Minutes of a special meeting of the City Council held August 17, 1990 at 6:00 p.m. in the Council Chambers of the City Hall, Bountiful, Utah.

Present:	Mayor:	Bob Linnell
	Council Members:	C. Harold Shafter, ReNee Coon, Bob Gramoll, Barbara Holt, and Leslie Foy
	City Manager:	Tom Hardy
	City Attorney:	Layne B. Forbes
	Dept. Heads:	Clifford Michaelis, Power Rec.
	Secretary:	Nancy T. Lawrence

Official Notice of this meeting had been given by posting a written notice of same and an Agenda at the City Hall and providing copies to the following newspapers of general circulation: Davis County Clipper, Deseret News, and Salt Lake Tribune.

Mayor Linnell called the meeting to order and explained that the purpose f or the meeting is to determine a resolution of the Pine View Hydroelectric project's civil construction bid.

COUNCIL APPROVES COVENANT NOT TO SUE

Mayor Linnell explained that the two low bidders for the Pine View Hydroelectric Project civil construction have mutually agreed that they will not sue the City should they not be awarded the contract for the Pine View contract, with the understanding that they will both have opportunity to present to the City Council the facts surrounding the submission of their bid on said project, and the Council will determine who will be awarded the bid. An agreement entitled "Covenant Not to Sue" has been signed by both contractors (Counterpoint and Fox Construction) and Weber/Box Elder Water Users Association, and upon approval by the City Council, will be signed by Bountiful, indicating that all parties have agreed that whatever takes place in this proceeding will be binding on all parties. Councilman Gramoll made the motion that the Council accept the agreement as presented and that authorization be given for the Mayor to sign. Councilman Shafter seconded the motion which carried unanimously. The Mayor then executed four copies of the document.

CONTRACTORS PRESENT INFORMATION REGARDING SUBMISSION OF BID - PINE VIEW POWERHOUSE CONSTRUCTION

Mayor Linnell reviewed the proposed format for this evening's meeting as follows:

1. Each contractor would have 15 minutes to make an initial presentation to the Council and respond to questions from the Council, with Counterpoint making the first presentation;

2. Following the two 15-minute presentations, each contractor would have 5 minutes for further input and/or clarification;

3. The Council would then have an opportunity to ask any further questions of the contractors and then input from the contractors would cease.

4. The Council would then discuss the matter and make a determination as to awarding of the bid.

Mr. Bryce Penrod, president of Counterpoint, presented documentation which supported his thesis that his company's bid was the lowest responsive bid. He explained that the bid specifications called for "two hoists", however, no exact specifications were given for these hoists. Based on this and the f act that the general conditions state that bidders are cautioned that exceptions may cause a bid to be rejected, he included an amount for the two hoists (the lowest price which he was quoted by suppliers) . on the morning of the bid opening, Mr. Penrod received a call from Agutter Engineering informing him of the proper specifications for the hoists and he adjusted his bid higher (including the cost of the hoists, overhead, labor, and profit). His final bid was $411,000.00.

Mr. Penrod then explained that Fox Construction had taken an exclusion in their bid presentation by not quoting a price for the hoists. Following the bid opening they added $4,642.00 for the hoists; however, this figure (based on the quote from Agutter which had also been given to Fox Construction) did not include labor, overhead, or profit as would be prudent in successful business. However, with the $4,642.00 added, Fox Construction's total bid was $410,436.00. Mr. Penrod contended that the bid from Fox was not responsive due to the exclusion; and if the two bids were compared without the amount for the hoists in either bid, the Counterpoint bid would have been lowest. He also pointed out that Counterpoint has the proper licensing qualifications and Fox Construction does not. In response to questions from the Council, Mr. Penrod stated that Counterpoint submitted a bid bond for the project and that there are no lawsuits pending against this company.

Floyd Cox, president of Fox Construction, explained that at the time of the walk-through at the job site, the engineers were asked several questions, including the absence of specifications for the trolley and hoists. They (the contractors) were informed that an addendum would be prepared to clarify that matter. When the addendum came out, it indicated a manufacturers product which Fox understood to include the hoists. The morning of the bid opening, Fox received a call from Agutter Engineering advising them of the correct specifications for the hoists and giving them a quote on the cost of the hoists. However, Mr. Cox said that he did not include this amount in his bid for two reasons: (1) the general conditions of the specifications provide that any questions regarding the specs should be addressed solely by the engineer in order to be legal (and the information regarding the hoists had come from a vendor) ; and (2) he was advised by Mr. Paul Taylor, Bingham Engineering, (prior to the bid opening) that it would be okay to include an exclusion for this item.

The Council questioned Mr. Cox regarding the contact which he had with Agutter and Bingham Engineering, and both contractors re- stated their position in summary. Councilwoman Coon asked if the permission given to Fox Construction from Bingham Engineering to take an exclusion was in writing, as provided necessary by general conditions, and Mr. Cox stated that at this point, no written approval has been provided.

The input from the contractors concluded at 6:54 p.m., following which Councilman Gramoll expressed displeasure at this responsibility having been given to the Council for resolution. He stated that it is very poor practice to re-bid a project. Based on the facts presented this evening, Councilman Gramoll made the motion that the bid be awarded to Counterpoint, the lowest responsive bidder. Councilman Foy seconded the motion. Councilwoman Coon expressed appreciation to the two contractors for meeting with the Council and for the work and time which went in to their bids. The motion carried by a majority with Councilman Shaf ter voting nay. He stated that he felt the engineering company had made the mistake and it was unfortunate that the contractor bore the burden for this mistake.

Mayor Linnell expressed appreciation for the willingness of the contractors to amicably resolve this problem and Mr. Michaelis thanked the Council for their extra time and effort and on behalf of the staff, he acknowledged acceptance for a portion of the responsibility in the problem.

The meeting adjourned at 7:02 p.m. on a motion made by Councilman Gramoll and seconded by Councilwoman Coon.