

JUN 22 2015

Date _____
Agenda Item 32
Roll Call # 15-1039

AMENDMENT NO. 4 TO WRA OPERATING CONTRACT

BETWEEN

**THE DES MOINES METROPOLITAN
WASTEWATER RECLAMATION AUTHORITY (WRA)**

AND

**THE CITY OF DES MOINES, IOWA,
AS OPERATING CONTRACTOR**

EFFECTIVE _____

THIS AMENDMENT NO. 4 TO WRA OPERATING CONTRACT is made and entered into as of the _____ day of _____, 2015, by and between the Des Moines Metropolitan Wastewater Reclamation Authority and the City of Des Moines, Iowa.

RECITALS

WHEREAS, on July 1, 2004, by Resolution No. 04-017, the WRA ratified and confirmed the Initial Operating Contract with the City of Des Moines; and

WHEREAS, by Resolution No. 05-24 on March 22, 2005, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 05-564 on March 7, 2005, the City of Des Moines, approved Amendment No. 1 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 06-67 on June 20, 2006, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 06-1355 on July 10, 2006, the City of Des Moines, approved Amendment No. 2 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 11-183 on December 20, 2011, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 12-0299 on February 27, 2012, the City of Des Moines, approved Amendment No. 2 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, the Insurance Subcommittee has recommended that the WRA participate in Iowa Communities Risk Pool (ICAP) for property risks versus purchase property insurance which is required under the Operating Agreement; and; and

WHEREAS, this amendment is to reflect the changes needed for participation in ICAP for property coverage and changes to allow use of equipment, personal property and vehicles by the Operating Contractor for its municipal operations.

NOW, THEREFORE, the parties do hereby agree as follows:

1. That Article II, OPERATING CONTRACTOR DUTIES AND SCOPE OF SERVICES, Section 2.55, Operating Contractor to Purchase Pollution Liability for Underground Fuel Storage Tanks, is hereby amended as follows:

Section 2.55 Operating Contractor to Purchase Pollution Liability Insurance for Underground Fuel Storage Tanks. The Operating Contractor shall purchase, on behalf of the WRA and the Operating Contractor, Pollution Liability Insurance to protect the Operating Contractor and WRA from pollution liability exposure associated with the underground fuel storage tanks located on WRA property. Such insurance will serve as primary to the Pollution Liability Insurance purchased by the WRA. The Operating Contractor shall be the First Named Insured and the WRA shall be included as and Additional Insured on these policies.

2. That Article II, OPERATING CONTRACTOR DUTIES AND SCOPE OF SERVICES, Section 2.56, Operating Contractor Authorized to Make Claims on Behalf of WRA; Operating Contractor's Settlement Authority is hereby amended as follows:

Section 2.56 Operating Contractor Authorized to Make Claims on Behalf of WRA; Operating Contractor's Settlement Authority. The WRA authorizes the Operating Contractor to make claims as it deems appropriate to obtain proceeds to cover damages or losses incurred by the WRA or by the Operating Contractor, or to secure payment of damage claims made by third parties against the WRA or the Operating Contractor, and the Operating Contractor agrees to advise the WRA as to all such claims which it makes as it relates to the WRA.

3. That Article III, OBLIGATIONS OF WRA, section 3.5, Procurement of Insurance for WRA System Properties and Operations is hereby amended as follows:

Section 3.5 Procurement of Insurance for WRA System Properties and Operations. In order to protect the WRA and its Operating Contractor, the WRA shall, with the assistance of its insurance broker and after consultation with the Operating Contractor, procure coverage for property risks from the Iowa Communities Risk Pool (ICAP) or property insurance coverage and shall procure all coverages required of the WRA in the most currently adopted version of the WRA Insurance and Risk Management Program, except for (a) Workers Compensation Insurance, (b) Crime Insurance and (c) primary Pollution Liability Insurance covering underground fuel storage tanks located at WRA facilities as indicated in Sections 2.53, 2.54 and 2.55 of this Contract. The WRA shall, with the assistance of its insurance broker and in consultation with the Operating Contractor, periodically review the insurance coverages and ICAP coverage or insurance coverage for property insurance provided for in the WRA Insurance and Risk Management Program to determine (a) if such insurance and ICAP coverage or insurance for property risks is appropriately covering known risks to WRA System properties and operations, and (b) to determine if such coverage, when combined with reserves established by the WRA Board, is providing an appropriate level of financial protection from such risks. The Operating Contractor shall make recommendations as to any needed changes in said coverages and reserve funds.

4. That Article III, OBLIGATIONS OF THE WRA, section 3.7, Risk Management Program is hereby amended as follows:

Section 3.7 Risk Management Program. The WRA authorizes the Operating Contractor to, in consultation with the WRA, develop and maintain a risk management program on behalf of the WRA that protects the WRA and the Operating Contractor as indicated in Section 2.51 of this Contract. The WRA, with the assistance of its insurance broker and in consultation with its Operating

Contractor shall procure property coverage either from ICAP or insurance for property risks and procure insurance coverage for other risks and establish reserves to adequately financially cover such risks.

5. That Article III, OBLIGATIONS OF THE WRA, section 3.8, Procurement of Insurance for WRA System Properties and Operations is hereby amended as follows:

Section 3.8 Procurement of Insurance for WRA System Properties and Operations. The Operating Contractor shall purchase, as directed by the WRA, those insurance coverages, including ICAP or insurance coverage for property risks, procured by the WRA insurance broker and approved by the WRA Board as described in the WRA Insurance and Risk Management Program adopted by the WRA. The WRA is responsible for maintaining in continuous effect the types and amounts of insurance and property insurance or membership in ICAP for property coverage necessary to satisfy WRA loan agreements, grant agreements and revenue bond covenants.

6. That Article III, OBLIGATIONS OF THE WRA, section 3.11, Retaining Insurance Broker and Advisory Services is hereby amended as follows:

Section 3.11 Retaining Insurance Broker and Advisory Services. The WRA shall retain insurance advisory and broker services by competitively selecting, through an RFP process, an insurance broker to market insurance coverage, coverage with ICAP or insurance for property risks, excluding Workers Compensation Insurance, Crime Insurance and primary Pollution Liability Insurance as described in Sections 2.53, 2.54 and 2.55 of this Contract. Such coverages shall remain the responsibility of the Operating Contractor.

7. That Article III, OBLIGATIONS OF THE WRA, section 3.14, WRA Responsible for Payment of Insurance Premiums, Risk Pool Payments for Maintaining Reserves, and for Payment of Claims Not Covered by Insurance is hereby amended as follows:

Section 3.14 WRA Responsible for Payment of Insurance Premiums, Risk Pool Payments for Maintaining Reserves, and for Payment of Claims Not Covered by Insurance. The WRA agrees to pay the premium costs associated with the insurance coverages it approves for purchase and ICAP or insurance for property coverage, and to fund the insurance reserves it establishes, pursuant to the WRA Insurance and Risk Management Program. The WRA further agrees to pay claims or cover losses which are not covered by such insurance, ICAP or insurance for property risks or insurance reserve funds.

8. That Article III, OBLIGATIONS OF THE WRA, section 3.15, Budgeting and Payment of Insurance Premium Costs; Budgeting and Payment of Participating Community Contributions Required for Creation and Maintenance of Insurance Reserves is hereby amended as follows:

Section 3.15 Budgeting and Payment of Insurance Premium Costs; Budgeting and Payment of Participating Community Contributions Required for Creation and Maintenance of Insurance Reserves. (a) The premium cost of the insurance coverages and ICAP or insurance premiums for property coverage authorized by the Board as set out in the WRA Insurance and Risk Management Program, and those premium costs for the Workers Compensation Insurance, Crime Insurance and primary Pollution Liability Insurance covering underground fuel storage tanks procured by the Operating Contractor shall be budgeted and funded as provided in Article IV, Section 4.4(h).

9. That Article IV, COMPENSATION OF OPERATING CONTRACTOR; BILLING AND PAYMENT OF COSTS BUDGETED IN WRA OPERATING AND CAPITAL BUDGETS, Section 4.4, Expenditure of Funds from Appropriate WRA Operating Accounts, paragraph (h) is amended to read:


(h) The cost of risk management services provided by the Operating Contractor shall be reflected in and funded in the indirect cost line item for WRF operations in the WRA operating budget. The premium costs for services of the insurance coverages and ICAP or insurance for property coverage authorized by the WRA Insurance and Risk Management Program and the Workers Compensation, Crime Insurance, primary Pollution Liability Insurance for underground fuel storage tanks and the contributions of the Participating Communities required to create and maintain insurance reserves as authorized by the WRA Insurance and Risk Management Program, shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget.

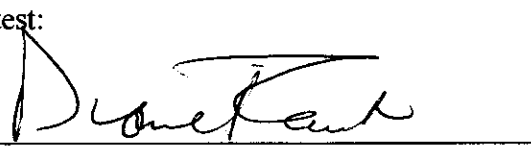
10. That Article V, GENERAL PROVISIONS, Section 5.2. Use and Ownership of WRA Real Property, Buildings, Facilities, Easements, Licenses, Rights-of Way, Equipment, Personal Property or Vehicles: Disposition Upon Termination of Contract is amended by adding paragraph (f):

(f) The Operating Contractor may use WRA owned equipment, personal property and vehicles for the Operating Contractor's municipal operations subject to a written agreement between the WRA Director and the Operating Contractor's City Manager which sets forth the terms of the compensation for such use. Operating Contractor's municipal operations are those operations that are the sole responsibility of the City of Des Moines and are not done for the WRA as the WRA's Operating Contractor. Operating Contractor agrees to indemnify, defend and hold harmless the WRA from and against any and all claims, citations, suits, judgements, decrees, orders and the like, brought or obtained by persons or legal entities for liability for damage to property or for personal or bodily injury, including death at any time resulting therefrom, which arises from the use by the Operating Contractor of WRA equipment, personal property and vehicles for Operating Contractor's municipal operations

It is hereby expressly understood and agreed between the parties that all other terms, provisions, and conditions of said amended Agreement shall continue in full force and effect, and the terms of this Fourth Amendment are hereby incorporated therein and made a part thereof.

**CITY OF DES MOINES, IOWA,
OPERATING CONTRACTOR**

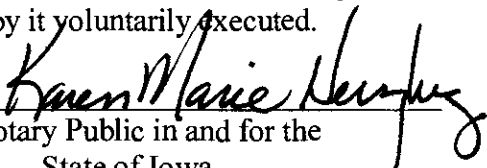
By 
T. M. Franklin Cownie, Mayor

Attest:

Diane Rauh
City Clerk

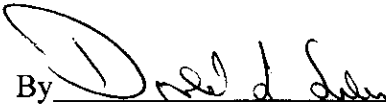
STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 22nd day of June, 2015 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and Diane Rauh, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in (Ordinance No. _____ passed) (the Resolution adopted) by the City Council, under Roll Call No. 15-1039 of the City Council on the 22nd day of June, 2015, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.




Notary Public in and for the
State of Iowa

**DES MOINES METROPOLITAN WASTEWATER
RECLAMATION AUTHORITY (WRA)**

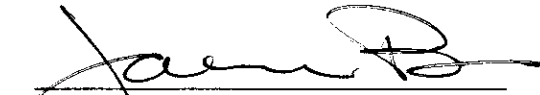
By 
Don Sandor, Chair, WRA Board

Attest:

Tim Moerman, Secretary, WRA Board

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 16 day of June, 2015 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Don Sandor and Tim Moerman, to me personally known, and, who, being by me duly sworn, did say that they are Chairperson and Secretary, respectively of the WRA Board; that the instrument was signed and sealed on behalf of the WRA by authority of its Board, as contained in the Resolution No. 15- 75, adopted by the WRA Board on the 16 day of June, 2015, and that Don Sandor and Tim Moerman acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.


Notary Public in and for the
State of Iowa





Roll Call Number

15-1039

Agenda Item Number

32

Date June 22, 2015

**RESOLUTION APPROVING AMENDMENT NO. 4 TO
OPERATING CONTRACT BETWEEN THE DES MOINES METROPOLITAN
WASTEWATER RECLAMATION AUTHORITY AND THE CITY OF DES MOINES**

WHEREAS, on July 1, 2004, by Resolution No. 04-017, the WRA ratified and confirmed the Initial Operating Contract with the City of Des Moines; and

WHEREAS, by Resolution No. 05-24 on March 22, 2005, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 05-564 on March 7, 2005 the City of Des Moines approved Amendment No. 1 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 06-67 on June 20, 2006, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 06-1355 on July 10, 2006 the City of Des Moines approved Amendment No. 2 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 11-183 on December 20, 2011, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 12-0299 on February 27, 2012 the City of Des Moines approved Amendment No. 2 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, the WRA Insurance Subcommittee has recommended that the WRA participate in Iowa Communities Risk Pool (ICAP) for property risks versus purchase property insurance which is required under the Operating Agreement; and; and

WHEREAS, this amendment to the Operating Agreement is to reflect the changes needed to allow participation in ICAP for property coverage by the WRA and changes to allow use of equipment, personal property and vehicles by the Operating Contractor for its municipal operations.



Roll Call Number

15-1039

Agenda Item Number

32

Date June 22, 2015

-2-

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines that Amendment No. 4 to the Operating Contract between the WRA and the City of Des Moines is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Amendment No. 4 to the Operating Contract for and on behalf of the City of Des Moines.

(Council Communication No. 15-355) Moved by Gatto to adopt.

APPROVED AS TO FORM:

Kathleen Vanderpool
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and TOTAL (7).

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor signature

Diane Rauh City Clerk

**RESOLUTION APPROVING AMENDMENT NO. 4 TO
OPERATING CONTRACT BETWEEN THE DES MOINES METROPOLITAN
WASTEWATER RECLAMATION AUTHORITY AND THE CITY OF DES MOINES**

WHEREAS, on July 1, 2004, by Resolution No. 04-017, the WRA ratified and confirmed the Initial Operating Contract with the City of Des Moines; and

WHEREAS, by Resolution No. 05-24 on March 22, 2005, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 05-564 on March 7, 2005 the City of Des Moines approved Amendment No. 1 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 06-67 on June 20, 2006, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 06-1355 on July 10, 2006 the City of Des Moines approved Amendment No. 2 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, by Resolution No. 11-183 on December 20, 2011, the Des Moines Metropolitan Wastewater Reclamation Authority and by Resolution No. 12-0299 on February 27, 2012 the City of Des Moines approved Amendment No. 3 to the WRA Operating Contract between the WRA and the City of Des Moines; and

WHEREAS, the Insurance Subcommittee has recommended that the WRA participate in Iowa Communities Risk Pool (ICAP) for property risks versus purchase property insurance which is required under the Operating Agreement; and; and

WHEREAS, this amendment is to reflect the changes needed for participation in ICAP for property coverage, changes to allow use of equipment, personal property and vehicles by the Operating Contractor for its municipal operations.

NOW THEREFORE, BE IT RESOLVED BY THE DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY that Amendment No. 4 to the Operating Contract between the WRA and the City of Des Moines is hereby approved and the Chair and the Secretary are hereby authorized and directed to execute and attest, respectively, said Amendment No. 4 to the Operating Contract for and on behalf of the WRA.

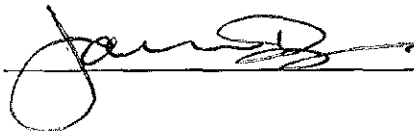
Moved by Garvey to adopt.

AGENCY ACTION	YEAS	NAYS	PASS	ABSENT
Sandor	✓			
Conkling	✓			
McKenna				✓
Moritz	✓			
Arentsen	✓			
Weaver				✓
Goode	✓			
Cownie	✓			
Moore	✓			
S. Sanders	✓			
Vander Waal	✓			
J. Sanders	✓			
Hoskins	✓			
Mahannah			✓	
Giovannetti	✓			
Sassatelli	✓			
Garvey	✓			
Gibson Moerman	✓			
Stiles Mickelson	✓			
Smith			✓	
TOTAL	16	0	2	2

CERTIFICATE


I, ~~Tim Moerman~~ ^{James Peck acting} Secretary of the Board of the Des Moines Metropolitan Wastewater Reclamation Authority (WRA), hereby certify that at a meeting of the WRA Board, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand the day and year first above written.

 acting Secretary

MOTION CARRIED

APPROVED


Don Sandor, Chair