

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY,
TUESDAY, APRIL 3, 2007, 4:00 P.M., CITY COMMISSION CHAMBERS.

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

Not present: Mr. Robert W. Summerhays, Jr., Deputy Secretary

Others present: Director of Utilities; Director of Electric/Gas Systems; Director of Water/Wastewater Systems; Director of Corporate Services; Director of Shared Services; Acting Risk Manager; Community and Corporate Relations Manager; City Purchasing Coordinator; FPUA Attorney.

Chairman Perona called the meeting to order.

The Invocation was given by The Reverend Ted Rice of St. Peters Lutheran Church.

The Pledge of Allegiance was recited.

The roll was called and a quorum declared.

Mr. Craig Brewer presented the Board with a plaque for the 2007 FMEA Safety Award in Category D, second place received by FPUA.

Motion by Mr. Drummond, seconded by Mrs. Cully and unanimously carried to approve the items listed on the Consent Agenda.

1. Approval of the Minutes of the Regular Meeting of March 20, 2007.
2. Excuse Mayor Benton from the March 20, 2007, Regular Meeting.
3. Bid 5141: Approve increase for two, one-year renewal options with Harbor Branch Environmental Laboratories from \$24,000 to \$40,000, annually, for water analysis services.
4. Bid 5340: Approve an additional \$50,000 for unit price contract for installation of two inch water mains, water services and miscellaneous system improvements for payment of expenditures due to emergencies to Ditchdiggers, Inc.
5. Bid 5711: Approve a two-year, single source agreement with BellSouth Telecommunications to provide dedicated internet access in the amount not to exceed \$51,216.00.

Mr. Thiess presented a request for approval of a revised Independent Contractor Agreement with Rick Smith.

Mr. Thiess said this Contract was approved by this Board and went to the Retirement Board. The Retirement Board voted for approval, but the vote was 4 – 2. They were short some board members and were lacking the five votes required to approve the Agreement. Shortly after that time Mr. Smith began work through a temporary labor service, and he has been working in that capacity ever since.

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In the order issued by the Retirement Board, five points were made. The bottom line was the Retirement Board wanted to make sure the Agreement met the requirements of the Internal Revenue Service, so they requested an opinion by an attorney well versed in that area. Mr. Koblegard sent the Agreement to an attorney in West Palm Beach who is well versed in tax laws. We received a letter outlining some recommended modifications to the contract. All those modifications have been incorporated into the version of the contract before the Board today. The tax attorney's opinion was that even without those modifications, the contract would pass muster with IRS. With those revisions the attorney felt the contract would be much more likely to pass muster with IRS.

Since this agenda item was prepared, the attorney came back with several more suggestions that would make the contract almost an iron clad case for meeting the requirements of the Internal Revenue Service. Today, we are asking the Board to approve the contract attached to this agreement subject to, possibly, more changes in contract language, which will not materially affect compensation or scope of services. Staff and Mr. Koblegard would like to be able to make some fine-tuning changes in the contract subject to working them out with the attorney from West Palm Beach.

Mr. Perona said he doesn't like to leave things open ended. If it is anything other than very minor provisions that do not change any aspects of the Contract, he would rather wait. Mr. Koblegard said he has the suggested changes with him and can briefly outline those. Mr. Koblegard said in paragraph 3 of the Contract, the tax attorney suggested we delete the reference to Workers' Compensation Insurance coverage. He doesn't believe an Independent Contractor can obtain Workers' Compensation Insurance; however, we may want to keep the language that he shall secure, maintain and provide proof of any insurances required or desired. In the same paragraph, further down, it is recommended that we delete the wording, "except as otherwise provided herein," and change it to read, "Contractor shall not be entitled to any benefits nor subject to any provisions of any personnel handbook nor shall any of the rules and regulations applicable to employees of the company be applicable to the Contractor. Contractor shall provide his own transportation." In paragraph 5, the tax attorney suggested that we change the 60-day termination provision. He doesn't know if he agrees, because most all of our contracts with any number of different parties have cancellation clauses in them. He thinks the 60 days is probably something that is important to us, because he thinks we want to know when Mr. Smith may be moving on to give us more time to get up to speed if and when he is gone. The fourth change suggested was that we put in the term of the Agreement as three years. Mr. Koblegard said we actually have that covered in the way we set it out in the compensation. We may add that. Those are the four suggestions made by the tax attorney. Those changes would only tighten up the Agreement. The tax attorney said with or without these suggested changes she will give us a written opinion that we can provide to the Retirement Board. She thinks we should be fine.

Mayor Benton asked as far as the pay changing each year, is there any way we could put that in line with what everyone else is getting across the board. This year we are looking at 4%, but he wouldn't want an independent contractor to be getting a higher percentage raise than the rest of the employees. Mr. Thiess said he worked that out yesterday, and it comes to exactly 4%. Mayor Benton said maybe we should word it that he would get the same percentages as we give the general employees each year rather than putting an actual figure in the contract. Mr. Koblegard said it is probably best not to mention employees in this Agreement or tie something directly to what the employees are paid. Mr. Thiess said both years are 4% increases. It is a cost of living type of thing. We are seeing that with our other contractors, too. In fact, our standard contracts with most of our contractors have a 3% increase, but we have been going well beyond that with materials.

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Mr. Thiess thinks the four suggestions Mr. Koblegard referenced are really just strengthening the definition of the Independent Contractor relationship with the Utilities Authority. None of them are of any consequence, materially. The first two suggestions, we are going to incorporate, but the remaining two, we are still going to discuss with the tax attorney about how we want to word them. We would like to have approval today so we can get it to the Retirement Board at their next meeting on April 19th.

Motion by Mrs. Cully, seconded by Mayor Benton that the Independent Contractor Agreement with Rick Smith be approved subject to approval by the Retirement Board and if there are any changes made to the contract other than the four suggestions from the tax attorney, it will be brought back to the Board.

Mr. Thiess said we are not going to put the contract into effect until it has been approved by the Retirement Board. We plan to discuss it with as many members of the Retirement Board as we can prior to the April 19th meeting. Mr. Koblegard said the requirement that it be approved by the Retirement Board was included in the first motion the Board made approving this contract also.

The roll was called and the motion carried with Mrs. Cully, Mayor Benton and Mr. Perona voting yes. Mr. Drummond voted no.

Mr. Peter Helmich, Superintendent of Natural Gas Operations, presented a request for approval of a post budgeted work order. Mr. Helmich stated that FPUA has been contacted by Saint Lucie County School Board to run a 2,224-foot 4-inch gas main, a 1,250-foot 2-inch gas service and 425-foot 1-inch gas service to the new Jenkins Road K-8 School and shelter. The gas main service will provide natural gas to the cafeteria, commercial boiler, and a 560kw generator. The estimated 4-year payback is \$43,877, which meets the 4-year payback in the Resolution. There will be no charge to the customer for the gas main extension and services. There will be two meters at the school, one for the cafeteria and one is for the generator and gymnasium. Generator usage is not included in the 4-year payback. The money is in the budget. Mr. Perona asked for clarification of the need for two meters. Mr. Helmich stated the two meters are because of the two locations and to track the generator usage. Mr. Drummond asked about the transfer of money from capital improvements budget and will it further impact the changes we have been forced to make in our capital improvement plan? Mr. Helmich said the money is already in the account and there were no changes in his capital budget.

Motion by Mr. Drummond, seconded by Mrs. Cully and unanimously carried to approve post budgeted work order in the not to exceed amount of \$35,000 to install a natural gas main and services to serve St. Lucie County K-8 school at 2240 South Jenkins Road.

Mrs. Nina Hurtubise, Controller, presented the December 2006, Quarterly Operating Results. Mrs. Hurtubise stated that the three months look about the same as they did last year; the unit sales, overall were down with the exception of water, which was up about 5 percent unit-wise. The revenues were below budget and also the expenses were below budget. We brought in about one million dollars in capital improvement charges in the first three months of the year and have spent about \$400,000 of that million. On page 11, we have modified the quarterly results to include the 40 percent calculation for the City distribution, and the results are the same as the last fiscal year. We are going to be limited in our distribution by that 40 percent formula for the first quarter, with the estimate to be about \$950,000. Debt service coverage is still very good at 2.22. Two significant things which occurred during the quarter are our regular annual payments of our debts. As you have approved, we established 20

million dollars for the loan, so the balance sheet numbers show huge increases on the asset side and the liability side. Mr. Thiess asked if the \$950,000 for the first quarter will improve, because the first quarter represents the rate increases not being in effect, and as we move forward in the second, third, and fourth quarters, that should increase. Mrs. Hurtubise agreed that it should increase. This is an information item on the agenda and does not require any action by the Board. Mr. Perona stated that he has noticed our debt service coverage has shifted down and asked if there is a standard number for the debt service coverage that if we fall below, we may be in trouble with our bond people. Mr. Varella said that there is no specific number. He said that as our debt service coverage ratio drops, the ability to pay our transfer drops. In order for us to be able to pay our transfer and stay financially healthy and have more revenues to get above that 40/60 split to pay our transfer, the 2.5 times number is what we want. Our debt service coverage ratio has always been high, and we try to pay off more debt than we are incurring so that we can build our financial strength so that when we get to a period like this when we need significant capital spending we have the ability to go out and secure it at a lower rate.

Mr. Thiess presented the Salary increases for Exempt Status employees, which represents an overall salary increase average of 4.02%. Nick Pellegrino of Cody & Associates, Inc. explained the annual salary survey where they redesigned the pay plan and consolidated the Senior Management, Exempt, and Critical Positions into one plan. By doing this it gives the managers greater flexibility and more ranges in between in which they can finer define based on the market where positions should be. The market is up in the air because of the property tax debate that is going on in the Legislature.

Motion by Mrs. Cully, seconded by Mr. Drummond and unanimously carried to approve the salary increases for Exempt Status Employees of approximately 4.02% average.

Mayor Benton made a motion, seconded by Mr. Drummond and unanimously carried to approve a 4% increase for Mr. Thiess and Mr. Koblegard.

Frank Varella presented Resolution UA 2007-05: Final Budget Amendment for FY 2006 which ended six months ago. Mr. Varella said there has been an increase in expenses and revenues. On page 28, the depreciation expense for the power plant increased by 2.355 million dollars because Governmental Accounting Standards Board (GASB) #34, which requires governmental accounting entities to write down their assets when they become non-productive and the power plant is in the process of becoming non-operational in the next couple of years. Next year the depreciation will be large also. Across the board there is an increase in all the insurances. On page 40, interest on bonds and pooled loans increased by 1.472 million dollars because of an error we made in the 2007 budget in the 2006 and 2007 figure. We did not budget the interest accretion on the bonds. The accretion is like a coupon bond where you have a small bond payment and over the years it builds at a higher interest rate than the other types of bonds and at the end of the issue, they get one lump sum amount for their payment. That payment is coming due in 2008 and 2009 on the 1989 Series. Mrs. Cully asked for clarification of "the different way" that Mr. Varella spoke of. Mr. Varella explained that every year we accrue the expense at the end of the year. During the audit process, we accrue the interest expense. It is not an actual cash payment, it is an accrual. We were not outlaying the cash, so we did not think that we needed to include it in our budget, but after we book it, it results in a higher interest expense, which means we do need to include it in our budget and that is where we went wrong.

Mrs. Cully made a motion to approve Resolution No. UA 2007-05, the Final Budget Amendment for FY 2006, Mayor Benton seconded and it was unanimously carried.

Mr. Thiess requested that Item F. 2. Resolution UA 2007-06: Amending FY 2007 Capital Budget be pulled from the agenda. The budget will be worked out through the year. The resolution originally came about because of the rate increases coming late and having to cut budgets in certain areas for renewals and replacements. The budget cuts will still be made. Mr. Perona stated that after reviewing this resolution he thought we would be “cutting the fat”, but there is no fat, these are services and replacements being cut. As a Board member he is concerned about our future to continue the level of service and reliability that we have come to have people expect from us. It has put us in harms way. The inability of the Utility Authority to transfer the amounts of money that we have budgeted accordingly, these things don't set well with him. Based on the amount of money we have incoming, these are areas that have to be cut, and which I would not expect to have to cut. In the long term, these are going to cost the Utilities Authority and the customers/owners more money. These next couple of years we will have to play catch up. Mr. Thiess said he has instructed staff to prepare detailed renewal and replacement plans that go out 25 years and address the 200 miles of pipe that we know have to be replaced, as well as poles and lines. Mr. Drummond requested that staff bring this back towards the end of the year as part of the workshop process with the City, so we are very clear in terms of what needs to be made up as a result of the reduction this year. Mr. Perona requested that we keep track of the overall impact on the Utilities Authority, above the norm of what happens to us in the next year or two. This history will be helpful in the future attempts to educate the public. Mayor Benton said the uncertainty, not just here, but in government and what happens to the City, the State, and Tallahassee, determines where growth is going. To build a new facility or the new reclamation facility and to not use it is very costly. Mr. Thiess said our major projects going forward on the water/wastewater side of the business are primarily going to be on wastewater and mainly the mainland plant. Unless the money comes out of Tallahassee very quickly, we will have to push that plant out further. The new capacity analysis report draft is showing the island plant reaching capacity at the end of 2011 instead of late 2009.

Mr. Thiess introduced the item for the contract with Youngquist Brothers, Inc. for the Mainland Water Reclamation Facility Deep Injection Well System. The Contract arrived this afternoon and we are ready for the contract to be signed. David Mellert reminded the Board that in September 2006, it was approved that we negotiate a contract with Youngquist Brothers, Inc. to drill these injection wells. Through permitting with Florida Department of Environmental Regulation and contract negotiations with FMPA, we are now ready to bring the contract before you. We were notified at 3:00 this afternoon by e-mail that the permit should be issued today. It took six months to get the permit. The scope of services kept changing as the State changed along the way as did the requirements. The scope was redefined 15 days ago. If the scope changes again and DEP requires a liner in the second well, then there would be \$750,000 added to the contract, which would be paid by FMPA. FMPA and FMPA are jointly pursuing a variance with DEP to avoid this cost and FMPA will incur the cost of the variance. We have 13.7 million dollars budgeted to do this work, and this contract is 10.9 million dollars. We are working with local vendors on the site work and saved \$350,000 so far. Mr. Mellert said that we are working with CH2M Hill on this and staff has evaluated Youngquist contracts over the last three years for other contracts they have had with other municipalities and we feel that 10.5 million dollars is a fair price for what we are attempting to accomplish. Because of the time frame, approval of this contract should be contingent upon our insurance consultant and our attorney to finalize the review of these documents, which we received at 3:30 this afternoon. We would like to issue the

Notice to Proceed tomorrow because our goal is to have the first well on line and in service as early by November to meet the FMPA guidelines and requirements that we have with them. Mr. Perona asked for clarification of the second liner. It is my understanding that it is classified as industrial and it is the same effluent that is not considered industrial, but when it goes through the cooling towers then now it becomes industrial waste and may be classified accordingly. Can the liner be added at a later date? Mr. Mellert replied that yes that is correct. He said as we move forward on the first well, the variance issue will be cleared up in such a manner that we can order and install the liner, if needed, under the same time frame. By January, if we need to order this, we need to know by January so it can be manufactured, delivered and installed before Youngquist finishes up what they are doing. The second well is a backup and they are asking for a variance to use this well without the liner in a backup situation. Not a permanent situation, only a backup and the state is interested and that is a four or five month process. Mr. Perona asked if FMPA is paying that part of the liner and Mr. Mellert responded yes.

Mr. Drummond made a motion, seconded by Mayor Benton and unanimously carried to award contract to Youngquist Brothers, Inc. for the construction of the Mainland Water Reclamation Facility Deep Injection Well System in the amount of \$10,900,000, contingent on resolving any remaining contract language issues raised by FPUA attorney or Siver Insurance Consultants.

Mr. Thiess said that at the last meeting we brought the 16.25 acre parcel on 37th Street to the Board to purchase. Mr. Drummond requested that we come back with a method of financing, and Mr. Thiess discussed it with Mr. Varella and we plan to finance it with the FMPA pool loan. This could be the permanent financing or if doing a major refinancing for other facilities at a lower interest rate, we could refinance the property at that time. The FMPA pool loan rate is sub 5% rate and we could stay with that or if we get a more attractive rate as part of the bigger finance package for other facilities, we can roll this into that also. Mr. Perona asked if it was the intention of the Utilities Authority to use the real assets that the utility owns to retire this debt. Mr. Thiess stated that the plan that CH2M Hill recommended was that we buy this property this year for the administrative center. The projections are moving out further. When we first did the staffing analogy, we were looking at 2016 to having 60 additional employees. That 2016 could move out to 2020, so we are going to monitor the growth and addition of staff and when we are projecting ahead three years down the road that we need a facility, that is when we will begin to plan, design, and build that facility. We have several ways of recouping some of the investment in the land. We will sell all the facilities down town, which will appreciate with the Federal Courthouse coming in. We can sell three or four acres of the Okeechobee frontage of that property, because we do not necessarily need that. We look at it as a fairly long term, possibly five years out or beyond. Mayor Benton asked if we have a contract on the property. Mr. Koblegard responded yes, that the Board approved the purchase at a previous meeting. Mr. Thiess said that he has met with his staff and the planning department and their staff and they walked through both properties and the intended use and potential issues. Mr. Thiess followed up the meeting with a letter to Mr. Margotta giving him our assessment of the results of that meeting and that assessment is that there are no obstacles we can not over come with good communication with the City of Fort Pierce Planning Department and the County. The zoning is fine, the zoning of future land use is fine, and there should not be any issues developing regarding that site. Mrs. Cully asked the time line of the contract. Mr. Koblegard responded 30 days. Mr. Thiess said that once we get the survey in and the environmental phase I, we should be able to close the deal. Mr. Drummond asked if this was budgeted this year. Mr. Thiess said we budgeted three million dollars in land acquisition in fiscal year 07 and this falls within that. We do have another intended purchase for the substation on Selvitz and Prosperity Drive that puts us at 1.6 million dollars beyond what we budgeted for this year, but that is

part of what we are talking about with the budget amendment. These are capital expenditures that do not effect us on rates as much as our routine renewal and replacements that are funded from rates. We budgeted 3 million dollars and we will bring the other parcel for the substation to the Board in two weeks and that parcel is 1.7 million dollars. We can sell the lot behind it, because we had to purchase two lots and these lots are right at the FP&L transmission line so we saved money. It was Mr. Koblegard's opinion that if we went to condemnation we would pay as much or even more for that parcel. Mr. Drummond asked if as part of our budgeting we did not budget for the full capital outlay, we budgeted for the debt service on the purchase. Mr. Varella said we have secured a loan, and we have 20 million dollars in FMPA coffers waiting for us to spend. We budget that based on how much we expect to spend, and we use an estimated rate because it is a variable rate and that is what is included in the budget. Mr. Drummond asked if this is coming from the 20 million dollars that we have approved under the FMPA pool loan. Mr. Varella stated you have approved it, and we have secured it. Mayor Benton asked what the interest rate is. Mr. Varella said it is less than five percent. Mayor Benton said that when the City goes up for bonds, sometimes they are in the 3 to 3 ½ percent range. Mr. Varella said that he is adding the administrative costs, and it may be in the 4 and 5 percent range. He said that we are getting a very good deal because we do not have to add in the closing costs like when you go out for a bond issue. Mrs. Cully asked what area the substation property would service. Mr. Thiess said it will serve the new water reclamation facility and anchor down the entire southwest section of our service territory.

Mr. Koblegard said he wanted to thank the Board for the pay increase. Mr. Thiess also wanted to thank the Board for his pay increase.

Mayor Benton said that Congressman Mahoney and Senator Nelson were here to officially deliver the news that the 53 million dollars for the federal courthouse is in this year's budget and hopes to break ground before September 1st. That should up the property value across the street that will benefit us. Mayor Benton said that they showed them the facility on the island while they were here, and there was a meeting up at Harbour Branch with the same group that has been pushing for years for a Water Resources Development Act, which is to clean up the Everglades. It appears that the new Congress in Washington and Committee has agreed to start with over a billion dollars for this. At least, locally, we are pushing to move the plant off the island as part of cleaning up the Indian River Lagoon. The federal government is looking for a catastrophe fund for helping with the increase of insurance rates.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN