

Minutes of TIFA LLC Meeting
July 9, 2015
10:00 a.m.
City of Titusville Water Resources
Mourning Dove Water Plant
2836 Garden Street
Titusville, Florida 32796

Persons in Attendance

Mike Brown, Miami Corporation, TIFA Management Committee Member
Dwight Severs, City of Titusville, TIFA Management Committee Member
John Peterson, City of Titusville, Water Resources Manager
Sean Stauffer, City of Titusville, Water Resources Director
Andy Jantzer, City of Titusville, Water Resources Deputy Director
David Fuechtman, Farmton Water Resources (by telephone)
Barbra Goering, Farmton Water Resources (by telephone)
Helen Hutchens, Miami Corporation (by telephone)
Jim Perry, GMS LLC

Jim Perry conducted the meeting.

Action Items

**I. Approval of the Minutes of the TIFA LLC Meeting of May 28, 2015
(Presenter: Jim Perry)**

Member Severs moved to approve the minutes of the May 28, 2015 meeting. Member Brown concurred and the motion passed.

II. Approval of Agreement with GMS, LLC (Presenter: Jim Perry)

Member Severs moved to approve the agreement with GMS, LLC. Member Brown concurred and the motion passed.

III. Approval of Agreement with Mark Dowst & Associates, Inc. (Presenter: Sean Stauffer)

Mr. Stauffer stated, as part of the Phase 2 Project TIFA needs to obtain access and utility easements for maintenance and operation of the Phase 2 wellfield. The proposed agreement with Mark Dowst & Associates is for the preparation of the easements and legal descriptions in the approximate amount of \$9,600. CPH's price for the same work was approximately \$14,000.

After receiving assurance that Mark Dowst & Associates was aware of the fact that the wellfield property has more than one owner, Member Severs moved to approve the agreement with Mark Dowst & Associates, Inc. Member Brown concurred and the motion passed.

IV. Approval of Change Order No. 3 to CPH, Inc. (Presenter: Sean Stauffer)

Mr. Stauffer stated, CPH Change Order No. 3 consists of additional time for CCI, which is the sub-consultant for hydrogeology. The additional time is due to what we have experienced with WR-5A and these additional hours will allow for CCI to make up the additional work that was done as well as continue to provide the onsite activities and be onsite during the key activities; the change order cost is \$2,150.

Member Severs moved to approve Change Order No. 3 with CPH, Inc. in the amount of \$2,150. Member Brown concurred and the motion passed.

Financial Items and Reports

V. Approval of Capital Call Notice (Presenter: Helen Hutchens)

Ms. Hutchens stated, we have exceeded our threshold for the capital call and there are four total invoices, two for CPH, one each for Felix and Advanced Well Drilling. It will be handled in equal parts equaling a total of \$505,084.42; that will be one-half for Titusville and one-half for Farmton Water Resources.

Member Severs moved to approve the capital call notice in the amount of \$252,542.21 each for the City of Titusville and Farmton Water Resources; a total of \$505,084.42. Member Brown concurred and the motion passed.

Staff Reports/Informational Items

VI. Area IV Phase 2 (Presenter: Sean Stauffer)

Mr. Stauffer stated, the only item AWD is continuing to work on is WR-5A, the 18" casing has been driven to 124 feet, the 12" casing has been set at 130 feet and they are at approximately 156 feet and drilling it out to depth. The final depth of the well is 200 feet. They have experienced some small delays due to some equipment issues but they are drilling now and expect within the next week or so they will complete drilling and the steps after that will be to video and log the bore hole and start with their development and once development is complete the well will be finished. We have decided to not acidize this well.

Member Severs asked when do you anticipate Advance Well Drilling will be finished with their work under their contract for this particular well?

Mr. Stauffer responded there are a number of things that have to occur but my best guess is about two to three weeks.

Member Severs stated, part of the reason I'm asking relates to the next item, which is concurrent delay notification. We have not received a change order request from Advance Well Drilling for additional compensation. Do you anticipate there will be one coming?

Mr. Stauffer responded yes, clearly we will have to execute a change order for the additional work that was done for driving the casing and we had given some estimates at the last meeting for driving the additional casing as well as we wanted to do a second caliper log. Once

everything is done, we want to do another log at the recommendation of BFA. We have estimates on that but they have not sent the cost yet.

The pipeline and well outfitting, all the construction work with the exception of WR-5A is done and most of the equipment onsite has been demobilized. There is some small equipment left for sample points. We have done a preliminary punch list inspection for Wells WR-8 and WR-9 and they only contain minor items that need to be completed. Since construction is done we have moved on to the bacteriological testing. To date Wells WR-1, WR-2, WR-3, WR-4, WR-6, WR-7, and WR-8 have passed their bacteriological testing, they are taking samples on Well WR-9 today. Some portions of the raw water main have passed but not all of it, approximately 30% to 40% is cleared and Felix is continuing to take samples. Their first attempt to clear the raw water main they were going to do it all at once but found that some passed and some didn't pass so they are going to break it down into sections by valve and start retesting before they chlorinate again. The first segment they will be testing will be the one from Well 408, which is Phase 1 to WR-8. If you remember, the idea was to bring those two wells on first. Probably by next week we will know better where they stand.

The RTU units that the city is installing to help run the wells, six of those are installed at this point with the remaining two to be installed by the end of the week. The road is complete there are some minor issues with compaction but generally the road stabilization, the grassing is all done and ready to go. At this point, we are waiting until the bacteriological tests pass, once we receive passing tests then it is submitted to DEP for permitting, once we receive DEP permits then we move forward with startup testing. If all goes well with the bacteriological testing and those pass this week we estimate within three to four weeks we would be doing startup testing.

VH. Concurrent Delay Notification – Felix Associates of Florida, Inc. (Presenter: Sean Stauffer)

Mr. Stauffer stated, on June 29th we received this letter from Felix. Probably a month or two ago as we were talking with Felix about completion of the project we discussed that WR-5A would not be ready for them to do the outfitting as part of it and what we discussed with them was to separate WR-5A, the completion schedule, out from the rest of the contract because we felt that there was no reason they couldn't finish the work on the other wells in accordance with the original contract. The plan was to come up with substantial and final completion dates for all the wells and then have a separate one for WR-5A. About a month later, they talked to us in the field and said that they didn't feel that it was appropriate that you could separate WR-5A from the remainder of the work and they said they would be sending us a letter with their position. We received this letter and it seems that their contention is that you can't separate one well and that they are expecting to extend their contract date to September 8th. We will remind the board that their original contract completion date was July 2nd so at this point they are beyond that date. We sent an original schedule out yesterday and it showed that they had contemplated finishing by July 2nd then I sent their most recent schedule, which show them extending much farther. I would also like to remind the board that over the past year or so with Felix we have sent a number of letters to them particularly starting with the approvals for the certificates of insurance letting them know that they were not being timely in acquiring those. We also sent another letter that talked about timeliness of starting the actual work as well as timeliness with starting construction of the road. There have been multiple times when this board or the engineer have sent letters letting them know that they weren't meeting the schedule even back in December

2014. The new project manager has certainly done a very good job over the last few months getting them caught up, he really took the reins and they have progressed extremely fast over the last few months. Unfortunately, from the previous project manager they didn't make enough ground back in the winter or this last fall so it is not surprising that they didn't meet the original schedule. We wanted to present this letter and I know from the city's perspective we have had some discussions and we think it is appropriate to respond to this letter but I would ask for guidance from the board about what they would like to see in that correspondence and what kind of position that we think TIFA needs to take in response to the Felix letter.

Member Severs asked has Farmton had an opportunity to review the letter and provide input as far as their position?

Mr. Fuechtman stated, we reviewed the notice that was sent out and note that the notice is lacking on any specifics on what they are going to be looking for when this is all done and it is only a notice and we don't feel there is really any need to respond at this point. We feel that we would be better served from a business standpoint in waiting until the job is completed. I think Sean noted that with new management onsite they are doing a much better job and I think it would be prudent to wait for the job to be completed, see how everything turns out and see what it is they are really looking for. They haven't put any numbers of anything to this and there is still a little road left to travel before I would want to go out there and take a shot in the dark with a response.

Member Severs stated, I agree with you, their letter is quite vague. It is so vague it is kind of scary when they talk about additional contract time and compensation and I gather they are talking about compensation until September 8th. Have we conducted an analysis of why September 8th or have there been meetings that has been discussed because our earlier conversation here with the well driller basically was that Advance Well Drilling was to be done hopefully, within three weeks. All I have heard is there is very little additional work to be done so I have a hard time figuring out why September 8th.

Mr. Stauffer stated, that date is not something that has come from TIFA; I think that is something that is coming from their estimations. I would like to add that once AWD finishes they have to also go through permitting before any construction can start at the well site. There will also be a permitting time once the well is finished that could be anywhere from a week to two weeks before Felix can take the site over and begin their work.

Member Severs asked you mean taking over Well WR-5A.

Mr. Stauffer stated, correct and it will have to be completely built. At this point, all that is happening out there is the drilling so Felix will have to start fresh with the site, meaning clearing and grubbing, all the way through fill.

Member Severs stated, in looking at their April 2nd update it appears as if it was basically only WR-5 where there was time until September 8th. All the other items in their breakdown show completion by July 7th. Are they talking about changing some of those other dates or what are we talking about or do we know?

Mr. Stauffer stated, I don't know. I think if you look at the schedule that was printed out on June 10th they are not meeting that schedule. They say startup for WR-8 and WR-9 would occur in early July and we are not doing startup. Even the schedule that they prepared they are not meeting.

Member Severs asked the April schedule they are not meeting that even though they did show for 5 September 8th as the substantial completion date?

Mr. Stauffer stated, correct.

Member Severs asked why shouldn't we point that out, that is you are not meeting the schedule you previously gave us?

Mr. Fuechtman asked what is that going to accomplish?

Member Severs stated it is just consistent with what we have done in the past that placed them on notice if they were not in compliance. Obviously, we want them to get the job done but I don't think we should ignore their correspondence and acquiesce or them say you never objected or you never gave us a response. In addition, I don't have the bid documents for this contract but I assume they are similar to the bid documents that were used on the other contract and I'm referencing section 4.7 in the schedule and I assume the same type of language is in this contract, where the contractor is supposed to submit a schedule, the schedule is requested in order that operations of other contractors may be coordinated, contractor shall cooperate with the owner developing a schedule that will best serve the interests of all parties, then it says, the schedule shall become an integral and binding part of this contract. I asked for the original schedule because as I read that language that is an integral part of the contract and they have contracted to be complete on X date for certain wells, etc. I think that needs to be pointed out.

Mr. Fuechtman stated, I agree with that but I don't see the necessity of doing it right now. We are certainly not going to waive any of our rights by sitting on their letter. Their letter is not even asking for a response. I don't think they should have sent the notice out to begin with but two wrongs aren't going to make a right. I would rather sit, get the job done, get all the facts before us and then we can respond to them in due course.

Ms. Goering stated, I don't believe that we waive our rights to liquidated damages at all so if that is the concern I don't know that this is a situation where we would want to demand liquidated damages but I don't believe that we waive our right to demand it by allowing them to complete the work. I don't think responding to the letter serves to further preserve any rights. I definitely agree with David (Fuechtman) based on the way that they kind of pulled their socks up and are really going to town now. I don't want to throw a monkey wrench into that relationship because they have been good and we don't want to interfere with that unless it interferes with our rights and we don't think it does.

Member Severs stated, I don't see any harm in a letter that basically since they sent us a letter by certified mail that we respond acknowledging receipt of their letter indicating that at this time we understand their letter not to be a demand or request at this stage and we are reserving any and all rights that we may have under the contract documents when and if they submit a notice or request.

Mr. Fuechtman stated, I just don't see what that does for us. I would rather let them rattle their saber, which they have done, sit back and keep them guessing because there is no reason to respond to it.

Ms. Goering stated, let me ask a question in connection with change order no. 1 that was pulled from the agenda. That was the Felix change order. What is the background of why it was pulled?

Mr. Stauffer stated, originally change order no. 1 was not part of the agenda. When I returned from vacation I brought up the fact that we had it here for quite a while and was questioning whether or not, I actually went back to CPH then they went to Felix to see if they were willing to or if that was what they would consider approval that they were settled on where we were. Then I forwarded that off to everyone to take a look at and it had come in after we had already published the deadline but then had some discussions yesterday at least the city had some discussions with our attorney, with Richard Broome, and he suggested that we hold off on that

and kind of wait and see how things play out with the current letter then also the current delays rather than go ahead and put that on the agenda as an addition at the last minute at least from the city's perspective we wanted to wait and see how the current situation plays out before we execute that change order.

Ms. Goering stated, that change order adds 11 days to the contract time but what you are telling me is that was what everybody thought it would be back several months ago.

Mr. Stauffer stated, a number of those items on change order no. 1 are some months old, some of those are from the very beginning of the project, some of those have to do with rain delays back in November it was not a change order to get them to completion it was times when they had asked for additional time based on situations that were out of their control. Most of those items are three to four months old and it doesn't contemplate and it certainly wasn't prepared in a way to take them all the way to completion with what we are talking about now.

Ms. Goering stated, in our view we still have a right in this issue and we don't think this situation is ripe for any kind of response at the moment. That would be our position and our whole legal team agrees with that. I discussed this with Glenn Storch yesterday and he agreed.

Member Severs stated, unfortunately I respectfully disagree, I think we should forward a letter similar to what I just outlined, which is not drawing lines in the sand but clearly putting in writing we are preserving our rights under the contract as well since we have received the letter from them.

Mr. Fuechtman stated, we disagree.

Member Severs stated, I will leave this as not one of those that is right for going through the dispute resolution process so if you won't agree we respectfully disagree with one another. I don't know what else to say. I tried to soft pedal a letter a hearing to which you requested and obviously there is no compromise on your part.

Mr. Fuechtman stated, we all believe in compromise but this is a position there really is no compromise. You are going to do the letter or you are not and we feel that the letter shouldn't be done.

Member Severs stated, obviously any action by us requires concurring votes and I don't hear that.

Member Brown stated, based on opinion of counsel I can't support it.

Member Severs stated, that is fine.

Other Business

Public Comment

Next Scheduled Meeting

The next meeting will be scheduled for August 13, 2015 at 2:00 p.m.

Open Items

Adjournment

Member Brown moved to adjourn the meeting at 10:38 a.m. Member Severs concurred and the meeting adjourned.