

**MINUTES OF THE EMERALD COAST UTILITIES AUTHORITY BOARD MEETING**  
**THURSDAY, MAY 24, 2018, 3:00 P.M.**  
ECUA BOARD ROOM  
9255 STURDEVANT STREET, ELLYSON INDUSTRIAL PARK  
PENSACOLA, FLORIDA

Members present: Lois Benson, Chairman  
Dale Perkins, Vice Chairman  
Vicki Campbell  
Larry Walker

Members absent: Elvin McCorvey

Counsel present Bradley S. Odom

Staff present: Stephen E. Sorrell, Executive Director

**ITEM 1 – INVOCATION AND PLEDGE OF ALLEGIANCE**

Prior to calling the regular meeting of the Board to order, Chairman Benson requested that Mr. Perkins provide the invocation and lead the Pledge of Allegiance.

**ITEM 2 – CALL TO ORDER**

Chairman Benson called the regular meeting of the Emerald Coast Utilities Authority Board to order at approximately 3:01 p.m.

**ITEM 3 - ADOPTION OF AGENDA**

Chairman Benson requested that the issue of litigation with Bear Marcus Pointe be discussed prior to all other items on the agenda.

Mr. Odom added Resolution 18-04 as Item 9(a)(3), which is a handout, that corresponds to Item 9(a) under Operational Items.

Mr. Odom also added Item 9(e) as a handout and replacement for Item 9(e) under Operational Items. Escambia County had not passed the agreement at the time of publication, but has since passed the agreement and it is before the Board as the handout Item 9(e).

Mr. Odom added Item 9(i) under Operational Items which is related to impact fees associated with the New Jail.

Mr. Perkins requested the addition of an Update on Recycling with the City of Pensacola under Unfinished Business. Ms. Benson indicated that this topic will be addressed as part of Mr. Sorrell's report. Mr. Perkins therefore withdrew his request.

Ms. Campbell added Time of Meetings under Unfinished Business.

A motion was made by Ms. Campbell, seconded by Mr. Perkins to adopt the agenda as presented and amended.

***Motion carried 4-0.***

### **Chairman Benson's Remarks – Bear Marcus Pointe Litigation**

Chairman Benson presented her concerns resulting from her interview with the State Attorney. These concerns relate to actions taken in a case on behalf of the ECUA, primarily by Mr. Richard Barlow, a partner in the firm of Odom & Barlow. She outlined the events as essentially correct. When ECUA embarked on the Main Street Replacement Project, it was necessary to obtain rights-of-way from approximately 150 properties to run ECUA's lines. The City of Pensacola and Escambia County granted the ECUA a blanket power of eminent domain for the project.

In the case of the property at Lewis Bear and Company at Marcus Pointe, the two sides could not agree. She understood that the ECUA's appraisal for the property was approximately \$10,000, and the property owner's appraisal was for \$15,000. When we could not agree on the price, the ECUA sued Bear Marcus to acquire the property under eminent domain, which was in 2007. Mr. Richard Barlow represented the ECUA in this case, which became quite lengthy.

On March 18, 2014, Judge Nobles declared that the eminent domain statute upon which the ECUA's case was based was unconstitutional, and issued an Order awarding attorney's fees to Bear Marcus in the amount of approximately \$300,000 to \$400,000. This Order was sent by email to both the firm of Odom & Barlow and the counsel for Bear Marcus. The Order was delivered to Odom & Barlow, but was captured by the firm's spam filter and was deleted. As a result, Odom & Barlow did not file an appeal within the 30-day window. On May 12, 2014, Odom & Barlow filed a motion for relief and requested that the Court allow time to appeal, based on excusable neglect because notice of the ruling had gone to spam.

There was subsequently a hearing for this motion, and it was found that (1) the clerk's office properly sent the email notice to the Odom & Barlow server and that no error message was generated, indicating that it was received by server. (2) The IT consultant engaged by Odom & Barlow, Mr. Hankins, testified that the spam filtering system the firm was using was unreliable and created the risk of filtering legitimate emails. He recommended that the firm hire a third party to handle spam filtering and that the firm get an online backup system. That would have cost the firm about \$700 to \$1,200 per year. Mr. Barlow rejected the recommendation. (3) Mr. Hankins also testified that he stopped working for Odom & Barlow because they did not take his advice. A partner with the local accounting firm, Saltmarsh, Cleaveland and Gund, testified that the server used by Odom & Barlow was not configured to back up data, and that a firm handling confidential and highly sensitive information should have a back-up or disaster recovery process. A counsel for Bear Marcus testified that, because a year had elapsed between the hearing and the ruling, he had assigned a paralegal to check the Court's website every three weeks to see if the Court had entered any Orders. Odom & Barlow did not have a similar protocol.

Based on the testimonies from these and others, the Trial Court concluded that Odom & Barlow made a conscious decision to use a defective email system without any safeguards or oversight, and that there was not excusable neglect upon which to appeal the award of attorney's fees. An opinion to that affect was issued by Judge Gary Bergosh on October 6, 2017. He awarded Bear Marcus another approximately \$300,000 - \$400,000 in attorney's fees for their expenditures after the 2014 ruling. In December of last year, attorney, John Trawick, was hired by the ECUA to negotiate the fees and settle with the attorney's for Bear Marcus.

Chairman Benson indicated that the critical issue is that of the use of the spam folder. Should this have been avoided by due diligence of Odom & Barlow, which seems to be the opinion of the Court. If this should have been avoided, do we have recourse in that we are answerable to the ratepayers of this community. If any of this money can be recovered, we should seek it. According to reports read but not verified, this matter has cost about one million dollars.

Chairman Benson stated that she is going to make a recommendation to the Board to hire independent counsel to advise us and to determine if we have a cause of action to initiate a malpractice claim against the firm of Odom & Barlow. If there is a claim, we need to act swiftly or we risk being caught by the Statute of Limitations. Based on her research and recommendations she has received, she recommends the firm of Sniffen & Spellman, P.A., located in Tallahassee, Florida, and who has special expertise in local government issues, as well as malpractice. They have an excellent reputation for handling sensitive issues for local governments. Being located in Tallahassee, they would be removed from local influences.

Chairman Benson also spoke highly of Odom & Barlow, and that this action is not personal. She indicated that in speaking with other attorneys, ECUA can continue seeking counsel with Odom & Barlow.

Chairman Benson turned the chairmanship of the ECUA over to Mr. Perkins to offer the following motion: That the ECUA proceed to engage the firm of Sniffen & Spellman, P.A., for an amount not to exceed \$15,000, to offer the ECUA Board legal advice on the issues surrounding the suit between the ECUA and Bear Marcus, and to begin immediately investigating whether a viable cause of action exists against the firm of Odom & Barlow, and that we instruct them to move as quickly as possible to make that determination. Ms. Campbell seconded the motion.

Mr. Perkins returned the chairmanship to Ms. Benson for discussion of the recommendation. Ms. Campbell agreed that this action is difficult. She added that the insurance company will probably fight the claim and we will end up spending more money in an attempt to recover. In speaking with Mr. Odom, he indicated that we would have probably prevailed on appeal.

Mr. Perkins agreed regarding the error and omissions insurance, and would like to retain Mr. Odom as ECUA's attorney. If there could be a claim against the errors and omissions policy, it is the Board's responsibility to do that. He added that he felt it was an honest mistake, but we should recover what we can. Mr. Perkins questioned whether there really was a \$5,000 difference in the request. Mr. Sorrell replied that this was not the case. Our appraisal was

\$5,000 and theirs was \$31,000, but they asked for indemnification and a huge number of additional fees exceeding \$150,000.

Chairman Benson requested clarification if the indemnification was part of the lawsuit. Mr. Sorrell replied that the indemnification was requested by the Bear Marcus group as part of the settlement, that they would be completely indemnified with the project and with all of the construction work. Additionally, they wanted numerous fees. Mr. Odom added that we got appraisals of the actual easement taken, which were relatively close. What Bear Marcus was seeking was a large amount of severance damages in the range that Mr. Perkins and Mr. Sorrell were talking about. It is not true to say there was a dispute of \$5,000, there was a dispute that the issue of the severance damages (around \$150,000) went to the jury and the jury agreed there were no severance damages. This was one of the major issues, along with other issues.

***Motion carried 4-0.***

Chairman Benson asked that Mr. Sorrell provide additional information about the Bear Marcus case. Mr. Sorrell presented a chronology of events regarding this project, which was part of the Main Street Replacement Project, and at that time Mr. Logan Fink was the chairman. There were in excess of 100 properties involved in the project. In September 2007, we advised the ECUA Board that we had been able to acquire all but two parcels. One was Kimberly Woods, the other Bear Marcus, and that we may have to acquire these parcels through the eminent domain process, which was authorized by the ECUA Board and the Escambia County Board of County Commissioners in January 2008.

We resolved the issue with Kimberly Woods and they settled. That left the single parcel with Bear Marcus. In March 2009, the Court ordered a mediation hearing regarding this easement acquisition. The ECUA had this property appraised at \$5,000. Opposing counsel requested indemnification and the other fees as mentioned earlier by Mr. Odom. The case did not settle because of the disparity of the numbers. In September 2012, the case went to trial and the ECUA prevailed. We were awarded the easement through the Bear Marcus Pointe property, the opposing counsel requested damages in the amount of \$150,000 and the jury ruled in favor of the ECUA and declined that request. In March 2014, a post-trial motion was made and heard by Judge Nobles. She ruled in favor of the Marcus Pointe attorneys and that the \$393,624 in fees were due the Marcus Pointe attorneys. In doing so, she found that a State Statute was unconstitutional in this case. The law firm of Odom & Barlow was notified electronically, and it went to their spam filter and was erased. We missed the 30-day filing deadline.

In May 2014, Odom & Barlow filed a motion for relief because they missed the email. In November of 2015, the Court denied the motion by Odom & Barlow without an explanatory opinion. In December 2015, an appeal was filed by the firm of Odom & Barlow with the Appellate Court. In October 2017, the Appellate Court ruled that the defective email with the Odom & Barlow firm was unacceptable and denied the appeal. The avenue for the ECUA to appeal any further was closed, and the ECUA was required to make the payments. In November 2017, the ECUA paid the \$462,638 to the Bear Marcus Pointe attorneys, per the Court Order. In December 2017, the Odom & Barlow firm recused themselves from further work on this case and Mr. John Trawick was hired to represent the ECUA.

There were large amounts of additional fees that were requested in the appeal process by the attorneys of Bear Marcus. Further in December 2017, Mr. Trawick indicated that he had read the files, discussed the matter with opposing counsel, and discussed the comments with the ECUA expert, retired Judge Ken Bell. Judge Bergosh then scheduled a hearing for February 20, 2018. Mr. Trawick advised the Executive Director that he had been able to obtain a significant reduction in the rates requested by the attorneys for Bear Marcus. In December 2017, Mr. Sorrell communicated with the Chairman of the Board, Ms. Lois Benson, regarding this matter. Both felt the reduction suggested by Mr. Trawick was significant and probably the best and least expensive overall solution. The Executive Director notified Mr. Trawick that, in order to pay any amount that was in excess of his authority, it would need to be in a Court Order placed by the judge. Otherwise, the request for payment would be presented for approval by the ECUA Board. Quick payments were being requested by the Bear Marcus attorneys; therefore, it was not possible to wait for a Board meeting. Costs were increasing as time went on.

In December 2017, Mr. Trawick advised that the negotiated amount he had been able to obtain would be the best he could get, and better than having the matter go to a Fee Hearing with Judge Bergosh in February 2018. Mr. Sorrell then communicated with Ms. Benson and they agreed that the recommended solution by Mr. Trawick would be the best and least expensive solution. Mr. Trawick was advised that we would need a Court Order from the judge in order for ECUA to be able to pay anything. On December 19, 2017, the Executive Director advised the ECUA Board of the \$468,698 that was required in the case. The matter would be presented to Judge Bergosh by opposing counsel for consideration. No Board member was advised at any time what another Board member said or thought.

On December 20, 2017, Mr. Trawick reviewed and agreed with the expert fees. On December 22, 2017, Judge Bergosh received the request from opposing counsel and signed the Court Order requiring the payment to be made by the ECUA. On December 22, the Executive Director advised the Board of the Court Order and of the mandated payment.

Mr. Trawick advised the Executive Director that he would not take a malpractice case against the firm of Odom & Barlow and did not think a local firm would take the case either. He also indicated that a computer error does not normally constitute a malpractice case.

On December 27, 2017, the Executive Director authorized \$80,000 to be paid to the firm of Ausley McMullen, per the Court Order after discussion with Mr. Odom. On January 20, 2018, the Executive Director authorized \$388,968 to be paid to the firm of Fixel and Willis, per the Court Order.

Dr. Walker reiterated that we hired former Judge Ken Bell to give us advice regarding the fees requested by the Bear Marcus attorney. He requested that the Board be provided with Judge Bell's opinion. Chairman Benson referred the request to Mr. Sorrell, who deferred to Mr. Odom. Mr. Odom explained that he was not involved, but had retained Judge Bell, then recused himself from the case. His opinion would have been rendered to Mr. Trawick. Chairman Benson then referred the question back to Mr. Sorrell. He stated that Mr. Trawick had relayed Judge Bell's opinion that the charges were inflated by a certain amount, 10% to 20%, but he does not have much more information. Judge Bell was charging the ECUA \$450 per hour for any work he was doing. Mr. Trawick was of the opinion that we would not be able

to get much of a concession in front of Judge Bergosh, so he felt the negotiated reduction was by far the best deal.

Mr. Odom stated that essentially what we are talking about with the Court-ordered payments is a purchasing decision that was made and the authority that the Executive Director has in reference to purchasing decisions. We need to look at these different issues and discuss what his authority is. We have one payment in November that had gone to a full hearing, it had been through the appeal process, and it could go no further. There is no discretion regarding that matter. Mr. Sorrell stated that in December a payment was made to the Ausley firm for \$80,000, which is well within his ordinary purchasing authority, thus it is not an issue. We have the payment in January mandated by the Court Order to the Fixel firm, and we must keep in mind what is the Executive Director's purchasing authority. This was part of the Main Street Relocation Project, the whole reason that we are engaged in any of this was to have the pipeline for the Main Street Relocation Project. Part of the Main Street Relocation Project budget was for land acquisition. This Board will recall that Mr. Sorrell was given unlimited authority in the Main Street Relocation Project and could make decisions pursuant to that, and he also advised the Board of what was going on. The matter was then presented in a Court hearing, which is held openly in a public form, and the Court considered the matter and issued a ruling. In light of what Mr. Sorrell's purchasing power is in this regard, it is not clear what the remaining issues are, because he clearly had the authority to make decisions and authorize payment.

Mr. Odom suggested to the Board that it may be appropriate to ratify these expenses in order to eliminate any confusion that there may be in the public or elsewhere.

Chairman Benson called for a motion but none was provided.

Mr. Perkins stated that he would not mind making the ratification, but would like some time to think about the facts. He added that he does not believe anything inappropriate has been done.

Ms. Campbell added that she would not feel good about making this ratification right now, but it is not because she feels anything has been done wrong.

#### **ITEM 4 – PUBLIC HEARINGS**

There were no public hearings.

#### **ITEM 5 – OPEN FORUM**

None.

#### **ITEM 6 – PRESENTATIONS**

There were no presentations.

**ITEM 7 – APPROVAL OF MINUTES**

A motion was made by Dr. Walker, seconded by Mr. Perkins, to approve the minutes of the regular Board meeting of April 26, 2018, as presented.

***Motion carried 4-0.***

**ITEM 8 – REPORT OF THE ECUA CITIZENS’ ADVISORY COMMITTEE OF MAY 16, 2018**

A motion was made by Ms. Campbell, seconded by Dr. Walker, to approve the following recommendation for Item F, that the Board approve the proposed benefits package for fiscal year 2019 described in the first Option at a total estimated additional cost of \$110,113, including the following plan components:

- 1) Renew with FMIT as the medical insurer, and
  - a. offer two plan designs, one HDHP and one PPO plan, and
  - b. provide a portion of the employee only premium for the two plans, and

Plan	Tier	ECUA Monthly Contribution
Plan 5 – HDHP	Employee Only	738.00
Plan 14 – PPO	Employee Only	757.99

- c. provide a portion of the dependent premium for the two plans, and

Plan	Tier	ECUA Monthly Contribution
Plan 5 – HDHP	Spouse	582.94
Plan 5 – HDHP	Child(ren)	451.16
Plan 5 – HDHP	Family	1,157.07
Plan 14 – PPO	Spouse	550.33
Plan 14 – PPO	Child(ren)	432.15
Plan 14 – PPO	Family	1,113.30

- d. contribute \$850 of the employee deductible and \$1,275 of the family deductible into a HSA for each employee enrolled in the HDHP; and
- 2) accept the proposal submitted and change the dental insurer to Aetna Inc.; and
  - a. continue to contribute \$19.68 per month toward the premiums for dental; and
- 3) accept the proposal submitted and change the vision insurer to MetLife; and
- 4) approve renewal with WageWorks as the flexible benefits administrator;
- 5) make no changes to the life, long-term disability, and short-term disability insurances offered to ECUA employees; and
- 6) approve funding for the proposed benefits package that includes group medical, dental, life, and long-term disability insurance.

***Motion carried 4-0.***

Ms. Benson thanked the staff and consultant for all of their hard work they put into this plan.

**ITEM 9 – OPERATIONAL ITEMS**

**(a) Surplus Warehouse Materials**

Motion made by Mr. Perkins, seconded by Ms. Campbell, that the Board authorize disposition of the listed items by auction or sold as scrap as authorized by ECUA Code, Section 2-16.

*Motion carried 4-0.*

Motion made by Ms. Campbell, seconded by Mr. Perkins, to approve Resolution 18-4: A RESOLUTION FINDING THAT IDENTIFIED WAREHOUSE ITEMS ARE NO LONGER NECESSARY, USEFUL, OR PROFITABLE IN THE OPERATION OF THE UTILITY SYSTEMS OF THE ECUA; AUTHORIZING DISPOSITION OF THOSE ITEMS; PROVIDING AN EFFECTIVE DATE.

*Motion carried 4-0.*

**(b) Utility Relocation – Detroit Boulevard/Cove Avenue Force Main**

Motion made by Ms. Campbell, seconded by Dr. Walker, that the Board authorize the Executive Director to enter into a contract with Evans Contracting, ECUA's Small Scale Contractor, to perform the required relocation of the force main on Detroit Boulevard near the Cove Avenue intersection, and establish a project budget in the amount of \$160,000 through a transfer of funds in that amount from CIP Project CR405.

*Motion carried 4-0.*

**(c) Award of Bid – Patton Drive Force Main and Lift Station (LS #120) Replacement CIP Project RS220**

Motion made by Dr. Walker, seconded by Mr. Perkins, that the Board award the contract for the Patton Drive Force Main and Lift Station (No. 120) Relocation project to Talcon Group, LLC, Havana, Florida, the low bidder, in the total amount of \$2,976,485, with funding provided by a transfer in the amount of \$2,600,000, from CIP Project RS121 to CIP Project RS220.

*Motion carried 4-0.*

Dr. Walker commented that ECUA has to spend a lot of money to replace one lift station, and we have well over 300 lift stations and many of them are as old or older than this one. He noticed that this is a tri-pump lift station and that he has never seen this term before. He inquired as to whether we currently have numerous tri-pump lift stations. Mr. Sorrell replied that we do. When you have three pumps, they are staged and this is one of the larger lift stations. It will accept the additional flows from Beach Haven when it is upgraded, so it is a very large lift station. However, it is not as large as the regional lift stations, which have three pumps.

Dr. Walker inquired as to the staff contact on this item, Ms. Wendy Prather. Mr. Sorrell stated that she is a relatively new professional engineer with the ECUA. She is very sharp and competent, and will be working mainly with lift stations.



**(d) Fats, Oils and Grease (FOG) Program Evaluation**

Motion made by Ms. Campbell, seconded by Dr. Walker, that the Board authorize the Executive Director to enter into a contract upon successful negotiation with Jacobs (formerly CH2M Hill) for the evaluation of ECUA's Fats, Oils, and Grease (FOG) Program and establish a budget not to exceed \$80,000.00 through a transfer from CIP Project RI700.

***Motion carried 4-0.***

Chairman Benson asked that Mr. Sorrell provide additional information on this item. Mr. Sorrell commented that we are actually doing two separate programs, one is inflow and infiltration, but part of this is the Fats, Oils, and Grease Program. We implemented a program just for fats, oils and grease and it has been very successful. However, we need to look at the scientific side of the issues. This would look at the cleaning of mains and frequencies where we are having problems with the grease and the use of chemical additives that are environmentally friendly to help break down the grease.

Mr. Perkins inquired as whether we could do this in-house. Mr. Sorrell answered that we only have two people who would do most of this work. Mr. Steve Holcomb, who will be retiring within a year, and Mr. Justin Midgette. We do not have the capacity to do a thorough evaluation of all of the pipes and cleaning, along with the evaluation of the additives.

Mr. Perkins stated his concern with possible new regulations as a result of the evaluation. Mr. Sorrell confirmed that this is just an evaluation and how to enhance the program, and has nothing to do with creating new regulations.

Ms. Campbell asked if they could give us an idea on how to educate the public as well. Mr. Sorrell stated that they could and maybe we can incorporate the good points from other programs that are available.

Dr. Walker commented that he is of the opinion that this is an excellent expenditure of funds and is something that will benefit the ECUA greatly.

**(e) Interlocal Agreement - Innerarity Island Sewer Expansion**

Chairman Benson reminded the Board that this item was substituted with a handout, Replacement Item 9(e).

She requested that Mr. Sorrell provide additional information on this item. He explained that a year ago or so, the ECUA entered into an agreement with Escambia County to upgrade the water system on Innerarity Island. That program was completed using the same process and same type of agreement. This is the second component of that same process - to bring the sanitary sewer system up to ECUA standards and take over the system. It is more expensive than the water system, which was about \$2 million, the sewer system is approximately \$4.5 million. The County has money provided to them by the State, and they will also use the Municipal Service Benefit Unit (MSBU) process in order to have the residents pay for it. Once the agreement is done, we will initiate the work. The original item in the agenda was requesting approval of the conceptual agreement, but since that time, the County has finalized and approved the agreement,

and that is provided to you as Replacement Item 9(e). The agreement is to upgrade the wastewater system on Innerarity Island and the ECUA will be responsible for the engineering and the construction work and the County will be paying us back for all of our expenses. We will then accept that system after proper inspection.

Motion made by Dr. Walker, seconded by Mr. Perkins, that the Board: (1) approve the attached agreement between ECUA and Escambia County, relating to a wastewater collection / transmission system project for Innerarity Island, and ECUA's provision of service to and within the Innerarity Island community; and (2) initiate a CIP project for the Innerarity Island Wastewater System Improvements, with an initial budget of \$250,000 for engineering design services, through a transfer of Project Contingencies, with the project expenses to be reimbursed by Escambia County.

***Motion carried 4-0.***

*Chairman Benson asked Mr. Bill Johnson, Director of Engineering, if he could provide the Board with any additional information about the project. Ms. Benson stated that she called Mr. Johnson up on false pretenses and that he has been ECUA's head engineer for 28 years. He will be retiring and this is his last Board meeting. She thanked him for all he has contributed to the organization and all of the things that she has personally learned from him over the years.*

*Ms. Campbell added that she has thoroughly enjoyed working with Mr. Johnson on several projects.*

*Mr. Johnson commented that when he came to work for the ECUA, it was less than 10 years old. There were many opportunities and challenges and being able to address those issues made the job fulfilling. Of course, it has been with the help and support of many people, senior management, Mr. Sorrell, the Board looking out for the best interest of the ratepayers. From the Engineering Department's standpoint, health, safety and welfare are their guiding lights, which is what it has to be. He has been fortunate to have a very good staff and support for the department, and for that reason he feels confident about retiring.*

*Dr. Walker commented that he was present when Mr. Johnson was hired, and has never known any action he has taken to be unethical, questionable, or unintelligent. He has done a consistently good job from beginning to end.*

*Mr. Perkins wished Mr. Johnson's next phase to be happy and content.*

Returning to comments related to Item 9(e), Mr. Sorrell commented that, as an agency, the ECUA owes thanks to Mr. Jack Brown, County Administrator, because we have been able to accomplish many things through his appointment. Mr. Brown has become a friend and supporter of both the ECUA and the County.

Mr. Perkins added that we have a good County Commission right now and extended kudos to them as well.

**(f) Escambia County Correctional Facility**

Motion made by Ms. Campbell, seconded by Mr. Perkins, that the Board approve the first option to pay the County \$260,482.97 to maintain, repair, and otherwise be fully responsible for approximately 970 feet of 8" sewer line and 270 feet of 6" sewer line in the vicinity of the new Jail property in perpetuity or until such time as they are no longer necessary or convenient to providing sewer service to ECUA's customers, as determined by ECUA in its sole discretion. ECUA would remain the owner of these wastewater facilities and could allow future connections to them as ECUA deemed appropriate.

***Motion carried 4-0.***

Ms. Benson asked that Mr. Sorrell provide background relative to this item. Escambia County is building a new jail facility at the corner of Fairfield Drive and Pace Boulevard. The old jail blew up and is no longer serviceable. There is an eight-inch sewer line that runs north to south through the center of the property. There is a six-inch sewer line that runs east to west on the north edge of the property. Essentially, these are within the confines of the correctional facility, and he is unwilling to have ECUA staff enter into the jail premises to work on the sewer lines. We have worked out an arrangement with the County whereby we will support their project, and provided the Board with three options: (1) Pay the County approximately \$260,000 and ECUA will retain ownership of the sewer lines. The six-inch line serves five private business, so it is important that we retain these lines for future connections. (2) We can abandon the facilities. (3) We can transfer ownership and maintenance to the County. The first option is the best and the County finds it acceptable. This will resolve many of the issues concerning the wastewater services for the new Jail

**(g) Recyclables Processing Contract with Waste Pro, Inc.**

Motion made by Ms. Campbell, seconded by Dr. Walker, that the Board approve the recyclables processing contract and authorize the Executive Director to sign the contract between the ECUA and Waste Pro, Inc., to allow the ECUA to provide recyclables processing for three counties in Mississippi.

Chairman Benson requested that Mr. Sorrell provide background for this item. This is a contract with Waste Pro, a private firm, who wants to bring recyclables in from three counties in Mississippi, which includes Biloxi and Gulfport. We have allowed them to deliver materials to us so that we could view the quality, which is outstanding with little contamination. They will deliver approximately 3,000 tons of materials to us per year. This is coming in from a private hauler, which means they will pay the ECUA and will not receive anything in return. It is a rare business opportunity which will provide profit to the ECUA, and he recommends approval of the contract.

Ms. Campbell inquired as to where it leaves the ECUA to provide capacity for the City of Pensacola. Mr. Sorrell replied that ECUA will be able to accommodate the City of Pensacola.

Dr. Walker questioned Section 8 and Section 9 of the proposed contract. Section 8 speaks to the amount of tonnage generated by Waste Pro within Escambia County. This does not seem to have anything to do with the rest of the item (page 54 of the agenda).

Mr. Odom stated that this agreement was prepared working from another document and it should be modified to read “within its jurisdiction.” The important part is the overall tonnage limit which is stated in the next sentence. This is a typo that can be fixed and the Board could amend the motion to conceptually approve the contract and authorize staff to finalize and execute it.

A substitute motion was made by Ms. Campbell, seconded by Dr. Walker to approve the recyclables processing contract conceptually, and authorize the Executive Director to finalize and execute the contract between the ECUA and Waste Pro, Inc., to allow the ECUA to provide recyclables processing for three counties in Mississippi.

***The substitute motion carried 4-0, and as a result became the main motion.***

The Board subsequently voted on the main motion.

***Motion carried 4-0.***

Dr. Walker indicated that Section 9 refers to ECUA contracting with a third party to staff and operate the ECUA MRF. He inquired about this being old language as well that will need to be changed. Mr. Odom stated that this is a draft agreement which was sent to Waste Pro several month ago for their consideration. They proceeded to execute this same document and returned it to us. Conceptually approving the document authorizes staff to address the errors. We will have the option to operate the MRF as we see fit.

Mr. Perkins inquired about conceptual approval of an item and whether there will be any substantive changes made. Mr. Odom confirmed that the document cannot be materially changed. Slight adjustment may be made, but the content cannot be altered.

**(h) Budget Amendment – Materials Recycling Facility (MRF)**

Motion made by Mr. Perkins, seconded by Dr. Walker, that the Board approve the following budget amendment for additional revenue and expenses for the remainder of fiscal year 2018 for the MRF in the amounts as follows, and allow staff to make a short-term, interest-free loan not to exceed \$450,000 from water / wastewater reserves, if needed:

Materials Recycling Facility:

Sources:

Recyclables Commodities Sales	1,000,000
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Uses:

ECUA Labor	350,000
Temporary Labor (sorters)	300,000
Equipment Maintenance	250,000
Equipment Purchases	100,000

***Motion carried 4-0.***

Chairman Benson requested that Mr. Sorrell provide information about this item. Mr. Sorrell replied that this is the budget amendment that ECUA will need in order for the ECUA to take over and operate the Materials Recycling Facility. Operating expenses have changed since we no longer use the private firm, and the private firm has not paid us approximately \$420,000 which they owe. This amendment will allow the MRF to

function as an ECUA-owned, staffed and operated facility, and address the issue of \$420,000 that they owe us.

Dr. Walker requested that the Executive Director provide the Board with a quarterly report on the status of the payback until it is completed.

**(i) Escambia County Correctional Facility Impact Fees (*handout*)**

Chairman Benson requested that Mr. Odom provide additional information about this item. Mr. Odom stated that this item has to do with the new Jail facility and is similar to the prior new Jail item. It is related to impact fees and that the County has requested that the impact fee credits for the old Jail site be transferred to the new Jail site property, which is approximately \$532,000. Although the ECUA Code states that impact fees are not generally transferrable from one real property site to another, this is a very unique circumstance in that we are literally talking about putting the jail on one side of the pipe as opposed to the other side of the pipe. Jails are also very unique facilities in that they house people 24/7 and have consumption that is atypical for any other use. ECUA has the option to grant or deny the request, therefore, we have asked for the Board's guidance and decision. It is very unique and is not one that would really apply to any other piece of property. If someone puts something on that site, then impact fees would be assessed to that site. This is not a waiver in any way, but a transfer request.

The recommendation is that the Board consider the County's request that it be allowed to transfer impact fee credits from the old Jail site (which is known in the ECUA System as 1200 Leonard Street, Central Booking FM155) to the new Jail site and give guidance and direction to ECUA staff as to how to proceed.

Motion made by Ms. Campbell, seconded by Dr. Walker, to approve the first option to grant the County's request that it be allowed to transfer impact fee credits from the old Jail site to the new Jail site due to the unique circumstances present in this instance.

Dr. Walker made an amendment to the motion, seconded by Ms. Campbell, to approve the first option to grant the County's request that it be allowed to transfer impact fee credits from the old Jail site to the new Jail site due to the unique circumstances present in this instance and that there will be no remaining impact fee credits for the old Jail property.

Mr. Perkins stated that he would like to divide the question to wait and see what happens with the old property site. He made a substitute motion to grant the County's request to be allowed to transfer impact fee credits from the old Jail site to the new Jail site due to the unique circumstances present in this instance. Ms. Benson stated that in accordance with *Robert's Rules of Order*, the Board will vote on the amended motion made by Dr. Walker.

***Motion fails 3-1.***

Chairman Benson then called for discussion on the main motion. There being no discussion, she called for a vote on the main motion.

***Motion carried 4-0.***

**ITEM 10 – INFORMATIONAL REPORTS**

None.

**ITEM 11 – EXECUTIVE DIRECTOR'S REPORT**

Mr. Sorrell thanked Mr. Bill Johnson in that he has been Mr. Sorrell's "go-to" guy for many, many years and it has been a pleasure working with him and he has done an outstanding job. Mr. Stacy Hayden has some big shoes to fill, but Mr. Sorrell is confident he will do a good job. Mr. Perkins stated that we had a difficult meeting recently and involved the engineers who handled themselves very well. Mr. Perkins added that Mr. Johnson has left behind a good legacy of engineers.

Mr. Sorrell stated that the mediation hearing for Zero Waste is scheduled for June 25 and 26. Mr. Odom will be present to address this matter.

In response to the Board inquiry regarding the capacity available at the MRF for the City of Pensacola, staff will have an agreement with the City on the Board agenda for consideration at next month's meeting. We will have sufficient capacity for the City, so there is no issue there. We have two other agreements on which we are working. Both involve the federal government to some degree, but we do not know when these agreements will be brought before the Board. We are almost at capacity at the MRF and will not be able to accept any more large-tonnage providers once all of these agreements are in place. The MRF is operating five days per week, and a partial day on Saturday due to the high volume. Once we begin receiving this additional tonnage, we will go to a full day on Saturday.

Mr. Sorrell commented that he declared Operational Condition 1 (OPCON 1) this morning to begin the first phase of emergency preparations for Tropical Storm Alberto. The crews will fill up the ECUA trucks with gas, pull everything out of the high-water areas, remove any items that will blow around, etc.

Mr. Sorrell provided an update on compost sales. He stated that we are making approximately 2,000 tons per month and selling all of it. We are negotiating with a company right now which wants to buy every bit of our compost. We will keep the Board members advised accordingly. We will most likely reserve some for the bagging operation capacity, which has been very successful.

Mr. Sorrell stated that 2017 Annual Report has been completed, as well as the Consumer Confidence Report. Our water met all of the Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) water quality requirements.

We were contacted this week by various hazard mitigation and the TRIUMPH fund groups. We will be able to receive grant funds but are not aware of how many yet. We have the Chlorine Contact Chamber Bypass at the CWRF, and the Transmission Main Improvement program to support the transmission main going to the CWRF because of erosion, the West Pensacola well that needs to be elevated because of flooding, and the Pensacola Beach Reclaimed Water System. All four are being considered for different levels of grant funding.

The Guillemard Street emergency tank is almost done. The contractor is doing the water sealing now and painting the inside, we will fill it with three million gallons of water to test the tank for leaks. It will then be drained and the outside painting will begin.

Mr. Perkins expressed concern about the federal delays relative to the erosion issue at the Pensacola Beach Reclaimed Water tank. He requested staff to pursue possible relief on this situation.

Dr. Walker commented that there has been some criticism in the community associated with the operations of the MRF due to the issue with Zero Waste. He is pleased that Mr. Sorrell's report emphasizes the fact that the MRF is doing well. There is the same criticism surrounding water quality, and ECUA has proven many times that ECUA produces the highest quality of water, and the *Pensacola New Journal* is no longer printing any criticisms of the water.

### **ITEM 12 – ATTORNEY'S REPORT**

Mr. Odom confirmed that ECUA began operation of the MRF on May 1 and the arbitration with Zero Waste is upcoming.

The City Attorney has informed him that the City will be taking the recyclables processing agreement to the City Council on June 14; therefore, we anticipate bringing it to the ECUA Board on June 28.

### **ITEM 13 – UNFINISHED BUSINESS**

#### **Time of Meeting**

Ms. Campbell withdrew this item and wishes to place it on the Citizens' Advisory Committee agenda for June.

### **ITEM 14 – NEW BUSINESS**

None.

### **ITEM 15 – BOARD COMMUNICATIONS**

None.

### **ITEM 16 – OPEN FORUM**

Dr. Gloria Horning, 310 South DeVilliers Street, Pensacola, Florida, addressed the Board regarding water quality. She stated that she tests water in peoples' homes and it is not good. She stated she is certified water tester and stormwater inspector. Ms. Horning stated that we just cannot blanket that our water is fine. It is not in certain communities. She agreed with Mr. Perkins that the beach is eroding and needs to be addressed quickly. It is predicted that in ten years the area will lose almost two feet out on the beach. She added that she is an environmental social scientist and studies these matters. She added that one must look at the sources of information and where the testing is taking place.

**ITEM 17 - ADJOURNMENT**

There being no further business to come before the Board, Chairman Benson adjourned the meeting at approximately 4:45 p.m.

Respectfully submitted,

Stephen E. Sorrell  
Executive Director and Secretary

APPROVED BY THE ECUA BOARD  
IN REGULAR SESSION ON \_\_\_\_\_

- Without corrections/amendments
- With corrections/amendments being: