

**CITY OF BRENTWOOD, MISSOURI
BOARD OF ALDERMAN
JUNE 29, 2015**

MEETING CALLED TO ORDER

Mayor Christopher Thornton called the special meeting to order at 5:30 pm in the Board Council Room of Brentwood City Hall located at 2348 S. Brentwood Blvd., Brentwood, MO 63144 and immediately led the Pledge of Allegiance.

ROLL CALL

Deputy Clerk Pittman performed roll:

Alderman Plufka	Present	Alderman Leahy	Present
Alderman Slusser	Present	Alderman Manestar	Present
Alderman Lochmoeller	Present	Alderman Saunders	Absent
Alderman Kramer	Present	Mayor Thornton	Present
Alderman Toohey	Present		

Members present constituted a quorum. Also present were City Clerk/Administrator Bola Akande, City Attorney Frank Albrecht, and Deputy City Clerk Octavia Pittman.

Administrator Akande announced that the Special Meeting Agenda has been revised to include a closed session and posted with less than 24 hours notice due to an emergency that arose and the need to update the Board of Aldermen this afternoon; the agenda for meeting was dated June 29th.

AUTHORIZATION OF MASONRY CONTRACT FOR THE BRENTWOOD RECREATION COMPLEX PROJECT WITH ST. CHARLES BRICK COMPANY

Administrator Akande introduced Tom Kaiman, Director of Operations w/SM Wilson who provided updates on the Recreation Complex Project. On June 12, staff provided an update to the Board of Aldermen about the Bricklayers Union Local No. 1 strike that began on June 1st and the possible effects the strike would have on the Brentwood Recreation Complex Renovation Project. SM Wilson has been communicating with their contacts about the bricklayers strike, even attending “mediation” efforts. As the strike enters its fourth week, there does not appear to be a foreseeable end to the strike and it is critical that the City procure another masonry contractor to complete the work.

Mr. Kaiman stated that to date no agreement has been reached the project is now at an impasse. The block work was scheduled to start on June 18th but the schedule has been modified and as soon as a decision is made they will be able to move forward with St. Charles Brick to start on July 6th.

There was a provision in the contract with John Smith that allows, in the event of an owners termination for convenience (section 14.4.3), the contractor to collect all of its profit. The contract was originally \$248,764, meaning upon termination for convenience John Smith would have collected approximately \$50,000. Knowing the strike was coming down the pipeline and before the contract had been signed, negotiations were conducted with all party’s attorney to come up with modified language and the result was change order No 1 that says if terminated for owners convenience we would only have to pay for cost completed to date and no profit on work not completed (saving the city approximately \$50,000). In light of the strike, a RFP was also issued to anyone in the area that would supply labor to come and complete the

project (those not included in the strike). It was advertised on June 1st for an opening on June 11th however no bids were received; however all of the city's bidding obligations were met.

The request is being made for a termination of convenience for John Smith Masonry as their part of the masonry association has not reached terms with Local No 1. There are independent contractors that have signed agreements with the union, one being St. Charles Brick. SM Wilson has negotiated a contract with St. Charles Brick Company to complete the masonry work for the Brentwood Recreation Complex Renovation Project. St. Charles Brick Company is not a member of the Mason Contractors Association of St. Louis and have their own contract with Bricklayers Union Local No. 1. Staff attended a meeting with SM Wilson and St. Charles Brick where the representative from St. Charles Brick stated that they would be able to complete the job in a timely manner.

Language has been added to John J. Smith's contract that protected the City against a work stoppage. The language stipulates that the City will pay John J. Smith for the work it has already executed and costs incurred thus far in the project. The Project Manager for SM Wilson believes this will not exceed \$30,000.

The original cost for the Masonry Work Package was \$248,761.00. St. Charles Brick provided SM Wilson with a proposal for \$243,280.00. If you include the payment for John J. Smith to this proposal, this would increase the Masonry Work Package cost to \$273,280.00, increasing the cost \$24,519.00. Staff recommends utilizing contingency funding to pay for the increase. SM Wilson will continue to negotiate with St. Charles Brick to see if there is a way to reduce the increase in cost. SM Wilson will provide an update as soon as they have an answer from St. Charles Brick Company.

It is imperative that the City has a plan to complete the masonry work and keep the renovation of the Recreation Complex on schedule. Staff estimates that not having the ice rink open on September 1st will cost the City an estimated \$1,000.00 per day in revenue. In addition, if City chooses to wait for the strike to end, and a prolonged strike makes staff unable to give a concrete opening date to our regular renters by August 1, it is highly likely that four regular renters will have to move forward with renting their ice for the rest of the calendar year at a different location. This would cost the City over \$45,000 in revenue. Staff is confident these renters would come back in January, but there is no guarantee.

Alderman Leahy stated his belief that no strike clauses were being made part of the contract, the difficulty of executing such a contract was later discussed. He asked that probability of the union picketing the construction site and Kaiman responded that he didn't think there would be any issues. Leahy asked if SM Wilson will receive a profit overhead added to this change in contract and Kaiman stated that SM Wilson will not take any overhead profit due to any cost increase to show good faith effort. Alderman Plufka requested clarity of the change in providers but they are still union from the stand point that they are signatories to the local 1 contract and John Smith Bricklayers are not. Kaiman explained that it is the contractors; the way the contracting community is set up is that several of the large masonry contractors joined the masonry association and assign of their collective bargaining rights to the association. The other contractors are independent and sign independent contracts with the union affording them the ability to keep working. Alderwoman Saunders questioned the benefits of being a part of the masonry vs independent contractor which were explained as negotiation rights.

Discussions continued and it was explained that there is no performance requirement to be completed by September 1st and strikes are typically defined as force majeure event or an act that is uncontrollable. When this happens work gets shut down, there is a schedule extension and costs go up. The alternative in this case will be to wait until the strike is over, pushing the project completion back and missing the prime opportunity to get hockey leagues conformation for the season (of which generally starts around August/September) and thus the potential loss

of anticipated revenue. It does not automatically give the right to find an alternative however language was included within the contract for termination upon completion.

Discussions were held of why a “no strike clause” was not included within the contract being a public entity; Kaiman stated that it is generally seen in the private sector.

Alderman Kramer made a motion to approve the masonry work package proposed in the memo dated June 29, 2015 terminating the contract with John J. Smith and paying John J. Smith for the work he has executed this far and furthering the execution with the St. Charles Brick Co. Motion seconded by Aldermen Toohey. Alderman Leahy stated opposition as the opportunity was missed to protect ourselves and now due to the strike we will be paying more to the same guys to the work that was originally under contract; it is not worth the cost overrun. Alderman Plufka offered comments of the no strike clause effectiveness and the ability to walk of the job being a national right that is guaranteed; the issue should not be compounded by continuing to wait. As requested by Alderman Kramer, Director Gruenenfelder explained that the estimated loss revenue is \$1000 per day and hockey groups are booking for their season now and may choose another facility. It was clarified for Alderwoman Saunders that the city does not have any previous commitments (renters) to be upheld. **ROLL CALL:** Alderman Kramer – yes; Alderman Leahy – no; Alderman Lochmoeller – yes; Alderwoman Manestar – yes; Alderman Plufka – yes; Alderwoman Saunders – yes; Alderman Slusser Alderman Toohey – yes; **MOTION PASSED.**

EXECUTIVE SESSION

Alderman Toohey made a motion to enter into executive session at 6:09 p.m. to discuss legal and personnel matters pursuant to RSMo 610.021(1)(3). Motion seconded by Alderman Plufka. **ROLL CALL:** Alderman Kramer – yes; Alderman Leahy – yes; Alderman Lochmoeller – yes; Alderwoman Manestar – yes; Alderman Plufka – yes; Alderwoman Saunders – yes; Alderman Slusser Alderman Toohey – yes; **MOTION PASSED.**

Discussions held regarding legal and personnel matters; not action taken.

Alderman Leahy made a motion to close the executive session at 6:24 p.m. Motion seconded by Alderman Toohey. **ROLL CALL:** Alderman Kramer – yes; Alderman Leahy – yes; Alderman Lochmoeller – yes; Alderwoman Manestar – yes; Alderman Plufka – yes; Alderwoman Saunders – yes; Alderman Slusser Alderman Toohey – yes; **MOTION PASSED.**

ADJOURNMENT

Motion was made by Alderman Leahy and seconded by Alderman Plufka to adjourn the meeting at 6:25 pm. Unanimous vote in favor taken; **MOTION PASSED.**

Approved on the 20th day of July, 2015.

Attest:

Christopher A. Thornton, Mayor

Bola Akande, City Clerk/Administrator