

MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
June 16, 2005

A regular meeting of the Board of Light, Gas and Water Commissioners, City of Memphis, was held in the Board room of the Administration Building, 220 South Main Street, Thursday, June 16, 2005 at 1:30 p.m. The following were in attendance: L. R. Jalenak, Chairman; V. Lynn Evans, Commissioner; Nick Clark, Commissioner; Joseph Lee, III, President and CEO; John McCullough, Vice President, CFO and Secretary-Treasurer; Max Williams, Vice President and General Counsel; Rob Hunter, Interim Vice President, Construction and Maintenance; Alonzo Weaver, Vice President, Customer Operations; Chris Bieber, Vice President, Engineering; Marcia Mason; Interim Vice President, Human Resources; and Linda Peppers, Vice President and Chief Technology Officer. Vice Chairman Masson and Commissioner Russell were not in attendance. William L. Taylor attended as an observer.

Commissioner Evans moved that after personally reading and reviewing the typed minutes of the Memphis Light, Gas and Water Board meeting held June 2, 2005, that they be recorded as the official record, seconded by Commissioner Clark and unanimously carried.

The Secretary-Treasurer acknowledged receipt of certified copies of City Council Resolutions as follows:

Dated May 17, 2005 - Item No. 54 – failing funding to Memphis Network in the amount of \$6 million approved by the MLGW Board at meeting held April 21, 2005 (see Minute File No. 1268.)

Dated June 7, 2005 - Item Nos. 7 through 17 - approving items approved by the MLGW Board at meeting held May 19, 2005 (see Minute File No. 1269); and Item No. 19 - approving MLGW in-lieu-of tax payments to the City of Memphis for fiscal year 2006, the amount to be calculated by MLGW under the formula for the Electric Division and the Gas Division (see Minute File No. 1270.)

The Board of Light, Gas and Water Commissioners elected the following officers:

WHEREAS, the Board of Light, Gas and Water Commissioners selects the Chairman of the Board and Vice Chairman of the Board; and

WHEREAS, Commissioner Clark nominated Rick Masson for Chairman of the Board and V. Lynn Evans for Vice Chairman of the Board, seconded by Chairman Jalenak; and

WHEREAS, there were no further nominations, it was unanimously carried:

THAT, Rick Masson serve as Chairman of the Board and V. Lynn Evans serve as Vice Chairman of the Board, effective July 1, 2005.

1. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11040, Surveying Services, to Ollar Surveying Company in an estimated funded amount of \$178,450.

The project scope is to perform land surveying as required by the Division.

Bids were opened on June 1, 2005, with the only and best bidder being Ollar Surveying Company.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11040 to Ollar Surveying Company in an estimated funded amount of \$178,450 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the award.

2. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 7 to Contract No. 10673, Facilities Location Services, with Heath Consultants, Inc. in an estimated funded amount of \$180,000.

The project scope has changed to extend the contract not to exceed 60 days beginning August 1, 2005 due to the evaluation of Contract No. 11042 not being

ready for recommendation of award. Therefore, a continuation of the current contract is necessary. The new contract amount is \$5,338,488.88.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 7 to Contract No. 10673 with Heath Consultants, Inc. in an estimated funded amount of \$180,000 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

3. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 4 to Contract No. 10760, Aerator Maintenance, with R. P. Services, Inc. to renew the contract for the fourth term, August 7, 2005 to August 6, 2006, in the funded amount of \$187,375.23.

The project scope is to mechanically and hydro-clean aerator structures, floors, media and dosing assemblies of biological films, floc and aquatic plant growth at all MLGW Water Treatment Plants. This renewal includes a 3% overall price increase due to insurance rate and cost-of-living increase. The new contract amount is \$824,087.19.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 4 to Contract No. 10760 with R. P. Services, Inc. in the funded amount of \$187,375.23 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

4. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 2 to Contract No. 10923, Workers' Compensation Claims Administrator, with Brentwood Services, Inc. to renew the contract for the second term, July 1, 2005 to June 30, 2006, in the funded amount of \$65,000.

The project scope covers the cost of Brentwood Services Administrators, Inc. to serve as the third-party administrator for workers' compensation claims which includes the issuance of 1099's and state filings, index bureau reporting, monthly loss run reports and check registers, ad hoc custom reports as requested, and claim kits with state forms. The administration covers claims-handling fees which include indemnity and medical-only claims. The services include cost containment and bill review. This renewal includes no increase in rates. The new contract amount is \$186,000.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 2 to Contract No. 10923 with Brentwood Services, Inc. in the funded amount of \$65,000 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

5. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 3 to Contract No. 10924, Professional Investigating Services, with CDA, Inc. to renew the contract for the second term, August 1, 2005 to July 31, 2006, in the funded amount of \$287,452.82.

The project scope is to provide professional investigating services as required for detecting and deterring the diversion of utility services and/or the theft of MLGW equipment throughout the MLGW service area. This renewal reflects a 4% increase for the purpose of cost-of-living adjustment and vehicle usage plus the addition of a fourth investigator with vehicle. The new contract amount is \$676,735.80.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 3 to Contract No. 10924 with CDA, Inc. in the funded amount of \$287,452.82 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

6. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 1 to Contract No. 10978, Global Positioning System, with At Road, Inc. to change the scope to add an additional 100 GPS units with monthly monitoring fees in the funded amount of \$140,000.

The project scope has changed to purchase and install an additional 100 units with monthly monitoring fees. The change also covers monthly monitoring fees and maintenance and repair costs to existing GPS units. The new contract amount is \$378,850.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Change No. 1 to Contract No. 10978 with At Road, Inc. in the funded amount of \$140,000 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

7. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 1 to Contract No. 11036, Drilling Operations for Temporary Substation No. 9, with McKinney Drilling Company in the funded amount of \$2,535.

The project scope has changed to cover the cost of performing additional work to place concrete in piers as quoted on the original proposal but not included in the original contract award amount, and to add \$3.00 inadvertently omitted from original award amount. The new contract amount is \$33,501.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Change No. 1 to Contract No. 11036 with McKinney Drilling Company in the funded amount of \$2,535 as outlined in the foregoing preamble is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

8. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners rejection of bids received up to 4:00 p.m., Tuesday,

November 16, 2004, and publicly opened on Wednesday, November 17, 2004, at 2:00 p.m. for Contract No. 11010, Water Meter Change-Out Service.

The two bids are being rejected by Water Operations because the low bid cost did not offer cost savings based on the new loading cost analysis. The work will be performed by MLGW.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, All bids for Contract No. 11010 are hereby rejected for the reason outlined in the foregoing preamble.

9. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing current limiting reactors for installation at Substation No. 1 located at 1642 Person.

Bids were opened on May 18, 2005, with the lowest and best complying bidder of three bidders being Trench Limited in the amount of \$78,000.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Trench Limited is approved for furnishing:

3 – Current limiting reactors, 115 kV, 800 ampere, 3.9675 ohm, 3174V drop, single-phase, dry-type, air-core, outdoor assemblies in complete accordance with MLGW specifications “RD” dated March 1, 2005, at \$26,000 each

totaling \$78,000, f.o.b. Memphis, Tennessee, transportation prepaid; said prices being firm; delivery in 12 weeks.

10. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing one switchgear and one adapter cable which will allow remote indication and isolation of faulted circuits which feed our Mallory Pumping Station and other customers.

Bids were opened on May 25, 2005, with the only bidder being Tennessee Valley Electric Supply Company in the amount of \$85,990.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Tennessee Valley Electric Supply Company is approved for furnishing:

1 – S&C Electric Catalog No. 865431-A12-A35-B12-L2-P6R11-Y4-SXXX, Model No. 541, remote supervisory vista underground distribution switchgear in accordance with MLGW specifications, at \$85,920 approximately

1 – S&C Electric Catalog No. TA-2367 vista over-current control adapter cable in accordance with MLGW specifications, at \$70 approximately

totaling \$85,990, approximately, f.o.b. Memphis, Tennessee, transportation prepaid; said prices being firm; delivery in 22-24 weeks.

11. The Secretary-Treasurer stated that the Pension Board, through its Investment Committee, had approved and was recommending to the Board of Light, Gas and Water Commissioners selection of BlackRock Realty–Tower Fund, real estate investment manager, to manage up to \$20,000,000 for benefit of the MLGW Retirement and Pension Fund.

The Secretary-Treasurer is authorized to negotiate and sign the contract satisfactory to MLGW for services of said manager with the provision for termination by either party upon 60 days written notice.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, The Secretary-Treasurer is authorized to enter into a contract with BlackRock Realty–Tower Fund Real Estate Management for benefit of the MLGW Retirement and Pension Fund as set forth in the foregoing preamble.

12. The Secretary-Treasurer advised the Board that due to certain personnel changes the resolution approved by the Board May 7, 1998, listing those persons authorized to sign or countersign checks and transfer funds on the Memphis Weekend Academy Operating Account should be amended.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Amendment No. 2 be approved as follows:

By adding Carol A. Shrein and Patrice J. Robinson to the list of personnel authorized to sign or countersign checks and transfer funds on the Memphis Weekend Academy Operating Account.

By deleting Don Hardy and Charles R. Powell from the list of personnel authorized to sign or countersign checks and transfer funds on the Memphis Weekend Academy Operating Account.

13. The Manager, Economic Development submitted for consideration of the Board, approval of annual membership dues to the Memphis Regional Chamber. The annual membership dues are \$25,000 and allow MLGW to be a part of the Chamber's efforts to achieve ongoing economic success and prosperity for Memphis/Shelby County by attracting new companies and investments and supporting existing business growth.

The Manager, Economic Development recommends these dues be paid in order to support the Memphis Regional Chamber to achieve ongoing economic success and prosperity through business and industry recruitment, make local companies more globally competitive, drive the advancement of the Memphis technology community, and help create an environment that promotes the retention/expansion of local business.

The funds for the dues are included in the 2005 Budget.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, The Secretary-Treasurer is hereby authorized and directed to have a check issued in the amount of \$25,000, payable to the Memphis Regional Chamber for the 2005 annual dues.

14. The Manager, Security and Facilities Operations presented for approval of the Board W. R. No. C3H21569 in the amount of \$41,161, to perform roof repairs at the Mallory Pumping Station due to constant leaking problems.

Funds will be taken from W. R. No. C1G93615 - Asphalt Overlay Project (42-3) – Account No. 31013310.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, W. R. No. C3H21569 in the amount of \$41,161 as outlined in the foregoing preamble is approved.

15. The Manager, Electric Engineering presented for consideration of the Board approval to acquire easement rights for a 225 foot wide transmission line from Horace Proctor and Ann Proctor for a proposed Transmission Line Circuit, said property being shown on the attached sketch and more particularly described as follows:

This easement is across a tract of land conveyed to Horace Proctor and Margaret Ann Proctor by deed of record as described in the Register's Office of Shelby County, Tennessee in the Register's Official Record Book under Instrument No. G9-4571 and being the same property as shown on the attached plat prepared by Ollar Surveying Company and dated 3/11/05 and made a part hereof. (See Minute File No. 1270.)

Said easement is described in metes and bounds as prepared by Ollar Surveying Company and shown on Page 2 of this easement contract and made a part hereof.

Included with the right of the above described permanent easement is the right for Memphis Light, Gas and Water Division to cut down and remove from the above described easement all trees and to trim all limbs overhanging into said easement. Any fencing within said easement must be approved by Memphis Light, Gas and Water Division. Grantor of this easement further agrees to allow Memphis Light, Gas and Water Division to remove any fences that would interfere with the operation of construction equipment within said easement. In the event fences are removed, the Memphis Light, Gas and Water Division will assume the responsibility at their cost to replace any fences removed in as good or better condition than they were at the time of their removal. Memphis Light, Gas and Water Division shall be liable for any damages to growing crops by its employees or by its agents or contractors in the exercise of the easements and rights-of -ways during the construction process.

Property located approximately 2772 feet south of the south line of Millington-Arlington Road as measured along the west line of the Horace Proctor and Ann Proctor property as described in deed E6-5109.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Purchase of the easement described in the above preamble for the sum of \$24,072 to be funded from the Electric Division included in the 2005 Budget is approved; and further,

THAT, The President or his designated representatives of the Division are hereby authorized to execute the purchase of said easement.

16. The Manager, Electric Engineering presented for consideration of the Board approval to acquire easement rights for a 225 foot wide transmission line from Horace Proctor and Margaret Ann Proctor for a proposed Transmission Line Circuit, said property being shown on the attached sketch and more particularly described as follows:

This easement is across a tract of land conveyed to Horace Proctor and Margaret Ann Proctor by deed of record as described in the Register's Office of Shelby County, Tennessee in the Register's Official Record Book under Instrument No. H4-9774 and being the same property as shown on the attached plat prepared by Ollar Surveying Company and dated 3/14/05 and made a part hereof. (See Minute File No. 1270.)

Said easement is described in metes and bounds as prepared by Ollar Surveying Company and shown on Page 2 of this easement contract and made a part hereof.

Included with the right of the above described permanent easement is the right for Memphis Light, Gas and Water Division to cut down and remove from the above described easement all trees and to trim all limbs overhanging into said easement. Any fencing within said easement must be approved by Memphis Light, Gas and Water Division. Grantor of this easement further agrees to allow Memphis Light, Gas and Water Division to remove any fences that would interfere with the operation of construction equipment within said easement. In the event fences are removed, the Memphis Light, Gas and Water Division will assume the responsibility at their cost to replace any fences removed in as good or better condition than they were at the time of their removal. Memphis Light, Gas and Water Division shall be liable for any damages to growing crops by its employees or by its agents or contractors in the exercise of the easements and rights-of -ways during the construction process.

Property located on the south side of Millington-Arlington Road approximately 436.80 feet east of the east line of Leggett View Road as measured along the south line of Millington-Arlington Road.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Purchase of the easement described in the above preamble for the sum of \$22,936 to be funded from the Electric Division included in the 2005 Budget is approved; and further,

THAT, The President or his designated representatives of the Division are hereby authorized to execute the purchase of said easement.

17. The Manager, Electric Engineering submitted for consideration of the Board release of the following utility easements:

PORTION of 30-ft.-wide utility easement as retained by City Council Resolution dated May 17, 1977, across a parcel of land as recorded by Instrument No. 02006763 in the Register's Office of Shelby County Tennessee, to Storage Rental and Sales, LLC., or their successors in title, for the sum of \$1.00. The property is located on the northwest corner of Utah Avenue and Louisiana Street.

PORTION of 8-ft.-wide multi-purpose utility easement as recorded under Instrument No. JX-5079 in the Register's Office of Shelby County, Tennessee across Countrywood Crossings P.D. as recorded in Plat Book 169, Page 52 in the Register's Office of Shelby County, Tennessee, to Costco Wholesale Corporation, or their successors in title, for the sum of \$1.00 Property is located on the west side of North Germantown Parkway, opposite Rockcreek Parkway.

PORTION of 5-ft.-wide multi-purpose utility easement as recorded under Instrument No. AV-5139 in the Register's Office of Shelby County, Tennessee across Lot 12, Kimberly Trace Subdivision as recorded in Plat Book 124, Page 37 in the Register's Office of Shelby County, Tennessee,

to Charissa L. Gentry, or her successors in title, for the sum of \$1.00. Property is addressed as 9148 Valkrie Lane.

PORTION of 5-ft.-wide utility easement as recorded under Instrument No. JF-8542 in the Register's Office of Shelby County, Tennessee across the west line of Lot 10 and the east line of Lot 11, Wind Chase Farms, LLC., to Ronald Norman Goulden and wife, Tamara Fleming Goulden, or their successors in title, for the sum of \$1.00. Property is addressed as 11840 Metz Place.

PORTION of 5-ft.-wide utility easement as recorded under Instrument No. JF-8542 in the Register's Office of Shelby County, Tennessee across a tract of land as recorded under Instrument No. 04098079 in the Register's Office of Shelby County, Tennessee, to Ronald Norman Goulden and wife, Tamara Fleming Goulden, or their successor in title for the sum of \$1.00.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, Release of easements across the above described properties is approved; and further,

THAT, The Board of Light, Gas and Water Commissioners recommends to the Mayor of the City of Memphis that appropriate release deed be executed releasing said easements to the current property owner for a consideration of \$1.00 each.

18. The Vice President, Customer Operations submitted for consideration of the Board approval of the annual subscription fee to the Drinking Water Research Program at the American Water Works Association Research Foundation. The subscription fee is \$2.05 per million gallons and is used to support a comprehensive national water supply research program.

The Vice President recommends this subscription because research is continually needed to assure that Memphis has the highest quality water at the lowest possible price.

The funds for the subscription fee are included in the 2005 Budget.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, The Secretary-Treasurer is authorized and directed to have a check issued in the amount of \$87,201.57, payable to the American Water Works Association Research Foundation for the year beginning May 1, 2005.

19. WHEREAS, in August, 2004 the President commissioned a compliance audit of MLGW Contract No. 10784 with A& L Underground, Inc., ("A&L") to be

performed by a joint team of the Internal Audit Departments of the City of Memphis and MLGW; and

WHEREAS, joint audit team issued an Audit Report dated December 25, 2004 which was furnished to the Memphis City Council and the Board of Commissioners; and

WHEREAS, MLGW Management, A&L, and Local 1288 of IBEW (the "Union") and the Audit Committee of the Board made written responses to the Audit Report which were incorporated into a composite document entitled *MLGW Board Report of Contract Compliance of A&L Underground* dated June 15, 2005 (the "Composite Audit Report") which was discussed at a meeting of the Audit Committee on June 16, 2005; and

WHEREAS, additional comments from A&L, the Union and MLGW Management were received at the meeting; and

WHEREAS, after reviewing the Composite Audit Report and reviewing the comments received at the meeting, the Audit Committee adopted its responses contained in the Composite Report and reported its adoption to the Board of Commissioners.

NOW, THEREFORE, the Board of Commissioners makes the following findings:

1. The Board ratifies and approves the payment and receipt by MLGW of the following disputed amounts referenced in the Joint Audit Report:
 - a. \$2,279,591 for payments to A&L in connection with a water main relocation as noted on pages 15-19 of the Joint Audit Report.
 - b. \$127,670 for payments to A&L in connection with the T. D. Williamson project as noted in Response No. 6 on pages 19-23 of the Joint Audit Report.
 - c. \$835,898 for unit price adjustments as noted in Response No. 7 on pages 24-28 of the Joint Audit Report.
 - d. Receipt by MLGW of \$234,204 for overpayments to an A&L subcontractor, Mills & Sons, as noted in Response No. 8 on pages 23-26 of the Joint Audit Report.

e. Receipt of \$17,115 as noted in No. 19 on page 45 of the Joint Audit Report which is part of the settlement referenced in No. 3 below.

2. The Board ratifies and approves a Release and Settlement Agreement between MLGW and A&L dated May 20, 2005 in which A&L paid MLGW the sum of \$307,670 for payment for damage claims which occurred before September 1, 2004 (including No. 1(e) above) and payment of the Mills & Sons matter referred in No. 1(d) above.

It was moved by Commissioner Evans, seconded by Commissioner Clark and unanimously carried:

THAT, The payments described in No. 1 of the Preamble of this Resolution are ratified and approved by the Board; and further

THAT, The Release and Settlement Agreement described in No. 2 of the Preamble to this Resolution is ratified and approved by the Board.

20. Chairman Jalenak retired after serving on the Board of Light, Gas and Water Commissioners since August, 1993.

21. Commissioner Clark read a statement from Commissioner Russell to Chairman Jalenak.

22. Commissioner Evans read a statement from Vice Chairman Masson to Chairman Jalenak.

23. Joseph Lee, III thanked Chairman Jalenak for his service on the Board of Light, Gas and Water Commissioners.

There being no further business presented, the meeting was adjourned.

SEE MINUTE FILE NO. 1270.