

Regular City Commission Meeting

Mayor Winters presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**ROLL CALL:** City Commissioners present: Michael Winters, Bob Jones, Bill Bronson, Fred Burow and Bob Kelly. Also present were the City Manager and Deputy City Manager; City Attorney; Directors of Fiscal Services, Park and Recreation, Planning and Community Development, and Public Works; Police Chief; and the City Clerk.

**PROCLAMATION:** Mayor Winters read a proclamation for Black History Month.

**PRESENTATION:** Mayor Winters presented Municipal Court Judge Nancy Luth with a resolution of commendation, appreciation and gratitude for her dedication and 30+ years of service to the City of Great Falls.

**SWEARING IN:** Municipal Court Judge Nancy Luth officiated the swearing in ceremony for Steven Bolstad, Municipal Court Judge.

**\*\* Action Minutes of the Great Falls City Commission. Please refer to the audio/video recording of this meeting for additional detail. \*\***

## **NEIGHBORHOOD COUNCILS**

### **1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

There were no miscellaneous reports and announcements from representatives of Neighborhood Councils.

### **CONSENT AGENDA**

2. Minutes, January 21, 2014, Commission meeting.
3. Total expenditures of \$1,035,564 for the period of January 10-29, 2014, to include claims over \$5,000, in the amount of \$857,985.
4. Contracts list.
5. Lien release list.
6. Set public hearing for February 18, 2014, on Resolution 10050, Swimming Pool Fees.
7. Set public hearing for February 18, 2014, on Resolution 10053, Establishing Fees for the Mansfield Center for the Performing Arts at the Civic Center.

8. Set public hearing for February 18, 2014, on Resolution 10052, Restoration, Rehabilitation, Expansion, and New Construction of Qualified Historic Properties Tax Abatement for Arvon Block Development Venture, LLC, located at 114-118 1<sup>st</sup> Avenue South.

**Commissioner Burow moved, seconded by Commissioners Jones and Kelly, that the City Commission accept the Consent Agenda, as presented.**

Mayor Winters asked if there was any discussion amongst the Commissioners or comments from the public. No one responded.

With regard to Item 7, City Manager Greg Doyon noted changes that will be made to proposed Resolution 10053, Fees for Mansfield Center for the Performing Arts at the Civic Center, before the public hearing. With regard to Item 8, Resolution 10052, Restoration, Rehabilitation, Expansion, and New Construction of Qualified Historic Properties Tax Abatement for Arvon Block Development Venture, LLC, he recognized that the property is also located in a TIF District. Manager Doyon asked the Commission to consider policy with regard to the impact these resolutions have on the ability to generate new taxes in a TIF District.

There being no further comments, Mayor Winters called for the vote.

Motion carried 5-0.

### **BOARDS & COMMISSIONS**

#### **9. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

There were no miscellaneous reports and announcements from representatives of Boards and Commissions.

### **PUBLIC HEARINGS**

### **OLD BUSINESS**

#### **10. TERMINATION, SETTLEMENT AND RELEASE AGREEMENT AMONG GENERAL MILLS OPERATIONS, LLC, THE CITY OF GREAT FALLS, AND ELECTRIC CITY POWER, INC. (OF 1472)**

City Manager Greg Doyon reported that this item is a request for the Commission to approve a Termination, Settlement and Release Agreement between General Mills, a former Electric City Power customer, and the City of Great Falls and Electric City Power. He reported that General Mills entered into a long term contract dated August 2, 2005, that was later amended and restated September 1, 2005, for a term of 37 years. He explained the sequence and timeline of events, including General Mills' termination letter and the City filing a declaratory action against Southern, through April, 2013. The Commission tackled the biggest issue first, its legal remedy with Southern. Subsequently, the Commission had conversations with prior ECP customers and asked for consideration in terms of what the City lost from electric sales, the premature termination, and taking into account that the litigation was resolved without having to include them as parties to the suit. Manager Doyon reported that he, Mayor Winters and Commissioner Jones met with a representative of General Mills, there were subsequent conversations, and General Mills approached the City indicating that it wanted to provide money in exchange for a settlement and release which

is before the Commission this evening in the amount of \$100,000.

**Commissioner Kelly moved, seconded by Commissioner Bronson, that the City Commission approve the Termination, Settlement and Release Agreement among General Mills Operations, LLC, the City of Great Falls, and Electric City Power, Inc. and accept the \$100,000 settlement payment.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Jones pointed out the federal bankruptcy trustee held the City to its all requirements contract for electricity extending for a long period of time. Negotiations started out at \$60 million and the settlement ended at \$3.25 million. He noted that the City would have been meet with negativity from the federal bankruptcy trustee had it sued customers for the term of their contracts when the City was trying to remove itself from Southern Montana without paying the \$60 million for the term of the contracts that the City entered into. He believes this to be the best conclusion, closing the books on Electric City Power and not expending any more money for attorney fees in litigation issues.

Commissioner Bronson noted that, from the experience of a litigator, a good settlement beats a long lawsuit any day of the week. Were the City to get into litigation with General Mills, the Court would require the City to enter into the kind of settlement negotiations that the City started right at the outset, that would likely result in a mediation process that could result in the City agreeing to accept a sum certain.

Mayor Winters noted he thought the citizens wouldn't look positively upon the City if it sued a vibrant company in the community.

Mayor Winters asked if there were any comments from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, referred to the proposed settlement amount as a joke. He thought it ridiculous to accept \$100,000 versus \$1,328,000 in accumulated debt. Mr. Gessaman concluded that neither he, his family, nor his corporations would do business in the future with General Mills.

Commissioner Jones clarified that over a period of time when the contract began until 2011, General Mills paid its contractual prices to the City of Great Falls. It was the City that had entered into a contract with General Mills for a period of time with no escalator clause in the contract.

**Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, also commented that he considered the settlement amount a joke.

**John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that he doesn't understand how lawyers could permit the City to fall into this trap because they should have known that power prices would increase because of deregulation.

Commissioner Bronson commented that he had nothing to do with the drafting or adoption of the original customer contracts. When predecessors sign a contract in good faith with another party the Commission has to honor that contract.

There being no one further to address the Commission, Mayor Winters called for the vote.

Motion carried 5-0.

### NEW BUSINESS

11. **ENVIRONMENTAL PROTECTION AGENCY JOINT CONSENT DECREE RE: UNITED STATES OF AMERICA AND THE STATE OF MONTANA VS. THE CITY OF GREAT FALLS AND MALTEUROP AMERICA, INC.**

City Manager Greg Doyon reported that at a special work session last week, staff, the Commission and the City's attorney conferred about this matter at length. Approval of this Consent Decree remedies a complaint that was filed against the City for operation of its sewer system. More specifically, Malteurop, in its production process, discharges fluid into the sewer system that creates H<sub>2</sub>S gas. It's aggravated by the fact that its septage is pumped uphill to a gravity point, and then it goes down to the Wastewater Treatment Plant. The primary issue EPA had concerns about was sewer gas that, at certain levels, can be harmful to people exposed to it. He emphasized that this matter does not pertain to any discharge into the river.

The proposed Consent Decree is a multi-party agreement between Malteurop, the City, Environmental Protection Agency (EPA) and Montana Department of Environmental Quality (DEQ) that addresses how the City will continue to monitor the gas in the system. There are recommended remedies for Malteurop to follow. EPA also chose to look at the entire collection system and included several other items that will be challenging and costly for the City to remedy and take care of. Manager Doyon further noted that, because there are still some adjustments that need to be made to the Consent Decree and there are still ongoing conversations about its implementation, he could not provide an exact cost of what all of those requirements will be and how it will impact the City. Manager Doyon introduced Alan Joscelyn, the attorney that represented the City in the EPA's complaint.

Alan Joscelyn reported that the Consent Decree is about two things. He explained that the federal Clean Water Act oversees how municipalities operate their sanitary sewer collection systems and water treatment plant systems. Even though municipalities have the primary responsibility and authority, the Clean Water Act sets some guidelines and standards. For the past 20 years, EPA has had an enforcement initiative to look at municipalities nationwide to see how they were functioning with respect to their Publicly Owned Treatment Works, which is basically the sewer collection system and treatment plant, and to make sure that discharges out of those plants into waters in the United States, like the Missouri, are no greater than they have to be. As a part of that initiative, the Denver EPA office took a look at Great Falls and other cities' operations, mostly reviewing regulatory reports that cities file all the time. Nationally, EPA's point was to use these reviews to justify making cities do additional studies and plans with respect to how systems are operated. More recently there have been a lot of Consent Decrees entered by EPA with municipalities nationwide imposing these sorts of requirements. The other issue is dealing with the H<sub>2</sub>S generation issues that arise out of the Malting Plant.

Attorney Joscelyn explained that the events covered in the Consent Decree go back to the 2005-2006 timeframe when EPA started doing its review and when H<sub>2</sub>S issues were first made aware. He discussed the sequence of events since that time that led to the proposed Consent Decree.

Approval of the proposed Consent Decree will accomplish two things, mainly it provides for a civil penalty and it provides for compliance requirements. It is a three party Consent Decree involving the City, EPA and Malteurop. With regard to the civil penalty, the City will be required to pay a total of \$120,000 in three payments over a three-year period. In terms of the compliance provisions, EPA is requiring the City to complete studies and plans with respect to fats, oil and grease added to the system, and root growth in terms of how it affects the system. EPA also wants studies with regard to inflow and infiltration, and to put together a comprehensive management plan for the system. It provides for the City to review its permitting program with regard to issuing permits to industrial dischargers into its system making sure that the template used is up to date. And, it provides that the City shall do a supplemental environmental project. The term of the Consent Decree is 42 months. At that time, the City can move to have the consent decree terminated.

Manager Doyon again reiterated the process with EPA. He expressed concern that this may not solve the H<sub>2</sub>S issues.

Public Works Director Jim Rearden explained that staff tried numerous things to try to identify what the issue was and then numerous things after that to try to remedy the situation. They found a system that has worked well since 2009, unless the system is shut down for maintenance or for an emergency shutdown. He feels they are being penalized for planning ahead in an industrial area of the City.

Mayor Winters asked the will of the Commission.

**Commissioner Bronson moved, seconded by Commission Burow, that the City Commission authorize the Mayor and Alan Joscelyn to enter into a Consent Decree between the United States of America and the State of Montana vs. the City of Great Falls, Montana, and Malteurop North America, Inc.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Bronson expressed appreciation to Attorney Joscelyn for his efforts in reaching this Consent Decree. He also acknowledged the efforts of Director Rearden and staff to address the problem and deal with it. Commissioner Bronson concluded that this Commission will be sending a letter to the congressional delegation expressing that, while we want to have clean water systems, this entire regulatory framework should not be the type of framework that we have to work with in this type of situation. When a community like Great Falls, in good faith, attempts to comply with the law and deal with technical problems like the City attempted to do, the response should not be “gotcha, we are going to sue you in court.” It should be the effort to find an appropriate solution, and reserve the court actions for those that refuse to obey the law.

Commissioner Burow commented that it was reported at the work session that the EPA doesn't regulate H<sub>2</sub>S caused by residential areas.

Manager Doyon responded that the EPA only enforces industry, not residential. But the point is, if H<sub>2</sub>S is bad, it shouldn't make a difference whether it's caused from industry or residential usage.

Commissioner Kelly commented that the detail presented at the work session was great. The reaction and action by the Public Works Department was the proper and appropriate response. He

also pointed out that none of this pollutant ever got to the river. It occurred prior to the water getting to the Wastewater Treatment Plant where it can, and was, treated properly so it could be discharged according to the rules and regulations.

Mayor Winters asked if there were any comments from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, commented that he loves the EPA. He suggested that, if the law were followed, the City wouldn't have a problem with the EPA. He remembered a speaker at a Commission meeting in 2007 or 2008 discussing a similar situation in Pleasant Hill, California, that ended up requiring all industrial users to do pre-treatment. He inquired why the corrosion problems created by Malteurop weren't figured in their rates a year or so ago when negotiations were ongoing.

Manager Doyon responded that Malteurop is going to pay \$525,000 in penalties to the EPA.

Director Rearden also responded that gas seeping out of manhole lids has never happened. Staff has had to monitor inside and outside of seven manholes along that line and have never registered a reading more than one part per million outside of the manholes.

**Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, inquired and was informed of Attorney Joscelyn's credentials. Mr. Witsoe made accusations of mismanagement and uninformed staff, and believes the fine should be greater because this has been ongoing for nine years.

Manager Doyon clarified that the EPA has made requirements of alternative treatment options at the Wastewater Treatment Plant and the last time sewer rates were considered a percentage of the cost of the increase was directly attributed to regulatory requirements. A \$17 million dollar project is currently underway.

Attorney Joscelyn clarified that what was dealt with in the Consent Decree had nothing to do with discharge from the plant into the river. It had to do with housekeeping with respect to how the sanitary sewer collection system is operated.

**John Hubbard**, 615 7<sup>th</sup> Avenue South, compared EPA's enforcement in this case to his contact with the EPA regarding the property of his prior employer. He concluded that the EPA is picking and choosing who it wants to fine.

There being no further comments, Mayor Winters asked the will of the Commission.

Motion carried 5-0.

### **ORDINANCES/RESOLUTIONS**

12. **ORDINANCE 3114, ASSIGN CITY ZONING TO THE AMENDED PLAT OF LOT 2, MEDICAL TECH PARK MINOR SUBDIVISION, TALUS APARTMENTS.**

Planning and Community Development Director Craig Raymond reported that at the conclusion of a public hearing held on August 13, 2013, the Planning Advisory Board recommended the City Commission approve the annexation of Talus Apartments (also known as Great Falls Apartments) legally described as Lot 2, Medical Tech Park Minor Subdivision, in the City of Great Falls,

Montana. The Planning Advisory Board also recommended approval of a subsequent minor subdivision of the property from one lot into two lots. The Zoning Commission recommended the City Commission approve assigning a zoning classification of R-6 Multi-Family High Density to the easterly lot of the proposed subdivision and M-1 Mixed-Use district to the westerly lot.

The requested action tonight is to accept Ordinance 3114 on first reading and set a public hearing for March 4, 2014, to consider annexation of the subject property, approval of the minor subdivision and assign zoning as recommended by the Planning Advisory Board and Zoning Commission.

The subject property is directly south of the existing Centenne commercial office building. The developer intends to construct a multifamily apartment building on the property. Annexation into the City would allow the property owner access to water and sewer services.

**Commissioner Jones moved, seconded by Commissioner Bronson, that the City Commission accept Ordinance 3114 on first reading and set a public hearing for March 4, 2014.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Burow inquired if the proposed project was for low income housing. Director Raymond responded that decision making can't be based on the income level.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

### **PETITIONS AND COMMUNICATIONS**

#### **13. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

- A. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, read an email he received on January 31<sup>st</sup> from an unidentified individual. Mr. Gessaman also discussed the number of negative emails and phone calls he received regarding a newspaper article about Monsanto's plans to build a facility on Stukey Road in the County.
- B. Michael Witsoe**, 2612 1<sup>st</sup> Avenue South, discussed the cold weather and stories the PBS channel has been airing about train derailments and chemicals.
- C. Ryan Holt**, 46 Prospect Drive, reported that he is an employee of Monsanto. He responded to and clarified comments made regarding Monsanto moving its operations from Bozeman to Great Falls.
- D. John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that the City shouldn't be getting fined with attorneys on staff.

### **CITY MANAGER**

#### **14. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

There were no miscellaneous reports and announcements from the City Manager.

**CITY COMMISSION**

**15. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Commissioner Burow took exception to verbal attacks on City staff this evening.

Mayor Winters encouraged citizens to attend Commission meetings.

**16. COMMISSION INITIATIVES.**

There were no Commission initiatives.

**ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Jones moved, seconded by Commissioner Kelly, to adjourn the regular meeting of February 4, 2014, at 8:57 p.m.**

Motion carried 5-0.

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Mayor Michael J. Winters

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City Clerk Lisa Kunz

Minutes Approved: February 18, 2014