

# UTILITIES SERVICE BOARD MEETING

April 13, 2010

***Utilities Service Board meetings are recorded electronically or stenographically and are available during regular business hours in the office of the Director of Utilities.***

Board President Swafford called the regular meeting of the Utilities Service Board to order at 5:03 p.m. The meeting was held in the Utilities Service Board room at the City of Bloomington Utilities Department Administrative Building in Bloomington, Indiana.

Board members present: Tom Swafford, Julie Roberts, Jeff Ehman, Jason Banach, Pedro Roman and ex-officio member Tim Mayer. Staff members present: Patrick Murphy, John Langley, Michael Horstman, Tom Staley, Mike Bengtson, Jane Fleig, Jon Callahan and Phil Peden. Others present: Sue Mayer.

## MINUTES

***Board member Roberts moved and Board member Roman seconded the motion to approve the minutes of the March 24th meeting. Motion carried, 5 ayes, 2 members absent, (Frank and Whitehart).***

Board President Swafford said claim number 1090444 needs to be pulled. It is a claim for Crowe Horwath totaling \$58,263.25.

## CLAIMS

***Board member Roberts moved and Board member Roman seconded the motion to approve the claims as follows:***

***Claims 1090324 through 1090376 including \$140,165.52 from the Water Operations & Maintenance fund and \$600.00 from the Water Construction fund for a total of \$140,765.52 from the Water Utility; Claims 1030177 through 1030212 including \$216,990.76 from the Wastewater Operations & Maintenance fund for a total of \$216,990.76 from the Wastewater Utility; and claim 1070011 for \$623.97 from the Wastewater/Storm water Utility and \$5,860.00 from the Storm water Construction fund for a total of \$6,483.97 from the Wastewater/Storm water Utility. Total claims approved – \$364,240.25.***

Board member Ehman asked if the Crowe Horwath claim was pulled because the USB needs to approve their contract first. Board President Swafford confirmed that was the reason for it being pulled.

Board President Swafford asked about a claim for Cassady Electric. It says it's for the repair and replacement of emergency exit signs but doesn't say where the signs are. Utilities Director Murphy said the signs are throughout the Service Building. There were some power surges that damaged the exit signs.

***Motion carried, 5 ayes, 2 members absent, (Frank and Whitehart).***

## **ADDENDUM ONE TO THE AGREEMENT FOR CONSULTING SERVICES WITH CROWE HORWATH:**

Utilities Director Murphy said he is requesting approval of Addendum one for the Crowe Horwath contract. The contract was originally for \$195,000.00 and was approved by the USB on March 30<sup>th</sup>, 2009. It was to cover work that Crowe had started on in April of 2007 when they first started running financial scenarios for the USB. At that time they were using the test year of 2006 to look at various scenarios for the financing of the water treatment plant expansion. That claim was approved April, 2009. At that time a contract had not yet been received from Crowe. When the claim was paid on April 17, 2009 it was for work that had been going on from April, 2007 to July, 2008. The amount of that claim was \$58,757.00 to cover 291.75 hours of work that was done by the Executive, the Senior Manager, the Manager, staff and associated expenses. On that same date an invoice of \$61,144.00 was paid covering work from July 18<sup>th</sup>, 2008 through January 7<sup>th</sup>, 2009. That covered a total of 454.25 hours of work. The Executive did 64.75 hours, the Senior Manager did 55.75, the manager did 3.50 and the staff did 330.25. Those expenses break down to \$20,082 for the executive, \$9,075 for the Senior Manager, \$532.00 for the Manager and \$39,966 for staff and expenses of \$483.75. Then another invoice was paid on July 10, 2009 that covered work from January 7<sup>th</sup> through May 17, 2009 in the amount of \$25,671. Out of that \$6,040 was for 19.25 hours for the Executive, the Senior Manager had 32.5 hours for \$5,687, the staff had 147.25 hours for \$13,252.50. There were expenses for \$691. This covered a total of 199 hours. On August 21, 2009 an invoice for \$11,134.25 was paid for 41.75 hours. The executive, John Skomp, had 27 hours for \$9,292, the Senior Manager had 4.25 hours for \$743.75, the staff had 10.5 hours for \$945.00 and the expenses were \$153.00. The total hours were 41.75.

Mr. Murphy said he is requesting an addendum to the \$200,000 contract. There is \$1,508 left in the contract. The \$58,000 on outstanding invoices represents 337.75 hours. Crowe has been working for CBU since April, 2007 when they first began running financing scenarios using 2006 as the test year. Because of the amount of time it has taken to make decisions the test year has been updated 5 times. They have continued to run multiple financing scenarios based on potential water expansion projects since that date and in addition have also completed updated community rate surveys, attended USB meetings, multiple working group meetings and have done some field work. There is still some additional work to be done depending on the actions of the City Council. If this addendum is approved there will be \$143,245.50 remaining in it.

Mr. Murphy said Mr. Skomp of Crowe Horwath has told him that the Indiana Utilities Regulatory Commission can be quite particular about test years so they may ask the test year to be moved up. A lot of work has been done since last fall so there are some outstanding invoices.

Board member Roman said he has a question about the numbers Utilities Director Murphy presented. The contract started with \$195,000, if \$58,000 is taken from it how does that leave \$99,000 as the balance on hand. The balance remaining should be around \$135,000 or \$140,000. Board member Ehman suggested that an invoice had been missed. Assistant Director of Finance Horstman agreed that would explain the discrepancy.

Mr. Roman said what is now available in the contract is \$1,508. Mr. Horstman confirmed that.

Board member Banach thanked Utilities Director Murphy for providing so much detail about this contract regarding amounts and hours worked. He said the essence of this is there was a

contract dated December, 2008 for \$200,000. Mr. Murphy said it was \$195,000 and was approved on March 30. Mr. Banach said they are considering increasing that contract by \$200,000. Mr. Murphy agreed. Mr. Banach said the original contract, where they provided scope of services, was for \$195,000. Based on other things Crowe Horwath has been asked to do the contract has been increased by 100%. He said that raises a process question for him. At any point do they inform Utilities they are approaching the \$200,000, or do they just say "by the way, your bill has doubled"? Mr. Murphy said Utilities has received invoices and monitored the situation. Crowe follows the directions of the client and provides an invoice for the billable hours. Sometimes, as non-financial people, the staff and USB fail to understand the implications of some of the questions that are asked of Crowe.

Board member Ehman said he understands that the \$142,000 plus is available to update the test year if that is requested by the IURC and to represent Utilities through the IURC process. He asked if that estimate was made by Crowe Horwath. Mr. Murphy said it was. Mr. Ehman asked if it is "not to be exceeded". Mr. Murphy concurred. Mr. Ehman asked if they had provided a scope of services and would do work orders since it's not a contract for set deliverables. Mr. Murphy said yes.

Mr. Ehman said he wanted to comment on the USB's access to information that was produced by Crowe Horwath. Leading up to the time when they gave the USB a power point presentation, several months ago, during the two to three months before that, members of the USB would periodically ask how the cost of services study was going and were told it would be ready soon. At the time of the meeting where they gave the power point presentation their recommendation was for a flat rate, not for using a cost of services based rate. At that meeting Mr. Ehman and other members of the USB indicated they would like to have access to the information. At that time Mr. Skomp indicated it would be about an 18" stack of paper. Mr. Ehman said it might not be necessary to print all of the information for each member of the USB but it would be nice if there were at least one copy that could be reviewed. The USB never was given access to that information. Mr. Ehman said his perspective is that he wants to understand Utilities' business well enough to make informed decisions and he doesn't believe he was given access to that information although other people in the administration and staff were which is good since they needed it, but he wants access to it also. He asked what level of access to information they will have going forward with this consultant. He went on to say it is a more general question as well. Often there are drafts of reports that sit on the desks of people in the administration for long periods of time. He wants to know as a board member that he will be able to review information as he sees fit. If there is a consultant working for the USB, which has had a budget approved, he should have access to that information whether it's a draft or digital or any other form. He doesn't feel that he is getting that now. His question is what level of access the USB will have to information that Crowe produces as they produce it.

Utilities Director Murphy said there was a report from Crowe Horwath on March 2<sup>nd</sup> that was an update per the request of the USB. From here on out any discussions will center on the bond ordinance going forward and the various financial and policy ramifications of that. Those discussions will take place with the City Council. All the information will have the light of the day. Mr. Ehman asked about the past information they were told they would have access to that they haven't. Mr. Murphy said he would be happy to sit down and walk through the various scenarios with respect to the various rates. Mr. Ehman asked what his opportunity would be to have access to the information as an individual without sitting down with anyone. Mr. Murphy said a report had been produced and when Mr. Skomp presented the report in March he talked about the various possibilities for rate scenarios. There was also discussion of looking at

conservation rates and other rates. Mr. Ehman said that was a very high level presentation where there was no basis for understanding those conclusions and recommendations. That information is included in the stack Mr. Skomp indicated. Mr. Ehman said it sounds like he won't have access to that information and to him it's important to understand Utilities' business well enough to make informed decisions. Going forward he would like access to information that consultants produce as it's produced.

Board President Swafford said the USB should have access to any reports the staff has. He said he isn't sure Crowe has the whole stack of information they have talked about. He thinks what the USB has seen is all they have got their hands on. It may also have something to do with confidentiality. Mr. Ehman said the entire USB was present for the meeting when Mr. Skomp made his report and he just wants to go on record that the information asked for was never produced. Now that the USB is giving them more money to do more work he would like to have some assurance that in the future the information will be made available. If it is confidential then there should be an executive session to go through the material. He said one question is whether they trust him as a board member to give him that information.

Board member Roberts asked if the original contract for \$195,000 had a "not to exceed" clause on it. She wanted to know how it was exceeded by \$58,000. Utilities Director Murphy said a lot of scenarios were being run. Ms. Roberts asked if every time the USB asked for a different scenario it increased the cost. Mr. Murphy said it did. She asked if there was not a mechanism in place to warn the USB of the costs. Mr. Murphy said they were also responding to some policy dictums they had heard such as doing a scenario on conservation rates or wholesale rates or non-wholesale rates. That was what brought John Skomp of Crowe Horwath and David McGimpsey with Bingham McHale to state publically they did not believe that the regulatory environment in Indiana was mature enough yet for conservation rates. Ms. Roberts asked if this had happened with other contracts such as engineering consultants. Mr. Murphy said Utilities will not pay a claim until there is a contract. Ms. Roberts asked if they keep billing but there is no guarantee they will get paid. Mr. Murphy said that is why this claim for Crowe Horwath wasn't approved with the rest of the claims.

Ex-officio board member Mayer asked if the original contract for \$195,000 that was approved in March was based on Crowe's estimation of the work that would have been required to get from point A through the IURC. Mr. Murphy said the estimation was based on the work being finished in 2007 or 2008. Crowe had assumed the City was ready to move forward. They did a lot of work in 2007 when the City was having forums and work shops. They attended these events without submitting a bill because they trusted Utilities to be good for it. Mr. Mayer asked if that contract had not anticipated all the scenarios they were asked to look at. Mr. Murphy said early on they were working on a lot of other kinds of things. They worked without billing for it for about one and a half years. They had faith in Utilities as a client. Mr. Mayer asked if requests from the City Council, the public and the USB added to the contract. Mr. Murphy said they did.

***Board member Roman moved and board member Ehman seconded the motion to approve Addendum One to the Agreement for Consulting Services with Crowe Horwath.***

Board member Roman said he has had an opportunity to review some of the things related to the contract. He believes the failure was not so much with the USB or Crowe Horwath but the amount of input from the community, the Council, the USB and the newspaper. When he reviewed the contract he found that nothing has been asked for that is not, specifically in most

cases, contained in the contract. The problem is that several times Crowe has been asked to look at the same issue in a number of different ways. He wondered if that could be one of the reasons for the increase in the cost of the service. The information he got from Crowe was usually satisfactory although he still lacks a piece of information that is very important to him. He will keep asking how much is paid by each customer class for 1,000 gallons of water.

Mr. Roman went on to say that confidentiality is a difficult issue. The consultants will go to the IURC for Utilities for example, and he assumes when they do so they need to show consistency in their positions. He believes it would have been helpful if the USB had found a way to call an Executive Session of the board to ask some questions and discuss some issues that he is not comfortable with. Not because he thinks the public doesn't have a right to know but because he doesn't know if they are things that should be debated in public, if they relate to matters like employees. It is something to try in the future. He will be supporting this motion.

Board member Ehman said he can see the consultant worked in good faith without a contract to the tune of \$58,000 and he appreciates that. He thanked them for that but said a better job needs to be done keeping up and having the contract in place ahead of their work. The amount paid by each customer class for 1,000 gallons of water is a cost of services study. He had expected to receive such a study as a part of the entire rate study. The staff and the consultant seemed to have indicated that would be the case. He understands why the recommendation was made that the USB not go in that direction but at the same time they were told the IURC favors rates that are cost based. The Mayor said in the paper that a study was done in 2001 so the current rates are cost based. That's not saying the new rates are and will be. His rhetorical question is at what point after these new rates are approved, if they are approved, at what point will it be possible to go back and look at and do a cost of services study and publish it. Right now all the USB has is a 2001 study that he doesn't know the validity of. He doesn't know if new techniques or methods or information or data from the Utilities are available. Maybe a better study can be done or maybe those conclusions are still correct for today. As the Utility evolves and the customer base evolves and the infrastructure changes in small or big ways those conclusions may remain valid or they might not. The question would be at what point will that be done. He understands it probably won't happen before this new rate is in place. He will continue to ask for that study along with Mr. Roman. Hopefully there will eventually be agreement to do it.

Board member Banach said he agrees with a lot of the comments made by his fellow board members. He continues to be disappointed that Crowe Horwath would go \$58,000 over their original scope of work and no red flags are raised. He knows it wouldn't be pleasant if he were to bring a situation like this to his own boss. In reading through the contract it says service will be provided, costs incurred are not *expected* to exceed a certain amount. Why can't this be *will* not exceed this amount without board approval? He would like Utilities to take another look at how this is monitored. He is going to support this but he has great concern with how it was monitored.

Board President Swafford said the contract is not to exceed \$200,000. He thinks it would be helpful if the USB were to get periodic updates as to where the contract stands. Crowe has done a lot of work for Utilities and still has a lot to do before the rates are in place. He does think the contracts need to be watched. A couple of years ago the USB asked that no expenses be incurred before there is a contract in place. This one was in place; it is just that the amount was exceeded. If the USB can get periodic updates they can be sure any charges

stay within the amount of the contracts. He asked Assistant Director of Finance Horstman to make sure they get the updates.

Mr. Swafford went on to say that he thinks if the USB requests a cost of service study Crowe would do one for them. It will be costly and must be paid for. One of the good things is when the bonds get sold Utilities will be reimbursed for this. It will go back into the operating budget. Once the rates are in place the USB can go back and request that study and pay for it. He asked staff to let them know when it would be a good time to do this once the rates are in place.

***Motion carried, 5 ayes, 2 members absent, (Frank and Whikehart).***

Board President Swafford said that at this time the USB needs to go back and approve claim number 109044 for Crowe Horwath, totaling \$58,263.25.

***Board member Banach moved and board member Ehman seconded the motion to approve claim number 109044. Motion carried, 5 ayes, 2 members absent, (Frank and Whikehart).***

#### **APPROVAL OF THE PROPOSAL FOR ATC TO CREATE JUNE AND SEPTEMBER GROUND WATER REPORTS:**

Utilities Deputy Director Langley said he is asking for approval of a consulting contract with ATC Associates to cover two semi-annual ground water monitoring events which are required by the Dillman Road sludge landfill permit. The objective of ground water monitoring is to make sure the landfill and liner are secure and no contaminants are being leaked off site or into the bedrock or ground water. He said he is happy to report that is not the case. Everything is going very well, however during the life of this permit it is required to do semi-annual sampling of three monitoring wells on the site. The total of the contract is \$41,042 which is the same amount that was spent last year on these particular services.

Ex-officio board member Mayer asked if this landfill is considered a permanent facility or an interim facility. Mr. Langley said it will not be possible to operate it in perpetuity simply because it will eventually be filled to its maximum capacity with the contours that are spelled out in the permitting language. In that sense it is a temporary solution. Mr. Mayer asked if the material will stay there once it's filled. Mr. Langley said it would.

***Board member Roberts moved and board member Roman seconded the motion to approve the proposal for ATC Associates to create June and September ground water reports. Motion carried, 5 ayes, 2 members absent, (Frank and Whikehart).***

Board member Banach said he just wanted to read a couple of sentences from the contract. "We propose to perform the work described above, both reporting events, for the not to exceed cost of \$4,142. Our services will be billed on a time and materials basis and in accordance with the attached fee schedule. The chosen amount will not be exceeded without your approval and all significant changes to the scope of work or the project budget will require a written change order." Mr. Banach said he loves this. It should be in all of Utilities' contracts.

***Motion carried, 5 ayes, 2 members absent, (Frank and Whikehart).***

#### **OLD BUSINESS:**

No old business was presented.

**NEW BUSINESS:**

No new business was presented.

**SUBCOMMITTEE REPORTS:**

Board President Swafford said the Administrative Subcommittee had met at 4:30 on this day to hear an appeal on a water leak. The petitioner had a water leak that resulted in a bill of \$908.80. Under the current rules there is no way to waive any of that amount so the committee recommended that the claim be denied and the staff set up a payment plan.

***Board member Roman seconded the recommendation of the Administrative Subcommittee to deny the petitioner's appeal of the bill for a water leak. Motion carried, 5 ayes, 2 members absent, (Frank and Whitehart).***

Mr. Swafford said he assumed Assistant Director of Finance Horstman would work out the payment plan. Mr. Horstman said the petitioner had paid the bill on the way out.

**STAFF REPORTS:**

There were no staff reports.

**PETITIONS AND COMMUNICATIONS:**

There were no petitions or communications.

**ADJOURNMENT:**

The meeting was adjourned at 5:50 p.m

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**L. Thomas Swafford, President**