

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DIVISION OF ROAD OPERATIONS
UTILITY RELOCATION MASTER AGREEMENT
(At Utility Expense)

Maps	File

THIS AGREEMENT, made and entered into this 6th day of December, 1977, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the DEPARTMENT, and UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH (Electric, Water, Sewer) a corporation organized and existing under the laws of Florida, with its principal place of business in the City of New Smyrna Beach, County of Volusia, State of Florida, hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT proposes to engage in certain projects for construction, reconstruction and other change of portions of the State Highway System which shall call for the relocation of the COMPANY'S facilities along, over and under the highways on said projects;

AND WHEREAS, the plans for said construction, reconstruction or other change are to be reviewed by the DEPARTMENT and the COMPANY; such utility relocation to hereinafter be designated as "Relocation Work";

AND WHEREAS, under the laws of the State of Florida said "Relocation Work" must be accomplished at the sole expense of the COMPANY when COMPANY'S facilities lie on property in which the COMPANY holds no compensable interest;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is agreed by the parties as follows :

1. When the DEPARTMENT has served an order on the COMPANY regarding relocation of the COMPANY'S facilities along, over and under publicly owned property, the COMPANY agrees to make or cause to be made all arrangements for necessary adjustment or changes of its facilities at COMPANY'S own expense and in accordance with the provisions of Rule 04-46.01 "Utility Accomodation Guide," Florida Administrative Code, dated May 4, 1970 ; any supplements or revisions thereof as of the date of this Agreement, which, by reference hereto, are made a part of this Agreement; and the plans, designs and specifications of the DEPARTMENT for the construction or reconstruction of said portions of the State Highway System, prior to the advertising for bid on said project. The COMPANY further agrees to do all of such work with its own forces or by a contractor paid under a contract let by the COMPANY, all under the direction of the DEPARTMENT'S engineer.

whole, or in part, to conditions, actions, or omissions done or committed by the COMPANY ; or its subcontractors, its employees, agents, representatives, or its subcontractors. It is specifically understood and agreed that this indemnification agreement does not cover nor indemnify the DEPARTMENT for its own negligence or breach of this contract.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

WITNESSES:

~~_____~~
~~_____~~
As to the DEPARTMENT

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: Billy S. Pelham
Director of Administration

ATTEST: Carol Scovel (SEAL)
Executive Secretary

UTILITIES COMMISSION
(COMPANY) CITY OF NEW SMYRNA BEACH

Scott Giff
Director of Utilities
Wanda Peterson
As to the COMPANY

BY: Wanda Peterson
Chairman

ATTEST: Barbara Bidwell (SEAL)
Secretary

Approved as to Form, Legality and Execution
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: [Signature]
Assistant Attorney

MINUTES OF A REGULAR UTILITIES COMMISSION MEETING OF THE CITY
OF NEW SMYRNA BEACH, FLORIDA, HELD WEDNESDAY, NOVEMBER 9, 1977,
120 SAMS AVENUE, 8:45 A.M.

The regular utilities Commission meeting of November 9, 1977 was called to order by Chairman Williams and all Commissioners answered present on roll call. Others in attendance were Mr. B. W. Wait, III, Director of Utilities; Mr. John E. Chisholm, U.C. Counsel; Mr. H.J. McNulty, Controller; Messrs. Gilbert & Shenck of Russell & Axon, Consulting Engineers; Mr. John Bolt, Attorney representing Robert Brooks of Holiday Cove South and Mrs. Glenda Patterson, Recording Secretary.

Agenda Changes, Additions or Deletions:

a) Florida Muni Power Agency-By Laws

Approval of Minutes of Regular U.C. Meeting Held October 12, 1977:

Commissioner Pence moved for approval of the minutes of the meeting held October 12, 1977 as presented, seconded by Commissioner Haworth and carried on roll call.

Approval of Minutes of Special Utilities Commission Meeting Held October 17, 1977:

Motion was made by Commissioner Pence for acceptance of the above described minutes as written, seconded by Commissioner Bidwell and approved on roll call.

Director's Report:

Generation Department:

Utilities Director, Mr. Wait, made known the traveling screen, ordered several months ago for the intake structure at the steam plant, has arrived and encouraged those interested to take a look at same.

The fuel adjustment for the month of November is a \$3.00 credit for 1,000 KWH based on October's consumption.

There followed discussion of the annual Florida Electric Coordinating Group meeting to be held in Tampa on November 16th. Mr. Wait advised he is scheduled to attend the meeting and invited any Commissioner to ride with him. Reservations in advance have been requested by FECCG, therefore Commissioners were requested to advise the Secretary if they plan to attend.

Transmission & Distribution Department:

Installation of Supervisory Control equipment at Field St. is expected to be completed soon and T&D should be ready to energize it shortly.

Utility Poles along SR44 are continuing to be relocated in coordination with Southern Bell.

2. The COMPANY further agrees that said adjustment, changes or relocation of facilities will be made by the COMPANY with sufficient promptness so as to cause no delay to the DEPARTMENT or its contractor in the prosecution of such construction or reconstruction work ; provided, however, that the COMPANY shall not be responsible for delay beyond its control; and that such "Relocation Work" will be done under the direction of the DEPARTMENT'S engineer; and the COMPANY further agrees that in the event the changes, adjustments or relocation of such facilities or utilities are done simultaneously with the construction project, that it will be directly responsible for the handling of any legal claims that the contractor may initiate due to delays caused by the COMPANY'S negligence ; and that the COMPANY will not either proceed with the " Relocation Work " with its own forces or advertise or let a contract for such work until it has received the DEPARTMENT'S written authority to proceed.

3. The COMPANY further agrees that it will maintain and keep in repair, or cause to be maintained and kept in repair, all of such adjusted, changed or relocated COMPANY owned or operated facilities or utilities within the right of way of said portion of the State Highway Systems; and to comply with all provisions of the law and Rule 14-46.01, Florida Administrative Code.

4. The DEPARTMENT agrees to furnish the COMPANY with all necessary highway construction plans that are required by the COMPANY to facilitate the COMPANY'S "Relocation Work."

5. The DEPARTMENT further agrees that the COMPANY may relocate its facilities upon the State's right of way, according to the terms of the standard permit required by the State Statutes for occupancy of public rights of way, and all published regulations lawfully adopted by the DEPARTMENT as of the date of this Agreement.

6. It is mutually agreed that the COMPANY'S plans, maps or sketches showing any such facility or utility to be adjusted, changed or relocated on any individual "Relocation Work" project are, when approved by the DEPARTMENT, made a part hereof by reference.

7. The COMPANY further agrees to indemnify, defend, and save harmless and exonerate the DEPARTMENT of and from all liability, claims, and demands for contractual liability rising out of the work undertaken by the COMPANY, its employees, agents, representatives or its subcontractors due in

Problems with salt spray were incurred last week due to a north-easterner, however with continuous spraying employees were successful in preventing any outages.

It was reported the consultants to the City Commission, Fehner, St. John & Associates, for the Airport Industrial Park, have advised the Utilities Commission will not be permitted to use their own personnel to do the electrical portion of the work. The entire basis of the program has been for the Utilities Commission doing said work with our personnel for the cost stated. Our consultants are reviewing the matter to see what we have done thus far and what will be needed.

Report on the cable crossing was made with Mr. Wait advising the splicing kits have been shipped from Okonite and the covers

for same will be shipped the 18th of this month. It appears it will now be the end of the month before actual splicing of the cables is accomplished.

Water & Pollution Control Department:

It was formally announced the Pollution Control Plant received a safety award at the recent joint annual meeting of the Florida Pollution Control Association and the American Water Works Association.

Mr. Wait advised other areas of discussion relating to this department would be discussed under Old Business.

Commercial Department:

Mr. McNulty, Controller, advised he has been involved entirely with a government program administered on a State level however channelled through federal grants. There is now owed to the Utilities Commission some \$14,000 from this program which should be forthcoming.

There followed a question and answer period on subject with Mr. McNulty offering explanations where possible. Commissioner Haworth questioned Mr. McNulty as to what he meant by the \$14,000 being owed to the Commission. Chairman Williams suggested to Commissioner Haworth that he or any other Commissioner who may have questions on the program get with Mr. McNulty for further explanation as this has been previously discussed in detail.

Commissioner Haworth continued his questioning asking Mr. McNulty what procedure is followed when a customer doesn't pay his bill by the due date. Mr. McNulty explained, along with Mr. Wait and other Commissioners, the procedure followed with Commissioner Haworth stating he did not believe such. He has been advised there are those commercial customers who are not cut out when they are late in paying their bills. It was suggested Commissioner Haworth speak with Mr. McNulty regarding the matter if he is aware of such.

Administration:

Payroll Summary for the two periods of October 9 through October 22nd, totaling \$46,052.82, and October 23 through November 5, in the amount of \$46,476.07 were reviewed. Commissioners had no pertinent questions regarding same. Commissioner Bidwell did comment on the amount of overtime stating she would like to see same decreased.

Commissioner Haworth questioned the absence of the Voucher List with Mr. McNulty advising same would be prepared for the next regular meeting.

APPA Report:

Commissioner Pence opened discussion on the recent management siminar attended by he and Chairman Williams in Washington, D.C., stating it was keyed mainly to the new Department of Energy.

Commissioner Pence and Chairman Williams then gave a detailed report on the meeting and those subjects discussed at same.

There followed a recess at 9:25 A.M., the meeting reconvening at 9:35 A.M. with all Commissioners again being present.

Old Business:

Appearance of Mr. Alan Gilbert, Russell & Axon, Engineers:

Mr. Gilbert reiterrated the Commission's congratulations on the safety award recently presented to the Pollution Control Department while displaying the plaque which was presented.

Chairman Williams suggested a letter of commendation to the employees as well as Mr. Havelock, Mr. RiChard's predecessor.

North Causeway Lift Station:

Director requested approval of Change Order No. 1 to the N. Causeway Lift Station project due to additional work necessary due to an obstruction to the estimated work of an existing water line underneath SR44, which presence was not known at the time the contract was awarded. The Change Order was in the amount of \$1,969.38 making the adjusted contract amount \$35,281.38.

Following a detailed explanation by Mr. Gilbert of Russell & Axon as to what procedure was followed Commissioner Bidwell moved for approval of the Change Order, which motion was seconded by Commissioner Haworth and approved on roll call.

Proposed Plan of Study for Sewer System Evaluation Survey:

Messrs. Gilbert & Skenck of Russell & Axon were present and Mr. Sheck gave an outline of work required by EPA with respect to construction of the new wastewater treatment facilities, which cost was included in the bond issue and funds are currently available.

Mr. Gilbert continued stating one condition of the grant recently awarded New Smyrna Beach was that such a study would be done, and depending on what is found we will be eligible to get 75% funding.

The following is a summary of those areas proposed to be covered in the Study:

- A. Historical Background
- B. Plan of Study/Scope of Work
- C. Physical Survey (Phase I)
 - 1. Above Ground Inspection
 - 2. Flow Monitoring
 - a. Minisystem 1
 - b. Minisystem 10
 - 3. Manhole and Sewer Inspection
 - 4. Smoke Testing for Rainfall Simulation
 - 5. Physical Survey Report
 - 6. Summary (Physical Survey: Phase I)
- D. Preparatory Cleaning (Phase II)
- E. Internal Inspection
 - 1. Specific locations along pipelines of every condition reported including:

- a. Conditions of joints.
- b. Alignment of pipe sections.
- c. Estimated flow rates for each pipeline.
- d. Unauthorized private connections, especially those which obstruct flow.
- e. Presence of root penetration.
- f. Any evidence of cross connections.
- g. Any evidence of exfiltration.
- h. All points of observed infiltration or inflow.
- i. Estimates of each infiltration flow.

2. Estimates of rehabilitation requirements for all of the above

F. Evaluation Surevy Report

G. Recapitulation-SSES Cost Estimates

No formal action was required at this time as this work has previously been authorized by the Commission.

Adoption of Resolution No. 23-77-Official Adoption of the 201 Facilities Plan:

Resolution No. 23-77 was presented for adoption, officially adopting the 201 Facilities Plan, the basis for the approval of the grant which we have received for construction of the wastewater treatment plant.

RESOLUTION NO. 23-77

A RESOLUTION ADOPTING THE P.L. 92-500 201 WASTEWATER FACILITIES PLAN FOR THE SOUTH COASTAL VOLUSIA COUNTY PLANNING AREA.

The above and foregoing Resolution was introduced at a regular meeting of the Utilities Commission of the City of New Smyrna Beach, Florida, held Wednesday, November 9, 1977, by Commissioner Pence who moved its adoption which motion was seconded by Commissioner Bidwell and unanimously approved on roll call on the Commission.

The executed Resolution is hereby attached and made a permanent part of these minutes.

Raw Water Supply & Service Area Expansion Report:

Mr. Gilbert of Russell & Axon distributed a lengthy report on the above described subject. Following a brief discussion on same, it was decided the Commission would hold a workshop meeting for purposes of detailed explanation and questions on the report November 30, 1977.

Agreement with DOT for Relocation of Utilities Commission Facilities:

Correspondence from Mr. Ben Godfrey of D.O.T. was reviewed with Commissioners indicating the Commission approved and signed a Master Agreement in their meeting of 10/12/77 when, in fact, DOT had intended to have executed a job agreement for the specific facilities along SR44. In further discussions with DOT, Mr. Wait learned they actually wanted to use the Master Agreement in addition to change orders to identify specific projects rather than the job agreement format.

Recommendation was made for approval of proceeding with the Master Agreement, change order concept requested by DOT and let the document stand as executed and so notify DOT.

Mr. Wait continued advising DOT has asked if the Commission would be interested in entering into an agreement for projects wherein our cost for relocation of facilities might be reimburseable, therefore he was recommending the Commission execute Master Agreement with DOT for reimburseable projects, Form 722-81.

Commissioner Bidwell moved for approval of the recommendation, of Mr. Wait heretofore outlined, seconded by Commissioner Pence and carried on roll call.

Payment of Invoice:

The following invoices were recommended for approval by Mr. Wait. Commissioner Pence moved for approval of same, which motion was seconded by Commissioner Bidwell and carried on roll call.

Payment of R.W. Beck Invoice in Amount of \$5,681.33, engineering services rendered as required, including field work associated with the remote supervisory unit at the diesel plant; preliminary analyses and preparation of data requests in connection with the wheeling case, FPC Docket ER77-175; computation of refunds related to natural gas supplier; attendance at CR-3 Administrative Committee meeting; analysis of energy control center operating procedures; and review of proposed FP&L rates for schedule A&B interchange services, work order FF-5149-EG1-My.

Invoices from Spiegel & McDiarmid, Washington Attorneys, covering two months work and expenses in the amount of \$2,865.14 on the following various cases:

E-8008, old wholesale rate case which was appealed and assigned 77-1528 by the court of appeals; 74-1371, another offshoot from E-8008 relative to continuing negotiations for a better interchange agreement; ER77-175, wheeling rate controversy regarding CR3 power and its appeal court number 77-1677; ER76-211, the most recent wholesale rate case which resulted in a large refund and 50-389A, one of the cases relative to our obtaining a share of nuclear power.

Consumer Information Program;

There followed a discussion of the Energy Conservation-Consumer Information Program on-going with the Utilities Commission. Mr. McNulty, Controller, played for Commissioners review a couple of one-minute radio spots for which the Commission has paid nothing. Recommendation was made by Messrs. Wait and McNulty that the Utilities Commission authorize continuation of a consumer information program, Commissioner Haworth so moved, seconded by Commissioner Bidwell and unanimously carried on roll call.

Appearance of Mr. John Bolt Re: Holiday Cove South:

Mr. Bolt, local Attorney representing Mr. Robert Brooks, President of Holiday Cove South, Inc., 1111 Hill Street in New Smyrna Beach, appeared relative to a claim of an overcharge of water and sewage by the Utilities Commission.

Mr. Bolt opened discussion of subject matter reviewing with the Commission a letter, dated September 16, 1977, to Mr. McNulty, Controller for the Utilities Commission from Mr. Brooks requesting the Commission reconsider their offer of \$6,147.04 and make an offer of \$9,245.66.

Following Mr. Bolt's stating his client's position, he and Mr. Chisholm, Commission Counsel, exchanged legal views as to the amount of interest the Commission owes on the stated claim. Mr. Chisholm contends, according to Florida State Statute, the amount of interest claimed by Mr. Bolt's client should be calculated from the date of the claim, this being June of this year, with Mr. Bolt stating such should be paid from the date of the error.

There followed a lengthy debate with those present expressing their personal opinions on same.

Chairman Williams then called for Commission Counsel's recommendation, with Mr. Chisholm advising the Commission pay the claim in the amount of \$6,174.04 plus appropriate interest, continue to provide bills under the proper rate schedules and credit such bills in full until the entire approved credit amount has been reduced.

Commissioner Bidwell moved for approval of Mr. Chisholm's recommendation as heretofore described, which motion was seconded by Commissioner Pence and approved by majority vote on roll call. Commissioner Haworth cast the dissenting vote stating his reasons to be whenever an error has been made and such is proven, it should be corrected regardless of the time element involved. The question of a time limitation doesn't enter into the picture to his way of thinking,

Commissioners Expenses:

Recommendation was made by Director for approval of expenses incurred by Commissioner Pence in the amount of \$327.75 during his attendance at the APPA Meeting in Washington, D. C.

Commissioner Bidwell moved for approval of the above described expenses, seconded by Commissioner Haworth and approved on roll call.

Commissioner Haworth commended the format of the recently in-

stituted travel expense form.

By-Laws-Florida Muni Power Agency:

Recommendation was made by Mr. Wait, Director of Utilities, for approval of the By-Laws as presented by the Florida Muni Power Agency, previously discussed in detail by the Commission.

Commissioner Haworth moved for acceptance of the By-Laws, which motion was seconded by Commissioner Higginbotham and approved on roll call.

New Business:

Meter Purchases:

Purchased of 152 single phase electric meters in the amount of \$2,845.44 was moved for approval by Commissioner Pence, seconded by Commissioner Bidwell and approved on roll call.

Quotations were received in the amounts of \$21.65 and \$21.99 each, plus tax, from two suppliers other than that recommended, Maddux Supply Company of Orlando, Florida.

Policy Statement Re: Employee Group Insurance Deductions:

The following Policy Statement relative to insurance deductions as proposed in the memorandum submitted by the Personnel/Labor Relations Officer of 10/31/77 was recommended for adoption by Director of Utilities.

EMPLOYEE GROUP INSURANCE DEDUCTION

Cancellation of dependent coverage may be made provided such is submitted in writing to the Personnel Department at least 10 days prior to the end of the month preceding the month in which cancellation is to become effective.

Commissioner Higginbotham moved for approval of the above outlined Policy Statement, which motion was seconded by Commissioner Bidwell and unanimously approved on roll call.

Appointment for Loan Officer for Credit Union:

Motion was made by Commissioner Bidwell to table this item at this time as she desired more information and the Personnel/Labor Relations Officer was not in attendance at this meeting, seconded by Commissioner Haworth and motion carried.

Intervention in Wholesale Rate Filing:

Copies of excerpts from FP&L's most recent attempt to increase the cost of electric power to the Commission for resale to our customers was provided for Commission's review. If such were to be approved it would include many new concepts which will make operation more difficult as well as more expensive.

Petitions to intervene were due Monday, November 7th and as it was imperative that we be represented in the matter by our legal representatives in Washington, Spiegel & McDiarmid, Mr. Wait, Director, requested the Commission officially endorse his actions in so instructing Spiegel & McDiarmid for the record.

Commissioner Bidwell moved for endorsement of Mr. Wait's actions as described, seconded by Commissioner Pence and unanimously approved on roll call.

Chairman Williams suggested individual Commissioners talk with Mr. Wait in order to become more aware of how such action could affect the Commission.

Purchase of Transformers:

Request for permission to advertise for bids for transformers at an estimated cost of \$40,000 was moved for approval by Commissioner Bidwell, seconded by Commissioner Haworth and carried on roll call. When questioned by Commissioner Pence, Mr. Wait advised that such costs are in this fiscal year's budget.

Labor Negotiations:

Commissioner Haworth questioned the status of labor negotiations, with Mr. Wait explaining there remain a few questions on economics to be settled, however does not anticipate any delay.

Attorney/Client Privileged Relationship:

Commissioner Haworth questioned Mr. Chisholm when he expects an answer with respect to the conflict to the difference of opinion between FP&L and ourselves concerning the historical privilege by clients and their attorneys. Mr. Chisholm reported he cannot give a definite answer, however he expects within 10 to 20 days.

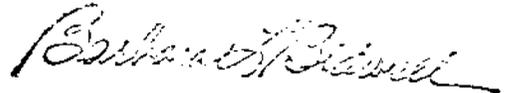
There being no other business to come before the Commission at this time, Commissioner Bidwell moved for adjournment at 10:52 A.M., seconded by Commissioner Pence and the meeting adjourned.

APPROVED:



Evan L. Williams
Chairman

ATTEST:



Barbara L. Bidwell
Secy.-Treas.

I DO HEREBY CERTIFY that the above Minutes of the November 9, 1977 Utilities Commission Meeting is a true and correct copy of said Minutes, which were approved by the Commission in their November 23, 1977 meeting.

IN WITNESS WHEREOF I have hereunto set my hands and caused the SEAL of the Utilities Commission of the City of New Smyrna Beach, Florida, to be affixed this 29th day of November, 1977.



Barbara L. Bidwell
Secretary-Treasurer

Sworn to and subscribed before me

this 29th day of November, A.D., 1977.

Francis E. Walton
Notary Public, State of Florida

S E A L

My Commission Expires Aug. 23, 1981.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES AUG 23 1981
BONDED THRU GENERAL INS. UNDERWRITERS