

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**City of Fayetteville Arkansas
Special City Council
Meeting Minutes
October 20, 2005**

A meeting of the Fayetteville City Council was held on October 20, 2005 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Aldermen Jordan, Reynolds, Thiel, Cook, Marr, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Aldermen Rhoads, Ferrell and Lucas.

Pledge of Allegiance

New Business:

Brasfield & Gorrie, LLC Contract: A resolution to approve a contract with Brasfield & Gorrie, LLC, to build the Broyles Road Wastewater Treatment Plant, the Broyles Road Twelve Inch Water Main, and other work for a guaranteed maximum price of \$59,994,710.00 and a contingency of \$2,400,000.00.

Ron Petrie, City Engineer: Let me just start by quickly going through some of this background information. I know several of you are members of the Water and Sewer Committee and have heard most of this but if you have not we certainly want to bring you up to date and inform you of the procedure used to get to this point. In response to having to find a new water and sewer director the Mayor decided to form a WSIP team in order to handle the wastewater treatment plant. This team took the place of one person, the water and sewer director that was in charge of the project. That team consisted of six people; myself, Gary Dumas, David Jurgens, Steve Davis, Tim Conklin and Susan Thomas. One of the first things this team had to face was to open bids on July 21st. This was a conventional unit price bid and we had two bidders. The highest

bid was Archer Western with a price of approximately \$72 million; the lowest was \$71 million. The lowest bidder was VanHorn Construction in Russellville with a bid of approximately \$61 million dollars. Keep in mind these prices were pre-Katrina prices. We knew that those prices were well over our certification of funds for the project. We knew as a team we had to find an alternative solution. One thing that we looked into was the new legislation passed by the state in order to pick a contractor and negotiate with that contractor as opposed to having bids.

We have Peggy Vice here. Since this was the first one in the state that used this procedure I wanted Peggy to run through the procedure real quick.

Peggy Vice, Purchasing Manager: Hello. The first thing you do is advertise for three consecutive days. You put your selection committee together and establish a deadline at least ten days out to receive your qualification statements. You have at least three members on the negotiation committee and we had several plus an aldermen. We received eight proposals and we interviewed five and selected Brasfield & Gorrie.

Mayor Coody: Alright thank you. Do we have any questions for Peggy on this? I want to say thanks. I don't get a chance much publicly to say what a good job you're doing here for the City. People don't recognize or they don't see you. You're behind the scenes making the city operate as legal and as streamlined as possible and we just really appreciate all your hard work. You're doing a very, very good job for us.

Peggy Vice: Thank you very much. This process is a great process. It allows us to look real close at the contractor before we contract. It allows us look at how they do business, what their timeframe has been, how on budget they are, how they keep their books and what their financial strength is. It allows us to look at everything before we enter into a contract.

Mayor Coody: Alright. Thank you very much. I know you explained this Ron, at the Sewer Committee but you might go over this for the City Council who weren't at that meeting. Since Peggy brought up the strength of the company, you might compare that to VanHorn.

Ron Petrie: It was very obvious from the committee that we had a company that was ranked 29th in the Engineering News Record out of 400 in the country of contractors as to a contractor who wasn't on that 400 list. It was very obvious the amount of work they do and the quantity and quality they do. It really allowed us to operate as a private company and do it like a private company would do instead of taking the lowest bidder, the lowest qualified bidder. So it was very obvious they were head and shoulders when we selected them and we're very happy to get them.

As for the contract itself, this is a guaranteed maximum price contract. We'll be doing this paying actual cost that the contract is paying within a six and half percent contracting fee on top of that. Throughout the process as the contract is being negotiated it was determined that there were many items that the city could pay for separately, instead of having a markup of six and half percent we could pay directly. The memo from David Jurgens lists those items such as water, electricity, dumpsters, progress photos, fuel, and those types of issues. Those will have to be paid for but we will not be adding a six and half percent on top of that cost.

Two big things that were removed and we want to make sure that we're very clear about this was Broyles Road construction and the wetlands planting. This price does contain the 12 inch waterline along Broyles Road, it does contain the earthwork or the berms associated with the wetlands planting but just not the planting themselves.

The contract was a total maximum not to exceed the amount of \$59,994,710.00. We are requesting a contingency of four percent in the amount of \$2.4 million. The contract contains that the Notice to Proceed will be issued in approximately two weeks, they will break ground. They will be doing work in between but they will actually be on site breaking ground in February, 2006 and a substantial completion date of May, 2008.

We do have representatives from both McGoodwin, Williams & Yates, and Brasfield & Gorrie here tonight if you have any questions for them also.

Mayor Coody: Alright thank you. Now when you say guaranteed maximum that means that if we can find ways to cut costs and save money we get those savings. I think that they would keep a small percentage of it as an incentive to find those savings, but we would be able to have this as a guaranteed maximum not a guaranteed minimum.

Ron Petrie: That's right.

Mayor Coody: We'll be able to cut this if we can.

Ron Petrie: Right and the savings amount is up to one percent under the maximum price the contractor would keep 50% up to one percent of the construction amount, approximately \$50,000.00.

Mayor Coody: Alright thank you. Any other questions?

Alderman Jordan: The odor abatement is it going to be as good as or better than what we originally said it would be?

Ron Petrie: It will not change from the original bid. The specs will be the same under the same specifications.

Alderman Jordan: And I assume it will be the same for the noise abatement too.

Ron Petrie: That's correct. I know we discussed that at the Water & Sewer Committee and they had questions. The engineer, McGoodwin, Williams & Yates, will be reviewing their submittals on those to make sure that they do meet the specs as originally bid.

Alderman Jordan thanked Mr. Petrie.

Mayor Coody: Thank you very much. I know we have representatives from Brasfield & Gorrie here with us here tonight.

Gary Harrington: I'll tell you quick about Brasfield & Gorrie, I'm Gary Harrington. I'm Vice President Division Manager for what we call a utilities group. We do the water and sewer for Brasfield & Gorrie. We'll do, in our group, a \$150 million and \$180 million worth of work per year in water and sewer. We work in eight states including Arkansas. We're actually in seven states right now. The company does \$1.6 billion worth of work a year. Eighty percent of that is negotiated work similar to what we're talking about here.

We think that we bring to the table the ability to do negotiated work. That's been the bread and butter of the company over the years. So much of our work is repeat customers. Right now in our group which is very usual we have probably five or six negotiated jobs taking place in water and sewer. It's happening more and more throughout the United States. The plus is that already in the last six weeks we've become a team, we've worked with your engineer and we've worked with representatives of the City. We've looked at various items and if they could be done differently. By becoming a team we don't go through the six months trying to find out what we're really like. Is the contractor honest, is the engineer really honest, does the owner pay on time, we work as a team. We're limiting the savings that goes to Brasfield & Gorrie. Some contractors could put two or three million dollars in the contract and have a windfall at the end of the job and go home with three or four million extra dollars. I don't care how quickly we've built or what sort of quality you have all of the sudden we've become a very ugly duckling and you're not happy with us. We need an incentive to work to save you money but we max out. That's what we suggested during our first visit over here is we maxed out one percent of the contract is the most that we can take home. Any savings we go 50/50 up to that point. Anything above that all goes back to the city.

Alderman Jordan: So it's a win win.

Mr. Harrington: To hear that from a contractor I know it's sort of scary. We try to be good citizens. We've been extremely impressed with the City of Fayetteville. If I had to live somewhere besides Birmingham this would really be a chose. I think you've really done a great job in putting this together. Your engineers, your city employees and all its been a pleasure. Quite frankly I've been over here nine times now in the last six weeks so I feel like I could vote. We want to be a part of the community and hopefully we will be. We would hope that this would not be the only job we do together. I've been going back to all of the treatment plants every ten years. It's like every ten years there's always an addition. We enjoy this. I promise you we'll mess up but the difference is that when we mess up we're going to correct our mess ups as soon as possible. We don't want them to fester, that's when you have a major dilemma. .

Mayor Coody: Thank you sir. Do you have any questions for Mr. Harrington? Thank you very much for coming tonight. And thanks for doing a good job for us.

Alderman Cook: It's been a long time coming to get to this point and I'm glad that we're finally here. I do have a few issues I just want to mention. One thing about guaranteed maximum price, you mean there are always opportunities for change orders. When the scope of work changes you have change orders so while I know that they will do everything they can to stick within this price they've listed it could technically go up; and it can go down too so either way.

Mayor Coody: And that's why we put a contingency in there.

Alderman Cook: So especially on negotiated prices some of the smaller stuff they'll probably cover themselves to some degree but when the scope changes they're going to look for a change order and that's just the way that works. Three things that sort of concern me about this contract, one of them are the elimination of Broyles Road and then the planting of the wetlands. Hopefully we'll be able to pick up some savings from those when we go out later on and price those by pulling them out of the contract. I hope so but those were eliminated out this contract. Also I hope that we can get our easements together on this as fast as we can. Heaven forbid we get the plant built and not have all the easements together and get all the line work to it. Lastly, and I mentioned this at the Water & Sewer Committee meeting the east line work, it seems like its kind of been pitched to the side and not discussed quite as much and that to me is a critical part of this sewer project. Overall sewer project as much as the west side plant and I don't want to eliminate any of that scope of work either. I know that's a discussion later on down the road. I just want to say now that I don't want to see any of that east line work eliminated from the scope of this whole project. Otherwise I'm glad we finally got to this point.

Mayor Coody: No kidding. All right thanks and I want to thank the Sewer Committee for all your hard work and I really want to thank the staff for all the hard work that they put into this too. The team approach has been working very well. I'm very pleased with how this is finally come about. Alright, any question or comments.

Alderman Marr: What is the anticipated completion date of this project?

Mayor Coody: May of 2008.

Kit Williams: May 31, 2008 according to the contract.

Alderman Marr: Thank you.

Ron Petrie: That's a substantial completion date.

Jeff Erf: Good evening Mayor, City Council. About six months ago the current or the estimate for the construction costs for the west side wastewater treatment plant based on data I believe from McGoodwin, Williams & Yates; and reviewed by Burns & McDonnell who at that time was the program manager, the estimated cost was around \$44 million. Now today before you is the contract for around \$60 million, that's about 36% percent higher than six months ago and \$16 million higher. Could someone explain to me the difference?

Mayor Coody: Since the engineers made the estimates I would expect that the engineers would be the ones with that explanation. Mr. Ulmer do you have any answer for that?

Mr. Elmer: Mayor. We followed a lot of work in the last six months and I've talked to several people about several projects and I haven't found a single engineer that has had a project come in at their estimate. The reason is that the market place has been in a very significant period of

inflation of price, concrete, steel, and anything that is made out of concrete and steel and when this project was negotiated gasoline was \$1.00 a gallon more than it was the year before. These are the issues that we've had to deal with. We don't make the market. We can't establish the market place. We've had to deal with these issues that the prices continue to change. The prices change from the time you bid the project until you negotiate it. Brasfield & Gorrie told us that suppliers would not hold a price for more than 30 days and some people would not give a price until it is time to deliver the materials and goods. This creates a tremendous amount of uncertainty in the market place and that's reflected in the bidding process. It's unfortunate but that's the climate that we're dealing with right now. That's why our estimate was low. Every single person I've talked to have said you cannot raise your estimating values fast enough to keep up with the market place and even your contractor has to deal with that on a day to day basis and that's why our price was different than what we estimated at the time.

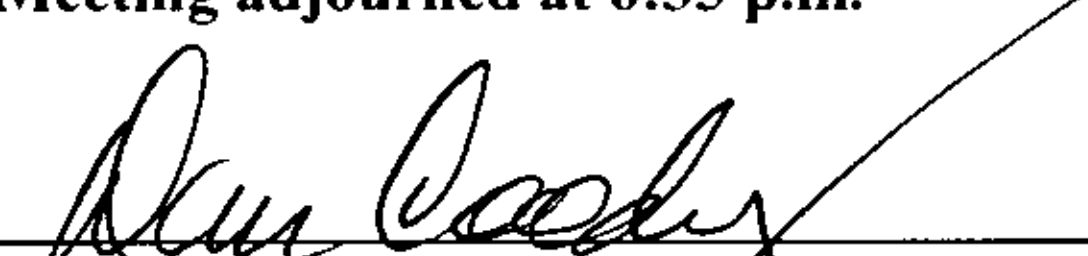
Mayor Coody: All right. Thank you very much. Any other questions?

Alderman Reynolds moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed 5-0. Aldermen Rhoads, Ferrell and Lucas were absent.

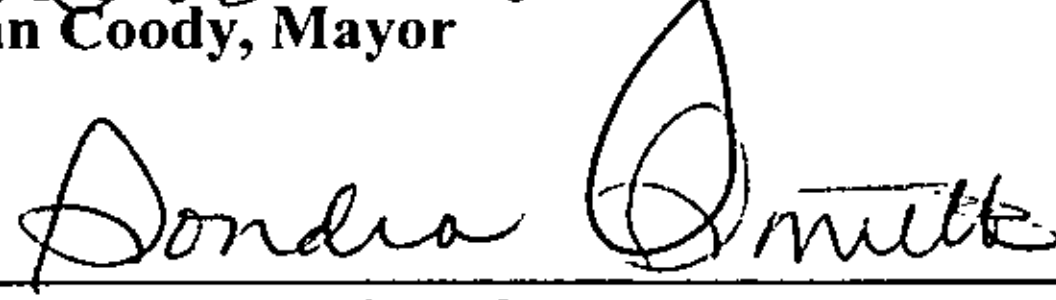
Resolution No. 208-05 as Recorded in the Office of the City Clerk.

Mayor Coody thanked every one for coming and adjourned the meeting.

Meeting adjourned at 6:35 p.m.



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer