



CITY OF NORTH MIAMI BEACH
City Commission Special Meeting
City Hall, Commission Chambers, 2nd Floor
17011 N.E. 19th Avenue
North Miami Beach, FL. 33162

Tuesday, August 4, 2020

Mayor Anthony F. DeFillipo
Vice Mayor Barbara Kramer
Commissioner McKenzie Fleurimond
Commissioner Michael Joseph
Commissioner Phyllis S. Smith
Commissioner Fortuna Smukler
Commissioner Paule Villard

City Manager Esmond K. Scott

City Attorney Dan Espino
Weiss Serota Helfman Cole and Bierman

City Clerk Andrise Bernard, CMC

City Commission Special Meeting Minutes

1. ROLL CALL OF THE CITY OFFICIALS

The Special Commission Meeting was called to order at 6:13 p.m. Present at the meeting in Chambers was Mayor Anthony F. DeFillipo. Present at the meeting via virtual communications media technology were Vice Mayor Barbara Kramer, Commissioner McKenzie Fleurimond, Commissioner Michael Joseph, Commissioner Phyllis S. Smith, Commissioner Fortuna Smukler, and Commissioner Paule Villard. City Manager Esmond Scott, City Attorney Dan Espino, and City Clerk Andrise Bernard were also present.

2. PLEDGE OF ALLEGIANCE was led by the Mayor and Commission.

3. PUBLIC COMMENTS were heard with the below item.

4. DISCUSSIONS

4.1 Action Regarding the Jacobs Contract, Including, But Not Limited to Termination -

City Manager Esmond Scott introduced the item to the Mayor and Commission. He presented three possible alternative choices to the Commission regarding the Jacobs contract. Raftelis Consulting has assisted the City with the option cost estimates.

- Option 1. Stay the course with the existing Jacobs contract,
- Option 2. Approve the amended and restated contract, or
- Option 3. Terminate the contract with Jacobs for convenience.

The City Manager shared that staff is prepared to implement the Commission direction. A PowerPoint presentation was provided with the key requirements, transition considerations, and estimated costs for each

alternative. There have been workshops and one-on-one meetings with Commissioners where this information has also been shared.

Option 1 Maintaining the Status Quo –Year one O&M cost is \$19.8M, with an unadjusted 7-year cost of \$138.6M. Jacobs shared today with the City that they will not charge a CPI (Consumer Price Index) in October which would keep the cost at \$19.8M. The benefits are continuity of services, no transition costs, and Jacobs maintains the risk. The limitations are a suboptimal customer service mix that stays with Jacobs, a higher cost, customer service performance concerns, limited City control, and reduced accountability.

Option 2 Amended and Restated Agreement – This has a cost of \$19.5M, and \$137M over 7 years and could be an easy transition over three months for less than \$500M. The benefits are optimized service mix, with the City managing facilities, customer service, and the cashier's office. This lowers the normal Wastewater Utility Operations and Maintenance (O&M) costs, with greater control and accountability, minimal transition costs, and continued collaboration with Jacobs who would continue to maintain the water facility plant. The implementation period is a limitation.

Option 3 Terminate the Agreement and the City resumes O&M Services - This option is achieved at a high cost of \$19.3M, plus \$9M minimally in transition costs. The duration of this is 6-12 months as an aggressive, projected path. The benefits are full control of the staffing. The downside is significant transition costs in year one, increased transition risk, and possible non-collaboration issues.

Mayor DeFillipo opened the meeting for **PUBLIC COMMENT**.

City Clerk Andrise Bernard read the rules of public comment and the following individuals made comments on the record:

1. Donald Blalock
2. Letter from Jacobs Employees
3. Trisha Harris
4. Veronica Llaneza
5. Lynn Su

The meeting recessed at 6:51 p.m. to address meeting technical difficulties.

The meeting reconvened at 6:56 p.m.

6. Whitney Padote
7. Mercedes
8. Allison Robe
9. LaTonya Felix
10. James Cotton

The meeting was closed for **PUBLIC COMMENT**.

Vice Mayor Kramer previously shared she does not feel it is the right time to return the plant operations to the City in its entirety, good faith steps have been made to take back customer service, and that the Commissioners help to convey complaints to the Manager if there are problems. She is concerned that the City does not know what will be occurring with the economy and does not want to spend this sum of money at this time to take operations back the Jacobs. She feels that steps can be taken to achieve this goal in the future over time, that the City will have to pay more, and that to bring back talent will be extremely difficult,

expensive and time consuming. She thinks residents will be up in arms if the City spends \$19M to keep the current service, that is working, in place.

Commissioner Fleurimond asked about the amended contract savings of \$300M. City Manager Scott explained that there is \$500M investment needed in customer service, \$1.4M savings was based upon an assumption of an increase, the \$100,000 PIO (Public Information Officer) full-time and Risk Manager positions were eliminated, and that about 13 employees remain working from the initial 14 who retired from the City in order to work for Jacobs. He asked the City Attorney if there are ever exceptions made for retirees to return to work for the City. City Attorney Espino shared that there is a policy in the collective bargaining agreements that was negotiated, and that retirees may only return if they work for less than 20 hours per week for five months in a calendar year full-time. City Manager Scott shared that the transition costs are estimated to be between \$9M-\$18M based upon Raftelis Consulting subject matter experts, and that \$7.7M was the initial in-house City estimate for year one and two, starting to transition in September 2020, since there might be a duplication in staff during the transition timeframe. During the transition timeframe, candidates must reapply for jobs, undergo background checks, and conduct drug testing all over again.

Commissioner Smukler thinks that the \$9M market rate is high. She asked for an example of high cost items, such as a new fleet, contracted services, recruitment costs, salaries, and additional support needed during the transition. City Manager Scott looked at the existing fleet and was advised that it was best not to buy it at the cost being charged. In June, there was a City water workshop where she suggested a two-year probation period with Jacobs, where if matters were not later acceptable, the City would not have to pay the convenience fee, and Jacobs seemed to be agreeable to that idea.

City Attorney Espino explained that the amended and restated agreement states that the City can measure the Jacob's agreement with key performance indicators (KPIs), can terminate for a reason/cause, and not be assessed a convenience fee. There can be an evaluation of Jacobs at any set time which puts them on notice, and then they have until the next evaluation period in which to improve, or else that is grounds for cause and the City would not be subject to an early termination fee.

Jon Mantay from Jacobs shared that quarterly business reviews can proceed which are part of both Options 1 and 2. Mayor DeFillipo had asked for quarterly reports when the Jacobs contract first started.

Commissioner Smith feels that the Commission has been speaking about this issue for 18 months. She went back to review many of the past meetings to follow the decision path and notes that Jacobs came into a water plant that had not been well maintained beforehand. She feels that people may be looking for jobs and that a downturn in the economy might be a plus for the City; that the Commission has waited for too long to make a decision and that this could have been done long ago; that it does not make sense if staff is not going to move quickly with the options; is concerned that professionals did not find many of the past problems; feels that the numbers are extremely high and that the timetable is too long; and wants to start the transition process since the contract did not work.

Commissioner Villard feels that it took a long time to get to today, Jacobs is a great company, and that the process has been going on for so long with the Commissioners left out of the negotiation process without the exact information provided as requested.

Mayor DeFillipo shared that the Commissioners received a book documenting 117.5 hours of meetings about the Jacob's contract over the last year since July 16, 2019, the information received, and all the work done over that period. He is happy to see that the estimated cost was reduced today, that there is no CPI in the new fiscal year, and that the City can have a safety net with a KPI clause to terminate for cause and continue to evaluate anything possibly wrong or mismanaged by Jacobs; feels it is a critical time in the world and City to maintain the contract and not have enormous expenses to take back the water plant operations; each

Commissioner met with the City Manager to discuss the water contract freely; with the necessity to repay the WIFIA bond loan, it would put the City in a critical financial position and impact our bond rating to use those funds elsewhere; it would be fiscally irresponsible; the City is also looking at a possible deficit, does not feel it is the right time or way to manage the contract with Jacobs, and does not want to see another possible increase of resident water bills to cover the bond repayment. Chief Financial Officer Smith concurred with the Mayor.

Commissioner Villard asked about the negotiation process and possible savings. City Manager Scott shared that they did have such discussions with Jacobs, but that the Commission direction had been steps to take the water plant back, and not to negotiate with Jacobs and find savings.

Commissioner Smukler asked about possible rate increases discussed at the last budget meeting. City Manager Scott shared that there might be future rate increases since reserve dollars are targeted for paying back our investments.

Commissioner Joseph was struck by the option of Commissioner Smukler about having reports done on a quarterly basis. The issue comes down to one of trust for him. If there is a transition, he hopes it can occur as quickly as possible. The Mayor asked to put back in the quarterly reporting requirement into the contract.

City Attorney Espino shared there are some things outside of the City's control. Per Human Resources, it can take upwards of one year to find qualified staff past the six months requirements, and that Jacobs is not required to work past then.

Vice Mayor Kramer shared that Jacobs initially provided monthly, and then later, quarterly reports to the Commission, and then the Commission decided to stop that practice since it expended a lot of time at the meetings. She asked if those reports are the same as what Commission Smukler was asking for with key performance indicators. City Manager Scott understood the KPI to be an evaluation that is linked to the contract's continuation. Mayor DeFillipo shared that the report has also continued going to the Public Utilities Commission (PUC) monthly. She shared that it took time for the City Manager to understand the issue, and that at the time, the Commission was told that they would save \$5M/year if the City entered into the Jacob partnership contract. She feels that the City has a better chance to bring in new customers if the City extends the Jacobs contract, as County rates also rise, and does not think that renegotiation was a main goal.

City Manager Scott shared the Commission direction was to negotiate steps to bring the water plant back to the City on March 20, 2019 meeting. It took a long time, with many successes in the process, such as taking back 40% of the water plant, and the CIP (capital improvement program) bill reduction from \$230 to \$105M, which took time and subject matter expert input. The Eastern Shores proposal was initially presented to occur in three different phases, and Commissioner Smith rightly suggested that it could be done in one phase, which also took time and expert review. There were many battles along the way, including times of walking away from the negotiation table, and time to get program management improvements. Jacobs did not have to disclose their financials and profit margin in this process, and there were many roadblocks along the way, but the City has proposed a defensible and affordable agreement as one of the options. Monthly and annual reports are still provided to the City by Jacobs, but not at the Commission Meetings, since it was often a billing report.

Commissioner Fleurimond shared that side bar conversation times total over 200 hours dedicated to this important subject matter. He is concerned about the promised \$5M savings that was not been accomplished in 3 years, and the unknown of the forecasted numbers. He asked for the cost difference in expected savings with the prior company Ch2m and Jacobs. City Manager Scott shared that he does not know that

information, but that it is a new team at Jacobs now. Andy Appleton with Jacobs shared that a City external consultant presented the \$5M savings figure, and that number never came from Jacobs.

Commissioner Smukler is concerned about trust factor with Jacobs. She feels that the City was taken advantage of, which the City allowed, and that it should not have been done; hopes that a transition can be done as quickly as possible, and that there can be a way to figure out new hires; and does not think renegotiating a new contract was the Commission direction given in March 2019.

Commissioner Smith shared that Matt Alvarez with Jacobs who communicated the \$5M savings figure; she was told that the City could see more than \$3M savings per year; is concerned about the control of what is spent and what it costs; does not want to go through this process again in the future if Jacobs does not satisfactorily perform; feels that if the City cannot hire the necessary employees, that another bid can be put out, and that she does not have trust Jacobs. She wants for the management to show the Commissioners a transition plan within the next 60 days.

Commissioner Villard feels that the requested information did not come timely to the Commissioners and that they had been told that it would be received in January; The City managed a great water plant in the past with delicious water, and that it can be done again now as it was done in the past; that much of the plant has been fixed now, and that she wants to think positively.

Mayor DeFillipo feels there was never a child mentoring program in the past prior to Jacobs and that he would like for that program to continue; shared that nothing is ever perfect and that it needs constant monitoring; feels that things started to flow well with the water plant when Jacobs came in, as a Fortune 500 company and experts in the field, to run a water plant of this caliber; the water plant serves six municipalities without a service discrepancy; does not want to take the chance of throwing away possibly \$9M at this time; feels that garbage rates are likely to go up, and that water rates could also go up with a transition here; the bond rating will be impacted; prior Jacobs staff have been fully replaced, and those in place today are trustworthy; it is not the right time for a change with the need for a new fleet, dealing with a transition, and an upcoming deficit; He asked for support on the amended contract, and for the Commission to think about the end users; Other cities close by might be able to use the City water services due to working with such a great company; He suggested that the water plant can grow with professionals; None of the employees have said to take the plant back, as was suggested with the sanitation contract; He asked that Jacob merits a second chance, and that facts and not emotions be considered.

City Manager Scott shared that he provides facts to keep the Mayor and Commissioners informed but is not practicing advocacy, and that he and his team will implement whatever direction is given.

Jon Mantay with Jacobs shared that they still provide monthly and yearly reports to PUC, and that quarterly KPIs can be added and reported out; that the City has control over the plant operations through a negotiated budget, and that the partnership has come a long way over the last few years. Andy Appleton with Jacobs shared that their role is to support the Mayor and Commissioners, does not think it is in the City's best interest to return to the prior scenario, that they are the best available experts to do the job, providing efficient services as a lump sum, and that if there are problems without experts being in place, that the City would have to pay piecemeal for experts.

Jafeth Baez, NMB Water Director, recommends that the Commission accept the amended contact at this time in the City's history, that the renegotiated KPIs are more suitable for the City's needs, and that the customer service office is a work-in-progress, which the amended contract addresses.

Steve Meininger with Jacobs, O&M President, shared that the complexity of regulations, systems, advanced expertise, and water quality expectations are higher today than they were in the past; There had been serious,

prior compliance issues, with serious risk exposure; There are many challenged facilities in the country; In the past, staff did not receive salary increases and were underpaid, and now there is market pay and benefits to current employees. He feels that the transition plan estimate is low.

Chief Financial Officer Jan Smith echoed the recommendation communicated by the City Manager.

Vice Mayor Kramer asked for the name of Commissioner Smith's experts. Mayor DeFillipo shared that information should be given through the Manager. Commissioner Smith did not have the requested information available at that time. Vice Mayor Kramer is concerned about prior mismanagement of the plant when the City managed the water plant, how the City can control a water plant when Commissioners are not trained as engineers, the possible transition in staff, and how to explain spending millions of dollars to the public.

Al Perez, NMB Water, is concerned about making a quick transition in staff, as it took him 1-1.5 years elsewhere to hire needed staff, especially for a water treatment plant that requires three different treatment processes, and that there are not many people trained in the needed specialty areas.

Motion to accept Option 2 to **accept** the Jacobs renegotiated contract made by Vice Mayor Kramer, seconded by Mayor DeFillipo.

Roll Call Vote

Fleurimond - **No**, Joseph – **No**, Smith - **No**, Smukler - **No**, Villard - **No**, Kramer - **Yes**, DeFillipo – **Yes**

MOTION FAILED 2-5. Commissioners Joseph, Smith, Smukler, Villard, and Fleurimond voting no.

Commissioner Fleurimond asked about transition timeframe for services provided by the cashiers, customer service, and wastewater utilities and facilities building maintenance, known as O&M, that are in the renegotiated contract. City Manager Scott shared that there is no transition time needed in the facilities, and the transition time estimated in the other areas is less than 3 months. Commissioner Fleurimond asked the Commission if they would support transitioning those areas in 60-90 days, hiring a plant manager within 90 days, or allow for the transition of a consultant, if needed, with an update coming before the Commission in 60 days. City Attorney Espino asked for clarification, which option is being recommended, and if the request is to maintain parallel operations and start to hire positions, and that the existing Jacobs contract ends in six months if no other action is taken.

Motion to accept Option 3 and **terminate** the Jacobs contract for convenience, made by Commissioner Smukler, seconded by Commissioner Smith.

Attorney Robert Meyers shared that the Commission could terminate all or part of the current contract for convenience. City Attorney Espino suggested that the contract could be deconstructed partially for customer service, initially, and then proceed to the next implementation stage, if Jacobs is willing to extend their transition timeframe.

Motion to table this item and to return within 30 days in order to allow staff time to provide more information to the Commission related to Option 3 to terminate the Jacobs contract, made by Vice Mayor Kramer, seconded by Mayor DeFillipo.

Voice Vote

MOTION FAILED 2-5. Commissioners Joseph, Smith, Smukler, Villard, and Fleurimond voting no.

Motion to accept Option 3 and **terminate** the Jacobs contract, made by Commissioner Smukler, seconded by Commissioner Smith.

Roll Call Vote

Joseph – **Yes**, Smith - **Yes**, Smukler - **Yes**, Villard - **Yes**, Fleurimond - **Yes**, Kramer - **No**, DeFillipo – **No**

MOTION PASSED 5-2. Vice Mayor Kramer and Mayor DeFillipo voting no.

Motion to hold another meeting within 14 days to update the Commission on the water plant projected transition process, made by Commissioner Smith, seconded by Commissioner Joseph.

MOTION PASSED 5-2. Vice Mayor Kramer and Mayor DeFillipo voting no.

5. ADJOURNMENT

There being no further business to come before the City Commission, the meeting was adjourned at 10:09 p.m.

Motion to adjourn by Vice Mayor Kramer, seconded by Mayor DeFillipo.

MOTION PASSED 7-0.

ATTEST:

(SEAL)

Andrise Bernard, CMC, City Clerk /s/