

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A special meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Friday, October 2, 2015 at 8:00 a.m. at the Town of Orono Municipal Building, 59 Main Street, Orono, Maine. In attendance were the following:

Directors:

Chip Reeves, Bar Harbor
Karen Fussell, Brewer
Tony Smith, Mt. Desert
Sophie Wilson, Orono
Elery Keene, Winslow
James Guerra, Mid-Coast Solid Waste Corporation
Ken Fletcher, Winslow
Catherine Conlow, Bangor

Consultants:

Greg Louder, MRC Executive Director
George Aronson, CRMC
Daniel G. McKay, Eaton Peabody
Denis St. Peter, CES, Inc.

Guests:

Peter Prata, PERC
Gary Stacey, PERC

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

President Reeves convened the meeting at 8:10 a.m.

**CONSIDERATION OF RESIGNATION OF VICE PRESIDENT JOSHUA RENY AND FILLING
VACANCY PER SECTION 5.9 OF THE MRC BYLAWS**

The Board first considered the recent resignation of Board Member and Vice President Joshua Reny of Fairfield. Board member Sophie Wilson made a motion to accept Mr. Reny's resignation with deep appreciation for his contribution to the MRC and with best wishes for the future. Upon motion made and duly seconded it was unanimously:

VOTED: That the resignation of Joshua Reny as Vice President and as a director of the MRC hereby is accepted.

The Board then discussed filling the vacancy on the Board. A motion was made to nominate Barbara Veilleux to fill the vacancy until December 31, 2015, at which time the vacancy would be filled starting January 1, 2016 by next election process, the results of which would be announced at the annual meeting in December. Board member Karen Fussell reminded the Board of the option to leave the Board seat vacant until the annual meeting but, given the circumstances, the Board agreed that the vacancy should be filled immediately, and noted that Barbara MVeilleux has attended all recent MRC Board meetings and is very well versed. After further discussion, the motion was duly seconded it was unanimously:

VOTED: That Barbara Veilleux hereby is elected to fill the vacancy on the Board of Directors created by Mr. Reny's resignation to serve until December 31, 2015.

The Board then discussed appointing a Board Member to serve as Vice President. Upon motion made and duly seconded it was unanimously:

VOTED: That Jim Guerra hereby is elected as Vice President of the MRC.

EXECUTIVE SESSION

A motion was made, and duly seconded, at 8:15 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 proprietary technical information provided by Fiberight to support MRC independent evaluation of proposed contract terms and verification of the feasibility of the Fiberight facility at proposed performance levels and the \$70 tip fee, and pursuant to 1 M.R.S.A. §405(6)(f) to discuss proprietary financial information received by the MRC from Fiberight. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

Cathy Conlow joined the Executive Session at 9:07 a.m.

At 11:01 a.m., executive session ended and the regular meeting reconvened.

CONSIDERATION OF A RESOLUTION THAT FINDS THAT FIBERIGHT HAS MET THE FEASIBILITY MILESTONE SET FORTH IN THE FIBERIGHT DEVELOPMENT AGREEMENT

Greg Louder reported that the Board has spent several hours reviewing technical information to determine whether the feasibility milestone contained in the development agreement with Fiberight has been met. Chairman Reeves indicated that he would entertain a motion finding that the feasibility milestone contained in the development agreement with Fiberight has been achieved. A general discussion ensued. It was noted that the information provided by Fiberight and the MRC's consultants has allowed the Board to thoroughly review the Fiberight technology and the supporting project financials. Mr. Fletcher noted that the analysis provided by George Aronson of Commonwealth Resource Management Corporation was excellent, clearly exemplifying his decades of experience working in the industry. After comprehensive due diligence, the Board has attained a high level of confidence in the accuracy and reasonableness of the figures presented and is prepared to find that Fiberight has met the project feasibility milestone. There being no further discussion, it was unanimously:

VOTED: That the report and recommendation of Commonwealth Resource Management Corporation, as contemplated by the Milestone Schedule and as presented to the meeting, hereby is accepted as verification that Fiberight has achieved the Feasibility Milestone as set forth in the Development Agreement.

George Aronson suggested that the Board consider re-engaging the University of Maine professionals who conducted the peer review of Fiberight's technology to review and comment on certain elements of Fiberight's project pro forma relating to biogas conversion rates and post hydrolysis solids generation rates. After discussion, and upon motion made and duly seconded, it was unanimously:

VOTED: That Chairman Reeves and the MRC staff hereby are authorized, acting singly, to re-engage individuals at the University of Maine or other technical advisors to provide review and comment on Fiberight's project pro forma relating to gasification.

Greg Louder noted that the budget contains a line item for post-2018 contingencies which has yet to be tapped during this fiscal year so there are sufficient funds available in the budget to accomplish this task.

CONSIDERATION OF APPROVING A DRAFT FORM OF MUNICIPAL JOINDER AGREEMENT, A SITE LEASE AGREEMENT AND MASTER WASTE SUPPLY AGREEMENT TO BE SENT TO MRC COMMUNITIES FOR REVIEW AND FEEDBACK

George Aronson provided an introduction regarding the three agreements to be discussed – the Municipal Joinder Agreement, Site Lease Agreement and Master Waste Supply Agreement, noting that the MRC is putting forth a plan that includes not just an agreement with Fiberight but an entire plan for the facility and the agreements are crafted toward that objective.

Dan McKay explained that the three agreements integrate with one another. The Site Lease, as conceived, contemplates that MRC will own the real estate and lease the property on a long term basis to a developer which would construct the building and operate the project. The Master Waste Supply Agreement (“MWSA”) is an agreement between the MRC and Fiberight that deals with delivery of waste to that facility once developed, and the Municipal Joinder Agreement serves as a mechanism by which each MRC member community agrees to deliver waste to the Fiberight facility under the terms of the MWSA.

Mr. McKay explained that by approving the Joinder Agreement, each municipality would be in effect signing on to the terms of the MWSA. There will be a Joinder Agreement between the MRC and

each participating municipality. Every member community would sign the same agreement, similar to the current arrangement with PERC. The initial term of the Joinder Agreement is fifteen (15) years commencing on the start of commercial operation of the facility. The Site Lease contemplates up to three (3) five (5) year extension terms, which member communities can opt to exercise or not at their option. Member communities would agree to deliver MSW under their control exclusively to the Fiberight facility and would commit to an estimated annual tonnage. It was noted that the estimated tonnage is not guaranteed annual tonnage with penalties, and that no community faces penalties unless it does something intentional to breach the agreement. The general concept is that the member communities are collectively agreeing to give assurance and there is collective responsibility if a shortfall occurs. Member communities would continue any recycling efforts they currently have and continue MSW disposal as usual. It was noted that the MRC will establish reserves which hopefully will be adequate to address any payments associated with a shortfall in committed tonnage under the MWSA. In the unlikely event that a shortfall occurs, and existing reserves are inadequate to cover it, each community could be assessed an amount to cover the shortfall.

Lastly, Mr. McKay noted that member communities would agree only to deliver acceptable waste and be responsible to ensure that unacceptable waste is not delivered to the Fiberight facility. The initial tip fee of \$70/ton will be invoiced weekly. A rebate regimen is expected to be implemented assuming successful operation of plant, however the precise parameters of that program have not yet been determined and are still under discussion.

By signing the Joinder Agreement, member communities would each be authorizing the MRC to administer its interest and to accept MRC's Bylaws and Articles of Incorporation. The Joinder Agreement accounts for contingencies in the event that bridge capacity or bypass is needed, including a provision that the joining member would send waste to the landfill contracted to accept that waste, with the goal that the MRC has secured existing contracts to cover the member communities in the event of a delay in project or a bypass situation. The MRC will continue to manage the disposition of assets including the current reserve of funds being maintained. The exact disposition of current assets is yet to be determined.

Board Member Tony Smith reported his understanding that Greg Louder and George Aronson had spent a couple of days in Baltimore meeting with Fiberight representatives and reviewing the agreements. Based on their discussions, Fiberight did not have many substantive changes to the agreement. Chairman Reeves opened the floor to questions.

The Board suggested several minor edits to the MRC staff and consultants for clarification on the draft documents before circulating the documents to the member communities for review and approval. A general discussion ensued regarding the estimate annual tonnage to be provided by each member community. It was clarified that the MRC is requesting a good faith estimate of the annual tonnage but reiterated that there would be no penalty associated with falling below the estimate absent bad faith. If a delivery shortfall results in a revenue shortfall, a penalty would be assessed against the MRC as a whole and likely would be paid out of existing reserves. If the shortfall does not affect Fiberight's ability to achieve a pre-determined return, then there would not be a penalty.

The Board also discussed removing language that might be interpreted to prohibit “pay as you throw” programs, as this interpretation of a limit on initiating new programs could be unacceptable for some communities. The Board agreed that there should be flexibility to give individual waivers on small programs with the goal of not materially affecting organic materials. The Board also discussed the capacity for growth and upper limits of this facility, and whether municipalities can be assured that if their estimate is low the facility can take the increased tonnage. George Aronson reported that his review of the capacity issues and alternatives indicates that if tonnage is significantly more than expected the facility can add employees and shifts or potentially add a satellite processing facility to account for the additional tonnage.

The Board generally discussed the parameters of the MRC's role in accepting or approving the tonnage estimate to be provided by each member community. Certain criteria would be established to evaluate the estimate, as it may not necessarily be based on the member communities' historical average. Dan McKay suggested adding the following language to Section 3.3(b) of the agreement: “to be consistent with guidelines established from time to time by Board.”

At 12:15 p.m. the meeting convened for lunch.

At 12:41 p.m., the meeting reconvened.

The Board continued the discussion of the draft Joinder Agreement. With regard to transportation allowances generally, not just with regard to bridge capacity, Greg Louder reported that the MRC is commissioning a GIS based assessment to gain a better sense of its options. The Board generally discussed transportation costs for bridge and bypass options, and it was determined that the MRC should set a policy of how this issue will be handled. After further discussion, the Board agreed that the Waste Flow Committee will analyze the data provided by CES, Inc. and assemble a list of possible approaches that could lead to recommendations for the Board.

The Board engaged in a lengthy discussion regarding the Force Majeure clause, including the risk that a change in law could result in member communities paying a higher tip fee. Under the current agreement, in the event of a force majeure, the affected party would prepare a Force Majeure Plan. If (i) the proposed Force Majeure Plan is rejected by the other party, and the parties cannot come to an agreement, and (ii) the impact proposed under the Force Majeure Plan would result in an increase of less than 20 percent in the tip fee, then the proposed increase would stay in effect on an interim basis until the dispute has been arbitrated. . The Board agreed that it is important to clarify this concept for member communities.

The Board discussed the timeline and logistics for sending materials out to municipalities for approval, and it was recommended to include a bullet point list of major points to make the package less overwhelming to receive. Board Member Cathy Conlow suggested that each board member follow up with their member communities within a week after distribution of the materials to answer any questions. Upon motion made and duly seconded it was unanimously:

VOTED: That the MRC staff and consultants are hereby authorized to finalize drafts of the Site Lease Agreement, Master Waste Supply Agreement and Municipal Joinder

Agreement based on the Board's comments at this meeting and circulate the drafts to member communities.

**CONSIDERATION OF ESTABLISHING THE SOURCES AND USES OF RESERVE FUNDS
MANAGED BY THE MRC FOR THE BENEFIT OF THE MRC COMMUNITIES THAT
WOULD BE INCORPORATED IN THE DRAFT MUNICIPAL JOINDER AGREEMENT TO BE
SENT TO THE MRC COMMUNITIES FOR REVIEW AND FEEDBACK**

George Aronson reviewed the spreadsheet of the sources and uses of reserve funds, noting the most time sensitive items for Board agreement include: (1) purchase land and build infrastructure (\$5,000,000); (2) reserve against building purchase contingency (\$5,000,000); and (3) Delivery Sufficiency Reserve (\$3,000,000).

A general discussion ensued regarding making determinations as to the disposition of these funds. The Board discussed departing equity municipalities and potential ways to incentivize equity charter municipalities to sign on to the Joinder Agreement and how to differentiate between equity members, charter members, and new members. The Board agreed that the Finance Committee will analyze this issue and report back to the Board. George Aronson will prepare a memorandum scoping issues relating to the reserve of funds for discussion by the Finance Committee and for presentation to the Board for approval.

**COMMUNICATIONS COMMITTEE REPORT ON MEMBER COMMUNITY
COMMUNICATIONS FOLLOW UP SUBSEQUENT TO SENDING THE DRAFT JOINDER,
SITE LEASE AND MASTER WASTE SUPPLY AGREEMENTS**

Board member Karen Fussell, Chairman of the Communications Committee, provided the Communications report. Ms. Fussell reported that the Committee is working diligently to prepare the package to member communities to be clear on how to review the agreements and what the MRC expects from each member community.

The Committee has been meeting and communicating by email and has some concerns concerning the current relationship with Preti Flaherty, particularly with regard to the transition from Dustin Brooks to Jessica James. Ms. Fussell noted that this is a critical time for the MRC and Preti Flaherty isn't performing the level of services that the MRC needs at this time. MRC's engineering

consultant, CES, Inc., has a marketing director and has provided a scope of work at the same rate as Preti Flaherty of \$5K flat per month. Greg Louder recommended to the Board a provisional change o CES, Inc. for three (3) months, and at the end of the year the Board can reassess whether to continue with CES or request proposals from other companies to provide these services to the MRC. Upon motion made and duly seconded it was unanimously:

VOTED: That the Executive Director, in connection with Communications Committee, is hereby authorize to finalize the arrangement to engage the services of CES, Inc. contained in the scope of work for a provisional period of three (3) months.

Karen Fussell then reported that the Communications Committee will finalize the packages to the member communities to go out within the next ten (10) days, and that once the packages have been sent out, the Communications Committee would like to re-engage the board and have CES, Inc. take an active role in reaching out to communities to answer questions.

DISCUSSION ON THE ROLES AND RESPONSIBILITIES OF COMMITTEES ESTABLISHED BY THE BOARD OF DIRECTORS

Upon suggestion from Board Member Sophie Wilson, this item was tabled until the next board meeting.

CONSIDERATION OF FINANCIAL STATEMENTS AND CURRENT BILLS PAYABLE

Sophie Wilson presented current bills payable in the amount of \$85,173.95. Upon motion made and duly seconded it was unanimously:

VOTED: That the bills payable of \$85,173.95 presented to the Board at this meeting hereby are approved.

There being no further business to come before the Board, the meeting adjourned at 3:05 p.m.

Respectively submitted,



Jennifer S. Baroletti

Dated: October 28, 2015