



Taxation, Revenue, and Utilization of Expenditures (TRUE) Commission

John Palombi, Chair

Wes Benwick, Vice Chair

Greg Anderson, Secretary

Meeting Minutes

Special Called Meeting – Trail Ridge Landfill Contract

April 13, 2009

4:00 p.m.

Attendance: John Palombi (Chair), Joe Andrews, Marcella Lowe, Randy Deen, Nicole Lester, Robert Jones, Jason Fischer

Excused: Ron Mallett, Steve Jarecki, Ruth Arnold

Guests: City Council Member Jack Webb; Kirk Sherman and Kyle Billy – Council Auditor’s Office; Chris Pearson – Solid Waste Division; Sherry Hall – Mayor’s Office; Commissioner-nominee Thomas Martin; City Ethics Officer Carla Miller

The meeting convened at 4:12 p.m. without a quorum present.

The Chairman introduced City Council Member Jack Webb, an attorney, to discuss the legal aspects of the Trail Ridge Landfill operations contract extension proposal currently pending before the City Council. Mr. Webb prefaced his remarks by stating that the opinions he would present were entirely his own and that he was not representing the position of the City Council or of the General Counsel’s office. He stated that his primary concern at the moment is the requested waiver of the Ordinance Code provisions requiring a competitive bidding process. A legal opinion from the General Counsel’s office states that the City *can* waive that provision, but *should* it be waived? The Florida Statutes and City Ordinance Code stress the importance of competitive bidding, so is this waiver the right thing do?

If the City doesn’t waive the provision and doesn’t enter into a revised contract with Waste Management Inc. (WMI), then the current contract still has 5 to 7 years of remaining life (based on the current rate of waste tonnage being delivered to the landfill), there is no breach of contract, and everything continues on as it has for years. The City could file a motion with the courts for a declaratory judgment to solve the question of whether the current contract involves the life of the current cell (5 to 7 more years) or the life of the entire landfill site (20 to 30 additional years), and then depending on the ruling could reopen negotiations with WMI or choose an open bidding process. There may be some loss of immediate savings offered by WMI, but that may be what has to happen in order for the Council to fully vet the contract extension proposal on its merits as it has to do. The process is very important and shouldn’t be short-circuited for short term gains.

In answer to a question about the City’s incentive to renegotiate the contract now if there is no breach, Chris Pearson explained that the permitting process needs to begin very shortly for the new cell that will

need to be opened in 5 to 7 years to succeed the cell currently in operation. Permitting can be a lengthy process and could be delayed substantially by a protracted legal fight. The current operating contract calls for WMI to obtain all permits for the site, so an action by the City to try to pull permits itself for the new cell could trigger a lawsuit by WMI charging breach of contract since they interpret the agreement to say that they have control over the entire 974 acre site. In response to another question about why the City needed to invoke a waiver of the procurement code to facilitate the contract extension when the code already has a provision for sole-source procurement, Councilman Webb indicated that the Office of General Counsel apparently did not think that provision was appropriate in this case, thus the need for the waiver.

The group discussed indemnification and the City's ultimate liability for whatever happens at the landfill over the years. According to Councilman Webb, WMI has no liability for the site except for its own negligence. Chris Pearson stated that WMI currently has in force a \$10 million liability bond, a \$10 million performance bond, and is subject to a penalty of up to 25% of annual operational costs (about \$2.5 million). The bonds are provided by an independent company not affiliated with WMI. In response to a question about how the land for the landfill was obtained, Mr. Pearson explained that the City's RFP in the late 1980s required interested companies to provide the City with a landfill site and operating permits, for which the city would reimburse the winning proposer. The City paid WMI \$1.5 million up-front and is paying off the additional "excess land cost" via a portion of the tipping fee over the life of the first cell (14 million tons).

One consideration that seems to favor an extended agreement with WMI is the ability to utilize the "valley" between two landfill cells for additional waste disposal capacity, which could add approximately 16% to the overall capacity of the full site. If another company is hired then it is unlikely that the valley could be filled because of possibility of a protracted fight over assigning liability for future problems if two companies are involved. Their legal interests will likely require that the two cells not be connected. Also, the City is responsible for paying \$1 million a year for 30 years in post-closure costs from the time the first cell is closed out and capped. If at some time in the future that cell was reopened in order to connect it to the second cell by filling the valley, then a new 30-year post-closure begins ticking at \$1 million per year.

The current contract with WMI states that if waste disposal technology changes and something new comes along that would save the City \$125,000 or more per year than the current landfilling method, the City can require WMI to adopt that technology. Sherry Hall stated that only WMI can offer \$85 million in immediate cost savings on the existing contract, which is a huge benefit to the City in the current economic conditions.

Mr. Pearson stated that they have looked at other landfill costs around the country and the \$10.21 per ton being offered by WMI in the revised contract is very competitive. Republic Waste Services offered the Corpus Christi, Texas landfill tipping fee of \$8 per ton as an example of what they could do, but that's not an apples-to-apples comparison with Trail Ridge. For one thing, it contains an annual adjustment factor of the full value of the increase in the Consumer Price Index (CPI) with no cap. Our current contract with WMI is for an annual increase of 70% of CPI. Republic says in its advertising that it opposes no-bid contracts, but doesn't mention that it is the beneficiary of a contract with the City for residential waste hauling that hasn't been re-bid since the 1970s. The City is trying to avoid potentially \$200 million in liability for lost revenue in a WMI lawsuit should the courts accept WMI's version of the life of site argument, and avoid paying up to \$48 per ton to ship our waste out of county, probably to Georgia, for disposal. The City barely avoided a solid waste calamity in the late 1980s and early 1990s when the Southeast Landfill siting process failed and we were down to just a few days of disposal capacity when the Trail Ridge Landfill opened. The City doesn't want to go through that again.

The group decided to schedule another meeting within the next week in hopes of having a quorum and being able to determine what, if any, position the TRUE Commission may want to take with regard to the contract extension proposal.

There being no further business, the meeting was adjourned at 5:33 p.m.

Posted 4.15.09
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