

**MUNICIPAL REVIEW COMMITTEE, INC.**

**BOARD OF DIRECTORS**

A quarterly meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, July 26, 2017 at 10:00 a.m. at the Town of Orono Municipal Building, 59 Main Street, Orono, Maine. In attendance were the following:

**Directors:**

Sophie Wilson, Orono  
James Guerra, Mid-Coast Solid Waste Corp.  
Catherine Conlow, Bangor  
Chip Reeves, Bar Harbor  
Karen Fussell, Brewer  
Tony Smith, Town of Mount Desert  
Susan Lessard, Town of Bucksport  
Mike Roy, City of Waterville  
Ken Fletcher, Winslow

**Staff:**

Greg Louder, MRC Executive Director

**Consultants:**

George Aronson, CRMC  
Daniel G. McKay, Eaton Peabody  
Denis St. Peter, CES, Inc.  
Jessamine Pottle, CES, Inc.  
Rebecca Twiss, CES, Inc.

**Guests:**

Hank Lang, PERC  
Gary Stacey, PERC  
Craig Stuart-Paul, Fiberright  
Shelby Wright, MRRA  
Angus Jennings, Town of Hampden

Jennifer Baroletti kept the minutes of the meeting and Chairman Reeves presided.

President Reeves convened the meeting at 10:06 a.m.

## **APPROVAL OF MINUTES**

The Board considered approval of the minutes of the April 26, 2017 quarterly meeting of the Board of Directors, and the July 11, 2017 special meeting of the Board of Directors. Board member Sophie Wilson requested revisions to the April 26, 2017 meeting minutes to clarify that the analysis of the transportation costs for bridge capacity was a preliminary discussion and not the plan moving forward. There being no further changes to the draft minutes as presented, upon motion made and duly seconded, it was unanimously:

**VOTED:** That the minutes of each of the April 26, 2017 quarterly meeting of the Board of Directors, and the July 11, 2017 special meeting of the Board of Directors hereby are approved in the forms presented to the Board at this meeting, as corrected.

## **CONSIDERATION OF FINANCIAL STATEMENTS & BILLS PAYABLE AS OF JULY 20, 2017**

Sophie Wilson reported that the Finance Committee met prior to this meeting and reviewed the Financial Reports. Year to date the MRC is on target and has spent \$2,405,625.03 of the \$4.5 million budget for both operations and capital. The Finance Committee also reviewed a quick construction timeline and the MRC has spent approximately 50% of the construction project costs.

Ms. Wilson presented bills payable totaling \$723,964.19, noting that there were no expenses outside of the usual course, with the exception of Sargent Corporation's invoice of approximately \$625,000, and that the Finance Committee recommends approval of the payables. Upon motion duly made and seconded, it was unanimously:

**VOTED:** That bills payable of \$723,964.19 as presented to the Board at this meeting hereby are approved for payment.

**CONSIDERATION OF THE AUDIT OF MRC FINANCIAL STATEMENTS FOR THE  
CALENDAR YEAR ENDING DECEMBER 31, 2016**

Donald Higgins, CPA of Loiselle, Goodwin & Hinds presented the preliminary independent auditor's report and financial statements, including management's discussion and analysis and notes to the financial statements. The audit includes a clean and unqualified opinion, and the financial statements are fairly stated in accordance with general accounting principles.

Mr. Higgins reviewed the report regarding internal controls. The only deficiency noted is MRC's reliance on its auditors to propose certain year-end adjustments and to assist in the preparation of financial statements, as it has done in prior years. While this is regarded as a material weakness, no change was recommended, because a change would not be cost effective in view of the MRC's limited staffing.

Mike Roy joined the meeting at 10:20 a.m.

After discussion, and upon motion made and duly seconded it was unanimously:

**VOTED:** That the preliminary auditor's report prepared by Loiselle, Goodwin & Hinds is hereby accepted as presented.

Mr. Higgins left the meeting.

Board Member Sophie Wilson asked about the status of the MRC's agreement with Loiselle, Goodwin & Hinds with regard to the audit for the coming year, and Greg Louder reported that the current agreement is renewed annually, and that costs may increase because of the added complexity.

**THIRD QUARTER 2017 TIPPING FEE CALCULATION; TRENDS IN MSW  
DELIVERIES**

George Aronson presented the PERC tipping fee calculation for the third quarter of 2017 of \$78.50 per ton. Tonnage from charter towns was up 1.7% compared to the third quarter of 2017. Based upon his review of the PERC materials, Mr. Aronson recommended that the Board vote to accept the tipping fee calculation. There being no discussion, and upon motion made and duly seconded, it was unanimously:

**VOTED:** To accept the tipping fee for the third quarter of 2017 at \$78.50 per ton as calculated by PERC.

**PERC FACILITY OPERATIONS REPORT**

Hank Lang presented the PERC facility operations report. Mr. Lang circulated a photo of the new Komptech grinder that PERC is renting, noting his satisfaction with the performance of the new machine. Mr. Lang reported generation and production rates for April, May and June 2017, noting that year to date generation is 3% ahead of budget.

No MSW was bypassed this quarter, which Mr. Lang credited to Gary Stacey and his excellent management practices for the tipping floor. Year to date, PERC has accepted 159,092 tons of MSW, processing 155,665 tons and bypassing 968 tons (mainly as a result of the scheduled outages at the beginning of the year). The new Komptech grinder arrived early in June and the PERC employees are learning how to operate it. The grinder is used for problem items such as rugs, pallets, and dishwashers. Both this quarter and year to date there were no emissions exceedances. The net income for the quarter was above budget, but year to date net income is behind budget due to performance credits.

Mr. Lang addressed the recent news article about PERC regarding a truck driver buried in waste, explaining that a delivery driver came in with a roll off and walked under the opened door

as he was dumping the trash onto the tipping floor. Plant personnel were notified and responded appropriately and extracted him immediately. He was taken by ambulance as a precaution but there were no life-threatening injuries. Mr. Lang wanted to clarify that there was no failure on the part of PERC. There have been no complaints about truck waiting times.

**CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY  
ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, 3<sup>RD</sup>  
QUARTER CASH DISTRIBUTION, TRACKING OF PERC CASH DISTRIBUTIONS  
TO SATISFY \$5,400,000 OWED PER THE SETTLEMENT AGREEMENT**

George Aronson presented an overview of the Charter Municipality Asset Management Report compiled by Commonwealth Resource Management. He summarized key elements of the Report noting that there are current balances of \$1,241,588.01 in the Custody Account, \$22,066,995.51 in the Tip Fee Stabilization Fund and \$193,414.59 in the Operating Budget Stabilization Fund. He recommended a quarterly cash distribution of \$642,906.03.

Mr. Aronson noted the target value step increase for contributions, which the board has elected to defer in the past. The Asset Management Report is written assuming that the Board takes no deferral action on that agenda item later in this meeting. Board Member Sophie Wilson suggested that the Board delay approval of the cash distribution until after the discussion regarding the step increase.

Gary Stacey of PERC reported on the spreadsheet that details payment of the \$5.4 million payable to the MRC over the remaining term of the PERC contract pursuant to the terms of the USAE litigation settlement, noting that approximately \$2.9 million has been paid to date. Mr. Stacy distributed a handout to Board members outlining the payments made to date and the schedule for future payments. Mr. Stacey noted that maintenance projects are planned which is

why some monthly amounts are slightly lower than others. The final payment will be made in February 2018.

**CONSIDERATION OF ADJUSTMENT TO THE JULY 1, 2016 SCHEDULED STEP INCREASE IN THE TARGET VALUE STEP INCREASE PLAN AND/OR SUBSEQUENT SCHEDULED STEP INCREASES**

George Aronson briefly reviewed the history of the Board’s consideration of the target step increase and its implications on cash flow and the ability of the MRC to meet its reserve fund requirements to joining members after April 1<sup>st</sup>. The amount of the increase totals approximately a half million dollars between now and April 1<sup>st</sup>. Following extended discussion, by a vote of 6 to 2, with Board Members Ken Fletcher and Mike Roy voting against, it was:

**VOTED:** That the Target Value Step Increase in the amount of Four Dollars (\$4) per ton as approved previously is hereby reaffirmed.

Upon motion made and duly seconded it was unanimously:

**VOTED:** That the Charter Municipality Asset Management Report hereby is approved in the form presented to the Board at this meeting and that a cash distribution in the aggregate amount of \$642,906.03 be made to the members.

**STATUS OF EQUITY CHARTER MUNICIPALITIES EXERCISE OF THE PUT OPTION FOR SALE OF LIMITED PARTNERSHIP INTERESTS IN PERC, LP**

Greg Lounder reviewed a chart of equity charter municipalities that have exercised the put option, noting that the deadline to exercise the put option is December 14<sup>th</sup>. Board Member Jim Guerra reported that four (4) towns in the Mid-coast area have approved the exercise but need to return their paperwork to the MRC. Mr. Lounder reported that staff is continuing to coordinate with Gary Stacey at PERC on outreach to members. Board Member Sophie Wilson reminded the Board that members do not have to exercise the put option, however if members do not exercise, they will need to negotiate their own deal.

## MRC REPORT ON CONSTRUCTION OF ACCESS ROAD AND UTILITY EXTENSIONS

Denis S. Peter of CES, Inc. reported on the status of the road and utility construction project in Hampden, noting that the project is into Phase II. There have been regular construction meetings with Chairman Reeves, Greg Louder, representatives of the Town of Hampden and DEP, and biweekly conference calls with DEP and Hampden officials regarding road and facility progress. The new water line on Coldbrook Road is complete, and the storm water treatment systems along the roadway are in progress. The water main along the access road is complete, and the construction of the road is ongoing and on track. Completion of the pavement and curb is scheduled for August, and landscaping and finishing the corridor is scheduled for September. Mr. St. Peter reported that we are mostly ahead of schedule for Phase II, and that there have been no safety or environmental issues. When asked about the bi-weekly calls with DEP, Mr. St. Peter reported that Craig Stuart-Paul of Fiberight had suggested that we have regular calls to keep DEP informed of the project's progress.

Craig Stuart-Paul of Fiberight provided an update on the clearing and grubbing of the site. Fiberight has paid the deposit for the MRF and steel building, and has contracted with Sargent Corporation to complete the site level, foundation excavation, and concrete. Pending final review of the foundation design, the concrete is expected to be poured in August/September and the building will go up in October. Mr. Stuart-Paul reported that financial close is set for Monday pending the final review and approval of agreements. Board Member Sue Lessard asked about the status of the application for a building permit with the Town of Hampden, and Angus Jennings, Town Manager of Hampden, reported that the status of the permits is based on both Fiberight's and DEP's sequence of events, to ensure that the Hampden permits align with the

DEP permits. Denis St. Peter reported that the foundation plans should be complete and delivered to both the Town of Hampden and DEP today.

**EXECUTIVE SESSION**

A motion was made, and duly seconded, at 11:26 a.m. to adjourn the meeting to executive session pursuant to 1 M.R.S.A. §405(6)(E) for discussion with legal counsel concerning legal rights and duties regarding (a) amendments to the Master Waste Supply Agreement and (b) amendment of the language of the Site Lease. Whereupon, it was unanimously:

**VOTED:** That the meeting is adjourned to executive session.

At 12:24 p.m., the executive session ended and the Board took a lunch break.

At 12:57 p.m., the board reconvened.

**MRC CONSIDERATION OF AMENDMENTS TO (A) THE MASTER WASTE SUPPLY AGREEMENT AND (B) THE SITE LEASE**

Dan McKay read the language of the resolutions recommended to be adopted regarding amendments to the Master Waste Supply Agreement and Site Lease. A motion was made and duly seconded, and a discussion ensued. Board Member Sophie Wilson asked George Aronson to summarize the discussions held in executive session concerning the amendments. Mr. Aronson noted that when the Master Waste Supply Agreement and Site Lease were first approved by the Board, there was an understanding that some amendments would likely be needed. The key changes since April, 2017 are that now there is two-step process for financial close; (1) the equity closing on or about July 31, 2017 and (2) the debt closing scheduled for October, 2017. Mr. Aronson noted concern by the equity contributor that contingencies be in place in the event the debt closing does not occur. The recommended changes to the agreements

stem largely from that particular concern. The MRC has made very clear the primary importance of the facility being up and running and ready to accept waste on April 1, 2018. The second issue was additional language for Fiberight to pay liquidated damages if Fiberight is not ready to accept waste on April 1, 2018. Fiberight is required to have contracts and subcontracts with similar provisions to focus all parties on having the same goal of April 1, 2018. It was noted that Coastal Resources of Maine, a special purpose entity formed to take title to the project, will be the entity signing the documents as the assignee of Fiberight.

Mr. Aronson reported that the MRC is comfortable with the financing plan put forth, and the financing schedule is starting to take shape. Representatives from the MRC have a meeting tomorrow with representatives from Finance Authority of Maine (“FAME”), the underwriters and counsel, and all signs indicate that we are on track and that financial close on the equity portion of the financing is imminent. There being no further discussion, it was unanimously:

**VOTED:** That the MRC is hereby authorized to enter into a First Amended Master Waste Supply Agreement among the MRC, Fiberight LLC, and Coastal Resources of Maine, LLC, and a Site Lease between the MRC and Coastal Resources of Maine LLC, in substantially the form presented to the meeting with such further amendments as may be approved by the signing officer, the execution and delivery of such agreements to constitute conclusive evidence of such approval.

**VOTED:** That each of the President and the Treasurer of the MRC, acting singly, hereby is authorized to execute and deliver on behalf of the MRC the First Amended Master Waste Supply Agreement and the Site Lease, and each is further authorized to execute and deliver such documents, and to take all such further action, as he or she may deem necessary or appropriate in order to fully implement the intent of these resolutions.

**CONSIDERATION OF DEFERRAL OF MRC’S TERMINATION RIGHTS UNDER SECTION 4.1(d) OF THE DEVELOPMENT AGREEMENT WITH FIBERIGHT UNTIL OCTOBER 1, 2017**

Consistent with the discussion held in executive session, and there being no further discussion, upon motion made and duly seconded, it was unanimously:

**VOTED:** That the MRC further defer its termination rights under §4.1(d) of the Development Agreement between the MRC and Fiberight to a date coincident with the date specified in §18.1(a) of the Site Lease.

**CONSIDERATION OF PROVIDING SURETY IN A FORM CONSISTENT WITH  
CONDITION 21 OF THE HAMPDEN PLANNING BOARD ORDER TO ALLOW THE  
ISSUANCE OF A BUILDING PERMIT PRIOR TO THE NEW ROAD BEING  
ACCEPTED AS A PUBLIC WAY**

Greg Lounder presented the Addendum to Planning Board Order dated April 12, 2017, noting that the Town of Hampden is requesting that the MRC post an acceptable form of surety to cover the estimated cost to complete the new road. CES is calculating the estimated costs to provide to the Town of Hampden. Dan McKay and Greg Lounder will work with Angus Jennings in the next few weeks to put something together in order to remain on track for the building schedule as it relates to the building permit. A general discussion ensued, and it was noted that this surety would consist of funds not previously authorized to be expended from the Tip Fee Stabilization Account, which decision should be properly noticed. Chairman Reeves suggested that the decision be tabled and Board member Sophie Wilson requested, and it was agreed, that staff obtain additional information to be brought back to the full Board, including a copy of ordinance, the amount of the surety, and what authority is needed for the Board to consider approval. Angus Jennings reported that he will work with the Town of Hampden's attorney to determine how much of the surety would be held back, noting that the Town of Hampden is simply looking to secure the town's interest, not to tie up more of the MRC's funds than necessary.

There being no further business to come before the Board, the meeting adjourned at 1:33

p.m.

Respectively submitted,

  
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Jennifer S. Baroletti

Dated: October 25, 2017