

**CITY OF CLEWISTON**  
**Special Commission Meeting**  
**September 28, 2020**

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The City of Clewiston City Commission held a Special Commission Meeting in the City Hall Commission Chambers Monday, September 28, 2020. The meeting was called to order at 10:30 a.m. by Mayor Gardner. Mayor Gardner gave the invocation and the audience joined in reciting the Pledge of Allegiance.

**Commissioners present in person:** Mayor Mali Gardner, Commissioner Kristine Petersen and Commissioner Julio Rodriguez.

**Commissioners present via telephone:** Vice Mayor Michael Atkinson and Commissioner Melanie McGahee.

**Personnel Present:** City Manager Randy Martin and Utilities Director Danny Williams

**Personnel in attendance by telephone:** City Clerk Kathy Combass, City Attorney Gary Brandenburg and City Consulting Engineer Andy Tilton.

**Visitors Present:** Paul Jacques and James Pittman

**Others in attendance by telephone:** none

**Telephone Conference Instructions on How to Watch and/or Participate:**

The City of Clewiston City Commission Meeting will be live on the City's Facebook page at <https://www.facebook.com/cityofclewiston> and the City's website at <http://clewiston-fl.gov/meetings>. Public comments will be allowed via telephone (863-254-4038, Conference ID 994729 #) at the time the agenda item is being considered when the Mayor invites public comments. Members of the public, when addressing the Commission, via email or telephone, must state his or her name, address, contact information and agenda item they wish to speak about.

**Statement of the Mayor regarding Virtual Public City Commission Meetings:**

Pursuant to Executive Order No. 20-69, issued by the Office of Governor Ron DeSantis on March 20, 2020, as extended by Executive Order No. 20-112, Executive Order No. 20-123, Executive Order No. 20-139, Executive Order No. 20-150, Executive Order No. 20-179 and Executive Order No. 20-193, municipalities may conduct meetings of their governing boards without having a quorum of its members present physically or at any specific location, and utilizing communications media technology such as telephonic or video conferencing, as provided by Section 120.54(5)(b)2, Florida Statutes.

**Additions/Deletions/Changes and Approval of the Agenda - none**

**Public Comments - none**

**RESOLUTION**

- Resolution No. 2020-64** – Resolution No. 2020-64 approves an Amendment of Solicitation/Modification of Contract No. W912EP17C0037 between the U.S. Army Corps of Engineers (USACE) and the City of Clewiston to incorporate a sanitary sewer system connection from the South Florida Operations Office reservation to the City of Clewiston sewer system and provide the sewer services to include maintenance.

Mayor Gardner summarized and read Resolution No. 2020-64 by title. Manager Martin reminded the Commission they previously approved a resolution authorizing modifications at the May 18, 2020 Commission Meeting and since then, based on the feedback from the

Commission, staff has been working with USACE representatives on this modification which commits the funding necessary for the services to begin the connection of their facilities to the City's wastewater system. The USACE has appropriated \$465,736.21 for this project and the modification would bind the USACE to provide those funds to the City to go forward with the project to make the connection. He stated the Commission also previously authorized a work order for the engineering aspects of this project but we have held off on commencing that work until this agreement is acted upon by the Commission. Once this agreement is approved, the engineer will move forward with the work on that work order and then we will go through a formal bidding process to acquire a contractor to perform the first phase of the project. He recommended approval of Resolution No. 2020-64 to provide for the connection. City Attorney Brandenburg stated that this is the USACE's contract form for encumbering their funds before the end of the year. He noted that there will be subsequent funding by the USACE to complete the project and the City will have to manage its contract so that it will not be responsible for the contract for this construction beyond what the USACE has encumbered and committed at any particular time and asked the USACE to confirm that understanding. Manager Martin assured the Commission that he will manage the funds and that City funds will not be committed to this project. He noted the engineer's estimate for this phase is less than \$465,736.21 so the City will have the opportunity to consider any alternates if bids come in better than estimated and the Commission will have to authorize the construction contract. Manager Martin stated that it is his understanding that if this modification is approved, we will authorize the engineer to go forward with the engineering work and draw the funds to reimburse us for that service and then funds would be drawn as the project proceeds once we bid and actually get a contract. He stated the total engineering services for the entire project is \$90,000 but the first phase of drawing the plans is just a portion of that. City Consulting Engineer Andy Tilton and USACE Representative Paul Jacques both confirmed the statements made by Manager Martin and Attorney Brandenburg were correct. Commissioner McGahee expressed that she feels the modification obligates the City to provide a sewer system including maintenance to the USACE for \$465,736.21; it doesn't mention the construction and project would stop once the \$465,736.21 was expended. Manager Martin responded that the only thing covered in this amendment is Phase 1; any future phases will be required to come back to the Commission with a USACE commitment for additional funding. City Attorney Brandenburg stated the sewer line is going to be built to the USACE property and then the question becomes how much of their property is going to be hooked up to that system. This only obligates the City up to \$465,736.21; any amount beyond that, the City is not obligated to without further agreement. He added that the USACE is not willing to make modifications to their standard forms and documentation. Commissioner McGahee stated that she feels the City would be short \$284,000 if the amendment is signed because it clearly states its purpose is to incorporate a sanitary sewer system connection from the South Florida Operations Office Reservation to the City of Clewiston Sewer System and provide sewer services including maintenance. Manager Martin's reiterated that the City is only obligated to provide the connection to the site with the funds provided by the USACE. He stated that Engineer Tilton has details that stipulate his estimate is \$440,000 to provide the connection to the site; it does not obligate us to connect all of their buildings unless and until adequate funding is available. If and when the USACE comes back with an additional commitment, we would come back to the Commission and ask to increase the amount from \$465,736.21 to some higher amount of funding. Commissioner McGahee stated the agreement intends for the system to be operational when the project is finished. Manager Martin explained that it would be operational to their main building. Connections to all the other buildings are not provided for in this agreement in terms of the available funding amount unless we get extraordinarily good bids. He stated the funding for the engineering of the entire project and the connection to USACE's field office is in this scope of the project. Mayor Gardner noted that the City always maintains the sewer lines once they are built. Manager Martin confirmed the City will own and maintain the sewer line and the USACE will be paying monthly fees for their service just like all other customers. Commissioner McGahee asked Attorney Brandenburg if the City has a legal obligation if this amendment is signed; can the USACE sue the City for failure to complete the project in accordance with this amendment. Attorney Brandenburg stated that he does not believe the City could be sued beyond its expenditure of the \$465,736.21 to complete the line to their property. He also stated that this is not the type of agreement that we would normally enter into; he has tried talking with the USACE's legal counsel on a couple of occasions on all the points that Commissioner McGahee has brought up and this is the document the USACE is willing to do. We are either going to have to accept this document or not do the project. Commissioner McGahee stated the risk falls on

the backs of the Commissioners and she is not willing to take the risk. She stated this is a lot of exposure for a project for someone who is not even a resident of the City of Clewiston and feels this should be a county project. She further stated the USACE could do this project themselves without exposing the City. She urged the Commission not to do this project because she feels the contract documents are not in order. After further discussion, Mayor Gardner asked Attorney Brandenburg if he recommended approval. Attorney Brandenburg stated that the USACE is not willing to lay out all the issues that Commissioner McGahee has pointed out. He stated the City always has risks when they enter into contracts. He added that it is a business decision of the Commission as to whether they want to proceed forward and expand their sewer system into the unincorporated area to serve the USACE; it is not a legal decision. Commissioner McGahee asked who bears the risk for any cost overrun. Mr. Jacques stated that this contract is in their expectation of \$465,736.21 to get a connection point to their field office (SF1) and their federal acquisition regulations hold them accountable for any cost overruns; which was covered in the meeting with the USACE's legal and Attorney Brandenburg. He explained that there are no additional funds available this fiscal year which is why they asked for full design engineering so that they would know what additional funds would be needed in order to complete the whole system on all the buildings when future funding is available. Commissioner Rodriguez expressed that he feels the City should not be responsible for paying anything over \$465,736.21. He asked if the project was paid out of the City's funds. Manager Martin stated the funds are reimbursed to the City almost simultaneously. Mr. Jacques stated that he will be authorizing the invoices for payment and expects the \$90,000 invoice for the engineering be sent to them almost immediately.

**Commissioner Rodriguez made a motion, seconded by Commissioner Petersen, to approve Resolution No. 2020-64. Vote 4 yeas, 1 nay. Commissioner McGahee voted nay.**

Commissioner Rodriguez left the meeting at 11:10 a.m.

Commissioner McGahee noted the resolution just approved is for electric, water and sewer services. Utilities Director Danny Williams explained that the City currently provides electric and water services to the USACE. Manager Martin stated that it is his understanding that there will be a subsequent amendment to increase the amount if and when available dollars are appropriated in the subsequent fiscal year. Commissioner McGahee stated the City will be obligated at \$465,736.21 to provide a line to one building and connect that one building to the city sewer regardless of the cost. Mr. Jacques confirmed that was correct. Commissioner McGahee then asked Attorney Brandenburg about the ownership of the Clewiston Canal and how we are going to get across or under the canal. Attorney Brandenburg stated that from the best that he can determine from a plat approved by the Hendry County Board of County Commissioners, the canal is owned by the County with a slight chance that it might be owned by the USACE. He explained that when something is dedicated to the public on a plat, it has to be accepted by somebody that represents the public; the only person accepting that plat that we can find of record is the County. He confirmed that neither the City nor United States Sugar Corporation is an owner of the canal. He stated that getting permission to cross or go under the canal from the USACE will not be an issue but we will have to approach the County and ask them to issue some sort of a quit claim easement where they are not necessarily taking ownership but giving up whatever rights they may have with respect to an easement. Commissioner McGahee then asked if the City is liable if a line bursts and pollutes the canal. Attorney Brandenburg's response was that the City would be liable just like it is if any line bursts anywhere in the City. Director Williams confirmed that City staff will not be used in this project and noted that the City has an easement where its powerline and water lines cross but may need to get approval from the marina because we will be tying in over in that area. Engineer Tilton confirmed that the bore will be a minimum of 10 feet below the bottom of the canal. Manager Martin added that it will be a force main designed for that purpose. Engineer Tilton agreed. Mr. Jacques noted that as part of the base contract, the City already has the right of entry. Mr. James Pittman came forward and stated the main points are the USACE approving the appropriation of the money, which he believes has been done, and the contract for the installation of the line, which can be written and bid in phases. He stated the jack and bore is typically a separate bid so he thinks the City will be able to spend up to the money that is appropriated without going over fairly easily. Commissioner McGahee clarified that her concern is that the contract that we have authorized to be entered into clearly says that the City will provide the

work for a certain amount of money and even though the USACE representative indicated that if there are unforeseen circumstances, the USACE would cover that, she did not see that in the contract. She stated that she doesn't understand how the USACE is going to go back and ask for additional funding to finish what they have already contracted for. Mr. Jacques explained that before the USACE started preparing any type of documents, there was an understanding that as a result of the initial estimate, they came up with the expectation in the scope limitation that they wouldn't be able to get at least that work done for the funds they had available so they didn't want to get to a point where the City wouldn't be able to award any contract for construction because there wasn't available funds; therefore the scope was reduced in order to make sure they had the proper scope to the cost so that it could be executed and they could get construction from this year's funds at their division level. He stated they are already working on budgeting the next \$275,000 to complete the system. He added that this action is only being funded for the connection and the first building but if they can take advantage of the competitive bids and add additional legs to the work or the vendor's contract, they are going to take advantage of that to utilize the \$465,736.21. Commissioner McGahee stated that she was more comfortable when the project was previously presented by Engineer Tilton that the USACE was going to pay \$465,000 as a hook up fee without any responsibility or any of the particulars with regard to what construction was going to be completed to allow the USACE to allocate these funds in this fiscal year. Manager Martin stated that it will be well into the next fiscal year before any construction begins so all of this may be moot depending on how the federal budget process goes with the additional funding. Engineer Tilton stated that Manager Martin's comment is well made and noted the normal amount of time for the design work is 3 months and then they would start the permitting process which would take an additional 3-5 months if everything goes well, otherwise it could be anywhere from 3-6 months. Commissioner McGahee noted that she has never been able to get a permit from any department for the canal because no one claims any responsibility. Manager Martin stated the primary permit is the permit from the State to extend the utility line and as Attorney Brandenburg stated, we will try to get Hendry County to relinquish any ownership they have. He added that the City, at some point in time, was able to get permits to put the other utilities to the site.

### **Adjournment**

**Commissioner Petersen made a motion, seconded by Commissioner McGahee, to adjourn the meeting at 11:29 a.m. Vote 4 yeas, 0 nays (Commissioner Rodriguez was absent.)**

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Kristine Petersen, Mayor

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Mary K. Combass, City Clerk