lot if it is rolled tight with a roller which would need to be rented. The 3 inch millings could also have oil spread and then sanded. The AB3 will cost about \$4700 plus the rental of the compactor. The 3 inch millings with the oil would cost about \$2000 and would provide a substantial parking area and will save money. Council agreed that the 3 inch millings would be the way to go.

Mayor Gladden – reported that Jim Koon's son has an elaborate treadmill he would like to donate to the community center. Clerk Schmitt will check into the insurance and legal issues of having exercise equipment in the community center. Superintendent Gomes also asked the Council to consider how the equipment will need to be moved whenever an event is held in the community center.

THERE BEING NO FURTHER BUSINESS, motion made and seconded by Council Member Berridge and Council Member Rohling to adjourn at 8:42 p.m. Motion carried by show of hands.

Official