

THE STATE OF TEXAS §
CITY OF BROWNSVILLE §
COUNTY OF CAMERON §

Sally Miniel Arroyo, At-large Commissioner "A"
Ricardo Longoria, Jr., District Commissioner 1
Carlos A. Cisneros, District Commissioner 3

Joseph A. Zavaletta, M.D., At-large Commissioner "B"
David A. Betancourt, District Commissioner 2
Ernesto L. De Leon, District Commissioner 4

Eddie Treviño, Jr., Mayor

**NOTICE OF A JOINT PUBLIC MEETING OF THE
CITY COMMISSION OF THE CITY OF BROWNSVILLE
and the
BROWNSVILLE PUBLIC UTILITIES BOARD**

Pursuant to Chapter 551, Title 5 of the Texas Government Code, the Texas Open Meetings Act, notice is hereby given that the City Commission of the City of Brownsville, Texas, in accordance with Article V, Section 12, of the Charter of said City, will convene a **Special Meeting with the Brownsville Public Utilities Board (BPUB), on Tuesday, June 15, 2004, at 4:00 P.M.**, in the Commission Chambers, on the Second Floor of the Brownsville City Hall – Federal Building, located at 1001 East Elizabeth Street, Brownsville, Cameron County, Texas, 78520.

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PLEDGE OF ALLEGIANCE: *UNITED STATES PLEDGE * TEXAS PLEDGE*

INVOCATION:

EXECUTIVE SESSION: 4:00 P.M.

- A) Consultation with attorney pursuant to Section 551.086 of the Texas Government Code, regarding competitive utility systems discussion regarding the purchase of additional interest in the Oklaunion power plant. (James Goza – City Attorney – 30 min.)

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ACTION ITEM:

1. Consideration and **ACTION** to authorize the Mayor to execute the amended Memorandum of Understanding between the City of Brownsville and the Brownsville Public Utilities Board, establishing a cash flow formula of 10 % gross revenues to the City of Brownsville, and deleting the provision that the utility cost for the City of Brownsville be subtracted from the City of Brownsville's net percentage of funds. (Jim Goza – City Attorney) (Tabled 06-01-2004)

Action by City Commission

Action by Brownsville Public Utilities Board

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PUBLIC COMMENT PERIOD: PLEASE NOTE:

- ANY PERSON WITH BUSINESS BEFORE THE COMMISSION, NOT SCHEDULED ON THE AGENDA AS A PUBLIC HEARING, MAY SPEAK TO THE COMMISSION.
- "PUBLIC COMMENT FORMS" ARE LOCATED ON THE SECOND FLOOR AT THE ENTRANCE OF THE COMMISSION CHAMBERS.
- "PUBLIC COMMENT FORMS" MUST BE FILLED OUT AND PRESENTED TO THE CITY SECRETARY/STAFF FIFTEEN (15) MINUTES PRIOR TO THE MEETING.
- THERE IS A THREE (3)-MINUTE TIME LIMIT PER SPEAKER.
- NO FORMAL ACTION CAN BE TAKEN.

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ADJOURNMENT:

NOTE: The City Commission of the City of Brownsville reserves the right to discuss any items in Executive Session whenever authorized under the Texas Open Meetings Act, Chapter 551, Title 5 of the Texas Government Code.

NOTE: The City of Brownsville does not discriminate on the basis of disability in the admission of, access to, treatment of, or employment in its programs, activities, or public meetings. Any individual with a disability in need of an accommodation is encouraged to contact the ADA Coordinator at 956/548-6037 (voice or Relay TX) by Monday, no later than 5:00 P.M., to make proper arrangements.

**By: Eddie Treviño, Jr.
Mayor of the City of Brownsville**

I certify that a copy of the June 15, 2004, Agenda of items to be considered by the Brownsville City Commission was posted on the Bulletin Area at City Hall – Federal Building, on June 11, 2004. I further certify that the Agenda was posted on the City’s website and can be downloaded by accessing: www.cob.us/agendas.asp.

Inelda T. Garcia, City Secretary

I certify that the attached notice and Agenda of items to be considered by the City Commission were removed by me from the New City Hall bulletin areas on the _____ day of _____, 2004.

Name/Title



AGENDA REQUEST FORM

A.

CITY COMMISSION MEETING DATE: 04/20/2004 ITEM NUMBER: _____

DEPT. MAKING REQUEST: CITY ATTORNEY DATE SUBMITTED: 04/12/2004

CONTACT PERSON(S) NAME: JAMES R. GOZA

PHONE: 956/548-6011 FAX: 956/546-4291 E-MAIL: jimgoza@cob.us

AGENDA CATEGORY: (TIME LIMIT)

EXECUTIVE SESSION WORKSHOP PRESENTATION DISCUSSION

Length of Time Needed for The Item Above: 30 (minutes)

(No time limit)

CONSENT PUBLIC HEARING ACTION

AGENDA ITEM: (Attach back up material)

Executive session pursuant to §551.086 competitive utility systems discussions regarding the purchase of additional interest in the Oklaunion power plant.

AGENDA ITEM HISTORY: Second Reading Tabled on _____ Discussed on _____

Pending Info Received Other _____

FINANCIAL: Budgeted: YES NO N/A

Grant/Matching Funds From:

STAFF RECOMMENDATION: (mark your selection) Approve Deny

Table for _____ weeks Table Indefinitely Other: _____

OTHER RECOMMENDATION: (Write in advisory board or committee name and recommendation if applicable)

ADMINISTRATIVE APPROVAL: YES NO

City Manager



AGENDA REQUEST FORM

1.

CITY COMMISSION MEETING DATE: 06/15/2004 ITEM NUMBER: _____

DEPT. MAKING REQUEST: CITY ATTORNEY DATE SUBMITTED: 06/10/2004

CONTACT PERSON(S) NAME: JAMES R. GOZA

PHONE: 956/548-6011 FAX: 956/546-4291 E-MAIL: jimgoza@cob.us

AGENDA CATEGORY: (TIME LIMIT)

EXECUTIVE SESSION WORKSHOP PRESENTATION DISCUSSION

Length of Time Needed for The Item Above: _____ (minutes)

(No time limit)

CONSENT PUBLIC HEARING ACTION

AGENDA ITEM: (Attach back up material)

Consideration and ACTION on authorizing the Mayor to execute an Amended Memorandum of Understanding between the City of Brownsville and the Brownsville Public Utilities Board (PUB) which provides for the purchase of an additional interest in the Oklaunion Power Plant, a proposed City Charter election to be held on September 11, 2004, certain changes in the utility system revenue obligation ordinances

AGENDA ITEM HISTORY: Second Reading Tabled on _____ Discussed on _____

Pending Info Received Other _____

FINANCIAL: Budgeted: YES NO N/A

Grant/Matching Funds From:

STAFF RECOMMENDATION: (mark your selection) Approve Deny

Table for _____ weeks Table Indefinitely Other: _____

OTHER RECOMMENDATION:(Write in advisory board or committee name and recommendation if applicable)

(continued) along with delegation to the Board of Directors of PUB the authority to adopt increases in utility rates and charges not to exceed five percent (5%) per annum.

ADMINISTRATIVE APPROVAL: YES NO

City Manager

**AMENDED MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF BROWNSVILLE, TEXAS
AND THE
BROWNSVILLE PUBLIC UTILITIES BOARD**

DATED JUNE 1, 2004

WHEREAS, the City Commission (the "Commission") of the City of Brownsville, Texas (the "City") and the Board of Trustees (the "Board") of the Brownsville Public Utilities Board (the "PUB") agree that the electric, water, and wastewater utilities (collectively, the "System") of the City are owned by the City for the benefit of the citizens and ratepayers of the City and that the powers of appointing Board members, selling utility system revenue obligations, and setting utility rates are reserved for the Commission; and

WHEREAS, the Commission and the Board agree that the System should be operated in a business-like manner and that the System should be administered on a day-to-day basis under the supervision, management, and control of the Board and that the PUB should establish a fair and reasonable method for determining the amount of the transfer of revenues to the City, based upon the utility rates and charges that are established by the Commission and implemented by the Board; and

WHEREAS, the Commission and the Board have, on occasion, disagreed about certain matters concerning the administration of the System, the sale of utility system revenue obligations, the setting of utility rates and charges, and the method for determining the amount of the transfer of revenues to the City; and

WHEREAS, the Commission and the Board intend to resolve substantially any disagreements about such matters prior to completing any major capital purchase; and

WHEREAS, the Commission and the Board recognize that it may be possible for the PUB to purchase an additional interest in the Oklaunion coal-fired power plant, which would likely delay the planned purchase of additional sources of power for the System, diversify the sources of fuel for the System, lower the volatility of fuel prices to the System, and permit the sale of off-system power until such power is needed by the System; and

WHEREAS, the Commission and the Board acknowledge that the bond ratings disseminated by the national bond rating agencies with respect to the utility system revenue obligations of the City are influenced by the relationship between the Commission and the Board.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS AND THE BOARD OF TRUSTEES OF THE BROWNSVILLE PUBLIC UTILITIES BOARD THAT:

1. The Commission shall call an election to be held on September 11, 2004 to allow the qualified voters of the City to consider revising and/or eliminating certain portions of the City Charter pertaining to the System (particularly in Article IV and Article VI) that are believed to conflict with State law or with the utility system revenue obligation ordinances or with prudent utility practices. Attached to this Memorandum, as Exhibit A, is a proposed form of the Charter amendment that the Commission currently expects to place on the ballot at said election pertaining to revisions to article IV and Article VI of the Charter. The Board finds such proposed changes to Article IV and Article VI to be acceptable.
2. The Commission shall change certain portions of the utility system revenue obligation ordinances for the purpose of modernizing the existing ordinance provisions or eliminating the existing ordinance provisions that are believed to conflict with State law or with the City Charter or with prudent utility practices. The Commission shall also change certain portions of the utility system revenue obligation ordinances in order to clarify the process for determining the transfer of revenues to the City. Certain of these changes are outlined below in this Memorandum.
3. The Commission and the Board shall effect such changes in the utility system revenue obligation ordinances by refunding the outstanding utility system revenue obligations or by seeking the consent of the holders of the outstanding utility system revenue obligations. The Commission and the Board acknowledge that such refunding may result in a net present value loss to the System.
4. In addition, the Commission and the Board shall convert approximately \$100 million of the System's floating rate obligations to fixed rate obligations and shall restructure the System's debt service payments to produce approximately level debt service payments over a period not to exceed 30 years. The Commission and the Board acknowledge that such restructuring is to be undertaken for the purpose of reducing the interest rate risk of the System and not for the purpose of realizing net present value savings to the System.
5. Through revisions in the utility system revenue obligation ordinances, the Commission and the Board shall covenant to establish, maintain, enforce and collect rates and charges sufficient to produce 1.00 times the amount needed to fund the operation and maintenance expenses of the System, including the funding or replenishment of an Operating Reserve Fund, 1.25 times the annual debt service and 1.00 times the debt service reserve fund deposits for senior lien obligations, 1.10 times the average annual debt service and 1.00 times the average annual debt service an debt service reserve fund deposits for subordinate lien obligations and inferior lien obligations. In addition, the Commission and the Board shall covenant to establish an additional bonds test of 1.25 times the maximum annual debt service for senior lien obligations, 1.10 times the average annual debt service for junior lien obligations and 1.00 times the average annual debt service for subordinate lien obligations and inferior lien obligations.

6. Through revisions in the utility system revenue obligation ordinances, the Commission and the Board shall establish a flow of funds that provides for the following uses in the following order of priority: first, to pay the operation and maintenance of the System, including establishing an Operating Reserve Fund [representing two months of operation and maintenance expenses of the System, to be funded in the amount of approximately \$15 million from balances in the existing improvement Fund, Plant fund, Repair and Contingency Fund, Reserve Fund, and Surplus Fund, at closing]; second through ninth, to pay principal and interest on all utility system revenue obligations and debt service reserve fund deposits related to such obligations (with priority given first, to all senior lien obligations; second, to all junior lien obligations; third, to all subordinate lien obligations; and fourth, to all inferior lien obligations, if any); tenth, to transfer revenues to the City in the amount of 10% of gross revenues of the System (less fuel and purchased energy charges and Southmost Regional Water Authority payments and PUCT imposed nonbypassable regulatory charges upon the electric utility) calculated in accordance with generally accepted accounting principles, paid on a quarterly basis, and presented in a manner consistent with the System's audit report; eleventh, to increase or replenish the Operating Reserve Fund; twelfth, to fund a Capital Improvement Fund in the amount of 5% of capital assets, net of accumulated depreciation, of the System, to be initially funded in five equal deposits of \$5 million annually (*Note: monies withdrawn from the capital Improvement Fund will be replenished in three equal deposits of one-third of the amount withdrawn annually.*); finally, if the balance in the Capital Improvement Fund equals 5% of capital assets, net of accumulated depreciation, of the System, to fund a Renewal and Replacement Fund.
7. The revisions in the utility system revenue obligation ordinances will provide that the Board will make monthly transfers to pay principal and interest on all utility system revenue obligations and debt service reserve fund deposits related to such obligations and will make quarterly transfers of all other amounts, including the transfer of revenues to the City.
8. The revisions in the utility system revenue obligation ordinances will provide that any balance that remains after making all required deposits and transfers will be deposited into the Renewal and Replacement Fund and that amounts on deposit in the Renewal and Replacement Fund may be deposited into any of the other funds or transferred to the City, only if revenues are insufficient to otherwise make the required deposits or transfers. The Commission and the Board acknowledge that the flow of funds will operate as a "closed loop" and that residual revenues will remain with the system.
9. The Commission shall establish sufficient rates and charges to fund the changes contemplated herein and to improve or maintain the bond ratings on the utility system revenue obligations. The Commission shall delegate to the Board the authority to adopt increases in utility rates and charges for each of the utilities in the System (excluding increases in fuel and purchased energy charges, which are

direct "pass through" charges) of no greater than 5% per annum, subject to the provisions of the utility system revenue obligation ordinances and supported by an independent review of System rates and charges, provided that the Board cannot increase rates for two consecutive years without the consent of the Commission. This delegation shall not limit the ability of the Commission to adopt rate increases of greater amount of frequency. The Commission and the Board acknowledge that the rate increase needed to fund the changes contemplated herein are currently projected at 6% for the electric utility and 8% for the water utility in January 2005; plus 6% for the electric utility and 8% for the water utility in January 2006; plus 7% for the water utility in January 2007; plus 3% for the wastewater utility in January 2008. *(Note: these rate increases represent the expected percentage increase of utility revenue, not the actual percentage increase for an individual utility customer.)*

10. The Commission and the Board shall fully implement the changes contemplated herein, as soon as reasonably possible, recognizing that these changes cannot be finally adopted until passage of an election to allow the qualified voters of the City to consider revising and/or eliminating certain portions of the City Charter and after refunding the outstanding utility system revenue obligations or by seeking the consent of the holders of the outstanding utility system revenue obligations to the changes contemplated herein.
11. The Commission and the Board shall provide for the issuance of utility system revenue obligations under the provisions of the existing City Charter and the existing utility system revenue obligation ordinances, in the event that the Commission and the Board determine to complete a major capital purchase (such as the purchase of an additional interest in the Oklaunion coal-fired power plant), prior to the time that the changes contemplated herein are fully implemented. The amount of utility system revenue obligations that would be required to purchase an additional interest in the Oklaunion coal-fired power plant is currently not expected to exceed \$50 million.
12. The Commission and the Board shall ensure that any utility system revenue obligations that are issued prior to the time that the changes contemplated herein are fully implemented shall be issued with such terms and conditions that they can be called for redemption by the Commission as soon as reasonably possible, in order to fully implement the changes contemplated herein.

SIGNED AND SEALED the 1st day of June 2004.

City Secretary

Mayor, City of Brownsville

Secretary

Chairman, Brownsville Public
Utilities Board