

CITY OF CLEWISTON
Regular Commission Meeting
April 15, 2019

The City of Clewiston City Commission held its regular Commission Meeting in the City Hall Commission Chambers Monday, April 15, 2019. The meeting was called to order at 5:30 p.m. by Mayor Gardner. Pastor Jeff Smith of the First United Methodist Church on behalf of the Clewiston Ministerial Association gave the invocation and the audience joined in reciting the Pledge of Allegiance.

Commissioners Present: Mayor Mali Gardner, Vice Mayor Michael Atkinson, Commissioner Melanie McGahee, Commissioner Kristine Petersen and Commissioner Julio Rodriguez.

Personnel Present: Interim City Manager/Finance Director Shari Howell, Interim City Clerk Kathy Combass, Assistant Police Chief Marci VanD’Huynslager, Police Sergeant Demetrius Scruggs, Utilities Director Danny Williams, Community Development Director Travis Reese, City Engineers Tommy Perry and Scott Jones and City Attorney Gary Brandenburg.

Visitors Present: Laura Smith, Jerry Cochrane, Donnie Hughes, Asa and Betty Godsey, John Wellslager, Phillip Roland, Ramon Iglesias, Antonio Perez, Sassy Whitehead, Tammy Waddell, Morris and Betty Ridgdill, Jimmy Pittman, Bobby and Shirley Haggins, Andy Tilton, Jeff Smith, Raoul Bataller, Stephanie Schneider, Brian Sullivan, Pedro Diaz, Keisha Burchell and Terry Gardner.

ADDITIONS/DELETIONS/CHANGES AND APPROVAL OF THE AGENDA - none

1. Consent Agenda

- A. *Commission Workshop Minutes – March 18, 2019*
- B. *Commission Meeting Minutes – March 18, 2019*
- C. *Proclamation – Child Abuse Prevention Month – April 2019*

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve the Consent Agenda. Vote 5 yeas, 0 nays

RESOLUTIONS

- 2. Resolution No. 2019-11 – (This agenda item was deleted from the March 18, 2019 Commission Meeting Agenda.)** Resolution No. 2019-11 approves Amendment Nos. 1 and 2 to Agreement No. 4600003609 Between the South Florida Water Management District and City of Clewiston.

Mayor Gardner summarized and read Resolution No. 2019-11 by title. City Attorney Brandenburg stated that paragraph 4 of Amendment No. 1 states that Johnson-Prewitt & Associates was subcontracted to complete the services required but it does not appear that they were subcontracted to do any of those services. He explained that it is reasonable for the Commission to think that if someone is making presentations and the Commission has given the go ahead, that their City Manager and their City Engineer will do the paperwork and come back to the Commission for approval but it does not look like that ever happened. He expressed that he wanted to make that clear but feels the Commission should go ahead and approve this amendment in order to move forward. City Engineer Tommy Perry stated that he was given notice to proceed and asked to proceed by the Commission and staff no different than they had been given the same direction in the contract that they’ve had with the City since 1977. He believes that Attorney Brandenburg is trying to apply the new contract with the City that occurred after this project began. Attorney Brandenburg stated that the new contract specifically said that the 1977 contract was null and void and all work would have to be under the new contract even if it was given to him under the 1977 contract and he would have to provide documentation for each hour he worked. He explained that the City Manager even in 1977 or any time after that date had no authority to authorize anybody to do more than \$25,000 of work under the City’s purchasing policy or under the state statute. He stated that the 1977 contract only applied to civil engineering and surveying, it did not apply

to bridge design and under that contract, Johnson-Prewitt & Associates would not have been authorized to do the bridge design. Mr. Perry stated that civil engineering would include the design of the bridge. Attorney Brandenburg stated that there is no one in Johnson-Prewitt's firm that does bridge design which is why he subcontracted it out so it is clear that the City didn't hire Johnson-Prewitt & Associates in 1977 or any other time to do bridge design. Attorney Brandenburg stated the contract did not allow Johnson-Prewitt & Associates to do any subcontracts other than menial ministerial stuff and certainly not something that would go to more than 50% of the contract. He also stated that Mr. Perry had indicated the bridge design work was probably \$150,000 more which means that is a major part of the contract and under state law that had to be bid out and the City had to make that selection. He explained that the City doesn't know how Johnson-Prewitt & Associates made the selection, what their contract says, how much work they are supposed to do, how they are supposed to be paid and if it is hourly or otherwise. He said he understands that Johnson-Prewitt & Associates and the City have been doing things certain ways for 30 years but we are just trying to get this papered properly so it would be legal for the City to pay. He added that no one suggested that there was anything wrong with the contract or anything nefarious. Mr. Perry stated that he was called by the city attorney who said he and City Manager Al Perry made an agreement to do this work in the back room. Attorney Brandenburg stated that Interim City Manager Wendell Johnson is the one that brought this to his attention. He also explained that the City has no idea how the subcontractor was hired, the qualifications of that engineer or the basis for payment. He stated that Johnson-Prewitt & Associates has submitted an invoice requesting payment for \$300,000 and the City has asked for backup and copies of the notice to proceed or anything in writing to support their position and nothing has been provided. Mr. Perry stated that he provided the information required for Task 2 to the South Florida Water Management District and that is how Task 1 was done. He stated that when they were here before the Commission, the Commission asked if they could do Task 2 for \$300,000 and the entire job for \$350,000 and they said yes so it was given to them as a lump sum contract. Mayor Gardner asked if the City has a copy of the lump sum contract. Mr. Perry stated that they were told to go ahead with this project just like they have been told for all projects with the City since 1977. Mayor Gardner stated that her understanding is that the City has an invoice with no documentation. Attorney Brandenburg agreed and stated that the City does not have a copy of anything that was presented to the district. Mr. Perry stated that the information was submitted to the district electronically and the City Manager was copied on that submittal and received the same submittal that the district received. Interim Manager Howell stated that it was not submitted in her capacity and agreed to search Mr. Johnson's emails. Attorney Brandenburg next stated that he feels Johnson-Prewitt & Associates should be terminated at the City Engineer and one of the City's other engineers should be hired to pick up this project and move it forward. He added that Johnson-Prewitt & Associates should be paid for the work they did that contributed to this project which needs to be sorted out and when the information required is provided, the City will remit payment. Commissioner McGahee asked if Mr. Perry had any issues with providing the requested documentation. Mr. Perry stated that he was asked to provide a copy of the scope of services and he has provided that. Attorney Brandenburg stated that he has not provided that documentation. Mr. Perry stated that he was asked for a letter from the subconsultants stating that Johnson-Prewitt & Associates did not receive a bribe or kickback to do the work and he indicated to Attorney Brandenburg through the Interim City Manager that the request is highly irregular and it not something that he feels he should respond to. Mayor Gardner asked Attorney Brandenburg exactly what he asked for. Attorney Brandenburg stated that it is highly irregular but in paragraph 10 of the 1977 contract, it states that the engineer warrants that has not employed or retained any company or person other than a bonafide employee working solely for the engineer to solicit or secure this agreement and that it has not paid or agreed to pay any person, company or corporation, individual or firm other than a bonafide employee working solely for the engineer, any fee, commission, percentage or gift or other consideration contingent upon or resulting from the award of the contract. He also stated that it is repeated in the new contract. Attorney Brandenburg stated that Mr. Perry was not asked to provide a statement like that, he was asked to provide the backup as required in the 2018 contract. He stated that Mr. Perry was also asked to provide a copy of the subcontractors invoices sworn to by the subcontractor that they were his invoices and a statement by the subcontractor that he has not paid anybody. He added that he did not ask Mr. Perry to sign anything and did not suggest that anything untoward was happening. He also added that Mr. Perry "flew off the handle" and charged around to all the Commissioner's offices, got in their faces and accosted three of them and threatened him over the phone with physical harm. He then stated that he does not think the

City can condone conduct like that on behalf of the City engineer so aside from all the contract issues, which are inappropriate, undocumented and illegal at almost every step of the way, his conduct is so atrocious. Mr. Perry stated that it is a false statement to say that he acted illegally in any way. Attorney Brandenburg stated for the record that that he did not say that Mr. Perry acted illegally in any form; he said that the contract was illegal. He also stated that it would be illegal and criminal to pay the invoices based upon what the engineering firm has supplied to the City to date. Mr. Perry stated that he was told by the City Manager and City Commission at the time to proceed with the project at the special meeting when the Commission approved the contract. Attorney Brandenburg stated that approval of the contract was not at a City meeting and there was no work order or contract or no specification signed off on by the City for what he was to do, how much he was to be paid or whether it was a lump sum contract or other contract. He also stated that there were a couple of occasions where Johnson-Prewitt & Associates appeared in front of the Commission regarding the location of the bridge and he believes the Commission thought that Mr. Perry had valid authority to move forward and if he didn't, he would provide that information and the City Manager would follow up and make sure the City was covered on all these items. He further stated that none of that occurred and if it had, he believes Mr. Perry would have brought it forward. He stated the 2018 contract has the exact work order spelled out with detail on what has to be filled in for each engineering work order but what was brought forward was a specification sheet that looked like it was part of the grant agreement. Mr. Perry stated that it is very difficult to comply with the contract that wasn't in place when they were told to go to work on the project. Attorney Brandenburg stated that he feels it would be very reasonable and appropriate for the City Engineer who just signed that contract, and knows that all previous contracts for engineering work are hereby void and this contract applies going forward to make sure that that engineer had the appropriate paperwork signed off by the City before he undertook a \$350,000 job which the City Manager does not have the authority to approve. Commissioner McGahee expressed that she does not feel the City Attorney's request for the documentation was unreasonable and also feels that Mr. Perry's conduct was very unbecoming and reprehensible. She stated that Mr. Perry scared her when he came to her office and behaved the way he did.

Commissioner McGahee made a motion, seconded by Commissioner Rodriguez, for the City Attorney to prepare the documentation to terminate the contract with Johnson-Prewitt & Associates, Inc. in accordance with the contract. Vote 3 yeas, 2 nays (Vice Mayor Atkinson and Commissioner Petersen voted nay.)

Before the vote, Attorney Brandenburg stated the City is only required to give a ten day notice that will start today to Johnson-Prewitt & Associates that their contract is terminated. Commissioner Rodriguez stated that he has not always been happy with Johnson-Prewitt & Associates' work but they have always been able to communicate and work things out. He then stated that Mr. Perry embarrassed him when he came to his business and he also feels his conduct was not appropriate. Commissioner Petersen stated that she wishes the City had received the documentation from Johnson-Prewitt & Associates. She also stated that she is torn because she feels it is obvious that neither party followed the old contract and is not sure if there was a misunderstanding or misconception when the new contract was signed. She then expressed her concern with Mr. Perry's behavior and stated that she feels the Commission should think about the historical information that would be lost if the contract is terminated.

Attorney Brandenburg stated that Johnson-Prewitt & Associates, Inc. will be required to turn over all public records in their possession from the beginning of their representation to the City at no charge at the City's request under the 2018 contract. Mayor Gardner stated that she will support the termination of the contract based on the facts and her experience on Wednesday afternoon. Vice Mayor Atkinson stated that he agrees with Commissioner Petersen and has supported and still supports Johnson-Prewitt & Associates, Inc. and will not support the motion. He stated that he remembers when Johnson-Prewitt & Associates, Inc. was given authorization for task 2.

After the vote, Attorney Brandenburg recommended the Commission choose one of the other engineers that that the City has contracts with to produce a work order for the City's approval to take over the bridge project and move it forward as quickly as possible and notify South Florida Water Management District that Johnson-Prewitt & Associates no longer represents

the City. Mr. Perry stated that they have enjoyed working for the City for many years. There was a brief discussion regarding who should make the decision as to which engineer should be selected to take over the project. It was noted that deliverable 3 in the amount of \$15,000 is the permitting for the bridge. Utilities Director Danny Williams stated that he feels Johnson Engineering, Inc. should be chosen. Andy Tilton of Johnson Engineering, Inc. stated that he had not seen the contract, but if it is just the permitting of the facility, those are items they do on a regular basis. Attorney Brandenburg stated that Mr. Tilton would need to familiarize himself with the project and develop a work order specifying what is necessary to complete those jobs that would come to the City Manager. He noted that the City Manager could authorize it if it is below \$25,000, if not, it would need to come back to the Commission. Mr. Tilton stated that he is willing to look at it and work with Interim Manager Howell to bring back what they are able to do. Interim Manager Howell agreed to follow up on this matter and stated that this is something that can't wait.

Commissioner Rodriguez made a motion, seconded by Commissioner McGahee, to approve Resolution No. 2019-11. Vote 5 yeas, 0 nays

3. **Resolution No. 2019-17** – Resolution No. 2019-17 authorizes the Mayor to sign the Agreement Between the City of Clewiston, Florida, and the Sky Family YMCA, Inc. to Operate Summer Camp to provide summer camp programs to children ages 5 to 12 years old.

Mayor Gardner noted that this agreement needs to be approved with some modifications. She stated the provider's name should be corrected and that the City would like to see the requirement for the background checks on the YMCA's employees. Interim Manager Howell stated that the name is to be changed to the Sky Family Young Men's Christian Association, Inc. and explained that it is the same entity that Hendry County contracts with to provide summer camp in Harlem and the west side of LaBelle. She stated the City's program will be a 10-week program from 6:00 a.m. to 6:30 p.m. and the cost would be \$70 per week. She also stated the only change to this year's program is that there will be one session with one rate offered. She added that the agreement states that YMCA will pay the City \$11.00 per hour for each lifeguard on duty and that City staff takes care of the day-to-day cleaning but if something happened where additional services were needed, the YMCA would be responsible for that. She then reviewed the differences in YMCA's summer camp and the City's summer camp. She confirmed that YMCA does offer financial assistance based on income but expressed that the City is not involved in that; that is between the participant and the YMCA.

Vice Mayor Atkinson made a motion, seconded by Commissioner McGahee, to approve Resolution No. 2019-17 taking into account the insurance requirements and the name to reflect the new legal name for YMCA. Vote 5 yeas, 0 nays

4. **Resolution No. 2019-18** – Resolution No. 2019-18 authorizes the Mayor to sign FDOT Exhibit A to Highway Lighting Maintenance and Compensation Agreement Number AM836 between the Florida Department of Transportation and City of Clewiston. Approval of Exhibit A is required in order to set the compensation to the City for the maintenance of State highway lights for FY 2019/2020.

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve Resolution No. 2019-18. Vote 5 yeas, 0 nays

5. **Resolution No. 2019-19** – Resolution No. 2019-19 approves and authorizes the Mayor to sign Change Order No. 3 in the amount of \$2,250 for the Block 201 Utility Relocation Project. Change Order No. 3 allows for the refund of some of the cost of installing a 2" valve near the intersection of Block 208 alley and West Circle Drive. The installation required less work than anticipated.

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve Resolution No. 2019-19. Vote 5 yeas, 0 nays

6. **Resolution No. 2019-20** – Resolution No. 2019-20 approves the final payment in the amount of \$21,188.47 to GO Underground Utilities, LLC for the Block 201 Utility Relocation

Project. GO Underground Utilities, LLC has completed the Block 201 Utility Relocation Project, totaling \$232,134.67, and is requesting final payment in the amount of \$21,188.47.

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve Resolution No. 2019-20. Vote 5 yeas, 0 nays

MISCELLANEOUS ACTION AND DISCUSSION ITEMS

7. **Discussion regarding Companies that Handle Permitting and Building and Fire Inspections** – Mayor Gardner stated that staff will have a recommendation at the May 6, 2019 Commission Meeting in regards to backup companies that handle permitting and building inspections.
8. **Update on Livestreaming City Commission Meetings** – Mayor Gardner stated that staff will have a recommendation at the May 6, 2019 Commission Meeting.
9. **Discussion regarding C-21 Bridge Project** – Mayor Gardner noted that this project was discussed under Agenda Item No. 2.
10. **Departmental Monthly Activity Reports** - Presented for information only.

PUBLIC COMMENTS – Mrs. Laura Smith addressed the Commission and announced that the spay and neuter clinics are going good. She stated that PAWS comes to Clewiston on the 2nd Wednesday of each month to pick up animals that need to be spayed or neutered. She also stated that the Gulf Coast Humane Society will be at the Clewiston Elks Club this Thursday from 6:00 p.m. to 8:00 p.m. to have a dessert auction. She invited everyone to come out and support them. Mayor Gardner thanked Mrs. Smith for the work she does with the Clewiston Animal Control.

COMMENTS FROM CITY MANAGER – Interim Manager Howell provided an update on the City Manager search. She stated that Colin Baenziger’s firm has a few good applicants and explained that the reason his firm requested to re-advertise was because they were not comfortable with the number of applicants received because some usually withdraw. She explained that this is typical and that there is no greater expense to the City and it has not affected the schedule. There was a brief discussion regarding the number of candidates the Commission would like to meet. Commissioner Rodriguez stated that he would like to meet the three best and Mayor Gardner expressed that she would rather meet with five in case any of them withdraw. Vice Mayor Atkinson suggested that the Commission look at all of the candidates because it is the Commission’s decision. Mayor Gardner explained that Mr. Baenziger will send the Commission the information on all of the candidates and the Commission will then select the best five. Attorney Brandenburg reminded the Commission that the selection process will be public and the consultant will then be told to negotiate a contract.

Interim Manager Howell stated that she will start working with the directors to get ready for the budget workshops and she intends to meet with them tomorrow at the staff meeting. She also noted that the audit is underway and there are no reasons for delay.

COMMENTS FROM THE CITY ATTORNEY- none

COMMENTS FROM THE CITY COMMISSION – Commissioner Rodriguez stated that because he was not in attendance at the last Commission Meeting, he wanted to give Interim Manager Howell his vote of confidence. He also stated that he feels the Commission should consider additional compensation for Interim Manager Howell. It was noted that Interim Manager Howell had declined any additional compensation the last time she served as the Interim City Manager because the time served was very minimal. Mayor Gardner stated that there is no declining this time and asked Interim City Clerk Kathy Combass to look into adjusting her salary. Interim Manager Howell thanked the Commission for their vote of confidence.

Commissioner Petersen thanked Utilities Director Danny Williams, Code Enforcement Officer Debbie McNeil and Community Development Director Travis Reese for stepping up to help Interim Manager Howell.

Mayor Gardner thanked Interim Manager Howell for the work that she did the last time she served as the Interim City Manager.

Mayor Gardner announced that Ramon Iglesias invited her to go to Tallahassee tomorrow with the “Anglers for Lake Okeechobee”. Mr. Iglesias stated that he co-founded the “Anglers for Lake Okeechobee” group and the “Make Lake O Great Again” hats were made to get the attention of the President and his staff. He explained that the senate has asked for money for the storage of water north of the Lake to clean and store it with ASR wells. He stated that we have to clean the water before it enters Lake Okeechobee and the ASR wells are needed for that. He stated that a press conference will be held in Tallahassee tomorrow. Mayor Gardner stated that the ASR wells are already approved by the U.S. Army Corps of Engineers and the South Florida Water Management District; we just need to get the funding to get those projects done.

ADJOURNMENT

The meeting adjourned at 6:40 p.m.

Mali Gardner, Mayor

Mary K. Combass, Interim City Clerk