

**MUSTANG CITY COUNCIL
JANUARY 2, 2013**

The Mustang City Council met in regular session on Tuesday, January 2, 2013 at 7:00 p.m. in the Mustang Municipal Building Council Chambers. Notice of the meeting was posted on the Bulletin Board outside the Mustang Municipal Building on Friday, December 28, 2012 at 1:25 p.m. and Amended and Posted on December 31, 2012 at 2:45 p.m. in compliance with the Open Meeting Law, 25 O.S., Section 301, et. seq.

A. CALL TO ORDER

Mayor Adams called the meeting to order at 7:00 p.m.

B. PLEDGE OF ALLEGIANCE/INVOCATION (Pastor Larry Holder, Mustang Methodist Church)

Councilman Jones led the assembly in the Pledge of Allegiance and the Prayer.

C. ROLL CALL

Council members Present:

**Taylor
Bowers
Jones
Hagan
Mount
Adams**

Council members Absent:

Grubbs

D. INTRODUCTION OF GUESTS/HEARING OF CITIZENS OR DELEGATES

There was none.

E. NEW BUSINESS, DELETIONS OR CONTINUANCES TO THE AGENDA

Mayor Adams stated that Councilman Grubbs is still out of town so he asked that Items H-3 and 4 of the Discussion Items be pulled until the next meeting so he could be present. He stated if Council has no objections this will be tabled until the next meeting.

Council showed no objection to this request.

F. CONSENT AGENDA

1. Approval of **12/18/12** City Council Minutes.
- *2. Approval of Claims List for **FY '13**
3. Approval of **Resolution No. 13-026**, Making Changes in the Street/Drainage Fund Budget by Making a Supplemental Appropriation to Increase the 2012-2013 Fiscal Year Budget by \$133,000.

City Manager Rutledge stated that on the **Consent Agenda Item F-3** there is a typo on the commentary. In the background the date states December 10, 2013 and that should be 2012.

Councilman Taylor asked that Item F-2 be pulled for separate discussion and **Councilman Mount** asked that Item F-1 be pulled for separate discussion.

MOTION was made by **Councilman Mount**, seconded by **Councilwoman Bowers** to approve **Item F-3** of the Consent Agenda.

AYE: Taylor, Bowers, Jones, Hagan, Mount, Adams
NAY: None

In reference to Item F-1 of the Consent Agenda, Councilman Mount stated that he read the minutes and on the City Manager's report he couldn't recall his report being like the minutes are here. He stated as he recalled he didn't even know the company that had been hired to go out and investigate that leak. The report he heard was they did come out and found the leak and said the pipe was 8 ft deep on the east end and 13 feet deep on the west end and was a 12" pipe and he also understood that Severn Trent after two days out there had already fixed the leak at that point. That is what he thought he heard.

MOTION was made by **Councilman Jones**, seconded by **Councilwoman Hagan** to approve **Item F-1**.

Roll Call vote was taken and was as follows:

AYE: Bowers, Jones, Hagan, Adams
NAY: Taylor, Mount

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Councilman Taylor asked about Department 13, Parks and Recreation there was an oil change charge for the senior bus in the amount of \$31.95. He asked if that money could not have been spent in Mustang.

Justin Battles stated yes but it would have been double the price. Joe Cooper has a lift and no one in the City has a lift so they would have to do outside the building because of large capacity of the bus. So yes, but it would cost about \$60.

Councilman Mount noticed a payment again for the backhoe on the lease so he wanted to know the remaining balance on the lease, remaining months on the lease, whether or not there are residual fees that would have to be paid on the end of the lease and the make and model of the backhoe.

Rutledge stated that Welsh State Bank holds the lease on that and he left his number to have a lady call him back with that balance. He thinks it is about \$25,000 per your request you sent me and that is the only document he has left on that. He stated that there is nothing wrong with the backhoe it runs and drives, it is not salvaged.

Mount wanted to know the make and model of the backhoe and Rutledge stated that it is a 2009 caterpillar but he did not have the model number but would get it for him.

Rutledge gave some background on the backhoe as to how it was purchased. He stated that it was purchased from Canadian County from Don Young when he was Commissioner. It had about 7 hours of time on it. The County purchased it for \$90,000 and we purchased it for about \$85,000. We needed the backhoe at the time and provided it for Severn Trent to use. This was an opportunity to get a good and new piece of equipment for less than what it would cost us to purchase it somewhere else.

Finance Director, Janet Isaacs stated that the model is a 420E and she had the amortization schedule if he needed it.

MOTION was made by **Councilman Taylor**, seconded by **Councilman Jones** to approve Item F-2.

AYE: Taylor, Bowers, Jones, Hagan, Mount, Adams
NAY: None

G. INFORMATION/REPORTS

1. City Manager

City Manager Rutledge stated that he just found out that there is a water leak to the south of our pond in the park and they are out working on that now.

Jan Guy with Severn Trent said that it is done.

Rutledge also reported on the waterline break at the Police Department a few weeks ago. A waterline on the fire suppression system in the building broke in the ceiling over the officer's area. It flooded those and damaged some documents in there. Simplex Grinnell was doing some work there a couple of months before and they are looking into that. Our insurance company is also looking into it.

The ice and snow storm was a good exercise for Silver Star and he explained what all they did to keep the snow and ice off the streets, etc.

There was a Board of Adjustment meeting this morning to approve the variance on the height of St. Anthony's Building.

Taylor asked the City Manager if the City has a document policy in place on scanning documents.

Rutledge stated that we don't scan everything but we do scan quite a few documents but no policy.

2. City Council

Taylor stated that he would like to get a report on fireworks over the New Year's holiday to see if anything happened.

Rutledge stated that he did not hear of anything happening.

Taylor stated that he would like a report on what can be done to reduce the arsenic level and why it is at the high end.

Rutledge stated that nitrates in the ground is a source for a lot of that.

Dave Gentry with Severn Trent stated that most of your wells are out of the Garber Wellington and they are high in metals. Garber Wellington is noted for high metals specifically arsenic. Several years ago we looked at the possibility of arsenic removal and there are a couple of products that will physically remove arsenic from the water. Severn Trent did a study for the City and he was sure he might have that somewhere. The decision at that time was to lower the levels by blending. We had a couple of wells that had lower arsenic and a couple that had higher levels and a plan was put together on how to blend those wells to bring the arsenic level down to the maximum allowable quantity.

He stated essentially they cut the maximum allowable quantity by half over night. The only acceptable number is below the maximum allowable quantity.

Taylor stated his particular concern is if we are buying water from Oklahoma City and their arsenic level is lower and we mix with Mustang water and we are still at the high end. That gives him some concern that maybe Mustang is above the acceptable limit and with the Oklahoma City water has a lower level is bringing it back into that normal acceptable range.

Rutledge stated that we test our wells and he did not believe that was the case. He stated that he would get him more information and give it to him.

Mount stated if all ten of those wells are in the same aquifer why do they have different arsenic levels in different wells.

Gentry explained that it is like air quality. It is the stratosphere of the aquifer and he explained briefly.

Mount asked if the City has considered drilling additional wells.

Gentry stated for a while they were looking at different alternative sources such as COWRA. They looked at different surface impoundments and ground water source down by Newcastle but he doesn't know that anybody is considering drilling new wells because of arsenic levels. He stated that Norman can physically treat it with the system they have so they can do what they want.

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Rutledge talked about where COWRA is right now with their studies regarding brackish water. He stated that may be a solution to some of these issues. We have a lot of things we need to deal with but we are probably closer now then we have been.

City Attorney Miller stated that this is not an agenda item. You can answer a few questions but can't get the entire Council engaged in a discussion without violating the Open Meeting Act.

Taylor asked the City Manager if it would be feasible to include a second sheet with the utility bill on how the water bill is calculated. He has had questions as to what exactly goes into the bill, how the calculation is made.

Taylor also asked if we have a resource to get an opinion on whether feeding the ducks and the geese are proper not only for wild life but also for our park.

Battles explained that the State Oklahoma Wild Life Department has made a recommendation to Please Do Not Feed the Geese. He stated that he would ask them to come out and look at the situation again and give us a report.

Taylor asked that there be an item on the next agenda to discuss the arsenic levels.

Bowers stated that she calls the City Manager every time she gets her book and he answers her questions and she thanked him for that.

Jones stated that his heart goes out to the family members of those who lost loved ones and whose loved ones are still in the hospital.

Mount stated that he has had a whole bunch of phone calls and not all were from his Ward but he does appreciate their phone calls.

Mayor Adams stated that he received a very nice complimentary phone call the other day and he was so shocked but it was nice to get a phone call like that.

H. DISCUSSION ITEMS

1. **Discussion, Consideration and Possible Action** Regarding Reappointment of Municipal Judge Steve Huddleston and Alternate Judge Chris Box.

Adams stated that this is an appointment by the Mayor with the approval of the City Council.

Adams made the **MOTION** to reappoint Judge Huddleston and Alternate Judge Box.

Taylor stated that he didn't think Council could vote on that today. He stated that the only notice he received was on Friday in his packet. He doesn't know anything about Steve Huddleston or Chris Box and he wouldn't have anything substantial to give his constituents if they asked him his feelings in any way. More importantly under Section 26-62 this should have been submitted to Council at the December 18th meeting. He stated that he has not received anything written relating to this appointment.

Adams asked him what kind of documentation he wants on our Judge.

Taylor stated that he was not sure. He didn't know so he read the code again to Council regarding something in writing referring to this appointment.

Adams asked the City Attorney if he was suppose to submit something in writing to Council since he is the one who makes this appointment.

City Attorney Miller looked at the code and stated that the agenda item in the agenda packet satisfies the requirement for the proposed nomination.

Adams stated but this should have been at the last Council Meeting instead of this meeting.

City Attorney Miller stated that is how it is construed.

Adams pointed out to the City Manager that Council has to table this item until the next meeting before we can vote on this and the City Manager said it sounds that way.

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Taylor asked for a resume on the Judges strictly for his information so he could talk with his constituents about these Judges in a reasonable manner.

The City Clerk stated that the Judge has been here for 25 years so we don't have a resume but I suppose I could get you one.

Adams stated that Chris Box has been here for about 15 years.

Rutledge stated that he would get a resume from the Judges.

MOTION was made by **Councilman Taylor**, seconded by **Councilman Mount** to table Item H-1 until the next meeting.

AYE: Taylor, Bowers, Jones, Hagan, Mount

NAY: Adams

- *2. **Discussion, Consideration and Possible Action** Regarding Directing the City Manager to proceed with Repairs to the Leaking Waterline at West SH 152 and Clear Springs.

City Manager Rutledge stated when last we met Severn Trent was out working on the water leak at Hwy152 and Clear Springs. They could not reach the line to find the leak so the information that Mount had mentioned earlier was the wrong information. It did not occur.

Rutledge stated the leak has not gotten any worse it doesn't appear. Over the last two weeks they have been pumping the water down and have put it in the manhole behind the convenience store. At this point we don't feel comfortable that the line has been exposed however their equipment won't reach it and he doesn't believe they have the expertise to accomplish that but we let them speak to that. He stated that he talked to Mr. Shawn who uses a company in Norman for water line repairs. He came out and looked at the project and feels like he can do the repair. They don't believe the line is separated but with the weight of the dirt removed it doesn't appear that the line is worse. I believe we should either retain another company to come in and do that repair or have Severn Trent come in and try to do it.

Adams stated I thought you just said they can't do it.

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Rutledge stated that he doesn't believe they can but if Council would like to ask them if they can do that.

Mount stated in his opinion that what is on the agenda tonight is not a business matter that Council needs to act on. He believes that this matter was handled on August 1, 2012 when the City Council signed the contract with Severn Trent for \$1.6 million a year to maintain the sewer and water systems. At that time the water leak became the responsibility of Severn Trent in his opinion. He stated now the City Manager and Severn Trent would like the City to continue to pay Severn Trent the \$1.6 million and hire an outside vendor to do the work and pay them as well.

Mount stated that Severn Trent signed a contract that said that they had the equipment, the manpower and expertise to form the contract.

Mount went over the contents of the commentary that was written by the City Manager regarding this matter and questioned most of what was written.

Mount talked about the backhoe that is a 420E that was checked out by his people and it has the capability to dig 22 foot deep and Mr. Gentry told us that they didn't have the ability to dig any further.

Mount talked about how much experience he has with the construction business and how he helped build the waterline from Atoka to Oklahoma City and how he understands it and still remembers it. Either we have a contract that is good or we don't have as far as he is concerned.

Mount stated that he realizes that some people sitting on this Council knows very little about water lines and the construction of them or the repair of them or operation of the water system. He has been there and done that and stated that he does know about them. He stated that some people on this Council has probably already made up their minds on this thinking that it is really important because we are going to have more damage. Both are state highways. Even the big savings pointed out here which is \$20-\$30,000 now compared to a prior bid of \$60-\$70,000 is suppose to look like a \$40,000 savings to us but he still doesn't see it that way.

Mount stated that Severn Trent has the obligation to fix that and he doesn't think that this City or the citizens of Mustang should go out and spend more money on someone else in order to do their job. He thinks if this Council does what is

right their vote has to be no instead of going along with the status quo. I think that needs to stop. Either the contract is good or its not, either Severn Trent is going to fix it or they are not. Mount stated that as far as he is concerned and on behalf of the citizens of Mustang the answer to doing this as proposed here the answer is no.

Taylor asked about the quotes that came in from Carl Gray, previous Project Manager for Severn Trent, in the \$60-70,000 range. Was this a quote that Severn Trent was going to bill the City of Mustang for and then they would contract this out?

Rutledge said, yes.

Taylor said so the possibility of a \$30,000 repair is that they would have charged the City \$60-\$70,000 and it would be a mark-up.

Rutledge explained that the bid was higher because of the concept that they might have to bypass that line.

Taylor asked since these are State Highways 152 and 92 if there was some damage would the state come after the City for money to fix that repair ultimately.

Mount stated that should already be covered in the contract under Paragraph 2.1.1 they will provide full 24 hours per day 7 days a week service. Paragraph 2.1.3 repeats the 7 day, 24 hours service and further talks about on emergencies will be there within one hour. So looks like if falls off in a hole should be there in one hour to fix it.

Adams explained that Highway 92 is no longer a state highway it has been deeded over to the City of Mustang for our maintenance in exchange for forgiveness of the City's debt. This happened in 2009 by a resolution.

Adams stated that ultimately in case of damage to the highway the City would be responsible for cost to repair it.

Taylor stated the last thing he wants to do is leave this leak out there and have some possibility of damage to occur. He agrees that per their contract that Severn Trent should have the capability to make this repair.

Taylor asked who the contractor is and what was the process in choosing him?

Rutledge stated that it is a company that Steve Shawn uses out of Norman.

Taylor said, so it is a recommendation from Silver Star.

Adams felt that most of these questions are a legal issue and should be directed to the City Attorney on review of the contract to see if Severn Trent would be liable on this particular piece.

Miller stated that he looked at the contract briefly and also he is not an expert on water line repairs by any means but under the terms of the contract there is a provision that if the items of repair or maintenance are extraordinary or beyond the capacity or knowledge reasonably expected of the contractor's employees exclusively assigned to the facilities that may be something that would be appropriately bid out to a third party but he does not know if this repair is an item that is extraordinary or that is something not expected to be done by staff here.

Taylor stated so if it was beyond their scope or their range of capability to perform this type of repair and it would have to be contracted out would Severn Trent be liable for the payment for that even if some outside contractor had to do it.

City Attorney Miller stated again that he has not done an in depth analysis to try to determine this particular issue is something that would or would not be within that if it is something that is outside of the scope of the contract for Severn Trent services then that would be something that would be done by the City.

Mount stated that it looks like to him that you need to determine what the definition is of extraordinary.

Taylor asked if the City Manager had anyone here who could speak to the likelihood of damage to SH 152 or Clear springs if tabled for two weeks.

Rutledge stated that with that line exposed he would like to see it repaired before that. He would prefer to get this cleaned up with that likelihood but he could not say if it would be ok for another two weeks or not.

Taylor stated that he wanted an official word either way from the City Attorney on whether this is outside the scope of Severn Trent on the contract if they would be liable for this payment if they hired an outside contractor.

With that **Taylor** made a **MOTION** to table this item until the next meeting.

Jones pointed out that this is a very serious issue and if as we continue to weigh the possibility of who is right and wrong and the legalities of it this could go on for months when the urgent situation is something we have to be aware of and our primary concern and the businesses there. It is not an easy question but he thinks to determine the legal aspects of it could go on more than two weeks.

Adams stated that he felt there are two issues we are dealing with. First is the legal issue and we needed to have the City Attorney research the contract to see who is responsible. As Councilman Jones said don't think we can wait that long so the other issue is how do we take care of this in between the time of getting the legal opinion and what the justification is in getting the work done. We could give the City Manager authority to go forward and get the bid and get it fixed while the legal opinion is being put together and if it is their responsibility we send them the bill and if they don't pay we file lawsuit to force them to pay it. If we are responsible then we have already done the work and we have already paid for it.

Taylor asked for a recess so that the City Attorney could go research this and bring it back to us tonight with an answer tonight.

Miller stated that a brief recess would not be enough time for him to research this and come up with an answer. The ultimate question is going to depend upon some factual review and visits with some experts in this field in regard to whether or not something is extraordinary.

Mount stated that he can see the urgency in this but this Council has a habit of sitting here and listening to all this rhetoric and says hey we have to do it right now. He stated we should find out who is responsible right now. Why should we pay it and then go back and try to collect on it when we have a matter in front of us right now. He doesn't understand that or the business point behind it.

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Adams stated that he depends on the Attorney to look at it and give a legal opinion on who is responsible for this.

Mount stated that it has been leaking for some time so he is not able to see the urgency that some people might see.

Taylor stated that he would like a report back from the City Attorney on the legal responsibility of this.

Rutledge asked for guidance in this in the event the line should rupture. He asked if they were prepared to allow him to hire an outside source. He doesn't know how long this will last.

Taylor stated but in the event of a full line rupture that would be a true emergency even where Severn Trent would be on site in an hour and come out and fix it.

Mount talked about the hole being dug up and being more susceptible to leaking now than if it was left alone. Who is responsible for that? Severn Trent dug it up at this point.

Dave Gentry stated that they dug the hole at the City's request.

Adams stated in the event you have a full line rupture like this you either insist Severn Trent fix it or at least cap it off. If they still can't fix it at that point then you call an emergency Council Meeting and we will deal with it at that point.

Mount talked about cutting the valve off and bypassing it.

Adams stated that would cut off a whole bunch of homes.

Jones asked the City Attorney if he would be able to return with this information in two weeks.

Miller stated that is possible but he would rather not get into that discussion in open forum.

The City Attorney made note that there was a **Motion** by **Taylor** but no second; therefore, **Mount** made the **second to table this item until the next meeting**.

Taylor asked for a roll call vote.

Jones asked Mr. Gentry about his thoughts on this.

Gentry stated the bids they solicited for the City are not subject to markup for Severn Trent. They are a straight pass through and it was the City's decision on what contractor to use and it was specked out by us. The City has the right to increase or decrease the specifications but it is not an opportunity for Severn Trent to make additional money by not performing.

Gentry gave Council some history on what has taken place. He stated that this is nothing new. In mid September we informed the City that this was a project beyond our capability and an extraordinary project. We based it on a couple of things and one was the depth at that corner. He went back and looked at PO's over the 11 years that Severn Trent has worked for the City and there were only two other occasions where we used a third party contractor to do work of this type. One of those occasions was that corner itself in 2004. The reason we made this decision in September is that we looked at how deep it was and where it was and what it was going to affect.

He stated that our original price of the contract was \$1.9 million with a lot of equipment in there. A Vactor Truck, TV trucks, etc. but in order to negotiate the contract down we had to remove scope and equipment of that nature. The clause that was read about extraordinary events has been in the contract for the last 11 years and is nothing new. We have used it on occasion and it is our goal to be able to fix 98-99% of leaks in Mustang and he believes they have done that since can only find two where they didn't.

Gentry explained that in September they notified the City that they couldn't perform this task then wrote the bid specs. The reason we defined it as extraordinary was because we knew the depth and knew we didn't have the equipment to get down there and didn't have the safety equipment to go that deep and it was beyond the capability of the people exclusively assigned to this project. Also we put in our bid specs that we anticipated water loss because of the configuration and what would have to take place in order to fix it properly. He listed the areas that would be affected by this water loss. Anticipated water pressure loss went to 9 additions that he listed. He stated that it is a critical part of the infrastructure.

He explained that if something went wrong they might have to use other equipment that they didn't supply with the contract nor did they promise and equipment that may or may not be available. While doing all that other things that would not be getting done that was in our scope.

That was the reason Severn Trent came in September and told the City it was beyond our capability. We gathered up bids and gave them to the City on October 4th and we were not happy with those bids and we resubmitted bids again. Another part of the bid specs was a second project to cut in a valve at North Lakehoma Parkway. This was going to be able to supply pressure to these that were going to get low pressure during this fix and keep the elementary school up and running. That was our aim and what contractors bid on. From there we will work with City to alter the specs in any way that we can.

Gentry stated that you asked why it is exposed now. We talked to the City in November again and stated that this is beyond our ability. We are not capable of doing this under the guise of the scope of what we bid on. It is not a case of do we want to do it or not. It is a case of what is in the best interest of the City and the best interest of our employees of a safety standpoint and the City's interest in supplying water at a reliable pressure during this event.

Gentry stated that we did expose it and we never should have.

Gentry stated that a gentlemen came to the last Council meeting and said it was about 8 foot deep and Mr. Jeff got together with Rutledge and decided Severn Trent would look really foolish if it was only 8 foot deep even though we knew it was more than that so Mr. Jeff authorized them to go down and dig as far as they could to try and uncover the water line but it is still not there. It never should have been uncovered because now you do have a problem and the City Manager is right in preparing for the eventuality of that. It offers liability issues for Severn Trent and the City due to the fact that it is now uncovered.

Gentry stated that they want to perform for this City in the fashion that is expected. We are not trying to wiggle out of anything. We bid this project knowing what it was. The contract you have is a version of many many contracts. He stated that he has read all of them and that clause you are talking about comes from Severn Trent's standard contract and he worked with that clause for 20 years. He has worked with that clause for the last 11 years with Mustang. He stated that we have never had a problem with it. He stated that

he would be happy to sit down with anybody to discuss the contract as to what your expectations are or what your disappointments are and we could come to some decision and discuss it and be reasonable. He stated that he has not approached Council individually because he follows the structure of the chain of command and they go through the City Manager.

Gentry stated that he is available at any time to discuss any part of this contract but this particular project right here we started in September and made the decision in September, based on that clause in the contract that you are going to research and we will be happy to discuss that with you as well and in the best interest of the City. We have witnessed what can take place when some projects go wrong.

Gentry stated that he would pledge to them that whatever the discussion is between the attorneys and himself, however it comes out, there is a mechanism within this contract for us to solve problems like this and if it is decided that Severn Trent should pay we will pay, I don't believe that we are we haven't been in the past and he wouldn't do this lightly. He stated that he has had relationships in this town for 11 years but if we are wrong we will pay. We always have, we always will. We live and die by our contracts and the only way we keep contracts is by making people happy and doing our job.

Gentry stated that he thinks it should be fixed now that it is exposed. He stated whatever the outcome we are good with it and if it requires Severn Trent to pay we will do that and we will do that the next day.

Taylor asked about the bid specs that Gentry had in his hand.

Gentry passed them out so Taylor could look at the bid specs and pass them around to the members.

Mount stated that he is not understanding why that is 20 feet deep out there. To take one clause in a contract and feel like you have no obligation. He thinks a lot of legal time could be spent on that one.

Gentry stated unfortunately it should have been spent before we signed the contract. He stated that extraordinary is a lot like reasonable is in the contract. What does reasonable mean? We could spend days and days on this question. That is where the relationship comes in that we have had for 11 years. We have

been nothing but a good solid partner to the City and the City has been a good solid partner to us and it is just something we have to figure out.

Mount stated all he knows is what he reads in the contract and the commentaries. He doesn't know where the exceptions are.

Jones stated that items 1 through 7 are in his Ward, he stated that he has deep respect for this Council, etc. but his vote will be to not to prolong this agenda item when the time comes.

Taylor asked Gentry if the reason Severn Trent might not have the capability to repair this type of leak is due to the fact that some things were taken out of the contract to get it down to \$1.6 million.

Gentry stated not necessarily, the reason he brought that up was to answer Mount's comment that Severn Trent is responsible for providing the equipment and they didn't, therefore; it is a breach of the contract. He stated that his point was that we put specific pieces of equipment into our proposal so they were pulled out to get the number down to where we are but even at \$1.9 million if he had a track hoe the same conditions would exist here. Severn Trent does not have the capability to do this job.

Taylor asked if the City Manager was notified in September and received these sheets in September and he said yes, he did. So we were notified in September of 11 gallon per day loss and still having some pretty hot days. He stated shame on this Council for not acting sooner and waiting until December after being notified that we had an 11 gallon per day loss potentially to bring action on this.

Jones stated if we decided to file a lawsuit he thought attorney fees would be more than the \$30,000 to fix the leak.

Mayor Adams stated that he agreed with Jones that to not address this for two weeks would be a concern.

Hagan called the vote.

AYE: Taylor, Mount

NAY: Bowers, Jones, Hagan, Adams

MOTION was made by **Mayor Adams**, seconded by **Councilwoman Hagan** to approve the City Manager to move forward with repair of this while the City Attorney is researching the legal ramifications of the contract, therefore; we can get the project completed and finished and get at the next meeting our legal opinion on who is responsible.

The **City Attorney** added a friendly amendment to the motion that moving forward with the project is not intended to waive any rights of the City under the contract.

That was added to the Motion.

Councilman Taylor stated that he is under the impression that the City Attorney should be able to give sufficient advice to this Council on a question like this without having to take two weeks to research. Having gone through the contract and negotiations, he should have the knowledge of the contract law to be able to give advice to this Council.

Adams stated he appreciated his opinion but he is not an attorney so he does not know what it takes to do the research or give a proper legal opinion.

Roll Call vote was taken and was as follows:

AYE: Bowers, Jones, Hagan, Adams

NAY: Taylor, Mount

3. **Discussion, Consideration and Possible Action** Regarding Adding an Additional Staff Position with Duties to be Determined by the City Manager to Include Assisting in the Review and Response to Open Record Act Requests Submitted to the City of Mustang.

This item was tabled until the next meeting.

4. **Discussion, Consideration and Possible Action** Regarding Adding the Staff Position of Assistant City Manager with Duties and Responsibilities to be Determined by the City Manager or by the City Council.

This item was tabled until the next meeting.

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J. CITY ATTORNEY'S REPORT

There was no report.

K. ADJOURNMENT

MOTION was made by **Councilman Jones**, seconded by **Mayor Adams** to adjourn.

AYE: Taylor, Bowers, Jones, Hagan, Mount, Adams

NAY: None

The meeting was adjourned at **8:25 p.m.**

MAYOR

ATTEST:

CITY CLERK

**MUSTANG IMPROVEMENT AUTHORITY
JANUARY 2, 2013**

The Mustang Improvement Authority met in regular session on Tuesday, January 2, 2013 at 7:00 p.m. in the Mustang Municipal Building Council Chambers. Notice of the meeting was posted on the Bulletin Board outside the Mustang Municipal Building on Friday, December 28, 2012 at 1:25 p.m. and Amended and Posted on December 31, 2012 at 2:45 p.m. in compliance with the Open Meeting Law, 25 O.S., Section 301, et. seq.

A. CALL TO ORDER

Chairman Adams called the meeting to order at **8:25 p.m.**

B. ROLL CALL

Trustees Present:

**Taylor
Bowers
Jones
Hagan
Mount
Adams**

Trustees Absent:

Grubbs

C. NEW BUSINESS

There was no new business.

D. CONSENT AGENDA

1. Approval of **12/18/12** City Council Minutes.
- *2. Approval of Claims List for **FY '13**

MOTION was made by **Chairman Adams**, seconded by **Trustee Hagan** to approve Items D-1 and 2 of the Consent Agenda.

AYE: Bowers, Jones, Hagan, Mount, Adams

NAY: Taylor

E. INFORMATION / REPORTS

1. Trustee Manager
2. Trustees

There were no reports.

F. DISCUSSION ITEMS

- *1. **Discussion, Consideration and Possible Action** Regarding Directing the City Manager to proceed with Repairs to the Leaking Waterline at West SH 152 and Clear Springs.

MOTION was made by **Trustee Adams**, seconded by **Trustee Jones** to give the City Manager authorization to proceed with repairs while the City Attorney figures his legal opinions to bring back at the next meeting with the amendment of not constituting the waiver of any rights of the City.

AYE: Bowers, Jones, Hagan, Adams

NAY: Taylor, Mount

G. ADJOURNMENT

MOTION was made by **Trustee Jones**, seconded by **Trustee Hagan** to adjourn.

AYE: Taylor, Bowers, Jones, Hagan, Mount, Adams

NAY: None

The meeting was adjourned at **8:30 p.m.**

CHAIRMAN

ATTEST:

SECRETARY

