

THIS MEMORANDUM IS A COMMUNICATION FROM COUNSEL TO AGENTS AND REPRESENTATIVES OF THE CITY OF FORT PIERCE IN AN ATTORNEY/CLIENT RELATIONSHIP AND IS THEREFORE CONFIDENTIAL AND IS FURTHER PROTECTED BY FLORIDA STATUTE SECTION 119.07 AS IT CONTAINS WORK PRODUCT OF THE ATTORNEY PREPARED IN ANTICIPATION OF, OR IN CONNECTION WITH, POTENTIAL OR PENDING ADVERSARIAL ADMINISTRATIVE PROCEEDINGS AND/OR CIVIL LITIGATION.

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

**TO:** Fort Pierce Mayor and Commissioners  
**FROM:** Robert V. Schwerer, City Attorney  
**SUBJECT:** City/FPUA Conflict Resolution Issues  
**DATE:** August 5, 2011

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I received the attached email and a copy of the Conflict Resolution Interlocal Agreement with Section 2(b) highlighted. Questions have been raised concerning Paragraph 2(b) of the agreement. Please accept the following as an explanation of what Paragraph 2(b) means.

At the time of this agreement, the City had a claim pending with the FPUA seeking to have the Power Cost Adjustment (PCA) included in "gross revenues". The City would be receiving substantially more money from the FPUA if the PCA were included. The City's Finance Director believed very strongly that since the PCA was being "billed" to customers and subsequently paid as revenues, it should be included when calculating the City's 6% annual transfer. The FPUA did not agree. The FPUA took the position that the PCA was not intended to be included in "gross income", and relied upon the following language in the charter, to wit:

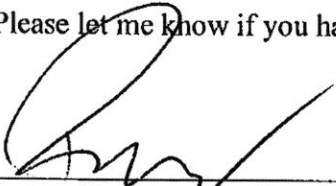
Where a power cost adjustment or purchase gas adjustment is utilized, "gross income" shall mean the amount billed based upon the applicable rate without a debit or credit for the cost adjustment.

The City and FPUA were therefore at an impasse over this language. To resolve this issue, the City and the FPUA simply agreed that the language was unclear and the City would withdraw its claim under the current wording of the City Charter. In doing so, the City did not agree the charter language could not be clarified or changed in the future.

Fort Pierce Mayor and Commissioners  
August 5, 2011  
Page 2

Under Paragraph 2(b) of the agreement, the City is precluded from making a claim for the PCA to be included in gross revenues at this time but is not precluded in the future from proposing a change in the language of the charter to clarify that it is being included, or alternatively, changing the percentage amount of the annual transfer.

Please let me know if you have any questions concerning the above.



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Robert V. Schwerer, Esq.  
City Attorney

/mlp  
Attachment

cc: David L. Recor, City Manager  
Gloria Johnson, Director, Finance  
William G. Thiess, Director, FPUA  
R.N. Koblegard, Esq.

RECEIVED City Attorney  
AUG 11 2011



Bill Thiess  
<bthiess@fpua.com>  
08/05/2011 09:31 AM

To "Bob Benton (AngelaWilkinson@city-ftpierce.com)"  
<AngelaWilkinson@city-ftpierce.com>  
cc "CommEddieBecht@bechtlaw.com"  
<CommEddieBecht@bechtlaw.com>  
bcc  
Subject Conflict Resolution Interlocal Agreement

1 attachment



Interlocal for Conflict resolution.pdf

Angela,

Bob Benton asked me to send this to you for forwarding to the City Commissioners. He said that he would like Section 2(b) regarding inclusion of the PCA in the transfer calculation highlighted.

**Bill Thiess, P.E.**

**Director of Utilities**

Fort Pierce Utilities Authority

206 South 6th Street

Fort Pierce, FL 34950

Telephone (772) 466-1600, Ext. 3200

Fax (772) 468-2412

E-mail: [bthiess@fpua.com](mailto:bthiess@fpua.com)

Please note: Florida has a very broad public records law. Most written communications to or from Fort Pierce Utilities Authority employees regarding government business are public records, available to the public and media upon request. Your e-mail communications may be subject to public disclosure.

(For additional information, go to [http://www.fpua.com/important\\_information/privacy.php](http://www.fpua.com/important_information/privacy.php))

OFFICE OF CITY CLERK  
CITY OF FT. PIERCE  
100 N. U.S. 1  
P.O. BOX 1480  
FT PIERCE FL 34954

INTERLOCAL AGREEMENT BETWEEN CITY OF FORT PIERCE, FLORIDA  
AND FORT PIERCE UTILITIES AUTHORITY  
(CONFLICT RESOLUTION ISSUES)

THIS AGREEMENT ("AGREEMENT") made and entered into this 2<sup>ND</sup> day of  
MAY 2011, by and between the CITY OF FORT PIERCE ("CITY"),  
a Florida Municipal Corporation, and FORT PIERCE UTILITIES AUTHORITY ("FPUA"), a  
municipal utility authority created as part of the government of the City of Fort Pierce,  
Florida under the City Charter.

WHEREAS, there exists a dispute between the CITY and FPUA concerning the  
following specified matters and issues; to-wit:

- (a) FY 2006 Distribution to the City. The amount of the distribution according to the "6% of Gross Revenue" formula was \$4,760,109 and by the "40% of Net Revenue" formula it was \$4,208,790. The difference is \$551,319, which the CITY contends that FPUA owes, and that the same is a carry-forward debt;
- (b) TECO Easement. FPUA was paid \$54,886 for an easement containing the gas supply line for the Treasure Coast Energy Center on property owned by the City. The CITY contends the easement payment belongs to the CITY;
- (c) Including the Power Costs Adjustment (PCA) in the Distribution Calculation. The CITY contends that the PCA should be included in

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT  
SAINT LUCIE COUNTY  
FILE # 3988915 05/03/2011 at 01:52 PM  
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RECORDING: \$44.00

the distribution calculation and payment to the CITY pursuant to the Charter; and

- (d) North 25<sup>th</sup> Street FDOT Delay Damages. Certain costs were incurred by FPUA as a result of the CITY transferring right-of-way to FDOT, including \$131,570 in utility relocation costs and \$90,000 for a delay claim, for a total of \$221,570. FPUA contends that the CITY should be responsible for these costs.

WHEREAS, the CITY adopted Resolution No. 11-10 initiating conflict resolution as provided by Florida Statute 164.1052, pertaining to said matters in disputes; and

WHEREAS, the CITY and FPUA commenced statutory conflict resolution procedures and have reached agreement on the matters specified above; and

WHEREAS, the parties desire to enter into this Interlocal Agreement evidencing their agreement with respect to these issues and matters.

NOW, THEREFORE, the CITY and FPUA hereby agree and covenant on the terms and conditions hereinafter stated:

1. General. This Agreement is entered into pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969. This Agreement embodies the whole understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained therein, and this Agreement shall supersede all previous telecommunications, representations, and/or agreements, either verbal or written, between the parties hereto.

2. **Conflict Resolution.** It is the intent of the parties by this Agreement that the above issues and matters be resolved as follows:

(a) As a full and complete settlement of any amounts owed either of the parties with respect to the FY 2006 Distribution to the City, the TECO Easement, and the North 25<sup>th</sup> Street FDOT Delay Damages claim, FPUA shall pay, after agreed set-off, the total sum of Two Hundred Thousand (\$200,000) Dollars to the CITY within thirty (30) days of the date of this Agreement; and

(b) Concerning the issue of *Including the Power Cost Adjustment (PCA) in the Distribution Calculation*, the CITY hereby agrees to withdraw said claim, and forbear any claim to the same under the current wording of the City Charter.

3. **General Release.** To the extent permissible by law, and in full and final settlement of only the issues and matters specified above, each party further agrees to remise, release, acquit, satisfy, and forever discharge the other party, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which either party ever had, now has, or which any successor, or assign of either party, hereafter can, shall or may have, against the other party, for upon or by reason of these specific matters and issues hereinabove specified.

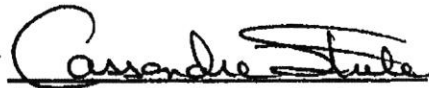
4. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the specific subject matter hereof and supersedes all prior verbal and/or written agreements between the parties with respect thereto. This Agreement may only be amended by a written document, properly authorized, executed and delivered by the parties hereto. This Agreement shall be interpreted as a whole unit. All interpretations shall be governed by the laws of the State of Florida.

5. Filing. This Agreement and any subsequent amendments thereto shall be filed with the Clerk of the Circuit Court of St. Lucie County pursuant to Section 163.01(11), Florida Statutes, prior to becoming effective.

IN WITNESS WHEREOF, the parties have caused the execution by their duly authorized officials.

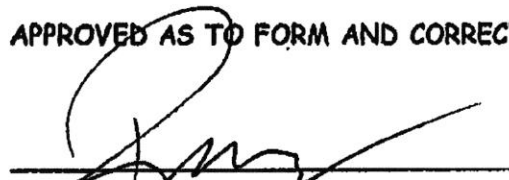
ATTEST:

CITY OF FORT PIERCE

  
Cassandra Steele, City Clerk

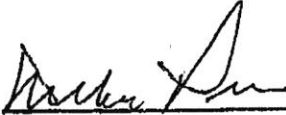
  
Robert J. Benton, III, Mayor

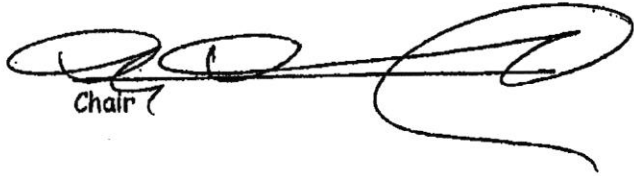
APPROVED AS TO FORM AND CORRECTNESS

  
Robert V. Schwerer, Esquire  
City Attorney


ATTEST:

FORT PIERCE UTILITIES AUTHORITY

  
Secretary

  
Chair

APPROVED AS TO FORM AND CORRECTNESS

  
R.N. Koblegard, Esquire  
FPUA Attorney