

Village of Windham, Ohio

Minutes of the Special Council Meeting

Held August 10, 2011

At 6:00 PM, the Honorable Mayor Robert W. Donham II called the meeting to order and announced that this is a Special Council meeting called for the purpose of discussing a Burgess and Niple inspection agreement for the OPWC Water Contract.

Roll Call: Rachel Barrett – present, Scott Garrett – present,
 Kelly Meszaros – present, Jena Miranda – present,
 Linda Rininger – present, Phil Snyder – absent

Mayor Donham explained that Mr. Snyder was excused from this evening's meeting and had reported his absence in advance.

Also present Atty: Tom Reitz, solicitor, Village Administrator Mike Iwanyckyj, Bruce Rininger, Gordon Fischer, Shawn McClellan, Cynthia Cale and Beth Simpson

Mayor Donham said the only item on the Agenda is the proposal for Burgess and Niple construction inspection and bidding process agreement for the OPWC Water Contract. He said he would like Council to approve a not to exceed \$24,900 contract with Burgess and Niple. He said he has negotiated it down to about \$24,000. There is also some Quality Assurance and Quality Check on the plans during the bidding so that is an hourly as needed but could be up to \$1500. This can be piggy backed on to our matching share for OPWC so we have a \$50,000 local liability for that project. This can count towards that local share. It depends upon where that final bid price comes in how much is covered. The inspection portion is going to be a requirement; we have to sign a completion affidavit for the project on the inspection that it was inspected properly, put in per the plans and specs and everything was done with your permit application to be EPA approved. On the roadway projects we don't hire anybody to do this because I sit down with Mike and Dove and go through it. It is a much less strenuous project for roadway and we basically collect the tickets that ODOT creates. But on this where we are installing a new static head mixer chlorinator I can't be here full time for that and it is going to need the professional inspection during the project and that is why we are going to need Burgess and Niple for this. I think there was discussion but I wasn't here at the last meeting. We would like to get it taken care of now. Any questions?

Mrs. Meszaros said my question is Burgess and Niple were the architects? Mr. Donham said the engineers. Mrs. Meszaros continued so doesn't the engineer normally follow the scope of the project and make sure that everything gets done? That's part of the normal process. Mr. Donham said they would be but it is billed separately and this would be a separate billing. They designed the project. Mrs. Meszaros questioned they are not normally responsible for checking and making sure the project is executed as it should be? Mr. Donham said usually you would have the same engineer do the inspection because they are the ones who designed it. But either way it is an hourly rate payment. We did the design contract first and now we are doing the inspection contract. It is the same company, the same people. They are just under two different contracts. Mrs. Meszaros said I was just under the assumption that when we do bids that they are responsible from A to Z. Mr. Donham said when you say bids, you mean? Mrs. Meszaros said the engineering portion of it to make sure that it is all inclusive and is all taken care of as designed. Mr. Donham said the engineering isn't bid, you just hire somebody to do it. It is a professional service. We don't take low bid you just negotiate a price from a qualified firm and

sign a contract. So we did that for the design. Mrs. Meszaros said so you could hire anybody for the inspection? Mr. Donham said you could hire anybody but their price would be higher. Anytime you hire an inspection on somebody else's design the price is almost double because they don't have knowledge of the design. Mrs. Meszaros said they designed a specified package for us and I was under the assumption that when you design a specific package you are also going to be there to make sure it is installed properly. Mr. Donham said you could have done it all at once but it makes it a \$50,000 project which makes it a lot more cumbersome for the design professional services and makes it a lot more expensive. In this case we had two very distinct contracts and we could separate at \$24,000 and \$24,000 and save our costs on interviewing and so forth. Burgess and Niple is going to be the general contractor. Somebody is going to bid on it and get the contract to actually install it and then Burgess and Niple will have a field rep there taking the measurements and filling out the bid quantities and checking to make sure they are using the right product, and checking to make sure we aren't getting ripped off on change orders. And then they will submit all of that to OPWC which Mike and I and Lloyd usually do and they will copy us and we will just sign and OPWC will pay the contractor. Mrs. Meszaros said my second concern is have we heard anything about tap-in fees because with everything that is going on in Washington and the military cuts to the bone. Mr. Donham said I just met with Lloyd about it here. We have not talked to Jeff Lonzrick who is the Interim Director of Portage County Water Resources. I will talk with him tomorrow. The money we are getting for tap-in fees is not a transfer from military stuff. I mean this is that Portage County Water Resources is paying us out of their fees. Mrs. Meszaros asked if we have heard anything from the County? Mr. Donham said no, there is no negative so we will just follow up on the invoice. Aside from the tap-in fees, we have a \$275,000 OPWC Grant that we need to either bid or send back and I'm not in favor of sending it back. This is going to have to be from the Water Operating Fund and we now have a 20% monthly surplus in that fund. So if you look at today's financials you will see the expenses are \$34,000 and the revenue is \$40,000 so we went from whatever catastrophic number we were looking at last time to \$9,193 this month later.

Mrs. Rininger said would you like to know what the County said? Mr. Donham said go ahead. Mrs. Rininger said I spoke to the County Commissioners Office and the Auditor's Office, to Jo Ann Townend who is the Director of Internal Services. The County Auditor has not been submitted the invoice for payment as yet. She spoke with Jeff because she called me back. What is happening is they will pay us and NDS will reimburse them so any cuts that come to the military will be held by NDS according to what I understand. So as long as the project is going forward they are going to get reimbursed by NDS but they are going to pay us prior to that reimbursement. Now nothing has been processed yet. It hasn't made it to the Auditor's office. Mayor Donham said we have received a request for service and I have instructed the office that it is denied. The request which the Fiscal Officer had seen was for the hydrant. There are two different things. Mrs. Rininger said the hydrant meter according to Jeff is an agreement between us and the contractor. Mayor Donham said as it relates to the OPWC project I don't think the tap-in fees are a major consideration in approving the inspection. We have two options, not doing the project which I think is not an option. We obviously have rusty water all over town; our filters are twenty years old and we need to move forward with the project. Not to mention it would undermine our credibility with the Ohio Public Works Commission to get a \$300,000 grant and send it back. But by the end of the year we should be very well on our way to having \$30,000 or \$40,000 in that fund. This is not something you pay upfront. We have a good professional working relationship with Burgess and Niple and we'll pay the invoice after the fact. They do the work and then we pay it after the invoice. And they'll be more than willing to work with us if something were to happen to the tap-in fees.

Mrs. Rininger said I don't think that is the concern. I think the reason tap-in was asked about is the security of the additional \$214,000 being dropped into that fund to cover these rather large expense that we have coming. Now we are talking about potentially on top of that \$59,000 or \$60,000, another \$24,500 (not to exceed \$24,500 but it could go that high). And I believe that is what the concern is. Even with our 20% that we have now, it's not going to be enough to cover everything if the tap-in fees do not come through and that \$24,000 is not included in the \$53,000. So I believe that is the concern and why she inquired about the tap-in fees..

Mayor Donham let's assume we don't get the tap-in fees and let's assume everything is worst case scenario, I still recommend we go forward with the project. Mrs. Rininger said we have no choice, we have to go forward with the project. It's just our budget is tight even on the General Fund side. That is a big concern that several of the members (of Council) have had. Mayor Donham said I do think we are in a short term cash flow situation but we are in the good and this isn't a bill that we have to pay in advance, so I think we authorize it before we bid the project. Mrs. Rininger asked what is the hourly rate that they offered you, you mentioned an hourly rate but not to exceed \$24,500, correct? Mr. Donham said they have a hourly fee, but the fee is a set fee for additional items, so the bidding service is \$7,500 and remainder is construction inspection and when they submit that they will submit how many hours they have on the project and if it is under the quoted hours, they prorate the hourly rate out. I think construction inspection the hourly rate ends up being about \$60 but then they have an overhead rate. They have a complicated formula.

Mrs. Miranda said I would think the County would have more to do with the inspections, you would have to meet their standards not Burgess and Niple's. Mayor Donham said the County doesn't have any standards. Mrs. Miranda said they don't have any standards, but we hold a lot of people accountable to the County. Mayor Donham said the County has zero, we are an independent water producer. Our only accountability is to the Ohio EPA and Federal EPA. The County doesn't have any standards, well they have their own standards but we are held to the EPA standards. The Ohio EPA sets the standards. Mrs. Miranda said why wouldn't the EPA come in and inspect. Mayor Donham said they make us provide the engineering services.

Mrs. Rininger said on this one, I have to agree with Kelly, I can't imagine this being another \$24,000. I thought that was part of the contract when they did the design and that they were going to oversee what happened to insure we were getting what the design called for. I didn't realize they were going to bill us over and above and make this a \$50,000 fee in the end. Mayor Donham said that's just what it is. You are more than willing to negotiate but we have till the end of the month before OPWC is going ask us if we are going to bid the project or not and if the answer is no they are going to start putting some pressure for us to send money back. Mrs. Rininger said what do you mean bid the project, what project? I thought we weren't bidding this consulting. We haven't got the bids pulled for... Mr. Donham said no, the engineer does that. That's what we are going to pay them to do. Mrs. Meszaros said so they prepare the bid packages? Mr. Donham said yes, they prepare the bid packages, they prepare the bidder list, they send that out, they do the entire thing. Mrs. Rininger said so basically we are held hostage on this, if we don't hire them to do the consulting then the bid process will not go forward and the whole project will be tanked. Mr. Donham said well it's not a hostage situation, you can certainly say no. Mrs. Rininger said then we have to give up the grant and we can't afford to do that because the upgrade is needed. Mr. Donham said you could try to hire Tom (Reitz) to do the bidding but this isn't a simple bid project and you still have to pay somebody for the inspection. So you might save \$7500 of which we owe 20% of so you save \$1500 but the vast majority of it is having a person on site to do the inspection. Mrs. Barrett said do we not have a contract with Burgess and Niple? What was that for? Mr. Donham said that was for design services, they designed the project. Mrs. Miranda said I still don't understand why the County

or the EPA aren't the ones doing the checking. Mr. Donham said because they just don't do it. Why would the County send a guy out here to inspect somebody else's... (some talking at the same time made this difficult) Why don't we inspect Garrettsville? Mrs. Miranda said because we are not the County. Mr. Donham said and the County doesn't inspect Garrettsville either. I mean I don't understand why you think the County would donate their resources to a plant they receive no revenue from. Mrs. Rininger said so in other words if we do not approve this today, then the bid process does not go forward and thus we have someone else which we really don't have time to do, because we have until the end of the month or the Grant will be declared null and void. Mr. Donham said we can certainly get a price from somebody else and get somebody else by the end of the month, I just think Burgess and Niple has been working on this project for so long; Dan Moss is so familiar with the project, I don't know that there is anyone with better expertise or can come in with a lower price because they are going to have to build in that institutional knowledge into the price just to get familiar. Mrs. Meszaros said the next time we have a project of this scope, the whole A to Z should be set before us instead of piecemeal. Mrs. Rininger said that is well and good at this point and time and it will be something we remember but what do we do for payment of it now? Even if they delay I mean by the end of the year, the budget is going to be tighter than it is right now. Mr. Donham said we enter into a contract and we pay the invoices as they come in, if we end up in a financial situation that we don't predict then we do what we do any other time and say, Burgess and Niple we have this outstanding invoice, we will pay it on such and such a date and as being a good client and a client who has worked with them for a while, that's not uncommon.

Mrs. Meszaros said we really don't have a choice, we have to do the plant upgrades. Mrs. Rininger said and we can't afford to wait. How long have you known this was going to be needed? Mr. Donham said three weeks. Mrs. Rininger said you didn't know before that then that we couldn't go through with the bid process and everything? Mr. Donham said I knew we would have to bid I just didn't realize Council didn't want to pay for it. I mean I knew that there would be... Mrs. Rininger said don't you think you should have gave this to Council a month and a half or two months ago so that Council could have mulled it around in their heads? Mr. Donham said I didn't have the proposal. Dan Moss was on vacation; last two weeks we got the plans. He the proposal before the utility committee. I submitted it at that meeting. Mrs. Rininger said you did realize additional cost was going to come with this correct? Mr. Donham said oh sure, for certain there is going to be additional cost. Mrs. Rininger said Mr. Mayor, please submit it to Council so they don't get hit in the heads with this five minutes before they have to decide. That's all I'm asking. Mr. Donham said I understand your apprehension on getting this, but you have to remember also that this is not an uncommon or new thing. On every project this should be anticipated, not only should Council anticipate this, Council should have anticipated it the entire process. We always bid a project. You had copies of the contract for design services. Nowhere in it did it say they would do bidding or design inspection. Now I will say that at least on the inspection portion, Council is not familiar with that because I provide that to the Village at no cost and I have Mike and Dove do quantity calculations, so that is something new because this is our first water project. I won't be doing the construction inspection, but nevertheless it is a cost. We can talk about the warrants all day long but we need to do it. Mrs. Meszaros said part of the confusion is we haven't had this split out like this before for the projects we have done before while I have been here like the road project. Mr. Donham said the only other time it was split out was last years Main Street resurfacing but the split out was \$5000. It wasn't \$25,000 because we provided the \$20,000 for construction inspection, the bidding was \$5000. So the split then just wasn't as much and it wasn't water department. Mrs. Rininger said oh get off that. Mrs. Meszaros said we are going to need a motion. Mr. Donham said yes. Mrs. Meszaros said I make a motion that we authorize the Mayor and Fiscal Officer to enter into a contract with Burgess and Niple for an amount not to exceed \$24,900 for bidding and construction inspection. Mr. Garrett seconded the motion.

The roll call vote was taken as follows: Mrs. Barrett no, Mr. Garrett yes, Mrs. Meszaros yes, Mrs. Miranda no, Mrs. Rininger yes. The motion carried.

Mrs. Meszaros made a motion to adjourn the meeting which was seconded by Mrs. Miranda and with all in favor Council was adjourned at 6:30 PM.

Respectfully submitted,

Attest

Lloyd C. Billman, Clerk of Council

Robert W. Donham II, Mayor