

Utility District Lift Station 10 & 50 Project Update

December 22, 2016

On October 25, 2016, the Utility District's outside Attorney, Malcolm Cunningham ("Cunningham"), advised Close Construction, LLC ("Close"), that the Utility District Board voted to terminate Close for its persistent failure to perform the Work in accordance with the Contract Documents. Also on October 25, 2016, Cunningham advised Close's surety, Hartford Fire Insurance Company ("Hartford") of Close's default, and of the Utility District's termination of Close for default on October 24, 2016. Cunningham demanded that Hartford correct Close's defaults and complete Close's work and meet with the District on or before November 1, 2016, to discuss completion of the project. Cunningham told Hartford that time is of the essence as the wastewater collection system is in temporary bypass and therefore subject to sewage spills.

Hartford responded on October 28, 2016, that Close had vehemently denied that it is in default of its contractual obligations. Hartford stated it needed time before meeting with us to investigate Close's claim, that it did not breach its contractual obligations and therefore whether the District was within its legal rights to terminate Close. In any event, Hartford advised that if it decided to complete Close's scope of work, it would consider using Close to complete the Work. Hartford requested project documents to assist Hartford in its investigation which Cunningham forwarded to Hartford. Close also wrote to Cunningham to advise that it intended to stay involved in the completion of the contract.

Cunningham responded to Hartford and Close that Close would have no role in the completion of the Project based on its past failure to perform the Work according to the contract and Close having lied about obtaining a permit from SFWMD to discharge ground water directly into Lake Worth Lagoon. Hartford and Close have seemingly acquiesced that Close will no longer be involved in the project. Not knowing how long Hartford would take before meeting with us, District staff contacted the second and third low bidders on the Project, Florida Design Contractors and Wharton Smith and requested that both review the Work at the Project and submit a bid to Hartford for completion of the Work to expedite completion of the Project. Both companies have inspected the existing Work on the Project and have reviewed critical documents which will facilitate their understanding of what is required to complete the Work.

On November 4, 2016, Hartford notified us through its newly retained attorney, Bruce King that Hartford hired an engineer, Don Eckler of Coral Springs to assist it with its investigation of the Project and that Hartford met with District staff on November 15, 2016, to "discuss various options regarding the completion of the project...." Our project engineer is accompanied Mr. Eckler on a tour of the project on Monday, November 14, 2016, in advance of the meeting. We will update you after the meeting concerning how we propose to complete the project.

On November 15, 2016, the Riviera Beach Utility District staff along with our project engineers and our attorney, met with representatives of Hartford Fire Insurance Company (“Hartford”), the surety company for Close Construction LLC (“Close”), along with Hartford’s lawyer and its engineer. We discussed the facts leading to Close’s termination, the status of the Project site and the completion of the Project. Hartford expressed its interest in completing the Work. Recognizing that time is of the essence, Hartford agreed to provide a timetable for contracting with a completion contractor and restarting the work. The District staff agreed to furnish Hartford with certain critical documents. We expect to provide a further update after we receive Hartford’s timetable and indication as to which contractor will serve as its completion contractor. On Tuesday, November 22, 2016, an engineering firm hired by Hartford will begin meeting with Florida Design Contractors and Wharton Smith to further evaluate both lift station sites.

Recently, Hartford Fire Insurance Company (“Hartford”), notified the Riviera Beach Utility Special District (“District”), that it has no obligation under the bond to takeover and complete the Work—only the payment of \$3,799,022, the penal sum of the bond in the event of Close’s default under the bond. Yet Hartford has expressed “it would appear mutually beneficial for Hartford and Riviera to reach an agreement as to the completion of Close’s Work.” The negotiations have taken the form of Hartford seeking waivers of certain provisions of the contract documents that reduce the time and cost of Hartford’s completion of the contract.

The Utility District has steadfastly maintained that Hartford is bound unto the District for the payment of the bond amount for performance of the contract “at the times and in the manner prescribed in the contract” and that the District would insist upon compliance with the contract documents. Notwithstanding the activities described above, Hartford has yet to commit to takeover and complete the Work. By letter dated December 9, 2016, the District imposed a deadline of December 15, 2016, for Hartford to advise the District of its intention regarding taking over and completing the Work. Hartford indicated that it has solicited bids from several companies and expects a response from those companies soon. On December 21, 2016, Attorney Cunningham requested a commitment from Hartford to take over the project by January 2, 2017, or the District will move forward with completing the project by whatever mean available.

In the interim, the Utility District took steps to install new bypass pumping equipment at lift station 10 on Singer Island to help reduce the noise caused by the current equipment and increase efficiency of the temporary operation and going to try using misting machines to help address the complaint of an odor coming from the lift station.

The Utility District is working diligently to complete this project and we truly apologize for any inconvenience to the residents.