

FEBRUARY 8, 1996

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, February 8, 1996, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho. There were present: Mayor Linda Milam; Councilmembers Beverly Branson, Ida Hardcastle, Gary Mills, Brad Eldredge, Larry Carlson, and Melvin Erickson. Also present were: Rosemarie Anderson, City Clerk; Dale Storer, City Attorney; and all available Division Directors.

The City Clerk read a summary of the minutes for the January 25, 1996 Regular Meeting. It was moved by Councilmember Eldredge, seconded by Councilmember Mills, that the minutes be approved as read. Roll call as follows: Ayes, Councilmembers Carlson, Erickson, Hardcastle, Eldredge, Mills, and Branson; No, none; Motion Carried.

CONSENT AGENDA ITEMS

Mayor Milam requested Council confirmation of the Appointment of Ernie Miller to serve on the Parks and Recreation Commission for a two (2) year term.

The City Clerk presented monthly reports from various Division and Department Heads and requested that they be accepted and placed on file in the City Clerk's Office.

The City Clerk presented several license applications, including a BEER LICENSE to Eagle Rock Ballroom; and BARTENDER PERMITS to Derek N. Ballard, Russell J. Bowen, Hollie K. Gilbert, Shere Hill, Christopher B. Johnson, Georgia K. Loveday, Jennifer E. Murphy, Patricia L. Noles, and Rod K. Walker, all carrying the required approvals, and requested approval to issue these licenses.

The City Clerk requested Council ratification for the publishing of legal notices calling for public hearings on February 8, 1996.

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, that the Consent Agenda be approved in accordance with the recommendations presented. Roll call as follows: Ayes, Councilmembers Hardcastle, Branson, Eldredge, Carlson, Erickson, and Mills; No, none; Motion Carried.

REGULAR AGENDA ITEMS

The City Clerk presented the following Expenditure Summary dated January 1, 1996 through January 31, 1996, after having been audited by the Fiscal Committee and paid by the Controller:

	<u>GENERAL</u>	<u>STREET</u>	<u>AIRPORT</u>	<u>WATER & SEWER</u>
SERV/MAT	\$1,747,720.30	\$ 76,342.07	\$ 143,074.95	\$ 224,559.34
SALARY	<u>898,968.99</u>	<u>48,983.64</u>	<u>28,776.14</u>	<u>114,467.82</u>
TOTAL	\$2,646,689.29	\$ 125,325.71	\$ 171,851.09	\$ 339,027.16
	<u>ELECTRIC</u>	<u>SANITATION</u>	<u>RECREATION</u>	<u>SAN SEW CAP IMP</u>
SERV/MAT	\$2,863,820.48	\$ 38,585.16	\$ 31,716.27	\$ 42,517.14
SALARY	<u>196,497.63</u>	<u>62,269.56</u>	<u>29,808.87</u>	<u>.00</u>
TOTAL	\$3,060,318.11	\$ 100,854.72	\$ 61,525.14	\$ 42,517.14
	<u>LIBRARY</u>	<u>BRIDGE/ART ST</u>	<u>AMBULANCE</u>	<u>MUN EQUIP REPL</u>
SERV/MAT	\$ 92,982.21	\$ 15,697.00	\$ 50,332.01	\$ 111,132.95
SALARY	<u>41,068.50</u>	<u>.00</u>	<u>50,982.62</u>	<u>.00</u>
TOTAL	\$ 134,050.71	\$ 15,697.00	\$ 101,314.63	\$ 111,132.95

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	<u>BPA WEATHER LN FD</u>	<u>SWIM POOL G O</u>	<u>TOTALS</u>
SERV/MAT	\$ 6,084.00	\$ 152,667.50	\$5,597,231.38
SALARY	<u>.00</u>	<u>.00</u>	<u>1,471,823.77</u>
TOTAL	\$ 6,084.00	\$ 152,667.50	\$7,069,055.15

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to ratify the payment of the January, 1996 expenditures as presented. Roll call as follows: Ayes, Councilmembers Erickson, Mills, Branson, Hardcastle, Eldredge, and Carlson; No, none; Motion Carried.

Mayor Milam declared open a public hearing to consider an appeal from the Board of Adjustment decision concerning a request for a Conditional Use Permit to locate a 28' X 70' modular building to house a copy center on property located generally at 1670 West Broadway, and legally described as Lot 17, Block 9, Westland Heights Addition (HC-1 Zone).

At the request of Councilmember Branson, the City Clerk read the following memo:

City of Idaho Falls
February 5, 1996

MEMORANDUM

TO: Mayor and City Council
FROM: William R. Gilchrist, Planning and Building Director
SUBJECT: APPEAL FROM DECISION OF BOARD OF ADJUSTMENT

The Board of Adjustment received a request to consider placing a 28' X 70' modular building at 1670 West Broadway. This property is legally described as Westland Heights Addition, Block 9, Lot 17. It is currently zoned HC-1 (Highway Commercial). The petitioner wishes to place a copy center and craft shop in the modular building. At the hearing in front of the Board of Adjustment, several people in the area voiced their protests to the proposal. Their protests were based on the fact that this was to be a temporary use and the fact that it is a modular building. After some discussion, the Board denied the request. The petitioner has since filed an appeal regarding this decision. This Department concurs with the action of the Board of Adjustment. This matter is now being submitted to the Mayor and City Council for consideration.

s/ Rod Gilchrist

The Planning and Building Director located the subject area on a map and further explained the request. Councilmember Branson requested those in favor of this proposal to come forward.

Dr. Tamala Rencher, 836 North Skyline Drive, appeared to state that she is the owner of the property being discussed. She explained that John Fielding approached her approximately two months ago with a request to rent the property and place a mobile unit on it to open the "U Copy Plus" business. She stated that she would enter into a five (5) year lease with Mr. Fielding. Dr. Rencher further explained her goals for the property in the future.

Councilmember Carlson questioned Dr. Rencher if she would landscape the area. Dr. Rencher stated that most of the area would be parking lot, with minimal landscaping.

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John Fielding, 842 East 800 North, Shelley, Idaho, appeared to explain that he is the owner of "U Copy Plus". Mr. Fielding explained that his business is open 24 hours as a self-service business. He further explained his request for a Conditional Use Permit.

Renee Lindsay, 321 13th Street, No. 8, appeared to state that she is happy with the copy center, in that her 4-year old boy plays with the toys that are available and is not running around.

Councilmember Branson requested those in opposition to this proposal to appear. No one appeared in opposition to this request.

Councilmember Carlson stated that he drove by this location. He stated that anything would add to the area.

Councilmember Branson questioned the Planning and Building Director as to whether this building would meet the Zoning Code requirements. Mr. Gilchrist stated that it meets Zoning Code, if the Conditional Use Permit is granted.

Councilmember Erickson questioned Mr. Gilchrist with regard to the reason for denial by the Board of Adjustment on this proposal. Mr. Gilchrist stated that one issue was the short-term lease for the building. A brief discussion followed regarding any items that need to be taken care of on the modular building before placing it at this location.

Dale Storer, City Attorney, requested Mr. Gilchrist to explain the conditions by which a Conditional Use Permit can be granted for the relocation of the modular building. Mr. Gilchrist stated that a Conditional Use Permit is granted for a specific use that is not specifically permitted in that particular zone. Mr. Storer read from the minutes of the Board of Adjustment Meeting, in that the building be in conformity with the type and quality of buildings in the area, the building and its placement must conform to the Building Code, the building location does not in substantial way adversely affect the buildings or uses on abutting properties, and dedication and/or improvements shall be provided in conformity with the standards of the City of Idaho Falls. Mr. Gilchrist stated that he understood that the reason for denial was that the building did not conform to those in the area, and further, there was concern over the short-term lease.

Mayor Milam stated that a Conditional Use Permit is not transferable. If someone else wanted to come in to this location and change the use, they would have to go through the same public hearing process.

Councilmember Erickson voiced his concern over the short-term lease.

Councilmember Eldredge requested to see the photographs of the modular unit that will be placed at this location. Mr. Gilchrist passed the photographs of the modular unit around the Council table. A brief discussion took place again, with regard to the amount of landscaping that could be done. Councilmember Eldredge read from the minutes that the main reason that this request was denied was that the building did not conform with all of the buildings in the area. Mr. Gilchrist showed photographs of the surrounding buildings.

There being no further discussion, it was moved by Councilmember Branson, seconded by Councilmember Carlson, to recess this public hearing to the February 22, 1996 Regular Council Meeting. Roll call as follows: Ayes, Councilmembers Hardcastle, Branson, Eldredge, Carlson, Erickson, and Mills; No, none; Motion Carried.

Mayor Milam indicated that this was the place on the agenda where citizens are invited to bring issues before the Council that are not otherwise on the agenda.

C. E. White, Jr., 3280 Chaparral Drive, appeared to state that on February 3, 1996, George Orullian passed away. Mr. Orullian was known as the "Father of Golf" and did a lot for the development of golf as a recreation, and for golf as a whole in this City. He was 86 years of age when he passed away. Mayor Milam stated that Mr. Orullian was very important to that game in this Community. About the time that Sage Lakes Golf Course was opened, Mr. Orullian came to her office and showed her 2-3 scrap books that included pictures of Pinecrest Golf Course when he started there. Mayor Milam further stated that he loved the game and made it what it is in this Community today.

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The Municipal Services Director submitted the following memos:

City of Idaho Falls
February 2, 1996

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: CHARGE OFF - UNPAID UTILITY ACCOUNTS 1991

Municipal Services respectfully requests authorization to charge off as uncollectable, all utility accounts that have not had a transaction since 1991, which includes, but not limited to, bankruptcies, skips, deceased persons, and those with no assets. These accounts total \$100,703.68, which is .27% of sales for that year.

It is further requested that authorization be given to charge off the following accounts as uncollectable: Ambulance \$207,091.95, Accounts Receivable \$253.72, and Returned Checks \$549.21.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to give authorization to charge off these unpaid accounts as presented. Roll call as follows: Ayes, Councilmembers Mills, Erickson, Carlson, Branson, Hardcastle, and Eldredge; No, none; Motion Carried.

City of Idaho Falls
February 2, 1996

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID NO. IF-96-15, SURPLUS USED EQUIPMENT

Attached for your consideration is the tabulation for Bid IF-96-15, Surplus Used Equipment.

It is the recommendation of Municipal Services to accept the high bid for each item of surplus equipment as listed on Attachment "A".

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to accept the high bid for each item of surplus equipment as listed on Attachment "A". Roll call as follows: Ayes, Councilmembers Carlson, Erickson, Hardcastle, Eldredge, Mills, and Branson; No, none; Motion Carried.

The Planning and Building Director submitted the following memo:

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City of Idaho Falls
February 2, 1996

MEMORANDUM

TO: Mayor and City Council
FROM: William R. Gilchrist, Planning and Building Director
SUBJECT: CONTRACT WITH IDAHO FALLS ARTS COUNCIL - COMMUNITY
DEVELOPMENT BLOCK GRANT

Attached is the Agreement between the City of Idaho Falls and the Idaho Falls Arts Council. The Agreement defines responsibilities under the Community Development Block Grant and was prepared by Robert Follett, Assistant City Attorney. The Block Grant monies are to be used to remove architectural barriers to handicapped accessibility in the Colonial Arts Center. The Agreement is being submitted to the Mayor and City Council for your consideration.

s/ Rod Gilchrist

Councilmember Carlson questioned why the Grant needs to go through the City of Idaho Falls. Mayor Milam explained that only units of government are eligible to receive those grants, and the City will oversee the management of the Grant. It was moved by Councilmember Branson, seconded by Carlson, to approve the Contract with the Idaho Falls Arts Council and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows: Ayes, Councilmembers Branson, Hardcastle, Mills, Eldredge, Carlson, and Erickson; No, none; Motion Carried.

The Public Works Director submitted the following memos:

City of Idaho Falls
February 6, 1996

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: WELL NO. 4 - ELECTRICAL UPGRADES
PROJECT NO. 2.38.17.3.WTR.96.7

Attached is a tabulation of bids for Well No. 4 - Electrical Upgrades. The low bid was provided by Snake River Electrical, Inc. of Blackfoot, Idaho. A number of irregularities, with respect to signatures, appeared in the Snake River Electrical, Inc. bid documents, none of which were significant enough to invalidate the bid proposal.

Public Works recommends award of the bid to Snake River Electrical, Inc. in the amount of \$135,235.00; and, authorize the Mayor and City Clerk to sign the documents.

s/ Chad Stanger

It was moved by Councilmember Erickson, seconded by Councilmember Mills, to award the bid for Well No. 4 - Electrical Upgrades to Snake River Electrical, Inc. from Blackfoot, Idaho,

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waive the irregularities and, further, give authorization for the Mayor and City Clerk to sign the contract documents. Roll call as follows: Ayes, Councilmembers Mills, Erickson, Carlson, Branson, Hardcastle, and Eldredge; No, none; Motion Carried.

City of Idaho Falls
February 2, 1996

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: CITY OF IDAHO FALLS VS. BECO CONSTRUCTION COMPANY,
INC.

Attached for your consideration is a Resolution and accompanying Mutual Release, prepared by the City Attorney, which provides for the settlement and dismissal of the Bel Aire Case involving BECO Construction Company.

s/ Chad Stanger

RESOLUTION (Resolution No. 1996-02)

WHEREAS, the City is presently involved in an action entitled *The City of Idaho Falls vs. Beco Construction Company*, bearing Case No. CV86-34763, in the District Court of the Seventh Judicial District of the County of Bonneville, State of Idaho;

WHEREAS, the defendant, Beco Construction Company, has proposed to settle said action in consideration for a Mutual Release of Claims executed by each party;

WHEREAS, such litigation has been pending for approximately ten years;

WHEREAS, the parties recognize the expense of continued litigation and the difficulties associated with prosecuting and defending their respective claims in said action, due to the passage of time and death of witnesses;

RESOLVED that the Mayor and City Clerk be and hereby are authorized to execute the Mutual Release attached hereto as Exhibit "A" and to deliver the same to counsel for said defendant and to further execute any and all other documents necessary or required by the terms of such Mutual Release in order to accomplish a dismissal with prejudice of said action.

DATED this 8th day of February, 1996.

CITY OF IDAHO FALLS

By: s/ Linda Milam
Linda Milam
Mayor

FEBRUARY 8, 1996

ATTEST:

s/ Rosemarie Anderson
Rosemarie Anderson
City Clerk

(SEAL)

CERTIFICATION

I, ROSEMARIE ANDERSON, being the duly appointed City Clerk of the City of Idaho Falls hereby certify that the above Resolution was approved and adopted by the City Council of the City of Idaho Falls, Idaho, at a regular meeting said Council held on February 8, 1996, and that on said date the Mayor and City Clerk were duly authorized to execute and deliver said Resolution.

s/ Rosemarie Anderson
Rosemarie Anderson
City Clerk

EXHIBIT "A"

MUTUAL RELEASE

AGREEMENT, made this 31st day of January, 1996, by and between the CITY OF IDAHO FALLS, a municipal corporation (hereinafter called the "CITY"), and BECO CONSTRUCTION COMPANY, a corporation (hereinafter referred to as "BECO");

W I T N E S S E T H:

WHEREAS, the parties are presently involved in an action entitled *The City of Idaho Falls vs. Beco Construction Company*, bearing Case No. CV 86-34763, in the District Court of the Seventh Judicial District of the County of Bonneville, State of Idaho (which action is hereinafter referred to as the "Action");

WHEREAS, the parties recognize the expense of continued litigation and the difficulties associated with prosecuting and defending their respective claims in the Action due to the passage of time and death of witnesses;

WHEREAS, in recognition of the foregoing, the parties desire to fully and finally settle and resolve all claims asserted in the Action or which could have been asserted against each other as a result of the facts and circumstances arising out of the Bel Aire Construction Project which is the subject of the Action;

NOW, THEREFORE, the parties agree as follows:

1. The City agrees that it will, within ten (10) days after the execution and approval of this Mutual Release by both parties and delivery of

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the resolution mentioned in paragraph 3 hereof, return to Beco the sum of \$14,000.00 cash, lawful money of the United States as and for liquidated damages withheld by the City on account of the construction project which is the subject of the Action. In consideration thereof, Beco agrees to fully and finally release the City from all claims for recovery of such amount and all interest, statutory or otherwise, accruing on account of the City's withholding of such liquidated damages. Furthermore, each of the parties hereby agree to and do by these presents fully, finally, and mutually release, waive, surrender for forever discharge the other from all claims or liability of every kind or nature, accrued, accruing or yet to accrue, asserted or unasserted, either in the Action or otherwise in any way related to or otherwise arising out of any act, omission, fact, circumstance or matter related in any way to the Project which is the subject of the Action, including but not limited to all claims or demands for recovery of court costs or attorney's fees incurred in the action. In making this release, the parties intend to release and forever relinquish all claims, counterclaims, cross-claims asserted in the Action or which could have asserted in the Action.

2. In making and executing this Mutual Release, each of the parties expressly acknowledge that:

a. This Release shall not in any way be construed to be an admission of liability by either party, that each party expressly denies such liability and that it is the intention of the parties merely to buy their peace;

b. Each party has been represented by legal counsel to the execution of this Mutual Release, that legal counsel for each party has fully and completely explained all ramifications, causes, and consequences associated with the execution hereof;

c. Neither party is relying upon any fact, statement, or representation made by the other or their legal counsel and that each party is relying upon its independent investigation of the extent and nature of their damages and the liability therefor;

d. It is the intent of the parties to fully, completely, and finally settle and resolve all claims, demands and disputes between the parties that are asserted or that may be asserted in the Action, irrespective of whether such claims have accrued or may accrue hereafter or are known or may become known by the parties after the date hereof;

e. Each of the parties expressly acknowledges that in making this Release they and their agents are not acting under any duress, coercion, or disability of any kind or nature.

3. The officers executing this Release hereto expressly warrant and represent that he or she has full and complete authority by duly-passed resolution of the Board of Directors or Governing Body of the parties, to execute and deliver this Mutual Release. As a condition precedent to payment of the settlement sum set forth in paragraph 1 above, and the dismissal of the action by each of the parties, each party shall deliver to the other a resolution,

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duly certified by the Clerk or Secretary of the Board of Directors or Governing Bodies of the parties, to the effect that the execution of this Release has been duly and unconditionally authorized by said Board or Governing Body in accordance with its terms.

4. Upon payment of the consideration set forth in paragraph 1 hereof, the parties agree that the Action be dismissed with prejudice and that each of the parties will execute a written Stipulation to that effect, failing which, either party shall, upon motion to the Court, be entitled to the issuance of an order dismissing the Action with prejudice.

5. Each party acknowledges that this Stipulation has been drafted and reviewed by each of their respective legal counsel and that in the event of any ambiguity in the terms and conditions hereof, no adverse presumption or construction shall be drawn or asserted against the drafter hereof.

6. In the event it becomes necessary to enforce the terms and conditions of this Mutual Release, each party agrees to pay the reasonable attorney's fees and costs of the prevailing party in any action or proceeding brought to enforce the terms and conditions hereof.

7. This Release shall be binding upon and inure to the benefit of the parties hereto and their officers, agents, insurers, successors, and assigns.

8. The parties declare that no promises, inducements, or agreements not stated herein have been made to them, that this writing evidences the complete and final agreement of the parties hereto, and no other prior statement, representation, or understanding shall be binding except as expressly set forth herein.

ATTEST:

s/ Jackie Gallup
Secretary

BECO CONSTRUCTION COMPANY

By: Doyle Beck
Doyle Beck
President

ATTEST:

s/ Rosemarie Anderson
Rosemarie Anderson
City Clerk

CITY OF IDAHO FALLS

s/ Linda Milam
Linda Milam
Mayor

It was moved by Councilmember Erickson, seconded by Councilmember Mills, to approve the Resolution, accept the Mutual Release from BECO Construction Company, Inc. and, further, give authorization for the Mayor to sign the necessary documents. Roll call as

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follows: Ayes, Councilmembers Carlson, Erickson, Hardcastle, Eldredge, Mills, and Branson; No, none; Motion Carried.

There being no further business, it was moved by Councilmember Eldredge, seconded by Councilmember Mills, that the meeting adjourn at 8:00 p.m.

CITY CLERK

MAYOR

* * * * *