

## Memorandum

**To:** FPUA Board

**From:** John Tompeck, Director of Utilities

**Date:** May 25, 2021

**Subject:** Joint Meeting FPUA Board/City Commission to Discuss Aqualia Unsolicited Proposal for Relocation of the WRF

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At the 5/18 Board meeting you were handed a package which contained a memo to the FPUA Board from the City Commission and a copy of the Aqualia unsolicited proposal for relocation of the WRF. The City Commission requested a joint meeting with the FPUA Board to discuss the proposal, and suggested meeting dates of 6/16 and 6/22. Subsequently I requested that you respond to Linda Cox on your availability for these dates.

Staff has reviewed the request and recommends the following:

- Discuss the public-private partnership (P3) concept at our next regularly scheduled Board meeting on June 15th so the Board will be adequately informed to determine if you wish to proceed with that concept.
- Proceed with the meeting with the City Commission. Solicit their thoughts on proceeding with a P3 as a parallel path to our established plan to relocate the plant in partnership with St. Lucie County.
- The joint meeting should focus on the P3 concept, including the pros and cons of a P3 approach but not whether FPUA should accept the unsolicited proposal from Aqualia.
- The Board should not discuss or evaluate specifics of the Aqualia proposal at the joint meeting. Doing so is premature in my opinion.
- Engage with our partners at the County to determine their interest in working with us should we proceed down this parallel path.

Discussed below is the background and rationale for each of these recommendations.

The City has been looking at the Aqualia proposal over the last several months. There has not been any discussion on the pros and cons of a P3 and how that fits in with our current plan to relocate the Water Reclamation Facility by partnering with St. Lucie County, which was presented to the City Commission on 3/8. Staff believes it would be beneficial to discuss this at a joint meeting with the City Commission.

In terms of evaluating the Aqualia proposal, a little background is necessary. Back in November when the subject first came up, I commented at the 11/16/20 City Commission meeting that it was inappropriate for the City to accept the Aqualia unsolicited proposal. The clear language of

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the Charter, Article XII, Section 169 (a) states the “Authority (FPUA) shall have exclusive jurisdiction, control and management of the utilities of the City and all of its operations and facilities.” That section goes on to note that “except as otherwise provided . . . the Authority shall be free from the jurisdiction, direction, and control of other city officers and of the City Commission.” As you can see, the Charter provides FPUA with the exclusive authority and ultimate responsibility for the provision of utility services. That includes deciding whether acceptance of an unsolicited P3 proposal is appropriate and warranted under the circumstances, or whether the right course of action would instead be conducting an open and public request for proposals (RFP) for the project. Any decision made by the City Commission on this proposal is non-binding on FPUA and could have negative implications in regard to the progress FPUA has made toward relocating the WRF.

Florida Statute 255.065 discusses Public-Private partnerships. It specifically states that a “responsible public entity may receive an unsolicited proposals or may solicit proposals for a project and may thereafter enter into a comprehensive agreement with a private entity . . . for building, upgrading, operating, ownership or financing of facilities.” The statute defines responsible public entity as “a county, municipality, school district . . . that serves a public purpose and is authorized to develop or operate a qualifying project.” Based on the wording in the Charter, FPUA has exclusive authority to develop and operate the wastewater treatment plant and is the “responsible public entity” here. The City should not have accepted the Aqualia unsolicited proposal.

All that aside, if the Board would like us to pursue this path, we need to do it the right way to ensure that FPUA delivers the best and most economical solution for our customers and the City of Fort Pierce. Doing otherwise would be counter to FPUA’s mission.

As a Board, we have not discussed the P3 concept. I’d like the opportunity for Staff to present that concept to you prior to the joint meeting. Once you understand it, you may decide to direct Staff to develop procurement documents to solicit bids, on a parallel basis to our established plan. I’m planning on a presentation at the board meeting on June 15th.

If the Board decides to pursue this route, we would need to develop a detailed scope document and specific requirements for a P3. In my opinion it is bad business practice to simply accept an unsolicited proposal of this magnitude without looking at, evaluating and considering other proposals. If we go in this direction, staff recommends the meeting with the City Commission should focus on the merits of pursuing a P3 as a parallel path. It would be premature for Aqualia to make a presentation at this juncture. It is possible that Aqualia may be hurting themselves competitively by doing so should we decide to pursue a formal request for proposals for the project.



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We have been working with the County as a partner in moving the WRF. They should be included in all meetings and we should request the City to invite them to any joint meetings on this subject to determine if they would want to continue to partner with us using an alternate P3 approach.

Please contact me if you have any questions.

Thanks!

cc: R N Koblegard