

CITY COUNCIL CONFERENCE MINUTES

December 11, 2018

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:00 p.m. in the Municipal Building Conference Room on the 11th day of December, 2018, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:

Councilmembers Bierman, Carter,
Castleberry, Cark, Hickman, Holman,
Scott, Wilson, Mayor Miller

ABSENT:

None

Item 1, being:

CHANGE ORDER NO. TWO TO CONTRACT K-1516-112: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND RDNJ, L.L.C., D/B/A A-TECH DECREASING THE CONTRACT AMOUNT BY \$12,933.52 FOR A REVISED CONTRACT AMOUNT OF \$900,616.49 FOR THE URBAN CONCRETE REHABILITATION FYE 2015 LOCATIONS, MAIN STREET: PARK DRIVE TO BERRY ROAD.

Mr. Tony Mensah, Street Maintenance Superintendent/Project Manager, said voters approved the 2010 Street Maintenance Bond Program in March 2010 that included four categories of street maintenance projects consisting of Urban Asphalt Street Maintenance; Urban Concrete Street Maintenance; Rural Road Maintenance; and Urban Street Reconstruction. He said all street maintenance bond projects were completed by 2018. The last Urban Concrete Street Maintenance Project to be completed was located on Main Street between Park Drive and Berry Road and the project has been under construction since 2016. The project was constructed in phases to minimize impact on local businesses in Downtown Norman and Norman High School. The project involved the removal and replacement of selected concrete panels in the driving surface, curb and gutter, and sidewalk ramps that had deteriorated to an unacceptable condition. On June 27, 2017, Council approved Change Order No. One in the amount of \$180,113 which added 52 additional panels to the inside lanes, the turning lane and the inside east, westbound lanes due to existing concrete failing in the area. He said on October 8, 2018, A-Tech Paving completed all the work and a final pay application of \$45,030.83 was submitted by the contractor. The total work completed amounted to \$900,616.49 leaving a balance of \$12,933.52. Change Order No. Two will decrease the contract amount by \$12,933.52 for a total contract amount of \$900,616.49 from \$913,550, a decrease of 1.4%, which will finalize and close the project.

Items submitted for the record

1. Text File K-1516-112, Change Order No. Two, dated November 15, 2018, by Tony Mensah, Project Manager
2. Change Order No. Two to Contract K-1516-112

Item 2, being:

CHANGE ORDER NO. TWO TO CONTRACT K-1617-91: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND RDNJ, L.L.C., D/B/A A-TECH PAVING, DECREASING THE CONTRACT AMOUNT BY \$41,435.67 FOR A REVISED CONTRACT AMOUNT OF \$561,869.15 FOR THE 2010 BOND ROAD RECONSTRUCTION: IOWA STREET, PHASE 1C, AND FINAL ACCEPTANCE OF THE PROJECT.

Mr. Mensah said the 2016 Street Maintenance Bond Program included four categories of street maintenance projects consisting of Urban Asphalt Street Maintenance; Urban Concrete Street Maintenance; Rural Road Maintenance; and Urban Street Reconstruction. The final two projects in the Urban Street Maintenance Program required outside engineering design services due to the complexity of the stormwater drainage improvements. The two projects involved eleven residential blocks of total street reconstruction on Dakota and Iowa Streets. The projects were split into three phases with Phase I being utility and paving work done by City staff. Phase II consisted of paving and stormwater improvements on four blocks of Dakota Street, and Phase III consisted of concrete pavement, curb and gutter, and driveways on two blocks each on Dakota and Iowa Streets. He said City crews are not equipped to do large amounts of concrete work and that part of the project was bid out. He said the two phases were added to the original contract under Change Order No. One because there were good unit prices below the engineer's estimate and there was a large amount of concrete work on Iowa Street. He said continuing under this contract allowed the contractor to complete the project by the end of the year and Staff did not have to rebid the project. Change Order No. Two will decrease the contract amount by \$41,435.67 for a total contract amount of \$520,433.48 from \$561,869.15, a decrease of 7.4%, which will finalize and close the project.

Items submitted for the record

1. Text File K-1617-91, Change Order No. Two, dated October 10, 2018, by Tony Mensah, Street Superintendent
2. Change Order No. Two to Contract K-1617-91
3. Location map

Item 3, being:

CHANGE ORDER NO. TWO TO CONTRACT K-1718-5: BY AND BETWEEN THE NORMAN UTILITIES AUTHORITY AND MCKEE UTILITY CONTACTORS, INC., DECREASING THE CONTRACT AMOUNT BY \$23,273.16 FOR A REVISED CONTRACT PRICE OF \$1,178,292.84 ON THE CROSSROADS BOULEVARD AREA WATER LINE PROJECT AND FINAL ACCEPTANCE OF THE PROJECT.

Mr. Charlie Thomas, Capital Projects Engineer, said the Crossroads Boulevard Area Waterline Project is located between Interstate 35 (I-35) and 36th Avenue N.W. and along 24th Avenue N.W. from near Boardwalk Avenue to just north of Tee Circle. On September 12, 2017, Council approved Contract K-1718-5 with McKee Utility Contractors, Inc., in the amount of \$1,184,999 for project construction of the project. On September 11, 2018, the City Manager approved Change Order No. One in the amount of \$16,567 due to a force majeure cost increase on polyvinyl chloride (PVC) pipe resulting from Hurricane Harvey in Houston, Texas. Change Order No. Two will reconcile bid quantities to final quantities and decrease the contract amount by \$23,273 for a total contract amount of \$1,178,292.84, which will finalize and close the project.

Item 3, continued:

Items submitted for the record

1. Text File K-1718-5, Change Order No. Two, dated November 27, 2018, by Charlie Thomas, Capital Projects Engineer
2. Change Order No. Two to Contract K-1718-5
3. Location map

Item 4, being:

DISCUSSION REGARDING THE CREATION OF A TREE ORDINANCE.

Mayor Miller introduced Mr. Will Spain and Mr. Don Menzie, Tree Board members, who will be making the presentation.

Mr. Spain said the Community Planning and Transportation Committee (CPTC) has been working on a Tree Ordinance as well as working with utility companies to create a vegetative management policy and in their last meeting, CPTC members requested the Tree Board review the draft Tree Ordinance and coordinate language with the proposed vegetative management policy. Mr. Spain said many communities that have a Tree Ordinance have a Forester so the Tree Board decided to write the Tree Ordinance to include a Forester. He said a lot of decisions about trees cannot be made by a layman and the City needs someone with expertise to educate the public and help the public with existing tree problems.

Councilmember Castleberry said ordinance language states that anyone wanting to cut down a tree must request permission from the Forester. If he wanted to cut down a tree and there is no Forester, will he be told he cannot cut down the tree because the City does not have a Forester? What is the alternative? Could he obtain permission to cut a tree down from a certified forester or arborist that does not work for the City? Mr. Menzie said the ordinance or vegetative management policy does not provide for that as it assumes the City has a Forester or an acting Forester if the City loses the Forester.

Councilmember Carter asked if the City Manager appoints an interim anytime the City loses a position of expertise and Ms. Mary Rupp, Interim City Manager, said that is the typical operational procedure. She said the ordinance does provide for a Forester or their designee so that would be the backup plan.

Councilmember Clark said the Forester position does not currently exist and to have a successful Tree Ordinance, which she thinks the community and this Council wants, the City needs to plan for a Forester and it seems a little premature to move forward on an ordinance without a Forester in place. She said Council discussed a Sustainability Officer versus a Forester and the possibility of combining those positions into one position; however, Council was told these positions require specific expertise and should not be combined. Mayor Miller said that was simply a conversation and nothing has been decided, but Council is looking to hire a Forester when funding is available.

Councilmember Scott asked if the Sustainability Officer could be the designated Forester until a Forester position is budgeted and Mr. Jud Foster, Director of Parks and Recreation, said these positions require two different sets of expertise, but it would depend on what skills or expertise the Sustainability Officer may have. He said the designee would most likely be someone in the Parks and Recreation Department on an interim basis.

Item 4, continued:

Councilmember Hickman thanked the Tree Board for their hard work on the ordinance and said Council has been discussing a Tree Ordinance for a long time so Council should not kick this can down the road any longer. He said CPTC decided if the City is not moving forward with the Internal Auditor position because of the proposed Charter changes, the Finance Committee should look at reclassifying the Internal Auditor position, which is funded in the budget, to a Forester position. He said during the interim period, it would be appropriate for the City Manager to designate someone from the Parks and Recreation Department to fill the role of Forester. He hopes the Finance Committee will discuss this topic in their December meeting so action can be taken by Council in January. Councilmember Bierman said in order not to lose the time and energy spent on the ordinance by the Tree Board and Council, there could be a year lead-in time for the Forester position. She does not want to lose the momentum on the progress made versus shelving it until a Forester position is funded.

Councilmember Clark said Section 4(c) states, "All funds collected by the city in conjunction with Section 4(b) of the policy shall be deposited into a special fund and utilized for the sole purpose to replant trees in the public right of way in the same vicinity as the tree that are removed." She said that language sounds a little dubious so it should be clarified because there have been transparency and trust issues regarding money the City collects being thrown into the General Fund (GF) and no one knows how that money is going to be used. Although the language talks about how the money will be used, it should be more specific about what department that money will go to so that needs to be fleshed out a little bit. Mr. Spain said the money will be used for replanting trees that have been removed so the exact location or geography of where those trees would be is undetermined and Councilmember Clark said she is thinking more about fund location. Mr. Spain said the assumption would be Parks and Recreation Department would receive the funds and Councilmember Clark would like to clarify that in the ordinance. Mr. Anthony Francisco, Director of Finance, said a revenue liability account could be set up to be used for that specific purpose and Council would need to appropriate those funds when a project is identified.

Mr. Spain wanted to clarify that the proposed ordinance does not supersede any existing policies in place, such as site triangles, nor does it take away any existing authority utility companies have.

Mayor Miller recognized Ms. Tory Tedder-Loffland, representing Oklahoma Electric Cooperative (OEC) and Tree Board member and Mr. Tom McCurdy representing Oklahoma Gas and Electric Company (OG&E).

Mr. McCurdy said the ordinance is great and the work the Tree Board has done is fantastic and the only thing he would recommend is that instead of replacement trees having a value deferral based on quantity of trees, which will be very difficult to achieve on a small property, the City might consider basing that on a caliper size. Also, there is a lot of value in having a Forester and research shows that communities with healthy, urban forests have lower crime, better quality of life, and trees provide a lot of intangible value, such as sequestering carbon, pollutants, wind, noise, etc.

Ms. Tedder said the Tree Board's focus was mainly on future planning and it is important to hire a Forester who knows how to make the right decisions. She said a lot of current problems are due to poor planning because property owners want quick growth, but a lot of times a quick growing tree is not the best tree. The right tree in the right place is important and can help the community create the look it wants.

Item 4, continued:

Councilmember Clark said ordinance language states that once a tree is designated as historic it shall apply to the tree in perpetuity regardless of its location and the owner shall place deed restrictions upon the tree to inform future owners of the status of the historic tree designation. What if she moves into her dream house and her child is deathly allergic to the tree? Does she have to move because she cannot get rid of the tree? Mr. Spain said an appeal could be made to the Forester through the appeal process.

Councilmember Castleberry asked how a deed restriction could be removed if the tree died and Ms. Kathryn Walker, Assistant City Attorney, said Staff is working on language creating a mechanism in the ordinance that allows the City to remove that restriction from the deed if there is an issue.

Councilmember Clark would like to clarify language regarding the historic tree designation falling under the appeal process because it is not clear to her as currently written.

A concerned citizen asked if there is a provision for when a storm takes out a tree and Mr. Spain said there is a provision regarding trees damaged or toppled by storms. The citizen said if someone removed a tree without permission because they were unaware of the ordinance, would they be fined? Mr. Menzie said they would have to replace the tree based on the tree diameter at breast height and about five trees have to be planted to replace a large tree.

Councilmember Clark asked if the Tree Board discussed an educational campaign to avoid incidents where people do not know they cannot remove a tree without permission and Mr. Menzie said information will be placed on the City's website and in a newspaper article. He will also contact local tree companies to inform them of the new regulations and let them know they may have some liabilities if they cut down trees. Mr. Spain said if the City hires a Forester, that person could establish an education program.

Councilmember Castleberry said his concern about historic tree designation being placed on the deed is that if someone bought an empty lot next to their property and wanted to take out a tree or trees that are historic, the deed restriction would basically make the lot unsaleable. Mr. Menzie said a historic tree would have to qualify and meet certain criteria so he did not know how many trees would be designated as historic by the City.

Councilmember Clark said she would also like to add an implementation date for the ordinance.

Councilmember Hickman would like to move forward with using funds budgeted for the Internal Auditor to hire a Forester before July 1, 2019.

Councilmember Clark asked if there will be another meeting once the changes Council has discussed have been made and Mayor Miller said the changes can be made and emailed to Council for review without holding another meeting on the topic.

Councilmember Clark would also like to see a timeline for switching the Internal Auditor to a Forester and hiring a Forester. Councilmember Castleberry said the Finance Committee has not discussed that, but the original plan was to hire an Internal Auditor mid-year and work towards a Charter revision and in the interim the Internal Auditor would report to Council. Councilmember Clark said she would like clarification on that timeline. Mayor Miller said after the Finance Committee meets, another meeting could be held to discuss the Forester and Internal Auditor positions.

Item 4, continued:

- Items submitted for the record
1. Draft Tree Ordinance

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Item 5, being:

DISCUSSION REGARDING DIAPER CHANGING TABLES REQUIREMENTS FOR COMMERCIAL BUILDING PERMIT APPLICATIONS.

Ms. Jane Hudson, Interim Planning and Community Development Director, said in October 2016, President Barack Obama signed a bill requiring diaper changing stations in male and female restrooms in publicly accessible federal buildings. During the Council Retreat in August, Council designated requiring installation of diaper changing tables in both male and female restrooms as a priority. On September 27, 2018, the CPTC reviewed the code amendment proposal presented by Staff and directed Staff to take this item to full Council.

Historically, the installation of diaper changing tables has typically been in the women's restroom in the handicap accessible stall. Currently there is no building code that regulates whether a new business or facility remodel is required to install diaper changing tables; however, the City can look at possible requirements for male and female restrooms; family restrooms; and new commercial developments. Things to consider would include to what extent the City wants to require addition/alteration projects; what uses would require diaper changing tables; and if the City wants the diaper changing tables in the handicap accessible stall or outside the handicap accessible stall.

Proposed Building Code amendments could include the International Building Code (IBC) for new construction and the International Existing Building Code (IEBC) for existing building undergoing construction. Ms. Hudson asked if Council would like diaper changing tables to be required by occupancy type such as restaurants, theatres, churches, arenas; businesses such as office buildings over 10,000 square feet; Mercantile such as commercial and retail; and Institutional such as assisted living and hospitals. She said exemptions in occupancy types could include educational facilities; utilities; factory, storage, and high hazard areas not accessible to the public; and spaces that restrict entrance due to age.

IEBC could require diaper changing tables based on the level of construction value that includes Level 2 - Assembly (restaurants, theatres, churches, arenas); Mercantile (commercial/retail over 100 occupants or over 50% of floor area); and Level 3 - change of occupancy, addition exceeding 50% of the restroom floor area being modified. Exemptions could include Level 1 - minor modifications to existing materials, equipment or fixture, and the installation of new materials, equipment, or fixtures and Level 2 - Assembly and Mercantile when there are less than 100 occupants or less than 50% of floor area addition/alteration.

Ms. Hudson said it is her understanding that, on average, it could cost \$1,500 for the table, labor, and installation. She said for new construction that cost would be incorporated into the construction costs, but it could cost more if diaper changing tables are retro-fitted.

Ms. Hudson said the City could focus on new construction and addition/alteration projects. She said the proposed definition of a diaper changing table could be, "A safe, sanitary and permanently affixed station, deck table, surface or similar amenity specially set aside for changing a diaper. The diaper changing table shall have safety straps or other appropriate restraint to secure a baby or young child ages 3 1/2 or under.

Item 5, continued:

The diaper changing table shall meet Standard Consumer Safety Performance Specifications for Diaper Changing Tables for Commercial Use or shall be a permanently installed counter.” She said most codes researched specified the age limit of 3 1/2 years or 50 pounds, but there are manufacturers producing diaper changing tables that exceed those standards.

Ms. Hudson said in the CPTC meeting there were questions about when 50% of the floor area is modified and Ms. Amber Armstrong, Plans Examiner II, said she reviewed some of the permits issued over the last year to see the type of work being done. She said the City could limit the requirement for over 50% of floor area to restroom only, Council has to keep in mind that when people renovate an area they tend to avoid the restrooms because of the handicap accessibility requirements. She said if the City ties modifications to the restroom then there will probably not be additions to existing buildings, but when thinking about 50% of the floor area of the restroom it is hard to define whether or not the restroom is really being changed. For instance, if someone has a restroom where the size is not being changed, there is tile on the walls and tile on the floor that is not being changed, but all toilets, sinks, and compartments are being removed, has 50% of the room been touched because no structural element has changed? She said when the diaper changing table is added there needs to be blocking behind it so the property owner has to tear the tile down, put the blocking behind it, and put the tile back up. She said Staff is seeking direction on where Council wants that trigger to be if the requirements are tied to 50% of the floor area of the restroom. She said Othello's Restaurant burned down a couple of years ago and when they rebuilt they were required to install a sprinkler system and there was a lot of discussion regarding whether or not they were modifying 50% of their floor space or not. She said construction companies will literally take the size of the toilet and say, “I have only affected two square feet of the floor area for this toilet,” yet they have removed a five by five foot compartment so there is a difference in floor area size there.

Councilmember Hickman asked when the City would require businesses to bring their bathroom into Americans with Disability Act (ADA) compliance in an existing building. Ms. Armstrong said in an existing building, when construction is done the City looks at the technical feasibility of that. She said 20% of the construction budget for the work being done is applied towards making the facility more accessible, but there is no requirement as far as having to do the restroom first. She said the architect gets to decide when and where they make that change. She said they can change fixtures and not make changes to the room and the room may not be fully compliant at that point, but it is more compliant than it was before.

Councilmember Bierman said she read several ordinances from other cities and they are pretty split between modifications of 50% of the restroom area or anywhere from 30% to 60% of the actual building footprint. Her intent was to minimize the added cost to the business or property owner to install a diaper changing table when modifying their building. She said new construction is different because you are starting from scratch so it would be a minimal cost. She is open to amending that language to make it as easy as possible to install a diaper changing table while also making sure the number of diaper changing tables is increasing in the City. She said this is an accessibility issue, not just a gender issue so however the City can get there she would support.

Ms. Armstrong said for new construction, there is an alternative to the restroom location so the diaper changing table does not have to be installed in the restroom, which would be a room designated for changing diapers. She said on existing buildings when the business is making modifications and wants to provide an accessible restroom, the business can provide a family or unisex restroom so anyone can use the restroom where a diaper changing table is installed.

Item 5, continued:

Councilmember Castleberry said instead of mandating this to be done can the City take the approach that if someone installs a diaper changing station when modifying a building the City will take \$200 off their permit fee? He would rather see the City encourage people to do these types of things. Ms. Armstrong said everyone thinks of diaper changing tables being in the restroom, but designers can come up with other options.

Councilmember Clark said she has received support for the ordinance not just from women, but from men who are wrestling with the issue of where to take care of changing their child's diaper. She is definitely supportive of moving forward with having more diaper changing tables in restrooms or having a family room.

Councilmember Wilson said the question is how to interpret the 50% floor area so what is Staff's recommendation? Ms. Armstrong said it could be very subjective on the person doing the application review and since this request is coming from Council she would really like to know at what trigger Council wants it installed. Councilmember Wilson did not think it was that cost prohibitive or that big of a deal and thinks 50% of the floor area as normally defined in other situations would be highly appropriate.

Councilmember Carter asked if there is a reason for the City not to say that if someone remodels a restroom they are required to install a diaper changing table and Ms. Armstrong said that would be one way of handling it. She said several of the ordinances she looked at tied the requirement to more than 50% of the entire building. She said if someone is adding a restroom to a building and already has a diaper changing table planned for the female restroom, they only have to add one to the male restroom, but if there is not enough room in the restroom, the diaper changing table can be installed in the handicap stall.

Councilmember Bierman asked at what level of renovation is it required to obtain a building permit and Ms. Armstrong said according to the Construction Industries Board, if someone takes a toilet out and puts another toilet in they want you to have a plumbing permit; however, people do not do that. If someone extends their waterline they need a plumbing permit, but may not need a building permit. Councilmember Bierman asked if it would be easier to interpret and administer if the requirement was tied to obtaining a permit as opposed to a percentage of the building where restrooms are not being modified. Ms. Armstrong said if 50% of the fixtures are modified in restrooms that could be one way of tying it in. She said everyone that comes in has a slightly different configuration and in an existing building, they have to have contingency funds because no one knows what is behind the walls.

Councilmember Carter said the whole concept is to bring the building to Code whether renovating 50% of the building or changing out a toilet. He would like the City to value handicap accessibility and diaper changing tables so this becomes the Code. If anyone is remodeling a building whether that is 10% or 100%, they need to bring it up to Code, which includes ADA or diaper changing tables. He said that is a reflection of the values of the City and would be a reflection of his personal values.

Councilmember Bierman would like to tie the regulation to 50% of restroom fixtures being replaced, which might be an easier way to administer this regulation.

Councilmember Hickman asked if there is a minimum size for a restroom required by Code and Ms. Armstrong said there are no size requirements, but there are clearance requirements for all fixtures. Councilmember Hickman is concerned about unintended consequences to older buildings that may have to expand a restroom to comply. He said The Mont is an old building with very small restrooms where

Item 5, continued:

there is no room to put a diaper changing table. He said they can change all their restroom fixtures, but if the size of the restroom does not change there is no space for a diaper changing table. He would like to have some type of exemption for older buildings if the footprint of the restroom does not change. Ms. Armstrong said there is an allowance within the existing Building Code where a facility may need two male fixtures and two female fixtures, but due to limited space the owners can build a family or unisex restroom and become accessible. She did not believe a business like The Mont is going to do an extensive remodel unless they experience a fire similar to Othello's. She said existing Building Code has various allowances to encourage redevelopment of an area as opposed to tearing the building down and rebuilding.

Ms. Armstrong said accessibility is tied to the percentage of the construction budget, and diaper changing tables could be handled the same way. Mayor Miller said that might be a good incentive option.

Councilmember Bierman said Council has provided flexibility in allowing counter top diaper changing tables and if the City is going to be calling itself a family friendly and inclusive community then the City needs to make this happen. She said regulations need to be as less burdensome as possible, but not so lenient that diaper changing tables are only installed under new construction. She said if a business is not going to remodel the restroom because of the diaper changing table requirement, then chances are customers will not come back.

Mayor Miller said she is all for the regulation, but worries about older, smaller buildings that may not be able to meet the requirements so there needs to be some type of exception for that. She said Staff can make changes based on Council suggestions tonight including options on incentives and email that to Councilmembers for review and additional input. Once Council feels comfortable with a final draft, it can move forward to a Council agenda.

Items submitted for the record

1. Memorandum dated December 11, 2018, from Jane Hudson, Planning and Community Development, and Amber Armstrong, CBO, CFM, Development Services, through Mary Rupp, Interim City Manager, to Council Conference, with Exhibit A, Section 202, Definition, International Building Code New Construction, and Exhibit B, Chapter 6. Plumbing Elements and Facilities from the International Code Council
2. PowerPoint presentation entitled, "Council Conference Discussion of Diaper Changing Table Requirements," dated December 11, 2018

The meeting was adjourned at 6:15 p.m.

ATTEST:

City Clerk

Mayor