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To: Mayor and Council

From: City Attorney Doug Herman

Re: Oelwein Celebration Committee

Date: October 15, 2024

Mayor and Council:

Following up on the City request for reimbursement from the Oelwein Celebration Committee. I let Lynda know this morning that I did not see her recent email until this morning after Dylan pointed out that I had not responded.

I note that I previously provided a memorandum dated 9/27/2024, that set out my analysis of the matter, and will not set out all that detail again, but have copied and pasted the following section of that memo.

1. The City has no 'Contract' with the Committee setting out expectations and/or obligations of the Committee.
 - a. Without a contract including those terms there is no clear path forward to allege breach of contract with a related request to return the City funding.
 - i. For example, the City did not fund the event specifically to cover the wrestling component nor did the City condition funding on a need by the Committee for the funding to break even.

I understand the follow up question to be as follows.

1. Whether the Celebration Committee have a contract with the City or do not, and
2. Whether the Celebration Committee should or should not be held accountable in some fashion.

In my earlier memorandum, I indicated that the City had no 'Contract', going on to explain that any suit would at least allege an 'Oral Contract'. It is also true that the City could allege that certain writings should be considered as a 'Written Contract' or at least as supporting or explanatory documents to an 'Oral Contract'.

I have reviewed the Agenda & Packet for the Planning, Finance, Enterprise, and Economic Development Committee meeting held on July 24, 2023 at 5:30 P.M. and find the following relevant information in that Packet:

1. Agenda item: “Consideration of a motion providing direction to Council on the Hotel/Motel Request from Oelwein Celebrations Renewed, Inc. in the amount of \$20,000.”
2. City of Oelwein Hotel Motel Tax Funding Application (Name of Kimberly K. Pont typed on signature line, no actual signature.)
 - a. Application states, “You further understand that you will be required to submit a summary of expenses at the end of the project and that if funds are not expended or are found to be outside the scope of the grant made by the City Council you will be required to reimburse/return these funds to the City of Oelwein.”
 - b. Application includes “Assurances” including,
 - i. “They will expend funds, received as a result of this application, solely on the described project and programs included within the grant application documents within the fiscal year from which the grant is disbursed.”
 - ii. “...all grant funds received shall be segregated from other funds..until used for the proper purposes as described herein. The sums will be deposited into a segregated, identifiable checking account.”
 - c. Application includes “Cost Reimbursement” heading
 - i. Requires complete project budget and schedule of completion.
 - ii. Upon completion of project, Applicant to submit documentation of expenses and project recap.
 - iii. Any funds not expended or found to be outside the scope of the grant must be reimbursed wo the City within 60 days.
 - iv. Failure to comply (with the above and other assurances) will prohibit applicant from applying for funds for one year.
 - d. The signature page following the assurances is unsigned and undated.

It is my understanding that the Applicant at some point signed the Application and that the Council formally approved the \$20,000.00 donation/investment by motion but that no additional documents have been signed/approved/accepted by the Applicant.

The “Application” alleges or includes a number of understandings on which the City could hang its hat, arguing that even if there was no more than an oral agreement that thee intent is clear when it comes to expectations and understandings. To that end:

1. Did Applicant’s summary of expenses submitted at the end of the project show that funds provided were not expended and/or that funds expended were outside the scope of the grant made by the City Council?
 - a. If yes, how so?
 - b. What evidence or argument does the City have that City funds were not spent or were spent inappropriately? (Could Applicant argue that City funds were spent, 100%, and that profits, to the extent they exist, were tied to revenues brought in during the event?

2. Can City argue/prove that Applicant did not spend sums expended solely on the described project and programs included within the grant application documents within the fiscal year from which the grant is disbursed?
3. Were all grant funds received segregated from other funds.....until used for the proper purposes as described in the Application? (Deposited into a segregated, identifiable checking account.)
 - a. If not, what is the damage to the City, do we have an argument that such a violation would support claim for reimbursement of some/all funds?
4. Did Applicant complete project budget and schedule of completion, upon completion of project did Applicant submit documentation of expenses and project recap, can we tie any unexpended sums to the City donation/investment in a way that we can support reimbursement request.
 - a. Is there any documentation of a specific purpose or purposes for the City donation/investment. (For example, did the Council approve \$20,000 for the wrestling component that did not happen, thereby justifying a request to return the \$20,000 as not being spent on the intended purpose.)

I want to look at this from a practical standpoint so as to not give you unreasonable expectations when it comes to successfully forcing a reimbursement. I believe the best route forward, at least at this point, is to set up a meeting between the appropriate persons (Mayor, Councilpersons, Dylan, etc., and Committee representatives) to privately discuss this matter and see if a settlement can be reached. If no settlement can be reached, or if you don't want to go that direction, you could put this topic on a Council agenda and invite Committee members to the meeting to openly discuss in a meeting, where you might be able to put public pressure on them to reimburse the City. Sometimes a softer approach is better, particularly initially.

Thereafter, steps should be taken to tighten up the program moving forward, with approved applicants being required to execute contracts that include terms and provisions, specific to the project, identifying those purposes for which the donation may be expended and terms clearly describing those circumstances that require reimbursement of sums. Potentially, it may make sense to expend funds from a reimbursement standpoint, after the submission of invoices supporting the expenditure. Lots of options when it comes to contract language with it being likely that those terms and provisions would be different depending upon the specifics of each application.

Sincerely yours,

Douglas D. Herman

Douglas D. Herman

LYNCH DALLAS, P.C.