

PUBLIC UTILITY DISTRICT NO. 1
OF ASOTIN COUNTY, WASHINGTON
SPECIAL MEETING – BOARD WORK SESSION MINUTES
February 28, 2019

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President Judy Ridge presiding, the Public Utility District No. 1 of Asotin County Special Meeting was called to order at 2:00 p.m. at the PUD Office at 1500 Scenic Way.

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ROLL CALL: PRESENT Commissioners: Don Nuxoll, Judy Ridge and Greg McCall.

PUD Staff: Tim Simpson, Bob Sischo and Craig Riehle.

Invited Guests: Foster Pepper Attorneys Steve DiJulio and Joe Brogan.

INTRODUCTIONS:

The manager introduced Foster Pepper attorney Steve DiJulio and PUD general counsel Joe Brogan and introduced the Board of Commissioners and staff. Mr. DiJulio provided a background regarding his years of work with the PUD after formation in 1984 starting with the condemnation process, the revenue bonding processes and development of our Personnel Policy.

WORK SESSION: Intergovernmental Utility Management Agreement

The manager stated that the purpose of the Special Meeting – Board Work Session today is to discuss the development of an agreement with the City of Clarkston to contract operate their Wastewater Treatment Plant (WWTP) and sewer collection system with the ultimate goal of taking over ownership of their system once the revenue bonds that funded the upgrade of the WWTP are able to be called. He stated that the City approached the PUD in 2017 with this request and that it has more than a year for them to get to the point to inform the union of the intended transfer of employees to the PUD and to informally request that we provide them with a Management Agreement.

Approach to Development of Agreement

Mr. DiJulio was given the floor to discuss his recommended approach to development of an Agreement with the City. He walked the Board through the following processes and steps:

Organization / Process

Mr. DiJulio stated that he is aware the ultimate goal is ownership of the City’s WWTP and collection system. He stated that the revenue bonds that provided for the upgrade of the WWTP could be called now but at a high cost. Currently the principal balance of the revenue bonds plus a Public Works Trust Fund loan and Ecology State Revolving Fund Loan total \$9.35 million. Jeff Nave from Foster Pepper represented the City in obtaining the revenue bonds. He stated that operating the system for a few years gives the PUD time to learn the system and get a sense of its condition before committing to ownership and the debt and refunding of the bonds. Mr. DiJulio stated that one of the bonds is callable in 2021 with the other in 2023. He stated that an account will need to be set up for City for the defeasance of the bonds. When that time approaches then a transfer agreement can begin to be developed along with working towards refunding of the revenue bonds.

Develop Initial Operations and Management Contract pro forma

Mr. DiJulio stated that the pro forma will involve the identification of deal points and major issues. The issues will be similar to the items identified in the manager's document that provides a list of items he believes are imperative to include in the Agreement. Mr. DiJulio stated that one of the major issues is the transfer of the employees to PUD employment. He stated that he is aware of the letter that was sent to the union, along with a PUD developed budget and the management options for the WWTP and sewer collection system, requesting a meeting with the union regarding negative impact negotiations.

He spoke of his experience with this type of negotiation process and stated that basically the union will be notified they have no bargaining position with regards to the City's desire for the PUD to manage their sewer system and the transfer of City union employees to PUD employment. Mr. DiJulio stated that one of the issues with taking on these employees is the vacation and sick liability at \$41,580.

The Board expressed their concern with assuming this liability and stated that the City should cash out their banks prior to PUD employment. The manager stated that he felt the assumption of this liability would normal in this situation because we would be taking on employees that have many years of service with the City. He stated that the liability is minimal and any retirements during the years of management would be paid for with City sewer system revenue. Mr. DiJulio stated that both concerns could be addressed through an employment contract with each transferring employee with some City cash out. Discussion ensued about management of the staff, the WWTP plant and probation periods.

Meeting(s) with City to Discuss pro forma

Mr. DiJulio stated that once a pro forma is developed and approved by the PUD board of Commissioners then a date for a meeting with the City Public Works Committee will be set to discuss the pro forma. The manager stated that the City Public Works Committee consists of three (3) City Council members, the Public Works Director Kevin Poole and the Clerk/Treasurer Steve Austin. The manager told Mr. DiJulio that Commissioner Nuxoll was the designated PUD representative and that both have met with the Committee in the past when they were seeking our interest in operating their sewer system. Mr. DiJulio stated that the meeting should also include himself and their legal counsel.

Mr. DiJulio stated that multiple meetings could occur prior to approval of a final agreement. At this point he stated that because Foster Pepper has represented both the City and the PUD that a conflict waiver/letter would need to be provided by both parties prior to meeting about the pro forma. Mr. DiJulio stated that he would contact the City's legal counsel Todd Richardson to discuss the waiver, the union negotiations and the process of development of the Agreement. Mr. DiJulio stated after the meeting(s) with the Public Works Committee that the next steps would be as follows:

Discussion with Board to Approve pro forma

Drafting of Complete Agreement in Conjunction with City

Board and City Approval of Agreement

Mr. DiJulio asked if the City Council had formally approved moving forward with the PUD in development of the management agreement. The manager stated that they have not formally approved the process in a public meeting but the Public Works Committee has directed Mr. Poole to request that the PUD submit an agreement for consideration. The manager stated that it is his understanding that the City Council has hesitated to formally approve and/or announce the request of the PUD due to the fact that the union had to be contacted first and provided the economic basis for considering PUD operation. Mr. DiJulio stated that a formal commitment by the City regarding this process, through a motion and/or resolution, needs to be done before we meet about the pro forma.

Report on Current Status

The manager provided an update of the current status on the City of Clarkston's progress towards PUD contract management. He spoke with Public Works Director Kevin Poole and told him about the approach by the PUD in development of an Agreement with the PUDs desire to meet with the Public Works Committee, himself and key City of Clarkston staff to review a pro forma identifying major issues. Mr. Poole stated that the City would not be able to formally meet until after the meeting with the union which has been tentatively scheduled for the end of March.

Mr. Poole was asked about the status of their NPDES permit and he reported that the WWTP is in compliance and that they have received awards for water quality consistently since 2012. The manager stated to Mr. Poole that since Foster Pepper has represented both public agencies that a mutual waiver will need to be approved. The manager told Mr. Poole that Mr. DiJulio would be contacting the City's legal counsel Todd Richardson about the waiver and the issues discussed today. Mr. Poole was acceptable to the idea.

The manager reported that he discovered our franchise with the City is water service only and will need to be changed to accommodate our operation of the sewer system. Mr. Poole was acceptable to updating the franchise. The manager discussed with Mr. Poole the need to transfer the vehicles to PUD ownership because our employees will be operating the vehicles. Mr. Poole was accepting of the transfer. Mr. DiJulio stated that it would not be a problem to identify and include the equipment and vehicles necessary for operation of the system as part of the Agreement.

The manager stated that one concern he has going forward is that the City is in the process of sighting a solar array at the WWTP. He stated that he believes that an existing contract for the construction and operation of the solar panels would be a burden to the PUD. He stated that there is a guaranteed contract for payback. The Board expressed concern on this issue as well. The manager stated that he would contact Mr. Poole and get more information about the solar panels.

The manager reported that he and staff have spoke to our CPA firm and the State Auditor's Office (SAO) about accounting for revenue and expenses of the City's system. In addition, PURMS was contacted about how liability and property insurance would be handled. Our CPA firm stated that the operation of the City would need to be reported as intergovernmental revenue and all expenditures would be reported as the PUD typically does. The SAO encouraged us and the City to work with our legal counsel in developing agreement. Beyond that, they did not have any recommendations on the financial or accountability processes since that is more a management decision in how it is going to work. Once the contract is established, the SAO stated that they would be looking to see what the terms

of the Agreement were and if the PUD is following through with the conditions of the Agreement. PURMS Administrator Dick Rodruck stated that covering the WWTP and collection system would not be a problem. Mr. DiJulio stated that insurance coverage is a major issue that would need to be addressed in the Agreement as to whether the PUD covers this or the City does and the PUD pays the City for it through operations.

Resolution 19-462 – Approving the Process and Development of Agreement

The manager presented Resolution 19-462 which provides for Board of Commissioners approval of the process and development of a Management Agreement with the City of Clarkston for contract operations of their WWTP and collection system. Mr. DiJulio stated that the Agreement will be developed using RCW Chapters 39.33, 39.34 and 39.106 which provides authority for these contracts.

MOTION by Commissioner Don Nuxoll and seconded by Commissioner Greg McCall to approve Resolution 19-462 approving the process and development of a Management Agreement with the City of Clarkston. The question was called for on the motion. The motion passed 3-0.

Mr. Brogan stated that the PUD would need to do their due diligence and review WWTP discharge monitoring permits. He stated that suspended solids can be an issue and that current capacity of the WWTP will need to be addressed. Mr. DiJulio stated that at some point during operations and prior to transfer of ownership the PUD will need to complete a condition assessment of both the WWTP and collection system. The Board concurred. At this point Mr. DiJulio and Mr. Brogan left the meeting.

President Ridge called for a brief recess of the meeting at 3:17 p.m. Commissioner Ridge called the meeting back to order at 3:20 p.m.

OTHER

Discussion ensued regarding the City's commitment to the process, staffing of the WWTP, the vacation and sick leave liability and Foster Pepper representing only the PUD during this process.

ADJOURNMENT

The Special Meeting – Board Work Session was adjourned at 3:50 p.m.