

100388-WS

EXHIBIT "A"

RESOLUTION NO. 2010-23

COM _____
APA _____
ECR |
GCL |
RAD _____
SSC _____
ADM _____
OPC _____
CLK Grant

DOCUMENT NUMBER-DATE

07172 AUG 27 0

FPSC-COMMISSION CLERK

RESOLUTION NO. 2010-23

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY DIRECTING AND AUTHORIZING THE ACQUISITION OF SUBSTANTIALLY ALL OF THE REAL AND PERSONAL PROPERTY COMPRISING THE WATER AND WASTEWATER UTILITY FACILITIES OWNED BY NORTH FORT MYERS UTILITY, INC., IN LEE COUNTY, FLORIDA; FINDING THAT THE ACQUISITION IS IN THE PUBLIC INTEREST AND SERVES A PARAMOUNT PUBLIC PURPOSE; APPROVING AND AUTHORIZING THE CHAIRMAN TO EXECUTE THE AGREEMENT OF PURCHASE AND SALE; APPROVING AND AUTHORIZING THE CHAIRMAN TO EXECUTE THE NORTH FORT MYERS SYSTEM COMPENSATION AGREEMENT; APPROVING AND AUTHORIZING THE CHAIRMAN TO EXECUTE THE DESIGN-BUILD AGREEMENT WITH U.S. WATER/WADE TRIM, LLC, FOR THE DEL PRADO WASTEWATER TREATMENT PLANT EXPANSION PROJECT; APPROVING AND AUTHORIZING THE CHAIRMAN TO EXECUTE THE DESIGN-BUILD AGREEMENT WITH CAMP, DRESSER, MCKEE, INC., FOR THE WATERWAY ESTATES-DEL PRADO WASTEWATER TRANSMISSION MAIN CONNECTION PROJECT; APPROVING AND AUTHORIZING THE CHAIRMAN TO EXECUTE ACQUISITION CLOSING DOCUMENTS; AND PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY, AS FOLLOWS:

SECTION 1. AUTHORITY. Pursuant to the provisions of the First Amended and Restated Interlocal Agreement Relating to Establishment of the Florida Governmental Utility Authority, dated as of December 1, 2000, as it may be amended (the "Interlocal Agreement"), and section 163.01(7), Florida Statutes, the Board of Directors ("Board") of the Florida Governmental Utility Authority ("FGUA") has the power to acquire, own, improve, operate, maintain, contract for management and operational services, and dispose of water and wastewater utility facilities.

SECTION 2. INCORPORATION BY REFERENCE. The public briefing document, including a description of North Fort Myers Utility, Inc. ("NFMU") water and wastewater utility facilities within Lee County, Florida (the "NFMU Utility Facilities"), the most recent income

DOCUMENT NUMBER-DATE

07172 AUG 27 0

FPSC-COMMISSION CLERK

and expense statement, the most recent available balance sheet, a description of the system's physical condition, a statement on the reasonableness of the price, a statement on customer impacts, a statement on additional investments required by the FGUA and the FGUA's ability and willingness to make these investments, a description of any alternatives to acquisition by the FGUA and a statement regarding the ability of the FGUA to operate acquired systems, presented at this public hearing and filed with the Clerk are hereby incorporated herein by reference and made a part hereof (hereafter referred to as the "Report"). The Report is attached hereto as Appendix A. The Report is intended to be a statement demonstrating that the acquisition of the Utility Facilities is in the public interest.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared:

(A) The Interlocal Agreement and section 163.01(7), Florida Statutes, grants the FGUA the power to acquire, own, operate, maintain, improve, contract for management and operational services, and dispose of water and wastewater utility facilities.

(B) NFMU owns and operates certain water production and treatment systems and wastewater collection, treatment and disposal systems within the State of Florida.

(C) To provide for the public interest and welfare, the Board is required to hold a public hearing on the acquisition of the NFMU Utility Facilities to ensure that such acquisition serves the public interest. This public hearing was duly advertised in Lee County where the Utility Facilities are located and Lee County is a member of the FGUA. The public hearing began on June 3, 2010, and was continued to June 17, 2010. Lee County and the FGUA have executed an Amended Interlocal Agreement whereby the County has authorized FGUA to consummate the acquisition of the NFMU Utility Facilities. All interested persons had an opportunity to attend and participate and to file written comments.

(D) FGUA ownership and control of the NFMU Utility Facilities will provide an opportunity for the FGUA to:

(1) address and balance the impact of growth with the need to provide and plan for quality water production and treatment and wastewater collection, treatment and disposal facilities necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demands for such facilities in the area, the requirements of state and federal mandates, and the demands of new development and local government's statutory responsibility to implement financially feasible comprehensive plans;

(2) further develop a regional approach, together with the Lee County Utilities Department relative to the comprehensive supply, distribution, and treatment of water and the collection, treatment and disposal of wastewater;

(3) seek economies of scale relative to operations, maintenance, customer

service and management;

(4) provide current and future users of the NFMU Utility Facilities with cost efficient services at reasonable rates by a governmental entity;

(5) provide that the operation and maintenance of NFMU Utility Facilities is done in a proactive and environmentally responsible manner;

(6) reduce inefficient expansion and extension of service capacities and avoid the proliferation of smaller treatment facilities and sites;

(7) offer an opportunity for the FGUA and Lee County to not only coordinate the expansion and extension of facilities, but also permit the County to later acquire the systems and operate them as a part of the County's larger community system;

(8) accomplish a greater public use and increased public benefit which results from the ownership, operation and control of the NFMU Utility Facilities by the FGUA, or subsequently, by Lee County;

(9) enable Lee County to more effectively and efficiently plan and fulfill its comprehensive planning requirements as provided by law and assure that high quality, cost efficient water and wastewater utility services are available within the County;

(10) enter into an agreement with a private firm for the performance of the operation, maintenance, billing and customer service functions which will (a) facilitate the eventual consolidation of the NFMU Utility Facilities into the County's service area and thus achieve the water resource preservation and environmental protection inherent in the regional and consolidated provision of utility services, and (b) permit the individual financing of enterprise fund ownership of the NFMU Utility Facilities as an individual FGUA System.

SECTION 4. DETERMINATION OF PUBLIC USE AND BENEFIT. Contingent upon the subsequent approval by the Board of new water and wastewater rates to be effective on the closing date in such amount as to permit financing of the purchase price and identified improvements to the NFMU Utility Facilities, the execution by Lee County of a bulk wastewater agreement with the FGUA related to the Waterway Estates Service Area, and based upon its legislative findings incorporated in Section 3, the Board expressly determines that the acquisition of the NFMU Utility Facilities by the FGUA, pursuant to the terms of the Agreement of Purchase and Sale, attached hereto as Appendix B, and the provision of water and wastewater services through facilities owned by the FGUA, or subsequently by Lee County, constitutes a paramount public purpose and is in the best interests of the health, safety, and welfare of Lee County and its inhabitants and affected ratepayers. Further, the Board expressly finds that the NFMU System Compensation Agreement, which is attached hereto as Appendix C, the Design-Build Agreement for the Del Prado Wastewater Treatment Plant expansion attached hereto as Appendix D, and the Design-Build Agreement for the construction of the Waterway Estates-Del

Prado Wastewater Transmission Main Attached hereto as Appendix E, are reasonable and necessary in order to cost effectively and efficiently transition services from private ownership to governmental ownership and to provide wastewater service to the Waterway Estates community. The acquisition of the NFMU Utility Facilities and the entry into an operations, maintenance, billing and customer service agreement with U.S. Water/Wade Trim, LLC will provide a greater public use and increased public benefit than will be provided under NFMU's existing operations.

SECTION 5. PUBLIC INTEREST DETERMINATION OF PURCHASE. In making the public interest determination concerning the transactions contemplated by the FGUA relating to the acquisition of the NFMU Utility Facilities and the privatization of the operations, maintenance, billing and customer service functions with U.S. Water/Wade Trim, LLC, the Board has considered numerous factors, including but not limited to the following matters:

- (A) The most recently available income and expense statement(s) of the NFMU Utility Facilities;
- (B) The most recently available balance sheet(s) for the NFMU Utility Facilities;
- (C) A statement of the existing rate base of the NFMU Utility Facilities for regulatory purposes;
- (D) The general physical condition of the NFMU Utility Facilities;
- (E) The reasonableness of the purchase price;
- (F) The impacts of the contemplated transition on utility customers served by the NFMU Utility Facilities, both positive and negative;
- (G) Any additional investment required and the ability and willingness of the FGUA to make that investment;
- (H) The alternatives to the contemplated transition and the potential impact on utility customers if the NFMU Utility Facilities are not acquired by the FGUA;
- (I) The ability of the FGUA in partnership with U.S. Water/Wade Trim, LLC to provide and maintain high quality and cost effective utility service; and
- (J) The technical expertise and experience of U.S. Water/Wade Trim, LLC in carrying out the obligations set forth in the operations, maintenance, billing and customer service agreement referenced herein.

SECTION 6. APPROVAL OF AGREEMENT OF PURCHASE AND SALE BY AND BETWEEN THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY AND NORTH FORT MYERS UTILITIES, INC. The forms, terms and provisions of the Agreement of Purchase and Sale By and Between the Florida Governmental Utility Authority and North Fort Myers Utilities, Inc., submitted to this duly called public meeting and attached hereto as

Appendix B and subject to satisfactory resolution of issues, if any, concerning appendices, be and the same hereby are approved. The Chairman, or a designee, is hereby authorized to execute the Purchase Agreement upon satisfaction of the contingencies identified in Section 4 of this Resolution.

SECTION 7. APPROVAL OF THE COMPENSATION AGREEMENT BY AND BETWEEN THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY AND U.S. WATER/WADE TRIM, LLC. The form, terms and provisions of the NFMU System Compensation Agreement by and between the FGUA and U.S. Water/Wade Trim, LLC, submitted to this duly called public meeting and attached hereto as Appendix C, be and the same hereby are approved, with such changes, amendments, modifications, omissions and additions as approved by the Chairman. The Chairman is hereby authorized to execute the NFMU System Compensation Agreement for the NFMU Utility Facilities with such changes, amendments, modifications, omissions, and additions as may be approved by the Chairman. Execution of the NFMU System Compensation Agreement by the Chairman shall be deemed conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

SECTION 8. APPROVAL OF DESIGN-BUILD AGREEMENT WITH U.S. WATER/WADE TRIM, LLC. The award of the Design-Build Agreement to U.S. Water/Wade Trim, LLC, for the Del Prado Wastewater Treatment Plant expansion project on a sole source basis is hereby approved by the Board based upon the System Manager's certification that no other source for the work is as uniquely qualified and no other provider is as familiar with or as positioned to perform such work. The unique circumstances justifying this sole source award are set forth in the Report identified in Section 2 hereof, and are hereby adopted as the findings of this Board. The form, terms, and provisions of the Design-Build Agreement by and between the FGUA and U.S. Water/Wade Trim, LLC submitted to this duly called public meeting and attached hereto as Appendix D, be and the same are hereby approved, with such changes, amendments, modifications, omissions, and additions as approved by the Chairman. The Chairman is hereby authorized to execute the Design-Build Agreement with such changes, amendments, modifications, omissions, and additions as may be approved by the Chairman. Execution of the Design-Build Agreement by the Chairman shall be deemed conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

SECTION 9. APPROVAL OF DESIGN-BUILD AGREEMENT WITH CAMP, DRESSER, MCKEE, INC. The Design-Build Agreement with Camp, Dresser, McKee, Inc., for the Waterway Estates-Del Prado Wastewater Transmission Line Project on a sole source basis is hereby approved by the Board based upon the System Manager's certification that no other source for the work is as uniquely qualified and no other provider is as familiar with or positioned to perform such work. The unique circumstances justifying this sole source award are set forth in the Report identified in Section 2 hereof, and are hereby adopted as the findings of this Board. The form, terms, and provisions of the Design-Build Agreement by and between the FGUA and Camp, Dresser, McKee, Inc., submitted to this duly called public meeting and attached hereto as Appendix E, be and the same are hereby approved, with such changes, amendments, modifications, omissions, and additions as approved by the Chairman. The Chairman is hereby authorized to execute the Design-Build Agreement with such changes, amendments, modifications, omissions, and additions as may be approved by the Chairman.

Execution of the Design-Build Agreement by the Chairman shall be deemed conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

SECTION 10. APPROVAL OF ACQUISITION DOCUMENTS. The Chairman and Secretary are hereby authorized and directed to execute and deliver all documents, papers, and instruments necessary and proper to effect the acquisition of the Utility System (collectively, the "Acquisition Documents") including, but not limited to, certain asset acquisition documents attached here to as Appendix F, with such changes, amendments, modifications, omissions, and additions as may be approved by the Chairman. Execution of the Acquisition Documents by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions. All of the provisions of the Acquisition Documents, when executed and delivered by the FGUA, as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 11. APPLICABILITY AND EFFECTIVE DATE. This Resolution shall be liberally construed to effect the purposes hereof and shall take effect immediately upon its adoption.

PASSED AND DULY ADOPTED at the meeting of the Board of Directors of the Florida Governmental Utility Authority on the 17th day of June, 2010.



**BOARD OF DIRECTORS OF THE FLORIDA
GOVERNMENTAL UTILITY AUTHORITY**

BY: _____

A handwritten signature in black ink, appearing to be "R. H. ...", written over a horizontal line.

~~Chairperson~~ Vice Chairperson

A handwritten signature in black ink, appearing to be "Keith Doyle", written over a horizontal line.

Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be "John C. Pelham", written over a horizontal line.

General Counsel