

MINUTES of the **MEETING** of the **ERIE COUNTY WATER AUTHORITY** held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 3rd day of May, 2018 as amended August 16, 2018 .

PRESENT: **Jerome D. Schad, Chairman**
Mark S. Carney, Vice Chairman
Karl J. Simmeth, Jr., Treasurer
Terrence D. McCracken, Secretary to the Authority
Robert J. Lichtenthal, Jr., Deputy Director
Earl Jann, Executive Director
Russell J. Stoll, Executive Engineer
Karen A. Prendergast, Comptroller
Daniel J. NeMoyer, Director of Human Resources
Jacqueline Mattina, Deputy Associate Attorney
Darlene Sikorski-Petritz, Deputy Associate Attorney
Richard Planavsky, Chief Business Officer Manager/Budget Director
John J. Mogavero, Chemist/Chief WTPO
Paul J. Whittam, Director of Water Quality
Susan L. Rinaldo, Cash Manager
Joseph T. Burns, Deputy Administrative Director
Anthony Alessi, Claims Representative/Risk Manager
Steven V. D'Amico, Business Office Manager

ATTENDEES: **Sean Dwyer**
Mike Wymer

CALL TO ORDER

PLEDGE TO THE FLAG

I. - ROLL CALL

II. - READING OF MINUTES

Motion by Mr. Simmeth seconded by Mr. Carney and carried to waive the reading of the Minutes of the Meeting held on Wednesday, April 25, 2018.

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

III. - APPROVAL OF MINUTES

Motion by Mr. Simmeth seconded by Mr. Carney and carried to approve the Minutes of the Meeting held on Wednesday, April 25, 2018.

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

IV. - REPORTS

SECRETARY

1. Public Relations RFP

Secretary McCracken noted that in the staff packet there is a RFP for public relations services. This is relative to item no. 5 on the agenda in termination of that contract. The staff did some research as to who the RFPs would be going out to. They also did research as to who does that type of business in the area. He asked that if the Commissioners should know of anyone else who this should be sent to please let him know.

2. Board Meeting Schedule – Deadline Schedule Changes

Secretary McCracken noted that in the staff packet there is a board meeting schedule for several months moving forward. It is tentative at this time. He asked that the Commissioners review it and let him know if they may have some vacation plans so adjustments can be made. He would like to finalize this some time at a future meeting. Chairman Schad noted there might be one meeting in late summer he will be away and may have to adjust the schedule. He agreed to finalize this at the next meeting. He mentioned that this particular schedule is extended out through December. It will be his effort to make sure that we have a long term look at our schedule. We can adjust it but from now on people will know months ahead of time what our schedule is so that we can inform the public. Once this is finalized he would like to have the schedule sent to the media.

LEGAL

No Report

FISCAL

1. Bond Counsel RFI

Deputy Director Lichtenthal reviewed with the Commissioners his memo to them regarding the RFI for Bond Counsel Services. It now becomes the Commissioners prerogative that based on their comfort level with the firms, with the conflict issue, and with the pricing to choose one and give staff the direction to be able to try to come to an agreement with that firm so we can move forward with the bond offering. They are all good firms. Their resumes were impressive, they worked on the type of the business that we work on. Chairman Schad expressed that "unaware of conflicts" doesn't tell him that they actually looked. Trespasz & Marquardt has done some work for other water authorities - some of our peer authorities MCWA and OCWA. Again, their pricing is the second highest. One thing that comes out of this is it doesn't stop us from being able to negotiate some of these prices and some of them said that in their response. Vice Chairman Carney asked for Mr. Lichtenthal's recommendation. He said he'd make one now but he really wanted to leave it to the Commissioners since there are choices to be made here. He would be comfortable with Trespasz & Marquardt, Philips Lytle and Pearlman & Miranda, LLC. if they can become more definitive on the conflict issue - the "believe none" vs. you have two that flat out state no conflict. Chairman Schad asked if Trespasz & Marquardt are one of the ones who said they are open to negotiating. Mr. Lichtenthal said yes they all did. Chairman Schad noted that he assumes even if they don't say it they'll negotiate if we say you'll get the job as long as we can negotiate. Vice Chairman Carney feels it doesn't make any sense to negotiate hourly because they'll find some way to use it. Wouldn't it be better to have a cap? Chairman Schad agreed. Chairman Schad said the other question I have is - this right before we got notice of the conflict with Barclay Damon there was a calendar of our prospective bond and now we are moving back a little and the issue for the delay was where there would be a shift in the interest rate price. Mr. Lichtenthal stated that based on the recent actions and the reports from the Federal Open Market Committee regarding interest rates, the March meeting report states that the Federal Reserve is staying within the targets 1.50% to 1.75%- that's where it's been. Their next meeting is June 13th. Mr. Schad noted it won't be done by then. We've lost four weeks maybe. Mr. Lichtenthal stated that on today's agenda there is a resolution with a blank with no recommendation of a firm to have this discussion with you at the meeting but that resolution can be tabled for two weeks and if you want me to take some specific actions and specific discussions with these firms to try to nail it down then let's take the two weeks and do it. Mr. Carney said the discussion is going to be whether or not these three firms would cap their fee at \$25,000 - bill us hourly but your cap is \$25,000. Mr. Lichtenthal asked for \$30,000 just in case because they are jumping in late and they are going to have to do some reading. Commissioners Schad and Simmeth would be inclined to go with \$30,000. Mr. Carney suggested to negotiate low but no higher than \$30,000. Chairman Schad suggested that we limit it to two firms and that Pearlman's "believe none" is unsatisfactory and don't want to waste our time with a firm that is going to say "well we didn't believe there was and now we have one". So

that leaves only Philips Lytle and Trespasz & Marquardt and they are way too high. Deputy Director Lichtenthal mentioned as you can see the less one would come in at around 50 at a \$20 million beginning so that's why it has to be negotiated. Mr. Schad stated price wise that leaves only Philips Lytle. Mr. Schad suggested that this item four be tabled and let Mr. Lichtenthal talk to Philips Lytle and Trespasz & Marquardt and see if we can get this deal cut and authorize it on the 17th. Mr. Lichtenthal noted he will keep the Commissioners posted on the status of those discussion as we go along so that they are up to speed when we get to the 17th with a resolution. Commissioner Simmeth would like Mr. Lichtenthal to make a call to Pearlman & Miranda and ask them what they are saying by "believe none". He noted that running down their list they have represented quite a few people in the same type of business that we are in. Chairman Schad agreed to call all three.

OPERATIONS

1. Landscaping Contract - Preferred Source

In Paul Riester's absence Bob Lichtenthal distributed a memo regarding the landscaping contract and the hiring of a preferred source. There are questions regarding preferred source contracting and the landscaping contract with the New York State Industries for the Disabled (NYSID). Basically, Paul wanted to give you a run down on what our experience has been with the NYSID. The law as it relates to public authorities and our requirement to contract is that if they are available to do it and if they want to do the work, we have law requirements to deal with them. At the current time the Authority does have two of these contracts one for cleaning services at the Service Center and the other one that we have completed and are asking the Board to enter the agreement for the next three years for landscaping services at our various facilities. We are happy to report the landscaping work that was done under this last three year contract was exemplary. Our facilities looked good, no issue, they did their job. So this worked well not to mention there was a significant savings over commercial firms even moving forward with some increases in price we are still below we were the last time with a commercial firm. There are obviously good business issues here for the Authority and some good public policy issues regarding working with NYSID so the recommendation is to keep moving through with this. Mr. Riester wanted to share that he has had some discussions because Leadership of NYS Disabled and OGS has been at the conference that Paul has been at in Albany. Paul asked the question at the conference about subcontracting which Commissioner Carney was concerned with. Paul Riester was told that they cannot subcontract. Commissioner Carney noted that he is aware we need to move forward on this since we are under a no contract period. Chairman Schad mentioned he has a past history with working in the disabilities field, and he is glad we can verify that and want to make sure as we go forward we know that this is the case. Mr. Carney noted he did look at the contract and did have some questions. If you take a really close look at the contract they are billing us for equipment which I would suggest they are using on other contracts. So we are getting billed for a percentage of equipment but we are getting billed -like for example they go out and they purchase two F350 trucks and one F250 truck we are getting

billed our proportion of the estimated duration life of this truck. Now if they are using this truck on ten other jobs I have a question about that overall but will save questions for next contract. But that is the type of things we need to begin to look at. If you take a real look at the contract in other words they are billing us for 20% of that truck deeming a three year contract over a five year lifetime use of that truck. That's assuming they are not using that truck on any other jobs. While that well may be the truth. They may not use those three trucks and all that equipment on any other job but I don't know that. If they are using it on any other job its pure profit because we already paid for it. Mr. Lichtenthal understood and noted one of the question part of that analysis will get down to he believes we have over 50 sites so there is just a constant circling of facilities. Mr. Carney said he looked at the list of sites that they do but just wonder whether or not that equipment is being used on other required contracts.

2. Engineering Update

Executive Engineer Stoll informed the Board that he usually takes this opportunity to advise them of some things that they may need to act on, however the two items he will be discussing briefly need no action at this point. The Engineering department is involved in countless numbers of capital planning, improvements, design, construction projects for the whole Authority. A couple things that have come up that we are working on that the Authority has regular water storage rehabilitation and painting projects throughout almost forty storage tanks within the overall system. Currently we are involved in five tanks in that program. They have already been inspected and any deficiencies are eliminated and to meet the current codes. Items can include ladders, railings, hatches. We typically empty the tanks, prime them, paint them and perform the required disinfection and then put them back into service. We are in the process of doing those five tanks. A couple of those have been dealt with successfully. These tanks are out of service for a couple of days up to maybe a week and again that does not typically impact our service to our customers. The other item which I think is helpful to us is I just completed and submitted a beneficial use permit as referred to as a BUD permit application to the NYSDEC for our residual sludge. In this case Sturgeon Point Treatment Plant. That sludge as it builds up and we store and dewater it we can determine that there is an ability to use that in a very positive way. By renewing our permit, which we have done this, provides the Authority the opportunity to have that sludge used instead of disposing it at a landfill. The sludge will be used for cover and fill requirements for projects. We have that submitted and hopefully be approved for another couple of years. This is something that helps save the Authority cost. Chairman Schad asked who gives us the approval on the BUD. That approval comes from NYSDEC. We have two applications one is for turf farming and the other is for fill material. You get that one or two foot of cover of soil material over a brownfield project. The sludge materials have gone to some of the Bethlehem projects along route 5 things like that.

HUMAN RESOURCES

No Report

AUDIT COMMITTEE

No Report

GOVERNANCE COMMITTEE

No Report

FINANCE COMMITTEE

1. Summary of 4/19/18 Meeting

Commissioner Schad gave a summary of the April 19, 2108 meeting

2. Summary of 4/25/18 Meeting

Commissioner Schad gave a summary of the April 25, 2108 meeting

V. - COMMUNICATIONS AND BILLS

ITEM 1 - CREATION AND/OR AMENDMENT OF MASTER PURCHASE ORDERS

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

**ITEM 2 - MASTER PURCHASE ORDER RELEASES, PURCHASE ORDERS AND
PURCHASE ORDER AMENDMENTS**

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

VI. - UNFINISHED BUSINESS

- T-1 APPROVAL OF THE AMENDMENT TO THE PROPOSED POLICY NO. 94.0 (ITEM NO. 4 4/19/18)**
- T-2 ADOPTION OF POLICY NO. 96.0 (ITEM NO. 15 4/19/18)**

VII. - NEW BUSINESS (RESOLUTIONS 3-10)

ITEM 3 - AUTHORIZATION TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE TOWN OF CHEEKTOWAGA IN CONNECTION WITH THE RECONSTRUCTION OF WOODBINE PLACE FROM CHEROKEE DRIVE TO CLOVER PLACE AND EVERGREEN PLACE FROM WOODBINE PLACE TO CLOVER PLACE IN THE TOWN OF CHEEKTOWAGA, NEW YORK, PROJECT NO. 201700073

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

Vice Chairman Carney noted conversation with Deputy Associate Attorney Mattina and Risk Manager, Anthony Alessi relative to the contract. He stated that he has concerns relative to the insurance clause as well as the performance bond. Mr. Alessi stated that he could put the clause into the contract. Commissioner Carney expressed concerns relative to a lack of right to enforce if said items are not in the contract. Deputy Associate Attorney Mattina agreed, Chairman Schad stated that we need to clarify and verify that the language is added.

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 4 - AUTHORIZATION TO ACCEPT THE PROPOSAL OF _____ TO PROVIDE BOND COUNSEL SERVICES FOR THE ERIE COUNTY WATER AUTHORITY'S PROPOSED 2018 BOND OFFERING (T-3)

Motion to table by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 5 - TERMINATION OF PROFESSIONAL SERVICES CONTRACT WITH ZEPPELIN COMMUNICATIONS, LLC dba ZEPPCOM

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

Vice Chairman Carney stated that ECWA received a letter from ZeppCom terminating services with the Erie County Water Authority. He also stated that his reading of the contract is that ZeppCom does not have that right. Vice Chairman Carney asked Deputy Associate Attorney Mattina to prepare a letter asking for all work product and everything they billed the Authority for since the inception of the contract. He referenced an investigation into ZeppCom's billing. There was other discussion about when ZeppCom's letter was received and right to terminate clauses. Other concerns were expressed by Vice Chairman Carney and Chairman Schad relative to ZeppCom following people including persons from Ukraine and Russia and the sudden deletion of contacts. Vice Chairman Carney expressed concerns about the reputation of Erie County Water Authority and poor relations and lack of transparency with the media.

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 6 - AWARD OF CONTRACT TO NEW YORK STATE INDUSTRIES FOR THE DISABLED FOR LANDSCAPING, GROUND IMPROVEMENTS AND MAINTENANCE OF PROPERTIES OF THE ERIE COUNTY WATER AUTHORITY ERIE COUNTY, NEW YORK FROM APRIL 15, 2018 TO DECEMBER 31, 2020, PROJECT NO. 201800011 - \$981,287.00

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 7 - AUTHORIZATION TO AMEND ITEM NO. 8 OF THE MARCH 9, 2017 MEETING OF THE ERIE COUNTY WATER AUTHORITY RELATIVE TO THE DELEGATION OF RESPONSIBILITIES TO THE EXECUTIVE DIRECTOR AND DEPUTY DIRECTOR OF THE ERIE COUNTY WATER

AUTHORITY

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 8 - RATIFICATION OF THE INSTALLATION OF HYDRANTS AND VALVES AND RETIREMENT OF EXISTING HYDRANTS AND VALVES - VARIOUS LOCATIONS

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 9 - AUTHORIZATION TO GRANT LEAK ALLOWANCE REQUESTS - \$7,226.68

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

ITEM 10 - SERVICE CONNECTION WORK ORDER LIST

Motion by Mr. Simmeth seconded by Mr. Carney

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad, Carney and Simmeth

Noes: None

Chairman Schad reported it to be a pleasure working with a large number of competent people in the organization. Vice Chairman Carney referenced that our customers do like and appreciate the hard work of our employees. Vice Chairman Carney also stated that he will work on transparency and open government. Chairman Schad and Vice Chairman Carney both expressed the need to post relevant documents onto the website much sooner than in the past.

VIII. – ADJOURNMENT

Motion made by Mr. Simmeth, second by Mr. Carney and carried that the meeting adjourn.

DISCUSSION

None

VOTE

Ayes: Three; Commrs. Schad and Carney

Noes: None

Terrence D. McCracken
Secretary to the Authority

PJF