

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY,
TUESDAY, May 6, 2008, 4:00 P.M., CITY COMMISSION CHAMBERS

Members Present: Chairman, Darrell Drummond; Vice Chairman, Pamela K. Cully; Deputy Secretary, Thomas K. Perona; and Mayor Robert J. Benton III.

Others present: Director of Utilities; Director of Electric and Gas Systems; Superintendent of W/RW/WW OPS; Director of Shared Services; Communications Manager; FPUA Attorney; Director of Finance; Purchasing Manager; Deputy City Manager

The meeting was called to order by Chairman Drummond.

The Invocation was given by Reverend Moses Hill of Moses Hill Ministry

The *Pledge of Allegiance* was recited.

The roll was called and a quorum declared.

Motion by Mr. Perona, seconded by Mrs. Cully, and unanimously carried that the items listed on the Consent Agenda be approved:

1. Approval of the Minutes of the Regular Meeting of April 15, 2008.
2. Excuse Bob Summerhays from attendance at today's meeting.
3. Approval of purchase from Advanced Control Systems (ACS) in an amount not to exceed \$145,000 for the upgrade of the existing Electric SCADA System project previously approved in the FY 08 budget.
4. Authorize award of bid to lowest and best bidder to Kelly Tractor Company of Miami, Florida in the amount of \$26,175 for one Sullair 125H portable air compressor.
5. Approval of Merchant Application and Agreement with Chase Paymentech for credit card processing service.

A letter was received from the Mustard Seed thanking FPUA customers for their donation of \$333.74 through Project Care.

A letter was received from Hayslip Landscape thanking our staff, Scott Loven and David Mellert, for a timely response to the water connection question for their property located at 6153 South US #1.

Mr. James Carnes of Water/Wastewater Engineering presented a request to the Board to increase the funding limit for of the current Annual Unit Price Contract with Ditichdiggers, Inc. by \$702,750 for the installation of underground utilities for two projects to be presented later in this meeting. Mr. Carnes stated that the Annual Unit Price Contract for

the installation of underground utilities is a one-year contract, with three one-year renewals originally approved by the FPUA Board on September 18, 2007. The initial sum of \$1 million was authorized to be expended each calendar year and during that same meeting the Board approved its initial increase and funding by \$3.7 million for the construction for the Harmony Heights MSBU. In January of this year, the Board approved a second increase in the amount of \$2.13 million, in which that increase was requested because of reimbursement possibilities of available federal grant funds for those projects.

Today, staff is requesting a third increase for Year 1 of this contract to perform the following projects. The first project is the North Hutchinson Island Dual 10" master meter reconfiguration, which is necessary to maintain the reliability and integrity of the system serving our water customers on North Hutchinson Island. Project 2 is Lincoln Park II Subdivision water main replacements. This is a high-priority water Rehabilitation & Reconstruction project that needs attention because of the age and poor condition of the existing infrastructure in this location. Therefore, staff is requesting approval to increase funding limits of Year 1 of the current Annual Unit Price contract of installation of underground utilities by \$702,750 to complete these water utility improvements contingent on the approval of the New Business Items D4 and D5 on this Agenda.

Mrs. Cully asked if budgeted funds are available for these projects.

Mr. Carnes stated that funds are available.

Motion was made by Mrs. Cully, seconded by Mayor Benton, and unanimously carried to approve the increase of funding limit for Year 1 of the current Annual Unit Price Contract with Ditchdiggers, Inc. by \$702,750 for the installation of underground utilities for two projects.

Mr. Don Landin of ITS presented a request to approve a Business Associate Agreement, and Security Rule Amendment, with Lawnwood Regional Medical Center and Heart Institute. Mr. Landin stated that back in October, we quoted a four-fiber link for the hospital that will go from their main hospital to the pavilion. It is dark fiber. We have been going through contract legal reviews and negotiations since then and they have signed all four copies of the documents on April 24th. Two of the documents have to do with a Business Associate Agreement and its Amendment. Even though FPUA does not intend to disrupt the flow of data between the hospital and the pavilion, it is going to go through our cables. Technically, this sensitive private health information is going through our cables, so we are required, in order to have this and to lease this service to them, we have to sign the Confidentiality Agreement stating that we are not going to distribute the patient health information to the public. We have no intention of getting that information out of the cable, we do not have facilities, we are not going to hook up to it in that way, but the Agreement is required.

Mr. Landin stated that the Agreement can be cancelled by either party at any time. The fiber lease and pay-back term is five years. When we do a pricing calculation, we price the service so that it is paid back within the terms of the Contract. That goes for dark fiber or for dedicated internet access. Any customer has the option, if they have some extra

capital money, to go ahead and pay quite a bit up front and that results in a lower monthly payment. This customer is going to pay 85% of the FPUA net construction cost up front when they receive this Agreement. They have the check waiting for us. We expect additional services to come in the future, leasing more fiber pairs on this cable, and possibly dedicated internet access as a backup for them and for wireless internet throughout the hospital for patients. These additional services will require one of these Agreements also. This cable will be passing an FPUA lift station off Nebraska Avenue, so if we need to connect to that in the future, we can for communication.

Mrs. Cully asked what dark fiber is.

Mr. Landin explained that if you have an extension cord that is not plugged in, it is not energized, but if you plug it into the wall, it is now energized. When we provide dark fiber, we just provide the pathway, like an extension cord between two points. It is up to the customer to energize that by adding electronic instruments at both ends to send laser signals back and forth. We just provide the "pipe" so to speak or the wire.

Mr. Perona made a clarification, that at a seminar about dark fiber he learned, dark fiber is a high secure-type cable that is used for a specific purpose where it is not open to public domain.

Mr. Landin agreed that is another feature of dark fiber since it is just a pipe that goes from one end to the other and does not go anywhere else, unless you scrape the installation off of it and tap into; those particular fibers are dedicated to only the hospital.

Mr. Perona stated that is why it is called dark because it is specific-use purpose, secure, and it is not open to public domain or any other non-authorized use so it is dark. He has talked to people in California, where it is big business for dark cable for their security. It is different than regular fiber because regular fiber is able to be hooked up into different domains.

Mr. Landin stated that generally it is more expensive to the customer than being on a network.

Mrs. Cully asked if there were any large businesses like this or if this is our first customer.

Mr. Landin named some of our other customers like the Sherriff's Department. The School Board has three dark fiber links and there are three services in Fort Pierce City Hall. The St. Lucie County IT Department just signed up a couple of months ago and they are looking to expand services. They have asked us for a fiber map overlay so they can merge with their locations map to figure out where we can connect them.

Mrs. Cully asked what kind of revenue this will generate.

Mr. Landin stated that this customer will be paying \$15,000 for setup charge and that reduced their monthly rate from what it would have been at \$350 a month to about \$156 a month. So the monthly rate is low because they are paying most of our construction costs up front.

Motion was made by Mr. Perona, seconded by Mrs. Cully, and unanimously carried to approve a Business Associate Agreement and Security Rule Amendment with Lawnwood Regional Medical Center and Heart Institute.

Mr. John Tompeck of Power Resources presented the Contract with National Salvage & Service Corporation in the amount of minus \$974,000 for the demolition of the H.D. King Power Plant, RFP No. 576, Demolition of King Plant. Mr. Tompeck stated that during the April 1st meeting, the Board directed staff to negotiate a contract with National Salvage & Service for demolition of the King Plant. Staff met with National on April 15th and completed those negotiations. Included in the contract are two items that we discussed at the April 1st meeting. The first was the Performance and Payment Bond and we agreed with National for a bond for \$2.1 million, which is sufficient to cover demolition of the plant. The cost of the bond is 2% or \$42,000, which has been deducted from the original bid price of minus \$1,016,000, which makes the contract price minus \$974,000. We have agreed on a payment schedule as noted in the Contract which calls for four monthly \$100,000 payments, starting on August 1st, with a final payment of \$574,000 to FPUA due 30 days after completion of the Contract. The project is scheduled to begin on June 16th and should take about 24 weeks.

One other note, there have been some questions on the optional work scope to demolish four feet below grade. Everybody agrees that this is something that we should go ahead and approve and the only thing holding us back is that we have no clear direction on the environmental cleanup of the site and; therefore, it would be unwise to disturb the surface or subsurface soil.

Several months ago, Mr. Thiess gave the Board a brief overview on the Brownfield Redevelopment Program that we feel it will be a great benefit to us and the City. We have been pursuing entry into the Program, but have had some eligibility questions with FDEP. We think we are in the process of resolving those questions and hope to hear something on that by the end of this week. Once we have cleared that hurdle, we can sit down with the Southeast District of FDEP folks and develop a Rehabilitation Agreement, which will include all the details on investigation, analysis, and remediation. As soon as they agree to our approach to the site cleanup, staff will come back and recommend modifying the National Salvage & Service contract to include additional excavation, which is approximately \$200,000.

Mayor Benton made a motion to approve the Contract with National Salvage and Service Corporation to pay us \$974,000 to remove the H.D. King Power Plant and it was seconded by Mrs. Cully.

Under discussion, Mr. David Recor, Deputy City Manager, stated that he understood the issue regarding the additional scope for \$200,000 and asked if it could be clarified in the initial scope that when it states the site will be taken to grade that it includes the removal of the existing slab.

Mr. Tompeck said it stated "removal of existing slab to grade".

Mr. Recor asked if the additional \$200,000 would be for removal of the four feet beneath the existing concrete slab.

Mr. Tompeck stated that includes foundations, piers, and everything that is on grade to four feet below grade.

Mr. Recor said the City wants to make sure that once the demolition and removal of the slab is complete, they have a property that is sodded and not an open dirt field in the middle of downtown where they just completed the downtown waterfront charrette. There is an established vision for the downtown where they have a very high-profile sports figure in town tomorrow that will be looking at this property. It will not be the only proprietor that they will be marketing to and they want to make sure that it is attractive and marketable while we are moving forward with phase two.

Mr. Tompeck said that the FDEP has asked for a soil management plan during demolition so they are serious. If we go moving around soil without an approval, a scope, and a work plan for the environmental cleanup for the site, we will be in trouble. That is the only reason that we are holding back with going forward with the option.

Mr. Recor asked about the concrete intake structure, if it is going to be removed.

Mr. Tompeck said that is not currently in the scope to be removed.

Mr. Recor asked when that would be removed.

Mr. Tompeck said that is up to the City. Before we developed the demolition specification, he did a site tour with the City Engineer and discussed different areas of the plant site and it was agreed at that time to leave the structure there and just remove all the pumps, the travelling water screens, electrical boxes, and to remove it from the actual structure. At that time there was no plan as to what the City was going to do with that area so that is why it is not in the scope as it stands right now.

Mr. Recor asked, if in as much as the UA is able to use the \$974,000 to reestablish the property and include in it any of the environmental cleanup that is not eligible for Brownfield monies, we want to encourage the UA to do that. If it exceeds all that money, he is here today to tell you that the City will step up and contribute and participate in any monies in excess of the monies that we would receive should it exhaust those resources.

Mr. Drummond stated that he was surprised that since we have been working with staff in regard to this and it has always been our intent to bring the property back to a level and desirable shape to turn over to the City and that intent has not changed in anyway. He stated that if we are going to move forward, it would be only after we have gotten the final report back from FDEP and determined exactly what additional items we need to do. Staff will continue to work with the City with regards to it. Mr. Drummond said that he may have misunderstood what Mr. Recor was saying. It was never Mr. Drummond's thought that we were going to turn over the balance of unexpended dollars back to the City. Is that what you were saying, Mr. Recor?

Mr. Recor said that is not what he was saying.

Mr. Tompeck said it would be very advantageous to us be able to do the environmental cleanup with the demolition so we are going to try and do everything we can to push FDEP to allow us to do that. It is a lot easier to do it then than to do it afterwards.

Mr. Recor asked, if to get these negotiations resolved, it should be within that 24-week period with FDEP.

Mr. Tompeck said he is hoping to sit down with FDEP in the next few weeks. Somebody is working on a soil management plan and somebody is working on an actual work plan based on the December phase one evaluation. We know that we are addressing 15 areas of interest, which will turn into a work plan that will be presented to FDEP and describe to them what needs to be done in each of those areas. We are fortunate in that we have been generating power on the site for almost 100 years, it is not a dirty site. Where we used to have a substation, we will search that area for PCB's. Places where we used to have oil tanks will be searched for PAH's. We want to investigate and analyze this so that we can close it out as quickly as possible so that the City and UA do not have any liability when the property is sold.

Mr. Thiess stated that we are on board with the City staff and the common goal is to leave this site in a marketable and clean state. We might have to negotiate some items with the contractor if we want to do something a little bit different, but we are prepared to do that. He also stated that this may sound like a \$974,000 windfall, but we have spent over \$5 million moving this plant, so we might get a little bit of pay back, but not a windfall. Our costs to date are well over \$5 million on the Hartman Substation and some other projects and the next item on the agenda is another \$664,000 for another project related to decommissioning the King Plant, so our expenses for moving the plant are significant. This is a little pay back for some of those expenses, if we do manage to keep some of the money from the Contract.

Mayor Benton stated that he hoped that our staff was a little concerned that we did not consider removing the intake structure. He does not know if it is something that can be filled up with concrete and look like a part of the seawall or if it has to be removed as a part of the cleanup. Several years from now he would hate to have to come in and redo the whole seawall in the Marina.

Mr. Thiess said that Mr. Beach was going to get in touch with Mr. Tompeck before he left for vacation.

Mr. Tompeck said that Mr. Beach came over and Tom Richards and he took him around the site. Mr. Beach talked about a couple of different items, not only the intakes, but some other items associated with Moore's Creek. This is the first time that we had heard that because we did not know what the City's future plans are especially as it is related to the intake structure. What Mr. Tompeck would ask is, as soon as those become clear and it is known exactly what the City wants us to do. If you want us to take the intake

structure back to fence that is there or somewhere in between the boardwalk which is already there, that becomes an issue too. It all depends on what you want to do.

Mr. Recor said he was under the understanding that there had been some discussions regarding removal of the intake structure and although it was not included in this scope, it was contemplated that it would come back as a change order during this stage.

Mr. Drummond stated, as he is reviewing this Agreement, he is suggesting that we move forward with this particular Contract and this does not preclude any future amendments.

Mr. Recor asked if coming back for removal of the intake structure could be a change order.

Mr. Drummond said that if all parties are in agreement, we could do that.

Mr. Thiess said that we need to continue getting our staff's together and decide exactly how we want the site to end up when the project is finished and will work with the contractor towards that end.

Mr. Recor said that works for them.

Mayor Benton said that we need to evaluate it because there may be a couple options for that structure.

Roll was called and the motion was carried unanimously.

Mr. Thiess said, that as stated earlier, this next item is a contract for modifications for the King Substation, which is next to the King Plant and is related to the decommissioning of the plant.

Ms. Betsy Schnebli of Electric Engineering presented for approval the Overland Contracting Change Order #1 to Open Book Contract for Hartman Road Substation Construction. Betsy stated that as Mr. Thiess mentioned, there is work required at King 11, King 5, and Hartman substations in regards to decommissioning the power plant, all these modifications must be complete. In keeping with the demolition contract schedule, work at King 5 and 11 must be completed before July 18, 2008. Because of this accelerated schedule, staff believes it is best to remain with Overland as they are already mobilized to Hartman and have the resources to construct the job within the project schedule. This is a budgeted item for FY 08.

Motion made by Mr. Perona, seconded by Mrs. Cully, and unanimously carried to approve Overland Contracting, Inc. Change Order #1 to Open Book Contract for Hartman Road Substation Construction to provide construction services in an amount not to exceed \$663,938.00 for King Substation Modifications.

Mrs. Nina Hurtubise presented the Rate Comparisons for the month of March 2008. Mrs. Hurtubise stated that this is composed of rate comparisons for residential electric rates compiled by the Florida Municipal Electric Association as well as that compiled by staff for three local utilities. What you see is the 1,000 kwh electric bill comparison. Fort Pierce Utilities Authority is displayed with the green bar. Where we are sitting as of March 2008, there are 23 municipal utilities with rates lower than FPUA and there are 9 that are higher, which leaves us a little bit higher than the middle. We are still not the highest in the state and just slightly above the municipal average of \$119.38.

For 500 kwh, we are only one tic higher than that. There are 24 other municipal utilities with electric rates less than ours and there are 8 that are higher. When we compare to our neighbors to the north and south, we are the highest for the month of March 2008. Not dramatically higher, just a few dollars higher. We are approximately \$15 higher. One question that was proposed to me was that these numbers we are seeing in this piece of the utility bill comparison, the numbers are higher than what we see in the FMEA analysis because we include the franchise fee, if there is one, which is in the case of Port St. Lucie. We include the gross receipts tax for all three utilities and utility tax for all three utilities, so the rates are a little bit higher, but these are comparable numbers. These are the 1,000 kwh of electric and 6,000 gallons of water/wastewater service.

Mr. Thiess stated that the greatest difference is between us and Vero Beach, which is \$15 and we are \$7 above the Port St. Lucie total. As we noted on this comparison, a lot of the Port St. Lucie customers also pay an assessment on their tax bill for the installation of the infrastructure down there so by the time you take a look at that, we are probably lower overall cost than Port St. Lucie.

Mr. Drummond said that we have suggested that in the past we were anticipating that our fellow communities are probably going to make adjustments as well so we will see that trend as we move forward.

Mrs. Cully said she noticed the electric we are neck and neck with Vero Beach, but the water/wastewater, we are higher. Could this be from the water restrictions?

Mrs. Hurtubise stated that they have the same restrictions that we have.

Mr. Thiess said he has talked to some people in Vero Beach and they are anticipating some rate increases on the water/wastewater side up there. They have had a rate structure that has been in place for a long time and are over due for a rate increase.

Mr. Perona said that when we discuss this comparison, it is a brief snap shot in time. He believes it would be an interesting tool to be able to compare it to a period of time of maybe six months and be able to look at it as we go forward and say, here is where we were three months ago and here is where we are at now. These people have made their adjustments and some utilities we know in anticipation of fuel cost, have not moved at all and we have. By doing so, we are not hitting the customer with one big boom charge all of a sudden where this fuel cost has gone through the roof, we have actually tried to feather it in a way that is it not so difficult for our customers.

Mayor Benton asked if there was a memo from FMPA in the last month where they said the price of natural gas had gone up 93% since last August. Similar to our oil and gas prices, natural gas, which many years ago so many bought into because it was suppose to be the cleanest form of energy, now the price has gone up considerably in less than a year. This is an information only item.

Mrs. Hurtubise presented the Quarterly Financial Operating Results for the month of March 2008. She stated that we are six months into the year. Our income before City Distribution and Capital Contributions is \$3.2 million. Much of this is attributable to grant revenue that we have received that is one-time money. We are still on a very tight budget. Our Capital Contributions also continue to be strong, up \$1.8 million compared to last year. The Capital Contributions cannot be spent on operations and maintenance; it is specifically for new construction in the case of capital improvement charges. Some of the Capital Contributions are in the form of assets and some cash, which is a reimbursement of capital costs.

We are continuing to experience decreases in our water, wastewater, and natural gas systems, units billed. A graph of that is shown with three years depicted here. The bar at the top is FY-08, FY-07 in the middle, and the gray bar is FY-06. The most obvious is the natural gas on the bottom. Electric is not changing dramatically, electric is actually up 3% from 2007. Water is down 13%, from the 1.5 million down to 1.3 million in 2008. The initial watering restrictions went into place March 2007, so the 2007 numbers are before the initial water restrictions went into place. Wastewater, the gallons billed is down 10% from FY07, which is down from the year before and natural gas is down 0.1%. From dollars received for those operation sales, electric is up 14% because of the rate increases that were passed in January 2007 and well as the additional power cost adjustment. We are not making a lot net, these are the gross net. Water is up 1% dollar wise, wastewater is up 4%, and natural gas is down 2% even though the consumption is up ever so slightly.

In an effort to remove odd data from last year, what I am attempting to demonstrate is that our operating income over a rolling 12-months is much more consistent than it has been historically and this chart does not show that and the same situation with the debt service coverage. Please take a close look at the scales, there is only \$350,000 difference in operating income from the top to the bottom. Basically, we have stabilized. The debt service coverage numbers with 2.34 being the lowest it has been and up to about 2.41. Our minimum debt service coverage requirement is 1.25. The debt service coverage for the 12 months ended March 31st was 2.40.

Contributed Capital in electric is \$2 million with \$1.6 million from Fort Pierce Redevelopment Agency for undergrounding the electric lines on South A1A. They have contributed another \$1 million on top of last year, so they have contributed \$2.6 million towards that project. The \$2 million in water Contributed Capital is contributed by St. Lucie County for Harmony Heights MSBU. The bottom line is Contributed Capital is non-cash and it is almost \$3 million in assets that were provided to us. The capital improvement charges of almost \$1.9 million can only be used on construction assets serving new customers.

Also contained in your packets is some analysis of budget versus actuals. Our revenues for the first six months are \$11 million below budget. The numbers that I have been showing you are more of a comparison to last year rather than to the budget. The reason for the \$11 million shortfall is the Hartman Road Substation was originally expected to be paid in part by the Fort Pierce Redevelopment Agency (FPRA) and that was not done and we have had to use debt to fund the improvements at the Hartman Road Substation. Also, the rate increases that were in the budget at that time went into effect three months later than they were originally anticipated. The good news is that our expenses are \$6 million below budget and that is basically all electric purchases for resale.

Mr. Drummond asked, if going into the budget, we anticipated that we would not be able to use the FPRA dollars and we did not include it in our budget projections.

Mrs. Hurtubise said it was included in revenue, it was an oversight. Some of the information was corrected in some spots, but not all the way through.

The calculation of the City Distribution does look like at the current time we will again be limited to the 40% of the remaining revenues formula. The short fall should be less due to the rate increases, the operating income and income for the Utility Authority as a whole is greater in the second half of the year than the first half of the year because of the weather. Our hottest months have not yet hit so there is expected to be a shortfall in the distribution again this up coming year, but hard to predict how much that will be until it actually happens.

Mr. Perona stated that he is still bothered by the \$11 million shortfall and not sure he understands that issue. He would like something that breaks that down explicitly for the next Board meeting.

Mrs. Hurtubise said that half of that is just less revenue in residential and less revenue in commercial, less revenue inside city, less revenue outside city, less revenue in PCA, so about half of it relates to less revenue compared to budget not comparing last year to this year, we were expecting more revenue overall. The other half is half of the \$10 or \$11 million in FPRA funds that was inadvertently included in the revenue budget.

Mr. Drummond said he agrees with Mr. Perona that he would like some further breakdown.

Mr. Perona said he has questions about this, but it would be easier if he has something to look through first. He would like it available for the next Board meeting.

Mr. Thiess said he would like to see the revenue and the expenses broke down in a similar fashion.

Attorney Koblegard presented the legal opinions on the 2006 Transfer to the City. He stated that in the packet there are three separate documents, one is a memorandum that Mr. Thiess received from the City back in August 2007, Robert Freeman's opinion and,

one that he has drafted for the Utility Authority. If the Board does feel that this is a reasonable position to take, he suggests the Board consider passing a motion to that effect, adopting both opinions and then ask Mr. Thiess to forward those on to the City Commission or the City for their review and receive comment back from them.

Mr. Drummond asked Mr. Koblegard to share the conclusion from his Opinion for the listening public.

Mr. Koblegard said if you go through his Opinion, he reviewed many documents such as the Charter, the minutes of many UA and City Commission meetings, correspondence involving Bond Counsel and attorneys over the period of time that this was explored and then determine what the Amendment to the Charter would actually be. He reviewed the Bond Covenants and it looks like until this Bond that was taken out in 1991 is paid off, we are required to honor the Covenants in the Bond and the way that money is to be spent by the Utility Authority. It appears very clear to Mr. Koblegard that we are required, after we make certain deductions from our gross income, to set aside 60% for capital improvements. It is required in this Covenant. After doing that, the amount of money left does not equal the 6% that you would pay based on the defined definition of gross revenue in the Charter. Then Mr. Koblegard's Opinion would be that we are required to pay no more than what is left after you set aside the 60%. If that is the case and that was discussed it appears to be accepted and drafted into the City Ordinance and the Amendment to our Charter, even though we do not pay the full 6% that does not mean there is a shortfall. We have paid what we are required to pay and what is defined for us to pay with the City each individual year. If we are doing that, in paying the 40% that is left after setting aside the 60%, we are not creating a shortfall, we are paying what our Charter says to pay. If that is the case, we do not have a shortfall.

In reviewing the minutes, he found nothing where there was any discussion about if there is a shortfall, what do you do going forward, if it is to be made up at some time, that was not discussed. It was very clear from the minutes of both the Utility Authority and the City that we are to recognize the Covenants and we are bound by that as what we can actually transfer to the City.

After the 1991 Bond is paid off, which will be in October 2010, that provision of the Covenant no longer is a limiting factor on the 6% that goes to the City. There are certain expenses that we have to pay before we determine what can go to the City as far as the 6%, but those Covenants in the Bond would not relate to that. We only have certain other deductions and there may be times after we deduct the debt service and operating expenses in the reserve account, we might even be short at that point in paying the full 6%. That would not be because of the Bond Covenant, it would be because of other reasons that are set out in the Charter.

Mr. Drummond asked if this Board takes the position of accepting the Opinion as the official position of this Board, where would it go from here.

Mr. Koblegard said it should go to the City Commission saying this is what the FPUA Board has reviewed and we take this position and there is no shortfall, we do not have anything to make up. The City could either accept or reject that.

Mr. Perona said this is a very highly legal matter and that half way through reviewing this he stated that he was not happy that there was not language in there that would assist us through this whole thing. He said he would insist that the two Authorities get together, which he knows they already have, and the City's Bond Counsel, which is Mike Williams, came up. Mr. Perona said he has something from Mr. Schwerer that states the fact that he upholds the City's contention that there is a shortfall of \$500,000 and it comes down to Bond Covenants that preclude the FPUA from paying annual contributions. After reading what the Utility Authority Bond Counsel has come up with that word "paying" should be "owing" annual contributions and that is where the major discrepancy happened. In 1991 the Utility Authority issued bonds and they were well within their rights to do so from the City's standpoint. In 1994, a Charter provision came along and said that there would be an amount of 6% of the gross revenues would be the transfer to the City. There is law in the Florida Constitution that states that no contract existing after the fact can change, it gets pretty confusing after that. Basically we have two sets of attorneys arguing over an issue.

Mr. Drummond stated as he understands it, the City had requested of FPUA, an Opinion as to whether we felt, as a result of the less than the 6% full transfer there was still monies owed by the Utilities Authority. So at this point, by this Board taking the position based on these Opinions from our attorney, we would be responding to the City as requested with regard to whether or not we feel that additional funds are owed to the City. That does not preclude, if the City so desires, for us to have further discussions with regard to this. What was asked of us was for us to express what our position was and at this point, what we have done is what Mr. Perona suggested is a legal matter. We have asked our attorney to share with us what he felt is our legal obligation. Mr. Drummond said that in 1994, he was sitting on the City Commission and his memory does not suggest to him that during the course of that discussion that we clearly were looking to make sure that it was an absolute at 6%. Most certainly, he would not preclude the ability for us to have further discussion with the City to make sure we are clear on both in terms from this past year and as well as this year in anticipating that we may again have a shortfall. The first step is to respond to the City.

Mr. Koblegard said if this Board feels that this is the proper position to take at this time, based on our Opinions, the City should know that the Board has reviewed this and made a decision base on that. We do not believe any additional funds are owed. The City would then take it from there and do their own review. We could set up a meeting to discuss it further. At this point, this Board needs to decide what their position is and this is the position that we suggest.

Mr. Perona said that the reason for this 40% is a safety mechanism for people that are purchasing these bonds and Bond Covenants are set up to protect that. We are not to pay out an exorbitant amount past our revenues to be able transfer to the City and put the Utility Authority in jeopardy creating a crisis for the people that own the bonds from the Utility Authority. By thinking that and reading through Mr. Bryant's comments, basically, this safety mechanism is there so there is no contemplation of any future debt. Mr. Schwerer writes that "while the Bond Covenants arguably precludes the FPUA from paying the annual contribution" and everything that Mr. Perona has read in support that it

is not from paying because that means that there is a debt and it is basically from owing. That given year that is the calculation that whatever is transferred to the City it is and there is no other consequence. Next year it is a new ball game and if we reach a certain revenue level that we can transfer the 6%, then that 6% is transferred as prescribed in the 1994 Amendment. Mr. Perona thinks it is clear from what we have received from our Bond Counsel and from our Attorney that their definitions make it a little bit easier that it was the true intent of this format.

Mrs. Cully said that her concern is that we have heard from our Counsel and our Bond Counsel and who else do we believe if we do not believe the people that we have hired to do that. Her concern is what was the 1994 Charter provision, why was it changed so that it would be just 6% instead of the 40%?

Mr. Drummond said that there were a lot of issues involved and it would be difficult to go into all of them. Ultimately it was "recognition and desire" on both parties to get a "more equitable transfer" in terms of revenue on an annual basis.

Mrs. Cully stated that the way she sees it, the City relies on this transfer for the monies for their general fund budget.

Mr. Drummond suggested that it has always been that the City has recognized the Utility as an enterprise and "investment", there is a return on that investment and they look forward to allowing those dollars to offset other things that they do. He does not know that they suggested "x amount" that they anticipate in terms of their budget. It is always reflected upon what the market is going to do.

Mrs. Cully said it is always reflected as what the market is going to do, but yet the 1994 provision basically once this Bond Series has ended, it will be 6% no matter what.

Mr. Drummond said that Mr. Koblegard has suggested that there are still certain things within the Charter which do still take precedence that does not go away. Subject to those things the Bonds would no longer be the determining factor.

Mrs. Cully made a motion to approve what our Counsel has given us and take it forward to the City.

Under further discussion, Mr. Perona asked for clarification that Mrs. Cully's motion would mean to stand to the point of the final of what Mr. Koblegard said in his summary "I do not believe that the UA is required to pay any additional sums to the City of Fort Pierce for the fiscal year 2006 distribution", it deals with only that. Mr. Perona wanted to make sure he was seconding the proper motion and requested that Mrs. Cully restate her motion.

Mrs. Cully said that our Counsel and our Bond Counsel have come together after reviewing many things such as the Charter and everything else and have come to the conclusion that we do not owe the funds so she moves to approve this information that they have given us and that we should send it forward to the City for their review.

Mr. Drummond stated that Mr. Koblegard might suggest that we have language that says that we accept as our official position.

Mrs. Cully said that she would like to put that in the motion and Mr. Perona seconded the motion.

Mayor Benton said that he sits on both Boards and he has Counsel and Bond Counsels that disagree so he would like to see us sit down in a closed door meeting with everyone in the near future trying to resolve this. I will not be supporting the motion today because there are still some unanswered questions and more to it than we have in front of us and he is not privy to bring that up today. It is a little more complicated.

Mr. Drummond reminded that what we are suggesting is that this is the response that was requested of us that we take a position and this would not in any way preclude any further discussions with the City with regard to the resolution. We want a resolution that we know going forward is going to be how this is interpreted for any given year for any future Boards that would have to deal with this.

Roll was called for the motion and Mrs. Cully, Mr. Perona, and Mr. Drummond voted yes and Mayor Benton voted no.

Mr. Javier Cisneros of Water/Wastewater Engineering presented the request to install a metered bypass required for Dual 10" Master Meter maintenance for the bulk meter connection to St. Lucie County Utilities for North Hutchinson Island. Mr. Cisneros stated that one of our largest customers, St. Lucie County North Hutchinson Island, is getting potable water via dual master meters at Little Jim Bridge. As identified in our Rehabilitation and Replacement (R&R) Program, the existing meter configuration does not allow us to perform maintenance because of harsh conditions. A metered bypass will allow us to isolate the system while providing uninterrupted service. The metered bypass design will be completed in-house and constructed by our unit price contractor. The funds are currently in our budget.

Mr. Perona made a motion, seconded by Mayor Benton and unanimously carried to approve the post budget request to install the metered bypass required for dual 10" master meter maintenance for the bulk meter connection to St. Lucie County Utilities for North Hutchinson in the amount of \$75,000.

Mr. Cisneros presented the request to replace the water main infrastructure in the Lincoln Park II neighborhood. He stated that we have identified potable water pipelines in our Rehabilitation and Replacement Program known as Lincoln Park neighborhood as problematic. The pipelines in this neighborhood are cast iron material and have exceeded their useful life expectancy. Our records indicated that pipelines are well over 70 years of age. Figure 1 attached to your agenda package show the limits of the project. The design will be completed in-house and constructed by our unit price contractor. The funds are currently in our budget.

Mayor Benton stated that when the residents see this work taking place in the next few months, please take a look at what is being taken out of the ground. That is one reason why the rates have gone up a minute amount to give them better water quality.

Mr. Cisneros said that we keep an archive of the pipeline that comes out of the ground.

Mrs. Cully made a motion, seconded by Mr. Perona, and unanimously carried to approve post budget request to replace the water main infrastructure in the Lincoln Park II neighborhood in the amount of \$710,000.

Mr. James Carnes presented the request to approve the post-budget work order for funding in the amount of \$45,000 and to start formal negotiations to purchase land for the reconstruction of Lift Station #30. He stated that Lift Station #30 is located in the roadway of Delaware Avenue near the intersection of 22nd Street. It was constructed in the mid 1960's, is approaching its useful life, and is in need of reconstruction or rehabilitation services. Unfortunately, because of its present location in the roadway, rehabilitation of this lift station is not an option at this time; therefore a new site must be acquired for the reconstruction effort. The nearest property to this station is located at 2206 Delaware Avenue.

An appraisal has been performed and the estimated value of this site is \$24,000. Staff has not been successful in negotiating the sale price below \$35,000. Staff believes tens of thousands of dollars in construction costs will be saved by acquiring this land and that warrants the \$35,000 asking price.

An additional \$10,000 is being requested to accommodate legal counsel service, FPUA staff time, appraisal cost, and other miscellaneous expenses. The design and construction funds for this reconstruction effort are in the pending FY 09 budget.

Mrs. Cully made a motion, seconded by Mayor Benton, and unanimously carried to approve the post budget request for funding in the amount of \$45,000 and authorize staff to start formal negotiations to purchase land for the reconstruction of Lift Station #30.

Mr. Thiess said that the Board would be getting an invitation for the ceremony for the decommissioning of the King Plant for May 29th at 3:00 at the King Power Plant. There will be a short ceremony to send it off and he would like to invite the Board. Invitations are going to the Board, UA staff, City staff, City Commission, and past employees and retirees.

Mrs. Cully said she and Mr. Thiess attended the FMPA meeting on April 24th. She printed out some information that came from the Internet for what is going on with the Florida Municipal Power Agency and handed it out to the Board. One article was in the Wall Street Journal and passed on to us from Jim Welsh who is the Chairman for the Board of Directors for FMPA. It has to do with the gasoline prices going up and mentioned the 93% gas price increase that Mayor Benton talked about earlier.

Mayor Benton passed out information about a box that could be added to your home, adjacent to your electric panel on the outside that will help save the life of your appliances and cut back your electric bill upward to 25%. He has asked Mr. Thiess and our experts to take a look at this to see if it could be used in our weatherization program.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN