OCTOBER 27, 1983

Pursuant to a call by the Mayor, the City Council of the City of Idaho Falls, met in Special Session in the Mayor's Conference Room, 308 C. Street, on October 27, 1983 at 12:00 Noon for the purpose of discussion of conservation contracts.

There were present at said meeting: Mayor Tom Campbell; Councilmen Wes Deist, Paul Hovey, Sam Sakaguchi, Ralph Wood, and Art Chandler; absent, Councilman Mel Erickson. Also present: Velma Chandler, City Clerk; Dale Storer, City Attorney; Jeff Paine, Van Ashton and Steve Harrison from the Electrical Department; Don Lloyd, Public Works Director; Romney Painter, Street Superintendent; and John Evans, City Controller.

Mayor Campbell asked Councilman Hovey to explain the conservation program. Councilman Hovey said that this program has been reviewed several times by the Council, and on October 20th the Council authorized the Mayor and City Clerk to sign the contract, but that it should not be delivered to BPA until reviewed by the legal counsel. He said that the contract, specifically, relates to how the conservation program would be carried out by the City and funded through BPA and, then again, through the individual rate payer. Hovey then asked Attorney Storer to review the contract.

Attorney Storer reported that the Council had, previously, been concerned over several items in the contract and several pending suits that have been filed by a number of aluminum companies and home building associations, challenging the authority of BPA to engage in this sort of a program. He also said that there was concern as to the authority of the City itself to enter into a contract in view of the nature of the conservation charges which are provided for and set forth in the contract. He said that he and Attorney Art Smith have reviewed the pending lawsuits, and even though they are unresolved, and they all request that BPA be enjoined from proceeding with the program, in view of the fact that only injunctive relief is being sought, it is counsel's opinion that it would be wise for the City to proceed with the contract only with assurance that this would not place the City in a position of having committed to the various homeowners more than those amounts for which they already have funds in their coffers from BPA, so that, if the Court so deems, the City would not be in the posture of having committed the City to make payments to the homeowners and not having funds to do so. He said that he would recommend that, if the Council decides to proceed with the contract, they do so in a rather conservative manner, that the weatherization program not be implemented "full force" but, rather, that the City proceed on a somewhat more moderate pace, to insure that their expenditures approximate the dollar amount of commitment which the City has outstanding. He said there is a "sinking capital fund" provision where BPA would permit to the City a certain amount, based upon their estimated budget, on a monthly basis and the City would draw down on that fund and then each month, that fund would be replenished. He recommended that, if the Council chooses to proceed, they take this approach so that the City has the ability of insuring that the City does not over commit itself to funds that maybe they could not pay. Storer then explained the concerns of the legal department relating to the imposition of what the contract deems to be a conservation charge. He said that the contract contains a provision that provides that BPA will allocate a factor each year that would be included within the wholesale power rates, to recoup their costs incurred in paying for the conservation measures. He said that he was concerned with this and, upon review, he found that it is the intent of BPA to assess that conservation charge irrespective of whether or not the City signs the contract. Therefore, this charge will be included within the rates whether or not the City signs the contract. He said that BPA views weatherization as a conservative or power resource. He said that this has not been tested in the Courts. Storer said, further, that in the past the City has added amendments to power sales agreements to include a provision in the authorizing resolution, which provides that the City enter into the contract insofar as the City has authority under the statutory and constitutional provision of our State and Federal laws. Storer explained what other Idaho cities are planning to do on the conservation programs.

Mayor Campbell asked Attorney Storer if the City would have to pay whether or not they signed the contract. Storer answered that BPA will add the cost to the rates irrespective of whether or not the City signed the contract. Mayor Campbell asked if the City could be penalized in any other way if they opted not to participate. Storer answered that, under the North-West Power Act, the City could be penalized up to fifty percent if they failed to implement limitations of the contract. Storer answered that the contract was for a seven year period but contained a "thirty day termination upon request" clause.

Councilman Hovey objected to the contract, calling the contract another welfare program that should be funded through general taxes. He said the conservation program was a form of legalized blackmail.

After further discussion, it was moved by Councilman Wood, seconded by Chandler, that the Mayor and City Clerk be authorized to sign the resolution, and that the Mayor be hereby authorized to cause said conservation agreements to be delivered to BPA and to advise it that the City deems itself bound by said agreements insofar as said agreements are not in conflict with the constitutions and statutes of the United States of American and the State of Idaho. Roll call as follows: Ayes, Councilmen Deist, Sakaguchi, Wood, and Chandler; No, Councilman Hovey; carried.

R E S O L U T I O N (Resolution No. 1983-13)

WHEREAS, on the 21st day of September, 1983, the City Council of the City of Idaho Falls, authorized the Mayor to sign the Residential Weatherization Program Conservation Agreement, Contract No. DE-MS70-83BP91434; and the Street and Area Lighting Program Conservation Agreement, Contract No. DE-MS79-83BP91570, with the United States of America, Department of Energy, acting by and through the Bonneville Power Administration;

WHEREAS, delivery of said Conservation Agreements was withheld pending resolution of certain concerns arising out of said Agreements;

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Mayor be and hereby is authorized to cause said Conservation Agreements to be delivered to the Bonneville Power Administration and to advise it that the City deems itself bound by said Agreements insofar as said Agreements are not in conflict with the constitutions and statutes of the United States of America and the State of Idaho.

DONE AND DATED this 27th day of October, 1983.

s/ Thomas Campbell

Mayor Campbell then introduced Councilman Sakaguchi, who in turn, invited Don Lloyd and Romney Painter to explain the proposal for snow removal for the upcoming winter season.

There being no further business, it was moved by Councilman Chandler, seconded by Deist, that the meeting adjourn at 1:00 P.M., carried.

s/ Velma Chandler
City Clerk

s/ Thomas Campbell
Mayor

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