



**NEENAH-MENASHA SEWERAGE COMMISSION**

101 Garfield Avenue • Menasha, Wisconsin 54952-3397

(920) 751-4760 • Fax (920) 751-4767 • e-mail [info@nmscwwtp.com](mailto:info@nmscwwtp.com)

August 30, 2012

Mayor Don Merkes  
City of Menasha  
140 Main Street  
Menasha, WI 54952

RE: NMSC Wastewater Treatment Plant Modification Project

Dear Mayor Merkes;

This is a follow up to our meeting today with yourself and other City of Menasha employees to discuss the status of the NMSC project – where we are and what actions need to occur for us to proceed with the project and to obtain Clean Water Fund (CWF) financing.

- In October 2011, the NMSC obtained short term financing (bond anticipation note) to bridge the gap in financing until CWF proceeds would be obtained. The projection at that time was to receive CWF proceeds by May 2012. The short term financing is structured with a December 1, 2012 due date.
- Plant equipment was bid and ordered.
- The project included the NMSC building a bio-solids storage building in the Town of Greenville, and as you are well aware, that effort fell apart and did not occur.
- The results of not building in the Town of Greenville created delays in completing the plant design; uncertainty of a bio-solids site created design delays due to the uncertainty of where some pieces of equipment related to solids dewatering may be placed in the plant design.
- Eventually decisions were made which allowed for the continuation and completion of the plant design.
- The delay in the plant design also delayed when we would receive CWF proceeds.
- The NMSC is now in a situation of the short term financing coming due on December 1, 2012 and CWF proceeds now are projected to be obtained in January 2013 creating the need to redo the short term financing. The short term financing needed will exceed the limit our local institution is able to provide and they will need to seek additional funding with other financial institutions to meet the immediate needs of the NMSC.
- To obtain the additional short term financing, the NMSC is expected to provide assurances to the local bank we have commitments from the communities they will obtain CWF financing for the NMSC project. The local bank indicated the conditional approvals already passed would be problematic in redoing the short term financing.
- The bid opening for the Wastewater Treatment Plant Modification project is scheduled for September 13.
- Special Meeting to award bids – contingent on financing, is scheduled for September 18.

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- There are some equipment delivery timing issues that require us to have a contractor on site by mid-October.
- The project includes replacing the backup generator to comply with current EPA air emission standards and to continue receiving income from WPPI as a stand-by unit (\$58,000/yr). Failure to have this unit installed and operational by December 31, 2012 to meet current air emission standards will require us to spend an additional \$1,000,000 (approx.) to meet the new air emission standards.
- As indicated earlier, the current schedule for anticipated receipt of CWF proceeds is now January 2013. We have met with the other communities and anticipate their support and removal of restrictions placed on the NMSC for obtaining the CWF.
- During this entire process, the NMSC Attorney has been working on obtaining some form of guarantee from Sonoco; Sonoco has not said no to having a form of guarantee. We feel we are moving closer to reaching an acceptable agreement.

Items needed by the NMSC to continue:

- Community commitment to the Project and CWF borrowing from all communities with no conditional approvals.
- All communities to accept the Agency Agreement in concept (copy attached).
- Submittal of the variance request to the State to receive the variance to issue taxable CWF Bonds (copy attached).
- Signing the Clean Water Fund Application.

Thank you for your consideration of these important issues. We will be available at the September 4, 2012 City of Menasha Council meeting to answer questions, but in the meanwhile please don't hesitate to call to discuss this further.

Very Truly Yours,



Randall Much  
General Manager

**RESOLUTION**  
**AUTHORIZING EXECUTION OF AGENCY AGREEMENT**  
**BETWEEN THE**  
**NEENAH-MENASHA SEWERAGE COMMISSION**  
**AND THE**  
**CITY OF NEENAH, CITY OF MENASHA, TOWN OF MENASHA,**  
**TOWN OF NEENAH SANITARY DISTRICT No. 2,**  
**AND WAVERLY SANITARY DISTRICT OF THE TOWN OF HARRISON**

DRAFT: MARCH 21, 2012

WHEREAS, the NEENAH-MENASHA SEWERAGE COMMISSION (the 'Commission'), a Commission created under Section 66.30 (now section 66.0301), Wisconsin Statutes, pursuant to the Neenah-Menasha Sewerage Commission Ordinance-Contract (as amended June 2008) [NOTE: Update if amended prior to approval of this Resolution], (the 'Ordinance-Contract'), which listed initial signers as the CITY OF NEENAH, CITY OF MENASHA, TOWN OF NEENAH, the former TOWN OF MENASHA SANITARY DISTRICT #4; TOWN OF MENASHA, the former TOWN OF NEENAH SANITARY DISTRICT #1, the former TOWN OF NEENAH SANITARY DISTRICT #1-1; TOWN OF NEENAH SANITARY DISTRICT No. 2, TOWN OF HARRISON and TOWN OF HARRISON SANITARY DISTRICT (current legal name is Waverly Sanitary District of the Town of Harrison), operates a Wastewater Treatment Facility (the 'System') as a public utility serving its Member Communities pursuant to the Ordinance-Contract.

WHEREAS, the Town of Menasha Sanitary District No. 4 has been dissolved, and the Town of Menasha has assumed its rights and obligations under the Ordinance-Contract; and

WHEREAS, the Town of Neenah Sanitary District No. 1's territory has been annexed into the City of Neenah, which has assumed its rights and obligations under the Ordinance-Contract; and

WHEREAS, the Town of Neenah Sanitary District No. 1-1's territory has been annexed into the City of Neenah, which has assumed its rights and obligations under the Ordinance-Contract; and

WHEREAS, the Town of Harrison was always a limited contracting municipality to the Ordinance-Contract and is only a party for the purpose of granting easements and not a party for any financial responsibility; and

WHEREAS, the Town of Neenah was always a limited contracting municipality to the Ordinance-Contract and is only a party for the purpose of granting easements and not a party for any financial responsibility; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Commission's Member Communities and the residents thereof, consisting of the construction of the project (the 'Project'), assigned Clean Water Fund ('CWF') Project No. 4115-03 by the Wisconsin Department of Natural Resources (the 'DNR'), and as described in the DNR approval letters for the plans and specifications for the Project or portions thereof, issued under Section 281.41 of the Wisconsin Statutes, dated \_\_\_\_\_, 20\_\_\_\_ and assigned No. \_\_\_\_\_ by the DNR; and

WHEREAS, CITY OF NEENAH, CITY OF MENASHA, TOWN OF MENASHA, TOWN OF NEENAH SANITARY DISTRICT No. 2, AND WAVERLY SANITARY DISTRICT OF THE TOWN OF HARRISON (the 'Member Communities') are to receive loans from the State of Wisconsin CWF Program to be used for the purpose of paying the cost of the Project and refunding the Commission's Sewerage System Revenue Bond Anticipation Notes, dated \_\_\_\_\_, 2011 (the "Notes")

issued to provide interim financing for the Project, and are to issue Sewerage System Revenue Bonds or General Obligation Sewerage System Promissory Notes in exchange therefor pursuant to the Financial Assistance Agreements made between the State of Wisconsin by the DNR and Department of Administration and the Member Communities, respectively, dated \_\_\_\_\_, 20\_\_\_\_ (the 'Financial Assistance Agreements');

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_ [NOTE: Will need to keep an eye on timing – may be before or after this date] the governing bodies of the Member Communities are to adopt resolutions authorizing the issuance of Sewerage System Revenue Bonds, Series \_\_\_\_\_ or General Obligation Sewerage System Promissory Notes, Series \_\_\_\_\_ (the 'Bonds') for the above-mentioned purposes (the 'Bond Resolutions'); and

WHEREAS, because the Commission operates the System, it is necessary, desirable and in the best interests of the Commission for the Commission to act as agent of the Member Communities in performing certain of their obligations under the Financial Assistance Agreements and Bond Resolutions.

NOW THEREFORE, be it resolved by the Commission that:

Section 1. Execution Of Agency Agreement. The officers of the Commission are authorized, by and on behalf of the Commission, to execute an Agency Agreement with the Member Communities in substantially the form attached hereto as Exhibit A.

Section 2. Redemption of the Notes. The Commission hereby calls the Notes for redemption on \_\_\_\_\_, 20\_\_\_\_ or as soon as practicable thereafter. The Commission directs its officers and agents to take all action necessary to affect the redemption of the Notes.

(Signature page follows)

**NEENAH-MENASHA SEWERAGE COMMISSION**

Dated: \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Dale Youngquist, President

ATTEST:

\_\_\_\_\_  
Kathy Bauer, Secretary/Treasurer

**EXHIBIT A**

**AGENCY AGREEMENT  
RELATING TO SEWERAGE SYSTEM REVENUE BONDS, SERIES \_\_\_\_\_ AND GENERAL  
OBLIGATION SEWERAGE SYSTEM PROMISSORY NOTES, SERIES \_\_\_\_\_**

WHEREAS, the NEENAH-MENASHA SEWERAGE COMMISSION (the 'Commission'), a Commission created under Section 66.30 (now section 66.0301), Wisconsin Statutes, pursuant to the Neenah-Menasha Sewerage Commission Ordinance-Contract (as amended June 2008), (the 'Ordinance-Contract'), which listed initial signers as the CITY OF NEENAH, CITY OF MENASHA, TOWN OF NEENAH, the former TOWN OF MENASHA SANITARY DISTRICT #4; TOWN OF MENASHA, the former TOWN OF NEENAH SANITARY DISTRICT #1, the former TOWN OF NEENAH SANITARY DISTRICT #1-1; TOWN OF NEENAH SANITARY DISTRICT No. 2, TOWN OF HARRISON and TOWN OF HARRISON SANITARY DISTRICT (current legal name is Waverly Sanitary District of the Town of Harrison), operates a Wastewater Treatment Facility (the 'System') as a public utility serving its Member Communities pursuant to the Ordinance-Contract.

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WHEREAS, the Town of Harrison was always a limited contracting municipality to the Ordinance-Contract and is only a party for the purpose of granting easements and not a party for any financial responsibility; and

WHEREAS, the Town of Neenah was always a limited contracting municipality to the Ordinance-Contract and is only a party for the purpose of granting easements and not a party for any financial responsibility; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Commission's Member Communities and the residents thereof, consisting of the construction of the project (the 'Project'), assigned Clean Water Fund ('CWF') Project No. 4115-03 by the Wisconsin Department of Natural Resources (the 'DNR'), and as described in the DNR approval letters for the plans and specifications for the Project or portions thereof, issued under Section 281.41 of the Wisconsin Statutes, dated \_\_\_\_\_, 20\_\_\_\_ and assigned No. \_\_\_\_\_ by the DNR; and

WHEREAS, CITY OF NEENAH, CITY OF MENASHA, TOWN OF MENASHA, TOWN OF NEENAH SANITARY DISTRICT No. 2, WAVERLY SANITARY DISTRICT OF THE TOWN OF HARRISON (the 'Member Communities') are to receive loans from the State of Wisconsin CWF Program to be used for the purpose of paying the cost of the Project and refunding the Commission's Sewerage System Revenue Bond Anticipation Notes, dated \_\_\_\_\_, 2011 (the "Notes) issued to provide interim financing for the Project, and are to issue Sewerage System Revenue Bonds or General Obligation Sewerage System Promissory Notes in exchange therefor pursuant to the Financial Assistance Agreements made between the State of Wisconsin by the DNR and Department of Administration and the Member Communities, respectively, dated \_\_\_\_\_, 20\_\_\_\_ (the 'Financial Assistance Agreements');

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_ the governing bodies of the Member Communities adopted resolutions authorizing the issuance of Sewerage System Revenue Bonds, Series \_\_\_\_\_ or General Obligation Sewerage System Promissory Notes, Series \_\_\_\_ (the 'Bonds') for the above-mentioned purposes (the 'Bond Resolutions'); and

WHEREAS, because the Commission operates the System, it is necessary, desirable and in the best interests of the Commission for the Commission to act as agent of the Member Communities in performing certain of their obligations under the Financial Assistance Agreements and Bond Resolutions.

NOW THEREFORE, be it resolved by the Commission that:

Section 1. Agency Provisions. The Commission shall act as agent of the Member Communities in the following matters:

- 1.a. Disbursement Of Bond Proceeds. The Commission shall make requests for disbursement of the proceeds of the Bonds (the 'Bond Proceeds') to the State of Wisconsin CWF Program in accordance with the Financial Assistance Agreements and the Bond Resolutions.
- 1.b. Receipt Of Bond Proceeds. The Commission shall accept disbursements of Bond Proceeds from the State of Wisconsin CWF Program pursuant to the Financial Assistance Agreements and the Bond Resolutions, shall deposit the Bond Proceeds into the respective Project Funds established by the Member Communities pursuant to the Bond Resolutions and shall expend the Bond Proceeds on costs of the Project and refunding obligations issued for that purpose as more fully described in the Financial Assistance Agreements and the Bond Resolutions.
- 1.c. Administration Of Funds. The Commission shall administer the funds enumerated in the Bond Resolutions in accordance with the provisions of the Bond Resolutions and the Financial Assistance Agreements. The Commission shall administer the Operation and Maintenance Funds, Depreciation Funds and the Surplus Funds or Borrowed Money Funds established in the Bond Resolutions as single funds and shall maintain separate Debt Service Funds for the Member Communities. [NOTE: For Communities with bonds already outstanding this may need to be modified]
- 1.d. Charges. The charges imposed on the Member Communities under the Ordinance-Contract will include as a component the total amount of debt service due on the Bonds issued by the Member Communities. The amount of debt service charged to each municipality will be determined on the basis of usage of the Commission facilities in accordance with the general formula for allocation of costs under the Ordinance-Contract. The Commission will allocate the amounts received with respect to debt service to the individual Debt Service Funds so the amount on deposit in each Debt Service Fund is sufficient to pay the principal and interest payable on each Member Communities' Bonds, respectively.
- 1.e. Payment On The Bonds. The Commission shall make payments of principal and interest on the Bonds to the State Of Wisconsin CWF Program from the Debt Service Funds created by the Bond Resolutions in accordance with the repayment schedules provided to the Commission by the Member Communities. Notwithstanding the provision of Section

EXHIBIT A

To The

RESOLUTION AUTHORIZING EXECUTION OF AGENCY AGREEMENT

Page A-2 Of A-5

ISSUED: 04/16/2012

I.d., above, if the amounts deposited in the Debt Service Funds are not sufficient to pay debt on the Bonds, the Member Communities each will remain responsible for payment of the debt service on the Bonds they issued.

Section 2. Observance Of Financial Assistance Agreements And Bond Resolutions. In performing its obligations under this Agreement, the Commission shall observe and not violate, nor shall it cause the Member Communities to violate or fail to observe, any provisions of the Financial Assistance Agreements or the Bond Resolutions. The Commission shall also operate and manage the System and the Project in such a manner so as to observe and not violate, or cause the Member Communities to violate or fail to observe, any provisions of the Financial Assistance Agreements or the Bond Resolutions.

Section 3. Allocation Of Revenues To Debt Service Funds. To the extent of the debt service requirements of the Bonds, the Net Revenues of the System allocable to the Member Communities shall be deposited in the Debt Service Funds for the Bonds according to the following proportions:

- 3.a. \_\_\_\_\_ % to the City Of Neenah Debt Service Fund;
- 3.b. \_\_\_\_\_ % to the City Of Menasha Debt Service Fund;
- 3.c. \_\_\_\_\_ % to the Town Of Neenah Sanitary District No. 2 Debt Service Fund;
- 3.d. \_\_\_\_\_ % to the Town Of Menasha Debt Service Fund; and
- 3.e. \_\_\_\_\_ % to the Waverly Sanitary District of the Town of Harrison Debt Service Fund;

Section 4. Definitions. Any capitalized items used in this Agreement, which are not defined herein, shall have the meanings given them in the Bond Resolutions.

Section 5. Term Of The Agreement. This Agreement shall bind the parties and shall not terminate until all of the Bonds have either been discharged or defeased, as provided for in the Bond Resolutions. In the event that any portion of this Agreement shall become unenforceable or cease to bind the parties for any reason, the Member Communities shall each perform, with respect to their respective Bonds, any obligations under the Bond Resolutions or Financial Assistance Agreements, which the Commission has become unable to perform.

Section 6. Severability Of Provisions. The invalidity of any provision of this Agreement shall not affect the validity of any other provision.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF NEENAH, Wisconsin

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF MENASHA, Wisconsin

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF MENASHA, Wisconsin

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF NEENAH SANITARY DISTRICT No. 2, Wisconsin

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WAVERLY SANITARY DISTRICT OF THE TOWN OF HARRISON, Wisconsin

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NEENAH-MENASHA SEWERAGE COMMISSION, Wisconsin

\_\_\_\_\_  
Dale Youngquist, President

ATTEST:

\_\_\_\_\_  
Kathy Bauer, Secretary/Treasurer

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EXHIBIT A  
To The  
RESOLUTION AUTHORIZING EXECUTION OF AGENCY AGREEMENT  
Page A-5 Of A-5

ISSUED: 04/16/2012

# McMAHON

ENGINEERS ARCHITECTS

April 16, 2012

Mayor Don Merkes  
City Of Menasha  
City Hall  
140 Main Street  
Menasha, WI 54952

Re: Neenah-Menasha Sewerage Commission  
Wastewater Treatment Facility Project  
DRAFT Agency Agreement  
McM. No. N0001-910101.21

Dear Mayor Merkes:

Attached is the Draft Agency Agreement, which is being submitted to you for your information at this time. This Agreement gives the Neenah-Menasha Sewerage Commission (NMSC) the authority to manage the Clean Water Fund (CWF) financing that will be obtained for the Wastewater Treatment Facility project.

As you know, each Member Community will be required to sell bonds to the State to obtain the CWF financing for the project. However, this Agreement will allow NMSC to receive the CWF from the State and to make payments related to the project. NMSC will also collect the funds needed to pay the debt service on the CWF loan from each Community, and will make the debt payments directly to the CWF. All payments associated with the project will be reviewed and approved by the NMSC prior to payment.

This Draft Agency Agreement is to be adopted by each Member Community later this summer, when all of the CWF financing paperwork is processed. This is being sent to you at this time so there is sufficient time for review. The Agreement has been reviewed by Rebecca Speckhard, Quarles & Brady; Aaron Hinz, Department of Administration; and Meja Maka, Department Of Natural Resources - Environmental Loan Section; and they all agree that the Agreement is acceptable. This Draft Agreement is also being sent to the other NMSC Member Communities.

Page 2  
April 16, 2012  
Mayor Don Merkes  
City Of Menasha

Please call if there are questions.

Very truly yours,

McMAHON

A handwritten signature in cursive script that reads "Amy J. Vaclavik".

Amy J. Vaclavik, P.E., BCEE  
Associate / Senior Project Engineer

AJV:smdt

cc: Tom Stoffel, Comptroller - Menasha  
Raymond Zielinski - NMSC  
Kathy Bauer - NMSC  
Randy Much - NMSC

Enclosure