



**BOARD OF COUNTY  
COMMISSIONERS**

July 14, 2009

www.co.bay.fl.us

POST OFFICE BOX 1818  
PANAMA CITY, FL 32402

COMMISSIONERS:

MIKE NELSON  
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DISTRICT II

WILLIAM T. DOZIER  
DISTRICT III

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DISTRICT IV

MIKE THOMAS  
DISTRICT V

EDWIN L. SMITH  
COUNTY MANAGER

The Honorable Scott Clemons  
City of Panama City Mayor  
Post Office Box 1880  
Panama City FL 32402

Subject: Wholesale Water Contract

Dear Mayor Clemons,

In an effort to start the process of negotiating an equitable wholesale water contract for both parties, Bay County feels compelled to clearly indicate our intent not to extend the existing contract for an additional 50 years.

Bay County desires to negotiate a modern 10-year mutually renewable contract that is capacity based and consistent with the Department of Community Affairs (DCA) and Northwest Florida Water Management Districts (NWFLWMD) Water Supply Planning Mandate.

We look forward to working with you during this process and should you have any questions, please feel free to contact Ed Smith at (850-784-4015).

Sincerely,

  
Jerry L. Girvin, Chairman  
Bay County Board of County Commissioners

cc: Ed Smith, Bay County Manager  
Dan Shaw, Assistant County Manager  
Jamie Jones, Bay County Utility Services Director



*"Dedicated to Excellence.....  
People Serving People"*

Scott W. Clemons  
Mayor

August 28, 2009

Jerry L. Girvin, Chairman  
Bay County Board of County Commissioners  
Post Office Box 1818  
Panama City, Florida 32402

RECEIVED  
BAY COUNTY COMMISSION  
COUNTY MANAGERS OFFICE

AUG 31 2009

Re: Wholesale Water Contract

Co. Mgr. \_\_\_\_\_  
Copy To: B.C., Cm, Dar, Tenell

Dear Chairman Girvin:

I am in receipt of your letter to me dated July 14, 2009, wherein you indicate that Bay County (the "County") wants to negotiate a new agreement to replace the wholesale water contract between the City of Panama City (the "City") and the County which exists today ("Existing Contract"). Before addressing the County's desire to negotiate a new agreement, I am compelled to address what appears to be fundamental misconceptions that you have with respect to our Existing Contract.

To be clear, the Existing Contract is an all-requirements wholesale supply agreement that the County and the City entered on November 16, 1965. The Existing Contract was amended on April 24, 1984 and November 30, 1999. The Existing Contract has an initial term of 50 years and, unless extended, is scheduled to expire on November 16, 2015. Section 1 of the Existing Contract makes it clear that the City has the unilateral option to extend the agreement for an additional 50 year period by giving written notice prior to November 16, 2014. Any suggestion in your letter that the County can elect not to extend the Existing Contract is simply incorrect.

Your letter also seems to imply that the Existing Contract is somehow inconsistent with the water supply planning policies of the Florida Department of Community Affairs ("DCA") and the Northwest Florida Water Management District ("NFWMD"). We have thoroughly analyzed this issue and are confident that our Existing Contract is entirely consistent with those water supply planning policies. In fact, our analysis shows that the policies of the DCA and the NFWMD are structured so as not to impair the sanctity of existing water supply agreements like our Existing Contract.

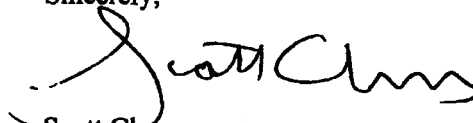
Jerry L. Girvin  
August 28, 2009  
Page 2

With those two points noted, I am not opposed to negotiating a new mutually acceptable agreement to replace the Existing Contract, provided that such negotiations adequately address four fundamental principles. First, the negotiations must proceed in good faith in a timely fashion. Second, the negotiations must address the City's fundamental need to guarantee a long-term supply of potable water for its residents. Third, such negotiations must ensure a fair and efficient process for establishing points at which water will be delivered to the City over the term of the new agreement. Fourth, such negotiations must resolve the City's long-standing objections to the methods by which the County continues to try to increase its wholesale water rates. To that end, the City continues to object to the dramatic wholesale water increases which the County proposes to implement. As indicated in the attached letter, the City firmly believes that the County's efforts to increase its wholesale rates have been inconsistent with the terms of the Existing Contract and, up until now, the City has paid the County's rate increases under protest. In light of the County's continued efforts to arbitrarily increase its wholesale water rates, it is my intention that all past and proposed rate increases are to be disputed. Going forward, it is also my intention that the City will establish an escrow account and deposit any future disputed amounts of the County's rate increases into that account until the dispute is resolved.

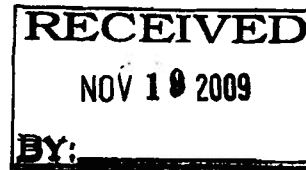
As indicated, I am prepared to negotiate in good faith with the County on a new wholesale water supply agreement that resolves the ongoing rate dispute and addresses the other principles outlined above. If, however, the City and the County are unable to mutually agree on a replacement agreement by January 1, 2010, it is my intent that the City will enforce its rights under the Existing Contract and elect to renew that contract for another 50 year term.

I look forward to working with you on this.

Sincerely,

  
Scott Clemons  
Mayor

Encl.



*"Dedicated to Excellence.....  
People Serving People"*

Scott W. Clemons  
Mayor

November 16, 2009

Bay County Board of Commissioners  
Chairman Bill Dozier  
P. O. Box 1800  
Panama City, Florida 32402

Dear Commissioner Dozier:

I am writing this letter to follow up on our previous conversations about an issue relating to our Wholesale Water Contract, as amended (the "Contract"), that hopefully the City and the County can resolve without having to resort to litigation.

In June of 2005, pursuant to Section 4 of the Contract, the City requested that an additional delivery point for potable water be established at Star Avenue approximately 100 feet south of the intersection with John Pitts Road. Following that request, the City provided the County with additional information regarding the customer demand that would be served by the additional delivery point, and participated in a series of discussions with the County regarding the new delivery point. The City was previously advised by County Manager, Pamela Brangaccio, and Utility Services Director, Travis Windham, that the requested interconnection would be approved. The City coordinated with the County and moved forward with its Star Avenue water transmission main project to interconnect at the new delivery point at Star Avenue (the "Star Avenue Project"). As part of the Star Avenue Project the City applied to and received from the County a permit to construct the water main on County right-of-way. Also as part of the Star Avenue Project, the City applied to the Florida Department of Environmental Protection ("FDEP") for a permit to construct the Star Avenue water transmission main, which was co-signed by the County's Water Division Manager. In co-signing the FDEP permit application, the County's Water Division Manager, Tim Beacham, certified (i) that the County "will supply the water necessary to meet the design water demands for this project" and (ii) that the County considers the Star Avenue interconnection to be "acceptable as designed."

After the City obtained the above described permits, it proceeded with construction of the Star Avenue Project on September 19, 2005. Construction of the Star Avenue Project was completed June 13, 2006 at a cost to the City of approximately \$1.2 million. Although the transmission water main is complete, the County still has not formally agreed to the additional delivery point. The City has in good faith provided all information the County requested concerning interconnection and sees no reason for further delay. The City would like to move forward with the new point of delivery as soon as possible, and I would like to meet with you next week in hopes that you and I can work together to bring this to closure.

If you have any questions regarding this matter, please do not hesitate to give me a call.

Sincerely,

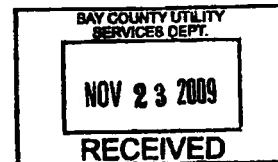
Scott Clemons  
Mayor, City of Panama City



*"Dedicated to Excellence . . .  
People Serving People"*

November 18, 2009

Mr. Jamie Jones, Director  
Bay County Utility Services  
3410 Transmitter Road  
Panama City, FL 32404



Re: Wholesale Water Contract

Dear Jamie,

Pursuant to Mayor Clemons letter to Chairman Girvin dated August 28, 2009, and upon advice of legal counsel, this is to notify you that the October, 2009 payment for wholesale water services has been reduced to \$155,715.30. The remaining \$128,032.58 has been placed in an escrow account to be held until such time as the City and County can mutually agree to resolve our ongoing rate dispute or adopt a new wholesale water supply agreement.

This reduction represents a rollback to the City's undisputed contract rate of \$0.90/1000 gallons. The \$0.74/1000 gallons disputed rate reduction will be applied to all future utility bills until such time as the issue is resolved. Please call me if you have questions or need additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "Ron Morgan".

Ron Morgan  
Utilities Director

RM:ads

cc: Mayor Scott Clemons  
City Manager Kenneth Hammons  
City Clerk Terri Lillard

DATE	INVOICE NO.	DESCRIPTION	NET AMOUNT
11/03/2009	OCT2009	CITY WATER USAGE	155,715.30

CITY OF PANAMA CITY  
PANAMA CITY, FLORIDA

PRINTED IN U.S.A.

WLC061101BP

THIS DOCUMENT HAS BEEN REPRODUCED ON THE PAPER HOLD TO LIGHT TO VIEW



**CITY OF PANAMA CITY**  
Post Office Box 1880  
Panama City, FL 32402-1880

**WACHOVIA**  
Wachovia Bank, N.A.  
wachovia.com  
63-2/630  
99998

AP 333787

DATE  
11/20/2009

AMOUNT  
\$155,715.30

CHECK NO  
333787

WE17256C-12-05

PAY  
TO THE  
ORDER  
OF

\*\*\*155,715 DOLLARS AND 30 CENTS

BAY COUNTY WATER SYSTEM  
3410 TRANSMITTER RD  
PANAMA CITY FL 32404-2079

*[Signature]*  
*[Signature]*

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 333787⑈ ⑆ 06300021⑆ 2000685687354⑈



*"Dedicated to Excellence.....  
People Serving People"*

Scott W. Clemons  
Mayor

December 01, 2009

Chairman William T. Dozier  
Bay County Commissioner  
Bay County Commission Office  
840 West 11th Street  
Panama City, Florida 32401

RECEIVED  
BAY COUNTY COMMISSION  
COUNTY MANAGERS OFFICE

DEC 01 2009

Co. Mgr. \_\_\_\_\_  
Copy To: \_\_\_\_\_

Re: Wholesale Water Contract

Dear Chairman Dozier:

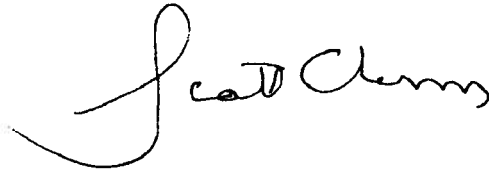
I was a pleasure talking with you earlier today. I want to follow-up with you on your issues concerning the City's decision to withhold payment of disputed amounts of rate increases which the City maintains were improper under our existing all-requirements wholesale water contract (the "Existing Contract"). As you know, the County provided the City with a draft agreement to replace the Existing Contract. The City continues to maintain that the Existing Contract is valid, enforceable, and fair to both parties. However, in an effort to accommodate the County, we provided the County with our suggested edits to the proposed replacement agreement back on June 26, 2008. Those proposed edits, among other things, were designed to avoid future rate disputes. We heard nothing back from the County for almost 10 months. It was not until April 13, 2009, that our City Manager received comments on our proposal, which comments rejected most if not all of our suggested revisions.

Thereafter, at my request, former Chairman Girvin and I met in July, 2008. At that meeting, I outlined five issues of critical importance to the City that needed to be resolved as part of the negotiation of a replacement agreement. One of those critical issues involved clear ratemaking provisions to avoid rate disputes. Former Chairman Girvin and I also agreed on a framework for our respective staffs to meet and develop proposed solutions to those five critical issues. No such meetings occurred prior to November 12, 2008, when Ron Morgan met with Jamie Jones. Thus, on August 28, 2009, I wrote a letter to Former Chairman Girvin, advising that going forward the City would begin withholding disputed amounts of the water rate increases imposed by the County. Consistent with that notice, the City began withholding the disputed amounts on November 18, 2009, and depositing the withheld funds in an escrow account while the parties attempt to resolve their rate dispute.

**You now have expressed a renewed commitment to elevate that dispute resolution process through bona fide negotiations on an agreement to replace the Existing Contract. The City concurs with that approach and, in the spirit of cooperation, is willing to suspend withholding disputed amounts of the water rate increases for the next 60 days if during that period the County agrees to negotiate in good faith on a comprehensive resolution of the issues.**

**Please let me know when we can begin the negotiations in earnest. Thank you for your consideration.**

**Sincerely,**

A handwritten signature in black ink that reads "Scott Clemons". The signature is written in a cursive style with a large initial "S" and a long horizontal stroke extending to the left.

**Scott Clemons  
Mayor, City of Panama City**