

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY,
TUESDAY, DECEMBER 18, 2007, 4:00 P.M.

Members Present: Chairman, Darrell Drummond; Vice Chairman, Pamela K. Cully; Secretary, Robert W. Summerhays, Jr.; Deputy Secretary, Thomas K. Perona; Mayor Robert J. Benton III; Ex-Officio Member/City Manager, Dennis Beach

Others present: Director of Utilities; Director of Electric/Gas Systems; Director of Shared Services; Acting Director of Corporate Services; Risk Manager; Community and Corporate Relations Manager, FPUA Attorney.

Chairman Drummond called the meeting to order.

The Invocation was given by The Reverend Moses Hill of Moses Hill Ministries.

The Pledge of Allegiance was recited.

The roll was called and a quorum declared.

Motion by Mr. Perona, seconded by Mr. Summerhays and unanimously carried to approve the items listed on the Consent Agenda:

1. Approve agreement with Telvent Miner & Miner to provide maintenance for the Network Adapter, Designer, ArcFM and Redline Extension in the amount of \$26,032.17 for the period of 1/1/08 – 12/31/08 as a sole source.
2. Bid 5783: Approve piggyback of City of Plantation RFQ for purchase of one 2008 Ford-550 Chassis with Dominator Crane Body and IMT 3820 Telescopic Service Crane from Fontaine Truck Equipment Co., Inc. in the amount of \$84,993.00.
3. Bid 5591: Approve piggyback of City of North Miami Beach Bid for sewer rehabilitation services from Miller Pipeline Corp. in the amount not to exceed \$475,000 for the period of 1/1/08 – 9/30/08.
4. Bid 5782: Approve piggyback of Florida Sheriff's Association bid for purchase of one 2008 Sterling L Model with Vac-con truck from Sterling & Western Star Trucks of Tampa in the amount of \$255,086.00.
5. Authorize an additional \$51,572.30 for installation of conduit, cable, equipment, electric service and lights for the Cortez Town Homes Project under our existing unit price contract with Mastec of North America, Inc.
6. Bid 5764: Award lowest and best bid to Advantage Ford in the total amount of \$66,078.00 for purchase of three F250 SD 4 X 2 trucks with utility bed.

The following letters of appreciation were noted:

1. A letter and certificate of appreciation were received from In The Image of Christ, Inc. thanking FPUA employees for their donations of 595.50 pounds of

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non-perishable food items as a direct response to the break-in they suffered just prior to Thanksgiving.

Motion by Mrs. Cully, seconded by Mr. Perona and unanimously carried to approve the Minutes of the Regular Meeting of December 4, 2007.

Mr. Thiess introduced a request for approval of a vacant land purchase for a future wastewater repumping facility at the corner of Orange Avenue and Jenkins Road. It has been identified in our Master Plan. It will be necessary to have the repumping facility in operation by the time the new mainland water reclamation facility comes on line.

Mr. Bo Hutchinson of Water/Wastewater Engineering explained the request to the Board. He stated it will be necessary to redirect the flows to the new mainland water reclamation facility. There are three major force mains that will converge into a 24 inch force main at the intersection of Orange Avenue and Jenkins Road. There is a 16 inch main coming from the east, a 12 inch from the north, and another 12 inch coming from the west. Due to the magnitude of the expected flows and the distance to the new plant, a booster pump station will be required as close as possible to this intersection. With that in mind, when the developer for Jenkins Commons approached us to discuss water and wastewater service, we took that opportunity to negotiate to acquire the property needed to construct the pump station. The deal is to apply the capital improvement charges and the accrued guaranteed revenue charges required for service for Jenkins Commons, to the purchase price of the property. The property was appraised at \$525,000 by an independent appraiser. There was a \$20,000 deduction for potential environmental issues we may or may not encounter in the future, bringing the cost of the property to \$505,000. The capital improvement charges and accrued guaranteed revenue charges for Jenkins Commons will total \$348,344.95, leaving a cash payment to the developer of \$156,655.05.

This item and the next one are contingent upon each other's approval.

Mr. Perona said what appealed to him is that we have an appraised value for this property and the same seller is also developing Jenkins Commons. We are paying the full price for the property, and the developer is paying his entire capital improvement charge and guaranteed revenue charges, so everything is on the up and up. It is not treated differently than any other contract.

Mr. Thiess said the developer also threw in easements on the north side of his property for a force main and along the entire west side. Mr. Hutchinson said that is correct. There is a 20 foot easement on Jenkins Road and a 15 foot easement along his frontage on Orange Avenue, and he donated those to us without asking for any contribution.

Motion by Mr. Summerhays, seconded by Mr. Perona and unanimously carried to approve the Vacant Land Purchase Contract between FPUA and Joseph G. Miller as Trustee of the Joseph G. Miller Revocable Living Trust dated 10/02/86, and approve payment to Mr. Miller in the amount of \$156,655.05.

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Mr. Hutchinson requested approval of a Water/Wastewater Supply Agreement between FPUA and Joseph G. Miller as Trustee of the Joseph G. Miller Revocable Living Trust dated 10/02/86, and Culpepper and Terpening, which goes hand in hand with the previously approved contract.

Motion by Mr. Summerhays, seconded by Mrs. Cully and unanimously carried to approve Water/Wastewater Supply Agreement between FPUA and Joseph G. Miller as Trustee of the Joseph G. Miller Revocable Living Trust dated 10/02/86, and Culpepper and Terpening.

Mrs. Betsy Schnebli presented a request to declare an emergency, waive formal bidding process and approve open book contract with Overland Contracting, Inc. (OCI) for construction services at the Hartman Substation in an amount not to exceed \$1,801,815.00.

Mrs. Schnebli stated for several months FPUA staff negotiated with FPL and FMPA on an interconnection agreement for Hartman Road Substation. This agreement had to be finalized prior to engineering and design. Staff has used OCI's open book contract for the Causeway Substation project and feels they have the resources to construct the job within the project schedule and their estimate is in the budget for this project.

Mayor Benton said we knew we were going to build this substation for a long time. Mrs. Schnebli said we knew we were going to upgrade it. Mayor Benton wonders how it got to be an emergency, and we didn't go out for competitive bids some time ago. Mrs. Schnebli explained the agreement between FPUA, FPL and FMPA had to be in place, first. Mayor Benton said he just wondered why things did not move along in a timely fashion, and we put ourselves in this predicament. This has been talked about for a long time. An emergency is one thing, but we knew we were going to do this for a long time, and to go ahead without competitive bids, he doesn't see how this became an emergency.

Mr. Perona said the way he reads it is the fact that the agreements had to be in place before we proceeded forward. Those agreements were done and looking at the time the agreements were signed and the time of the planned decommissioning, there is no way in the world we could go out through the bid process. He doesn't know how we could correct that. He read through it and came to the conclusion this is a casualty of doing something this big, decommissioning a power plant. To try to think ahead of the game, we still couldn't go out for bids unless those contracts were in place. Mrs. Schnebli confirmed Mr. Perona's statements. Mr. Perona said we ran out of time. On May 4 or 5, this Board will deal with the issue of decommissioning the plant. Mrs. Schnebli said that is correct. It is a very compressed timeline to get all the construction done prior to decommissioning the plant.

Mr. Perona asked if we could have gone out for bids before we had the agreements with FMPA and FPL signed or was it subject to having these agreements negotiated. Mrs. Schnebli said it was subject to the negotiations. We needed to know the exact scope of work and who was responsible for what before we could complete specifications. Mayor Benton asked if we couldn't have gotten FMPA and FPL to the table earlier. They put us in a predicament here. He doesn't know how much more this is costing us doing it this way than going out for bids. He has concerns doing business like that.

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Mr. Thiess said any time you have a project of this magnitude and something that involves taking a plant off line and \$11 million over a period of years for improvements to a substation, there are many things involved. R. W. Beck had to prepare the specifications, too. There just wasn't enough time between the inception of getting the power plant off line and bringing all these things together and make all these things happen and still fit them into the timeframe for the project.

Mr. Summerhays said he shared some of the Mayor's concerns about the emergency situation and the size of the contract, but it appears to him that the open book contract is a cost plus fees contract. The contractor is getting a fee, and we get to look at the costs to make sure they are right. Mrs. Schnebli said that is correct. Mr. Summerhays said if it was a closed book contract, he would be a lot more concerned. We may have been able to beat somebody else down lower on the fee, but this is a contractor we've worked with before and we know they will get it done.

Motion by Mr. Perona, seconded by Mr. Summerhays and unanimously carried to Declare emergency, waive formal bidding process and approve open book contract with Overland Contracting, Inc. for construction services at the Hartman Substation in an amount not to exceed \$1,801,815.00.

Mr. Thiess explained we have a walk on item, because bids weren't received in time to get it on the agenda. If we bump it to the next Board Meeting, we would incur a substantial loss of over \$18,000.

Mrs. Eve Walker presented the request to the Board. She explained this is a request to award a bid for purchase of a Packetshaper network monitoring solution and is time critical in nature. By approving the recommendation at this meeting, we can award the bid prior to the end of December, still qualify for the special 2007 quoted price, and save FPUA \$18,475. The purchase process began October 23rd for this FY 2008 budgeted network monitoring solution. The bids were not received for review and recommendation until December 14th. We received a total of six bids with the highest bid submitted at a little over \$51,000 from CDW Government, Inc. The lowest bid was from Sinnott Wolach at \$29,535. The next lowest bidder was Ray Wanza out of Dallas, Texas, for \$47,893. As of January 1st, Sinnott's 2007 special pricing will no longer be available, and their price will increase to \$48,000. Even if we had waited for the Board Meeting in January for approval, Sinnott would have been our second lowest bidder by only \$107, and they would still have ranked higher and been our recommendation for best qualified bidder, as they are the only company based in Florida. This system is needed to identify specific network traffic types for us to guarantee bandwidth for applications that need it and to prevent nonessential traffic from taking bandwidth from business critical applications. Additionally, it assures us the most efficient use of costly internet bandwidth.

Mr. Drummond asked if the only reason this would not have been on our agenda is the timing between the opening of the bid and when our packets went out. Mrs. Walker said yes, sir.

Motion by Mrs. Cully, seconded by Mr. Perona and unanimously carried to award the lowest and best bid to Sinnott Wolach Technology Group based upon Bid 5777 at a not to exceed

amount of \$29,525 and a \$4,153 annual maintenance fee for purchase of a Packetshaper network monitoring solution.

Mr. Thiess gave the Board a brief update on our Strategic Planning process. We are looking at a February 1 date. We have Tom Reedy of FMPA confirmed available for that date. The room we used last year at the Kight Center is not available on that date, but we are looking at other options. February 1 is on a Friday. We would start at 9:00 a.m. and go as long as we have to. He asked the Board to double check their calendars to see if that date works for them and give that information to Kenna Hayes.

Mr. Koblegard said he would like to bring the Board's attention to a matter in the early stages. We received correspondence in November from a group who had settled with EPA about a superfund site in the Carolinas called Carolina Transformer. Apparently, back in 1986, we did business with them, probably or possibly, disposing of some of our older transformers at that time. Apparently, EPA went onto this site in 1978. There was an issue of how Carolina Transformers was disposing of the transformers, because of a very serious PCB disposal problem. EPA notified Carolina Transformer in 1978 and went on site in 1984 to start their clean up. EPA notified 33 utilities and other customers of Carolina Transformer back in 2006 about a possible claim against them for disposal of the transformers at the site. They, then, circulated a letter to a number of other utilities in the hundreds about joining in back in 2006. Either we didn't get that or weren't aware of it for some reason. However, had we been aware of it, it would have been his advice that we not join at that time. What they were looking for then was for people to join this group and pay an additional \$10,000 upfront retainer. They estimated the cost of defending it of around \$200,000. The costs to date have run over \$800,000. The EPA's claim was for \$33 million. They have settled with EPA for \$9 million, and now they are, as a result of the settlement with EPA, allowed to bring a contribution claim against any unsettling utility or entity that did business with Carolina Transformer. There must be three or four hundred of us. They have estimated what they think our contribution should be based upon our kilowatt output. They have approached us to settle for \$90,000. The kilowatt output they've grouped us into runs from 2/3^{rds} of what ours is, up to twice as much as ours. We are in a broad group with no explanation as to why they have broken it out the way they have. They gave us a deadline of December 14th to send some of the information back and tell them our position. He talked with Attorney for the settling group, and the deadline is sometime in January. He talked with both EPA Attorneys. EPA can no longer bring an action against us, but the group that did settle can bring a contribution claim for up to three years after the settling date, which will be sometime this Fall. It has to be litigated in Carolina. It is out of his field. Through FMPA we were given the name of the Hopping and Sams law firm in Tallahassee, who have done this type work before. They have dealt with EPA on superfund issues. He contacted them. They have looked into it. They are not representing anyone else in this action, and they are going to send us an engagement letter in the next few days. It will be his advice to have them take over the defense of this issue.

Mr. Koblegard explained the only reason we are in it is because they found an old accounts receivable statement from Carolina Transformer where in May and June of 1986, we either purchased from or delivered to for disposal, items that totaled in May \$18,820. June totaled \$20,430, and October totaled \$11,262. We have no record going back to 1986. We have

searched every way we can and so far we have been unable to determine anything from our side where we have dealt with Carolina Transformer. Because we are on the accounts receivable list, that is sufficient to bring us into an action that we would have to defend. He tried to feel the Attorney out for the settling group to see if we could get out of it for \$10,000. He said no at that time. When he talked with the two attorneys for EPA, he said it seems strange to him that they were on site in 1984, and the records that tie us in aren't until 1986. If they were on the site cleaning up in 1984, how can we be a contributor? He was told Carolina may have had two or three additional sites, and it could be they were cleaning up one and hadn't moved on to the other one yet, and they were still doing business there. That seems like a stretch to Mr. Koblegard, but that is all we know today. He thinks it is important to have the attorneys out of Tallahassee take a look at this for us. He certainly hopes we will be settling with them for far less than \$90,000, but we don't know today. He wanted to bring the Board up to date on this issue.

Mr. Drummond asked Mr. Koblegard if he is anticipating an engagement letter in the next few days. Mr. Koblegard said yes. He should have it tomorrow. Mr. Drummond asked if there will be any discussion at that time about what they feel might be the anticipated costs before we make the decision to approve the engagement letter? Mr. Koblegard said he is going to require them to do that. He will try to get some kind of a budget. There are other members of FMPA who have been brought into this, too. They all have their own separate counsel. We can talk with them, too. He still doesn't think the \$90,000 was a reasonable figure, and he thinks we have a means of defending this, too. What he is concerned about is the cost of defending it. That is what we have to be careful of.

Mayor Benton asked if Mr. Koblegard has talked to Mr. Schwerer about this yet. Mr. Koblegard said Mr. Schwerer faxed him a copy of what he circulated within the City, because the City was named, possibly. He hasn't talked to Mr. Schwerer today, but when he looks at the accounts receivable, they are all in the name of FPUA, not the City of Fort Pierce. He doesn't think the City would have any issues in this. He thinks it is FPUA's responsibility to handle this. Mayor Benton thinks the issue is absurd.

Mr. Perona asked if there is anything we do today differently that safeguards us against these types of suits? He is sure we are decommissioning transformers and sending them down the way. It seems there are skeletons in the closet that can come out if that provider doesn't do what they are supposed to do as far as disposal. Mr. Koblegard knows Nancy Dallaire has checked, and there is no insurance coverage for this type of claim. He does believe they are disposed of properly, today. Mr. Thiess said there is a testing program for transformers to determine whether or not they have PCB oils in them. There is a very rigorous process with chain of custody to handle those all the way through the system. It is a lot different today than it was in the mid 80's. It is a much more controlled process today.

Mr. Koblegard said he is not looking for any action today.

Mr. Drummond congratulated Mayor Benton on his win in the election and welcomed him back to our Board.

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Mrs. Cully advised the Board she had the opportunity a couple of weeks ago to be a part of FMPA's meetings: the Risk Oversight meeting, the Executive Committee, and the Board of Directors. It was a full day of information. She brought back some information to the Board.

Mr. Thiess said there is a standing invitation for any Board Member who wishes to attend an FMPA meeting with us. It is really quite interesting. Mrs. Cully said instead of every other month, they are now going to have the meetings once a month. The agendas are so long, they decided to have more frequent meetings.

Mayor Benton wished everyone a Merry Christmas and a safe holiday and New Years. Mr. Drummond said he extends that greeting to everyone, as well.

There being no further business, the meeting was adjourned.

ATTEST:

Secretary

Chairman