

Cuyahoga Falls City Council
Minutes of the Finance and Appropriations Committee Meeting

June 15, 2020

Members: Tim Gorbach, Chair
Drew Reilly
Jeff Iula

Mr. Gorbach called the meeting to order at 6:34p.m. All members were present.

The minutes of the April 20, 2020, May 18, 2020 and June 1, 2020 Finance Committee meetings were approved as written.

Legislation Discussed

Temp. Ord. A-32
Temp. Ord. A-33
Temp. Ord. A-34
Temp. Ord. A-36

Discussion:

Temp. Ord. A-32

An ordinance amending Ordinance 922019 to authorize the Director of Public Service to enter into a contract or contracts, according to law, for the purchase of annual requirements of certain materials and supplies for use by the Division of Sanitation during 2020, and declaring an emergency.

Mr. Chuck Novak, Street Commissioner, presented Temporary Ordinance A-32. The Director of Public Service would be authorized to enter into a contract or contracts, according to law, for the purchase of the following materials and supplies for use in the Division of Sanitation during 2020: Wheeled Refuse Containers. Notwithstanding and as an exception to Section 181.06 of the Codified Ordinances, expenditures made under the contracts authorized by this ordinance shall not exceed, in the aggregate, \$302,000, without further consent of City Council by ordinance. The Director of Finance will be authorized and directed to make payment for same from the Sanitation Fund, line item Other Operations and increasing appropriations in the Sanitation Fund, line item Other Operations by \$137,000.

Mr. Gorbach asked if they looked at anyone other than Sagamore Soils. Mr. Novak stated that they looked at five or six other vendors. Only one would respond. The low bidder was at a dollar per yard. The second lowest bidder was at \$5 a yard of material, and they wanted \$7.50 a yard if it was in the form of bags, so there was only one choice with Sagamore Soils. Mr. Gorbach stated that he assumed the purchase of yard carts is less money than paying the increased amounts requested by these vendors. Mr. Novak stated that it was a hard question because they are talking about cubic yards of material versus carts for each individual customer. Mr. Gorbach asked the estimated number of cubic yards of material in a year. Mr. Novak stated that they normally would be around 7,000 cubic yards of material in a year's time. It does not include the leaf program,

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which would probably double that. Mr. Gorbach asked if Mr. Novak foresees vendors accepting yard waste material in subsequent years. Mr. Novak stated that he does not.

Mr. Reilly moved to bring out Temp. Ord. A-32 with a favorable recommendation, second by Mr. Iula. Motion passed (3-0).

Temp. Ord. A-33

An ordinance authorizing the Director of Public Service to enter into a contract or contracts, according to law, for overhead line clearance services including tree maintenance, tree and brush removal services, and mowing, for a period not to exceed three years, and declaring an emergency.

Mr. Michael Dougherty, Electric Superintendent, presented Temporary Ordinance A-33. He stated that Davey Tree was the only bidder. It was in line with what the current contract is. Mr. Gorbach asked how many bidders they typically have. Mr. Dougherty stated that they typically have three. Asplundh would bid and used to have the contract. Mr. Gorbach asked what Mr. Dougherty makes of the smaller number of bids this year. Mr. Dougherty stated that Davey Tree is extremely aggressive in their bid. They were less than the other competitors' last two bids. Mr. Gorbach asked if he was satisfied with Davey Tree's performance. Mr. Dougherty stated that they have been working out well for them.

Mr. Stams asked for elaboration on the pricing. Mr. Dougherty stated that pricing is based on dollars per man hour and dollars per equipment hour, vehicle hour. They then have a sample number of hours of each type of equipment and sample amount of man hours, and that is how they bid. Two contracts ago, Davey Tree won the bid, and they won it again the last contract by submitting the exact same bid they did two contracts ago. This time, it is an approximately six percent increase. The first two contracts were for two years, and this one is for three years. They decided to expand it out, so they do not have to do it as often.

Mr. Iula moved to bring out Temp. Ord. A-33 with a favorable recommendation, second by Mr. Reilly. Motion passed (3-0).

Temp. Ord. A-34

An ordinance authorizing the Director of Law to enter into a settlement agreement and release in the case of City of Cuyahoga Falls v. Johnson Controls, Inc., et al; authorizing the Director Of Public Services to enter into contracts, without competitive bidding with Aclara Technologies LLC, as successor to Aclara RF Systems Inc., Badger Meter, Inc. and Conxx, Inc. in connection with the settlement agreement to provide the City with an upgraded automated meter reading system, and declaring an emergency.

Ms. Janet Ciotola, Law Director, and Mr. Anthony Zumbo, Service Director, presented Temporary Ordinance A-34. On July 24, 2008, the City and Johnson Controls, Inc. ("JCI") entered into an energy savings performance contract whereby the City obtained, among other things, a new electronic system for the automatic reading of the City's electric and water meters. The project

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included the City's purchase of numerous pieces of hardware and software, including but not limited to new water and electric meters, meter transmitting units and data collection units (hereinafter referred to as the "Project"). The procurement process for the Project involved the following parties and contracts: (i) the City contracted with JCI to provide the entire Project to the City; and (ii) JCI subcontracted with Aclara Technologies LLC, as successor to Aclara RF Systems Inc. ("Aclara"), Badger Meter, Inc. ("Badger") and Conxx, Inc. ("Conxx") and others to supply various portions of the Project.

The City became aware that Project was not performing as promised and the Parties became involved in a dispute regarding the performance of the system. The Parties dispute regarding the performance of the Project gave rise to a civil action commenced by the City in Summit County Common Pleas Court and subsequently removed to the United States District Court for the Northern District of Ohio, Eastern Division, and docketed as Court File No. 5:18-CV-01130 (the "Action"). The Parties have made various claims against each other in the Action, including claims for damages regarding the design, installation, and the functioning of the Project. During the course of the litigation, the Parties agreed to mediation before the Honorable Mediator John M. Harens, Esq., which mediation was held on May 29, 2020. Due to the mediation, the Parties reached a settlement of their disputes pending approval by Cuyahoga Falls City Council, which settlement includes monetary compensation and discounts to the City, along with goods and services from Aclara, Badger and Conxx which will enable the City to upgrade to a fully functional automated meter reading system at a substantial cost savings to the City. Settlement of this matter is in the best interest of the City and will prevent further time delays and litigation expenses resulting from the lawsuit.

Mr. Gorbach stated that, at the last meeting, Council heard from Mr. Young and Mr. Mitchell, along with the law director, Ms. Ciotola. There was a spreadsheet shown to Council during Executive Session, and Council was able to view that. There were numbers there that indicated, along with that excellent settlement, that there would be various contracts needed and the City to supplement those contracts in order to purchase a new system. He was hoping that Ms. Ciotola could go over that with her team to make sure that all of Finance Committee and Council were aware of those different contracts.

Ms. Ciotola stated that she she would like to thank and recognize Mr. Mark Young, a a partner with the law firm of Roetzel & Andress that assisted the City with this case and Joey Mitchell, President of UMS and acting as a consultant for the City. As discussed in Executive Session last week, the settlement of this case is comprised of monetary compensation, along with goods and services, some at a discount and some free. It also requires the City to enter into separate agreements with the three parties mentioned in the legislation, Aclara, Badger and Conxx.

Mr. Zumbo stated that he wants Council and the public to know that they had an expert and consultants take a look at this system and vet them out, so that they are bringing something that they are sure is going to work.

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Mr. Riley and Mr. Iula thanked everyone for their work. Mr. Miller asked if Mr. Zumbo could provide copies of the agreement from within the settlement to Council at his convenience. Mr. Zumbo stated that he would do that as soon as Ms. Ciotola gave him permission to do so.

Mr. Gorbach stated that he thinks it is amazing that, 12 years later, they are going to be implementing a system at less of a cost with a product that is beyond the capability of that from 2008. That is a testament to what Ms. Ciotola and her team have been able to put together with the help of the gentlemen here in the meeting. The City of Cuyahoga Falls and the residents appreciate what Ms. Ciotola has done because it is going to allow the City to have some savings for a long time to come.

Mr. Reilly moved to bring out Temp. Ord. A-34 with a favorable recommendation, second by Mr. Iula. Motion passed (3-0).

Temp. Ord. A-36

An ordinance authorizing the Director of Finance to take all necessary action to accept an amount not to exceed \$1,586,276.00 in relief appropriations from the County Coronavirus Relief Distribution Fund, in compliance with the Coronavirus Aid, Relief, And Economic Security Act and amended substitute Senate Bill 310, now House Bill 481, and declaring an emergency.

Mr. Bryan Hoffman, Finance Director, presented Temporary Ordinance A-36. The Coronavirus Disease 2019 (COVID-19) has had a significant impact on the health and wellbeing of the residents of Cuyahoga Falls, Ohio, and has adversely affected its economy and employment for residents, local businesses, government and non-profit 20 organizations throughout the city. The State of Ohio has enacted Senate Bill 310, now H.B. 481 (“Act”) to provide Title V CARES Act funds under the 45% provision for local governments to local subdivisions. Pursuant to that Act, funding has been or will be distributed to the County of Summit for further distribution to local political subdivisions. and pursuant to the Act, a receiving subdivision is required to adopt a resolution affirming certain requirements in order to be eligible to receive such payment. The Act further requires the subdivision to establish a fund within its treasury named the Local Coronavirus Relief Fund, and it is necessary to authorize the Director of Finance to create such fund.

Council would affirm that all funds deposited into the Local Coronavirus Relief Fund will be used to cover the costs of the subdivision consistent with the requirements of Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, set forth in U.S.C 801, 42 formerly U.S.C. 601(d), and any regulations or amendments applicable thereto, as well as any guidance established by the U.S. Treasury Department and the Auditor of the State of Ohio. Council would affirm it understands that this fund shall be subject to audit by the Auditor of the State of Ohio during its next regular audit under Section 117.01 of the Ohio Revised Code. The Director of Finance would be authorized, in compliance with the Act, to take all necessary action to create a special revenue within the accounts of the City of Cuyahoga Falls, to name such fund the Local Coronavirus Relief Fund, and establish appropriations in an amount not to exceed \$1,586,276.00, line item Personal Services. On or before October 15, 2020, the Director of Finance would pay any unencumbered

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balance of money in the City's Local Coronavirus Relief Fund to the County of Summit Fiscal Officer; and on or before December 28, 2020, pay the balance of any money in the City of Cuyahoga Falls' Local Coronavirus Relief Fund to the state treasury in the manner prescribed by the Director of the Ohio Office of Budget and Management and provide any information related to any payments received under the process established by the General Assembly to the Director of the Ohio Office of Budget and Management as requested.

Mr. Hoffman stated that the State Legislature passed House Bill 481. It included the language and the much-talked about Senate Bill 310 that has been going back and forth over the past couple of weeks. What this does is it allows the State to take a portion of their CARES Act dollars and distribute those to municipalities through the local government formula. The language in House Bill 481 requires that the local government pass an ordinance that affirms certain things that are listed there in the ordinance as it is presented, and it must be done prior to receiving funds. How this will work is the state government will forward the allocations to the county government. The county government will then distribute those allocations to the local government. In the language of the House Bill 481, the county government must distribute those within seven days of receiving the dollars. Part of the reason they want to get this introduced, discussed and passed all in one night is because they don't know exactly when the State will be distributing those dollars to the county government, and then the county government has seven days, total, to distribute those to the City, so they need to be prepared to accept those dollars. It is strongly encouraged that municipalities pass an ordinance affirming these regulations as quickly as possible.

Mr. Gorbach stated that if they need to move fast to accept money such as this as quickly as possible, he has confidence in his colleagues that they will be able to do that. They are creating a fund to place the money in. He asked if there are any restrictions in the legislation with regards to how that money can then be used. Mr. Hoffman stated that there are many restrictions. Their plan at the local level is they are creating what they consider and call a payroll support program they will be able to use. These dollars will be used for safety forces personnel costs. They can do that from the period of March 1 through the end of this year. They will have well over \$1.5 million dollars in those costs, but they will be able to supplement what was spent in the General Fund with these dollars.

Ms. Nichols-Rhodes asked how that figure was derived. Mr. Hoffman stated that he does not know how they came to the full amount at the state level. They portioned off a part of that 45 percent, and they decided to distribute that through the local government formula. That is a formula based on population. Ms. Nichols-Rhodes stated that this is another reminder of the importance of the Census.

Mr. Miller stated that he want to publicly thank Senators Sherrod Brown and Rob Portman and Congressmen David Joyce and Tim Ryan. He know the City is going to put the CARES Act money to good use, and he wanted to say that the community is grateful for the CARES Act.

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Mr. Gorbach stated that there were no questions or concerns received from the public regarding any legislation pending in the Finance Committee.

Mr. Reilly moved to bring out Temp. Ord. A-36 with a favorable recommendation, second by Mr. Iula. Motion passed (3-0).

The meeting adjourned at 7:03 p.m.