

**MUNICIPAL REVIEW COMMITTEE, INC.**

**BOARD OF DIRECTORS**

A special meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Thursday, November 19, 2015 at 9:00 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  
Barbara Veilleux, Penobscot County  
Tony Smith, Mt. Desert  
Sophie Wilson, Orono  
Elery Keene, Winslow  
James Guerra, Mid-coast Solid Waste Corp.  
Ken Fletcher, Winslow  
Catherine Conlow, Bangor

**Consultants:**

Greg Louder, MRC Executive Director  
George Aronson, CRMC  
Daniel G. McKay, Eaton Peabody  
Jessamine Pottle, CES, Inc.

**Guests:**

Craig Stuart-Paul, Fiberright

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

Chairman Reeves convened the meeting at 9:07 a.m.

**CONSIDERATION OF FINANCE REPORT AND BILLS PAYABLE FOR NOVEMBER 2015**

Sophie Wilson presented current bills payable in the amount of \$58,110.32. She reported that the MRC currently has \$152,726.39 in the Operating Account prior to payment of these bills. Upon motion made and duly seconded it was unanimously:

**VOTED:** That the bills payable of \$58,110.32 presented to the Board at this meeting for November, 2015 hereby are approved.

**DISCUSSION OF MEMBER COMMUNITY FEEDBACK ON OCTOBER 13, 2015 MAILING OF DRAFT CONTRACTS (JOINDER AND MASTER WASTE SUPPLY AGREEMENTS AND SITE LEASE) AND CONSIDERATION OF AMENDMENTS TO THE DRAFT AGREEMENTS TO INCORPORATE MEMBER FEEDBACK**

The Board reviewed the updated drafts of the Municipal Joinder Agreement, Master Waste Supply Agreement and Site Lease. Dan McKay reported that he has synthesized a volume of edits that came from many sources, including board members, member communities, and financing partners. The edits to the Master Waste Supply Agreement came from Fiberight and potential financing partners. Mr. McKay reported that some comments conflicted and some overlapped. The Board agreed to review the overarching themes of the edits rather than going through each agreement line by line.

Mr. McKay presented a summary of the technical changes to the agreements, beginning with the Municipal Joinder Agreement. There were several additions to the recitals with the intent to provide background regarding why the MRC is embarking on this approach to post-2018 MSW disposal rather than continuing on with PERC. In the delivery requirements section, some changes were made to flesh out the MRC's review process of annual tonnage estimates provided by Joining Members. Greg Louder reported that this was an edit suggested by a member community and is important for the financing partners to know that the MRC will play a role in the ongoing monitoring of sufficient tonnage. Mr. McKay explained the waterfall provided for payment of Delivery Sufficiency Payments. He also noted apparent concern that the MRC is becoming a separate entity with interests apart from its members. He noted the need for more communication to emphasize that the MRC continues to have no role other than to promote the best interests of its membership. Greg Louder supported this comment noting that member community feedback has been that the goal of the MRC continue the way that it has always been.

A lengthy discussion ensued regarding the language in the Joinder Agreement concerning the level of consent necessary for individual member communities to implement recycling. The Board discussed the need to balance autonomy within each community with concerns in the investment community that the MRC would have a role in ensuring a reliable waste stream through the life of the

contract. If individual communities make minor changes which work within their individual communities, the collective effect could negatively affect the MRC's ability to meet its collective delivery commitment. After discussion, it was suggested to replace “consent” with “notice with reasonable lead time.”

George Aronson led a discussion regarding guaranteed annual tonnage (“GAT”) and penalties, noting that the MRC is bucking the national trend of requiring GAT as a means of financing waste facilities. The MRC is trying to avoid GAT but there must be some minimum delivery threshold or else the project will not be financeable. GAT is difficult in an environment in which everyone is trying to reduce waste. The Board discussed the different regimes for “diversion” as opposed to “reduction.” In summary, the two (2) ways to fall below the 150,000 ton threshold are (1) reduction, in which case the MRC communities are agreeing to collectively bear the burden of any penalty; and (2) diversion, in which case the member community responsible for the diverting would be individually responsible for any penalty.

Board member Karen Fussell suggested that Section 4.4 of the Joinder Agreement be augmented to include a clear statement of intent noting that the MRC will maintain its advisory role as an advocate for member communities.

After discussion, the Board agreed to make a global change in the agreements to replace “consult” with “opportunity to be heard” to be clear that the MRC board makes decisions but continues to have the interest of its member communities at the forefront. It was also noted that a provision could be added that provides member communities with an “opportunity for notice and opportunity to be heard” regarding any proposed amendments to the Master Waste Supply Agreement Or the Site Lease, as member communities are not a party to those agreements.

At 10:20 a.m., the meeting adjourned for a break.

At 10:29 a.m., the meeting reconvened.

Dan McKay reviewed proposed revisions to the Master Waste Supply Agreement, noting minor clarifications to a few definitions. The Board discussed generally the definitions of Acceptable and Unacceptable Waste and related responsibility.

The Board discussed the tonnage calculations contemplated by Section 5.2. If communities deliver all MSW to Fiberight to sort, that member community would get credit for the tonnage but pay for the associated tip fee. This arrangement is a trade off against implementing single sort and reducing the amount of MSW delivered to Fiberight and risking not making the estimated minimum tonnage. The Board discussed the edits to Section 12 regarding step-in rights. Mr. McKay indicated that a major investor wants assurance that in the event of a default, the investor would be able to “step in” and fulfill unfulfilled contract obligation and that the MRC would accept that as performance of the contract without declaring a default.

Mr. McKay next reviewed proposed changes to the Site Lease, indicating that most are conforming changes for consistency with revisions to the other documents. The Board discussed provisions related to nuisance impact. The MRC had originally proposed allowing the landlord to impose certain nuisance requirements more strict than regulatory requirements, however the financing partners would not agree to this. After discussion, it was suggested to add a reference to DEP’s standard for noise. The Board discussed the importance of being mindful of environmental concerns such as noise and odor, and Craig Stuart-Paul of Fiberight indicated that he is forming an odor committee, as there are a lot of requirements in the DEP permit to manage odor, noise and other environmental concerns.

The Board next discussed Exhibits C and D to the Site Lease. George Aronson explained the depreciation chart, which was taken directly from IRS schedules and doesn’t necessarily reflect the market value of the property. The Board discussed the delivery sufficiency provisions of Exhibit B to the draft Master Waste Supply Agreement. Mr. Aronson noted that the MRC is still waiting for Fiberight’s comments on this provision but that it corresponds with previous discussions.

At 12:10 p.m., the meeting adjourned for lunch.

At 12:51 a.m., the meeting reconvened.

**CONSIDERATION OF APPROVING DRAFT PROVISIONS OF EXHIBIT F OF THE MASTER  
WASTE SUPPLY AGREEMENT – REBATE CALCULATION**

George Aronson explained the underlying premise of the rebate provisions is that there are two pieces to be shared: tip fees over a certain threshold and product revenues over a certain threshold. Mr. Aronson further explained that all numbers are in brackets, as they are suggested numbers based on a pro forma which has since changed. The general concept is that rebates will come from overages, and that the rebate structure has to be set up so investors benefit from the amount of tonnage. He noted that revenues from tip fees is the sum of all from all sources of MSW delivered to Fiberight, not just tonnage attributed to MRC communities.

A general discussion ensued regarding what would constitute a reasonable split of revenues from which rebates are derived between Fiberight and the MRC communities Mr. Aronson noted that in his review of the pro forma and different scenarios, the investors aren't seeing astronomic returns to the detriment of communities, they have a reasonable window of return for a strategic investor, and they are putting up most of the money for the project. A general discussion ensued regarding adding, as a few members have suggested, provisions granting to members authority to overrule board decisions by taking a member vote. The need to balance member input with allowing the board sufficient flexibility to effectively administer the agreements for the benefit of the membership as a whole was discussed. It was suggested to give communities a reasonable level of comfort, a provision could be added to the bylaws allowing a member to call a special meeting for the members to vote and potentially veto certain fundamental decisions made by the Board.

The Board next discussed how best to treat Departing Municipalities who choose to leave MRC and then seek to buy back in later in the project. It was agreed that there has to be some disincentive for procrastination, because if everyone waits there will not be a project. After discussion, the Board agreed

that each Departing Municipality that chooses to rejoin after the deadline would be restored as an Equity Charter Member but would be required to pay the increased non-charter tip fee. The Board agreed that the contract should provide that this could be waived under extraordinary circumstances if the municipality could show good cause as determined by the Board.

At 2:35 p.m., Ken Fletcher and Elery Keene left the meeting.

**DISCUSSION AND PROGRESS REPORT ON THE NATURE OF CHANGES ANTICIPATED  
TO THE MRC BYLAWS**

Dan McKay advised the board that he has started work on restating the bylaws. There are a number of necessary edits as the bylaws are structured heavily around the current arrangement with PERC. The revisions will be designed to work with the Fiberight project but, to the extent possible, not be as specific. As discussed earlier in the meeting, Mr. McKay will also insert a provision that would empower member communities with respect to certain decisions to call a special meeting and vote on certain fundamental decisions (e.g., termination/extension of the basic agreements, borrowing above a certain level, certain capital expenditures, etc.). A draft of the restated bylaws will be circulated to the member communities and the Board requested that Mr. McKay include a cover memo outlining the changes.

**CONSIDERATION OF A SCOPE AND FUNDING OF AN INDEPENDENT LEGAL REVIEW  
OF THE DRAFT CONTRACTS (JOINDER AND MASTER WASTE SUPPLY AGREEMENTS  
AND SITE LEASE) TO BE ADMINISTERED BY CERTAIN INTERESTED MRC MEMBERS  
FOR THE INFORMATION AND BENEFIT OF ALL MRC MEMBERS**

Roger Raymond of the Town of Hermon provided a scope of work prepared by Perkins Thompson for the legal review of the existing agreements with Fiberight, focusing on municipal risks, responsibilities and obligations. The estimated cost of the review is \$9,000-\$12,375 (which includes a government hourly rate discount) and Mr. Raymond has asked if the MRC would consider underwriting the cost of the review.

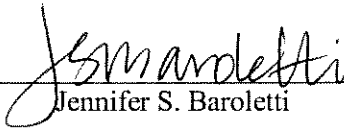
A general discussion ensued. It was determined that the MRC will only agree to reimburse the Town of Hermon if the work product generated by the review is shared with the MRC and all member communities. Mr. McKay will draft a simple contract which contains the terms of reimbursement.

After discussion, it was agreed that the MRC will agree to pay for this one review, which shall be made available to all municipalities within thirty (30) days. The MRC will pay the bill directly to Perkins Thompson within thirty (30) days, in an amount not to exceed Fifteen Thousand Dollars (\$15,000). Upon motion made and duly seconded, and with Board Members Keene and Fletcher absent, it was:

**VOTED:** That the MRC is hereby authorized to pay to Perkins Thompson an amount not to exceed Fifteen Thousand Dollars (\$15,000) for an independent review of the Fiberright agreements, which review shall be made available to all municipalities within thirty (30) days.

There being no further business to come before the Board, it was adjourned at 2:59 p.m.

Respectively submitted,

  
Jennifer S. Baroletti

Dated: January 27, 2016