

MINUTES

Board of Public Works
Michael E. Kobza Hall of Justice
Muskegon, Michigan
August 9, 2012

CALL TO ORDER

The meeting was called to order by Chairman Marvin Engle at 3:30 p.m.

ROLL

Present: Lewis Collins; Benjamin Cross; James Derezinski; Marvin Engle; David Fisher; Alan Jager; Scott Plummer; I. John Snider; Rillastine Wilkins.

Staff

Present: John Warner, Director of Public Works; Mark Eisenbarth, Wastewater Director; Heath Kaplan, Director of Finance & Management; Ted Williams, Corporate Counsel; Karen Fisher, Secretary.

Others

Present: Attorney Dave Bossenbroek; David Kieft, Jr., Muskegon Charter Township Supervisor; Kim Arter, Laketon Township Supervisor; Susie Hughes; Commissioner Longmire.

BPW-12-124 – APPROVAL OF AGENDA

Moved by Mr. Collins, seconded by Mr. Derezinski, to approve the agenda as presented.

Motion carried

BPW-12-125 – APPROVAL OF MINUTES

Moved by Mr. Cross, seconded by Mr. Plummer, to approve the minutes of the meeting held July 19, 2012.

Motion carried

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BPW-12-126 – PUBLIC COMMENT ON AN AGENDA ITEM

Mayor Darrell Paige, 543 Overbrook, City of Muskegon Heights, addressed the Board of Public Works. Mayor Paige was concerned that the City of Muskegon Heights was not aware of the Water Purchase Agreement.

BPW-12-127 – WATER PURCHASE AGREEMENT

Moved by Mr. Collins, seconded by Mr. Fisher, to approve the attached 40 year agreement between the County Regional Water System, North Muskegon and Roosevelt Park and the City of Muskegon.

Commissioner Jager requested a roll call vote on this issue. Commissioner Jager stated he is concerned that there is no opt out clause in the agreement. Commissioner Jager also stated a meeting was held with some members of the Water Policy Board and the Muskegon Charter Township Supervisor, who is also the Chair of the Water Policy Board, was not invited to this meeting. Commissioner Jager stated even though this was a legal meeting it was not ethical to not invite the Chair of the Water System Policy Board. Commissioner Jager encouraged the Board to vote "no" on this agreement.

Discussion followed.

Roll call: Ayes – Fisher; Snider; Derezinski; Engle; Collins; Plummer; Cross.

Nays – Jager; Wilkins.

Motion carried

BPW-12-128 – PURCHASE PROPERTY FROM NORTHWAY LANES

Moved by Mr. Collins, seconded by Mr. Snider, to approve the purchase of a 30' x 120' parcel of property from Northway Lanes (Marshall, Inc.) for the sum of \$9,000 plus closing fees with funds coming from the Regional Water System fund 5910.

Roll call: Ayes – Jager; Snider; Derezinski; Engle; Collins; Plummer; Wilkins; Cross; Fisher.

Nays – None.

Motion carried

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BPW-12-129 – AGREEMENT FOR ALTERNATIVE DAILY COVER WITH RRC

Moved by Mr. Snider, seconded by Mr. Fisher, to approve the attached 10 year Agreement for Daily Cover with Resource Recovery Corporation which allows them to dispose of suitable foundry sand to be used as daily cover at Solid Waste for \$2.50/ton for a period of up to ten years and authorize the Chair to execute the agreement.

Roll call: Ayes – Snider; Derezinski; Engle; Collins; Plummer; Wilkins; Cross; Fisher; Jager.

Nays – None.

Motion carried

BPW-12-130 – iPCS WIRELESS MODIFICATIONS – FRUITPORT TOWNSHIP WATER TANK

Moved by Mr. Derezinski, seconded by Mr. Cross, to approve iPCS Wireless (Sprint) request to make modifications to their facilities located on the Fruitport Township elevated water storage tank contingent upon approval by both Fruitport Township and Norton Shores and authorize the Chair to execute the document.

Roll call: Ayes – Derezinski; Engle; Collins; Plummer; Wilkins; Cross; Fisher; Jager; Snider.

Nays – None.

Motion carried

BPW-12-131 – PERMISSION TO BID – GRID SAMPLING AND SOIL TESTING

Moved by Mr. Derezinski, seconded by Mr. Plummer, to grant Wastewater staff permission to advertise for bids grid sampling and soil testing for agricultural ground at the Wastewater Management System.

Motion carried

BPW-12-132 – ADOPT 2012 WASTEWATER ARCHERY DEER HUNTING AND TRAPPING RULES & AUTHORIZE DNR WATERFOWL HUNT AND SPRING YOUTH TURKEY HUNT

Moved by Mr. Cross, seconded by Mr. Plummer, to adopt the 2012 Wastewater archery deer hunting and trapping rules and authorize the DNR waterfowl hunt and the spring youth turkey hunt.

Motion carried

BPW-12-133 – AWARD BID – ELECTRICAL CONDUIT, WIRE & CABLE

Moved by Mr. Plummer, seconded by Mr. Snider, to award the bid for the “Electrical Conduit, Wire & Cable” for the Wastewater System to WESCO, per the specifications in RFB 12-2011.

Roll call: Ayes – Plummer; Wilkins; Cross; Fisher; Jager; Snider; Derezinski; Engle; Collins.

Nays – None.

Motion carried

BPW-12-134 – AUTHORIZATION TO PROCEED WITH HIRING FOUR TEMPORARY OPERATORS

Moved by Mr. Derezinski, seconded by Mr. Snider, to authorize staff to proceed with hiring four Temporary Operators, instead of filling 2 full-time Irrigation Operator positions, at an hourly rate of \$14.57, Range 60.

Roll call: Ayes – Wilkins; Cross; Fisher; Jager; Snider; Derezinski; Engle; Collins; Plummer.

Nays - None.

Motion carried

BPW-12-135 – INFORMATION ITEMS

The following items were presented for information:

1. Public Works Monthly Operations Report, July 2012.
2. Wastewater Monthly Operating Report, July 2012.
3. Muskegon County Regional Water System Policy Board Minutes – July 17, 2012 (draft).

BPW-12-136 – OLD BUSINESS

There was no old business.

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BPW-12-137 – NEW BUSINESS

There was no new business.

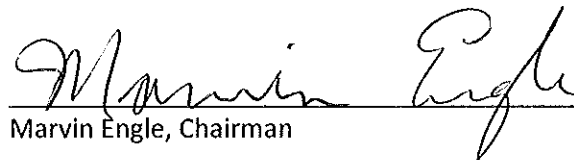
BPW-12-138 – PUBLIC COMMENT ON A NEW ITEM

There were no public comments on any new items.

BPW-12-139 – ADJOURN

Moved by Mr. Collins, seconded by Ms. Wilkins, to adjourn the meeting at 4:02 p.m.

Motion carried


Marvin Engle, Chairman

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AGREEMENT FOR MUNICIPAL WATER SUPPLY

This Agreement is effective on March 1, 2012, between the City of Muskegon, 933 Terrace Street, Muskegon, MI ("Muskegon"), the City of North Muskegon, 1502 Ruddiman Dr. North Muskegon, MI ("North Muskegon"), the City of Roosevelt Park, 900 Oakridge Road, Roosevelt Park, MI ("Roosevelt Park") and the County of Muskegon by and through its Board of Public Works, 990 Terrace St. Muskegon, MI ("County"). North Muskegon, Roosevelt Park and County are referred to herein as "Buyers" or collectively as "Buyer".

RECITALS

- A. Muskegon owns and operates a water production and distribution system with a capacity currently capable of serving the present customers of Muskegon's system and the estimated number of water customers to be served by the Buyers pursuant to this agreement.
- B. North Muskegon and Roosevelt Park each own and operate water distribution systems within their respective corporate boundaries. The County, pursuant to a Management Contract authorized by 1957 PA 185, MCL 132.731 *et seq.*, operates the Muskegon County Regional Water System within the Townships of Dalton, Fruitland, Laketon and Muskegon. The Management Contract provides that the Regional Water System is the exclusive supplier of municipal water within each township.
- C. The Buyers presently have separate contracts with Muskegon for water supply and the Parties now desire to enter into a single agreement for Muskegon to supply water to Buyers at a uniform rate.
- D. The parties enter into this agreement for the mutual benefit of Muskegon and Buyers.

THE PARTIES AGREE AS FOLLOWS:

1. **Supply of Water.** Muskegon shall sell, supply and deliver to Buyers, under positive pressure, such amounts of water as Buyers may require. The water shall be delivered to each Buyer at a master meter or meters used to measure the quantity delivered. The water shall have the same quality as that which Muskegon furnishes and delivers to its own customers and at a minimum meets the applicable purity standards of the State of Michigan, Department of Environmental Quality.
2. **Interruptions.** In the event the supply of water by Muskegon is interrupted for short periods of time, due to circumstances beyond its control, or due to breakdown in

Muskegon's system, such interruption shall not terminate or affect this contract, provided Muskegon exercises all due speed and diligence in eliminating the cause of such interruption, so as to minimize its duration.

3. Rates For Water Supply. The water supplied by Muskegon shall be paid for by each Buyer at a rate of 1.25 times the rate Muskegon charges a majority of its own commercial/industrial/residential customers within its corporate limits. The charges for water supply shall be determined using the metered volume of water supplied to each Buyer.

3.1 Muskegon reserves the right to increase its rates to its own customers for water service, and in such event, Buyer's rate shall increase at 1.25 times the increase charged Muskegon's customers.

3.2 Any rate increase shall not be effective, unless otherwise agreed, until Muskegon has given Buyers 90 days written notice thereof.

3.3 In the event any of the master meters fail to register the supply of water due to a breakdown or other failure, the charge for the water supply shall be determined by utilizing the average of the 30 day period prior to the breakdown. In the event the said measure is inaccurate because of a progressive breakdown or other reason, Muskegon reserves the right to use an average derived from a period of up to one year prior to the breakdown, in order to determine the charge for water supplied that meter.

3.4 The current water rate-setting methodology employed by the City of Muskegon does not include a ready-to-serve (RTS) component. Should the City opt to return to a rate format that includes a RTS charge, the Parties may negotiate a new rate multiplier.

3.5 The Parties may renegotiate the rate if Muskegon secures a substantial new municipal water customer (municipality). Muskegon may agree to sell water from its distribution system to any person or entity (including any municipal corporation or authority) outside Muskegon at a lesser rate than that payable hereunder, unless Buyer gives Muskegon written notice of unanimous disapproval within 90 days of receipt of a copy of the proposed agreement. In no event shall Muskegon sell water for less than Muskegon's cost to produce and pump finished water.

4. Term. This agreement has a term of Forty Years from the effective date, through _____, 2052. However, this agreement can be renegotiated if a regional water agreement is reached and Muskegon and Buyers agree to participate in same.

5. Muskegon the Sole Source of Water; No Resale. Buyers agree that they shall purchase all of their municipal water supply from Muskegon, delivered through master meters to each Buyer. There shall be no purchase of water by Buyers for their municipal systems from any other source, and the water supply furnished by Muskegon shall be solely for consumption within the systems of Buyers. Buyers shall not sell or supply

water to any other governmental unit not a Party to this agreement, except service to government facilities located within Buyer's system. Buyers shall not, however, be prohibited from expansion of their systems to other geographical areas such as Egelston and Moorland Townships, provided Muskegon's facilities can supply the required quantity of water.

6. Obligations of Muskegon.

6.1 Muskegon shall supply water to each Buyer in the quantities required and bill each Buyer for the amount actually metered, which readings will be provided to Buyer and verified upon request.

6.2 Muskegon shall maintain and replace the master meters as required, and shall charge the expense thereof to Buyer in addition to the water charges. Meter replacement shall be done by prior agreement or if meter accuracy is demonstrated to be outside the AWWA standard of +/- 2%. The cost of meter testing and/or calibration shall be shared equally by Muskegon and Buyer.

7. Obligations of Buyers.

7.1 Each Buyer shall pay the water charges set forth above promptly on a schedule to be determined by the Parties.

7.2 Each Buyer shall pay all costs for construction, design and improvement of its own system, meters and facilities such as, but not limited to, underground systems, overhead facilities, system pumps, meters, access and repair devices, all necessary to operate its water system or to increase its pressure over that supplied by Muskegon.

7.3 Each Buyer shall include in each system all necessary devices to prevent back flow of any kind into the water system which might contaminate the water system of either Party.

7.4 Each Buyer shall reimburse Muskegon as appropriate for the repair, maintenance and replacement of the master meters as referred to above.

7.5 Each Buyer shall be responsible for the maintenance, repair, and replacement of its own water system unless otherwise provided for through a separate agreement.

7.6 Each Buyer shall administer its own water customer services including billings, collections, determining its customer rates and passing any ordinances and regulations required to operate its system and comply with this agreement.

7.7 Each Buyer shall save and hold Muskegon harmless from any and all claims, demands or damages arising out of the design, construction or operation of the Buyer's systems, the master meter(s), any connections between the Parties' systems,

including but not limited to all damages, costs, attorney fees, laboratory expenses, fines, penalties, or any other expense arising out of any such claim.

8. **System Master Plan and Reliability.** The Parties understand and agree that the physical and financial health, reliability and growth of the entire system are directly related to that of the individual systems. Periodic reliability studies are also required as a condition of system licensing by the State of Michigan. To that end the Parties commissioned a *Water System Master Plan and Reliability Study* by Black and Veatch Corporation which was submitted to the Parties in March 2011. In addition to a detailed system analysis, the Study makes specific recommendations for system improvements and regional system planning. The Parties agree to jointly discuss and consider implementing the recommendations of the current and future Reliability Studies.

9. **No Third Party Beneficiary.** There shall be no other beneficiary or third party beneficiary to this agreement. No remedy is provided or intended by this agreement for the customers of any Party.

10. **Assignment.** This contract may not be assigned to another entity by any Party without prior written consent.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to its subject matter. This Agreement supersedes and/or replaces all prior oral or written Agreements between the Parties, and specifically, on its effective date, this Agreement terminates and replaces the following Agreements and Contracts:

- A. Agreement for Municipal Water Supply effective March 1, 2012, between the City of Muskegon and the City of Roosevelt Park.
- B. Agreement for Municipal Water Supply effective June 26, 2001, between the City of Muskegon and the City of North Muskegon.
- C. Water Purchase Contract effective October 7, 1981, between the City of Muskegon and the County of Muskegon.
- D. Water Purchase Contract effective April 22, 2003, between the City of Muskegon and the Charter Township of Muskegon assigned to the County of Muskegon.

12. **Severability.** In the event any provision of this agreement is determined to be invalid by any court or tribunal having jurisdiction, the balance of the agreement shall remain in full force and effect.

13. **Law Applicable.** This agreement shall be interpreted under Michigan Law.

14. **Notice.** Any notice required to be given or made to a Party must be in writing and will be deemed given when delivered personally or by registered or certified mail (return receipt requested), addressed to the Party at its address stated above. Addresses for giving notice may be changed by giving notice of the new address.

15. Approvals. This agreement shall be effective on the date above, but only after approvals given by the governing body of each Party.

AGREEMENT FOR ALTERNATIVE DAILY COVER

This Agreement is entered into by and between Resource Recovery Corporation of West Michigan ("RRC"), of 15220 68th Avenue, Coopersville, Michigan, and the County of Muskegon ("County"), of 990 Terrace St., Muskegon, Michigan, for providing the Muskegon County Solid Waste Management System (Landfill) with suitable alternate daily cover ("ADC") material, as defined in section (1) and (3) below. The parties agree as follows:

- (1) RRC shall provide to the Landfill, at its site at 9366 E. Apple Avenue, Ravenna, Michigan, approximately 500 tons of ADC material per week to be deposited at the location(s) the Landfill specifies. The material shall be foundry sand, shall generally not contain molded sand greater than four (4) inches in any direction, unless such sand will break down under normal depositing and spreading operations, and shall not contain other waste debris other than a material that qualifies as an ADC as defined in Section (3) below (collectively, "Suitable ADC"). Should the Landfill be unable to utilize the aforementioned molded sand, or should the material not break down under Landfill normal operating procedures, RRC shall endeavor to eliminate that component from the Suitable ADC upon 30 days notice from Landfill. If the Landfill requires additional material for special projects or other needs, RRC shall provide up to 1,500 tons of Suitable ADC per week. The total amount RRC provides shall only be limited by the amount of Suitable ADC available from RRC member and RRC authorized non-member foundries and the processed stockpile available at the RRC yard. If a sufficient amount of Suitable ADC is not available, RRC's failure to provide the

amounts specified above shall not be considered to be a breach of this Agreement.

The Landfill reserves the right to limit Suitable ADC receipts under this Agreement should business or regulatory conditions warrant a reduction in foundry sand use as an ADC. Only foundry sand approved by the Michigan Department of Environmental Quality as an ADC as provided in Section (3) below may be transported to and disposed of at the Landfill under this Agreement.

- (2) In exchange for supplying the landfill with 500 tons of Suitable ADC weekly and up to 1,500 tons weekly for special projects or other needs, the Landfill shall grant RRC with exclusive rights to provide foundry sand for Suitable ADC use during the term of this Agreement. This exclusive right shall not apply to disposal of foundry sand or residuals as waste at normal gate rates. Further, it shall not restrict the Landfill from utilizing other ADC materials that are deemed better than foundry sand for primary use during the course of this Agreement.
- (3) RRC agrees that it will not bring any material to the Muskegon County Solid Waste Management System other than material that meets the standards for management in a Type II Landfill pursuant to Part 115 of Act 451, Public Acts of Michigan 1994 ("Part 115") and regulations promulgated pursuant to Part 115, or meets the criteria listed in MDEQ Operational Memorandum 10, Revision 2. Furthermore, RRC will provide Landfill with the necessary sieve analysis or analytical information required for ADC under the MDEQ Operational Memorandum 10, Revision 2, and applicable Landfill operating license conditions.


- (4) Only Suitable ADC from counties that have within their Solid Waste Management Plans required by Part 115 reciprocal export/import authorizations with Muskegon County can be transported to and disposed of at the Landfill under this Agreement.
- (5) The County shall charge RRC a discounted tipping fee of \$2.50 per ton of Suitable ADC transported to and disposed of at the Landfill. Such tipping fee may be amended by providing notice to RRC thirty (30) days prior to the expiration of the then current one (1) year term.
- (6) RRC agrees to exonerate, save harmless, protect and indemnify County from and against any and all loss, damages, claims, suits, actions, judgments and costs, which may arise or grow out of any actions or omissions caused by RRC officers, employees, or agents under this Agreement.
- (7) The County agrees to exonerate, save harmless, protect and indemnify RRC from and against any and all loss, damages, claims, suits, actions, judgments and costs, which may arise or grow out of any actions or omissions caused by County officers, employees, or agents under this Agreement.
- (8) The term of this Agreement shall be from 9 August 2012 to 9 August 2013. This Agreement shall be automatically renewed on 9 August of each subsequent year, up to ten (10) additional years, unless cancelled by one of the signatories in writing no later than thirty (30) days prior to the automatic renewal date.
- (9) In addition to recovering damages, the prevailing party in a lawsuit for a breach of this Agreement shall be entitled to all reasonable costs and fees, including attorney expenses.

(10) This Agreement may be terminated by either party with or without cause by providing sixty (60) days written notice to the other party.

COUNTY OF MUSKEGON
BOARD OF PUBLIC WORKS

RESOURCE RECOVERY
CORPORATION OF WEST MICHIGAN

By: Marvin Engle, Chairman
Board of Public Works



By: Michael Lenahan
President