

Date FEB 27 2012

Agenda Item 34

Roll Call # 12.0299

**AMENDMENT NO. 3 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. 3 TO WRA OPERATING CONTRACT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, 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**, on March 22, 2005, by Resolution No. 05-24, the Des Moines Metropolitan Wastewater Reclamation Authority approved Amendment No. 1 to the WRA Operating Contract between the WRA and the City of Des Moines; and

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

**WHEREAS**, on September 20, 2011, the WRA Board requested legal counsel to draft an amendment to the Operating Contract between the City of Des Moines and the WRA pertaining to WRA Insurance and Risk Sharing Policies; and

**WHEREAS**, this amendment reflects the changes to the Operating Contract requested by the WRA Board and the Operating Contractor.

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

1. That Article II, Division 10 of the Operating Contract be and is hereby deleted and replaced as follows:

**Division 10 Risk Management Services; Procurement of Insurance.**

Section 2.51 Risk Management Services. The Operating Contractor shall, with the assistance of the Operating Contractor's Risk Manager and its insurance and risk management advisers, provide risk management services to the WRA in accordance with the Operating Contractor's responsibilities to the WRA under this Contract including but not limited to: (a) assessing and identifying risks of damage, loss liability which are inherent in WRA operations or associated with WRA property; (b) identifying and initiating operational changes to mitigate such risks; (c) identifying opportunities to contractually transfer such risks where appropriate; and (d) recommending insurance and reserve requirements to adequately financially cover such risks. The Operating Contractor shall, as deemed necessary to adequately protect the Operating Contractor, make recommendations to the WRA Board as to any needed changes in said insurance coverages, or as to any needed changes in the insurance coverage levels and reserve funds.

Section 2.52 Procurement of Insurance for WRA System Properties Operations. The Operating Contractor shall, with the assistance of the Operating Contractor's Risk Manager and its insurance agent and after consultation with the WRA Board, procure (a) Workers Compensation Insurance, (b) Crime Insurance and (c) primary Pollution Liability Insurance to cover the underground fuel storage tanks.

Section 2.53 Operating Contractor to Purchase Workers Compensation Insurance. The Operating Contractor shall purchase Workers Compensation Insurance to cover Operating Contractor's employees who perform work associated with the Operating Contractor's responsibilities as Operating Contractor to the WRA.

Section 2.54 Operating Contractor to Purchase Crime Insurance. The Operating Contractor shall purchase Crime Insurance to protect the Operating Contractor and WRA from the theft of monies and securities collected and accounted for by Operating Contractor on behalf of WRA. The Operating Contractor shall include WRA as a Joint Loss Payee on this insurance policy as its interest may appear.

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 WRA shall be the Named Insured and the Operating Contractor shall be included as an Additional Insured on these policies.

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 against WRA insurance carriers as it deems appropriate to obtain insurance 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 against insurance carriers insuring the WRA or the Operating Contractor, as it relates to the WRA.

Section 2.57 Budgeting and Funding of Costs of Risk Management Services. The costs of risk management services shall be funded as provided in Article IV, Section 4.4(h).

2. That Article III, Obligations of WRA., section 3.5 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 all insurance 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 coverage provided for in the WRA Insurance and Risk Management Program to determine (a) if such insurance is appropriately covering known risks to WRA System properties and operations, and (b) to determine if such insurance, 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 insurance coverages, or as to any needed changes in the insurance coverage levels and reserve funds.

3. That Article III, Obligations of WRA, section 3.6 is hereby amended as follows:

Section 3.6 Obtaining and Maintaining Required Insurance Reserves. The WRA shall establish, fully fund and maintain all insurance reserves as required by the most currently adopted version of the WRA Insurance and Risk Management Program. Further, the WRA shall fully fund and maintain any supplemental insurance reserve established under authorization of the WRA Insurance and Risk Management Program.

4. That Article III, Obligations of the WRA, sections 3.7 through 3.15 are hereby added 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 insurance and establish reserves to adequately financially cover such risks.

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 procured by the WRA insurance broker and approved by the WRA Board as described in the WRA Insurance and Risk Management Program heretofore adopted by the WRA Management Agency, or in accordance with any revisions to that Program adopted by the WRA Management Agency, or in accordance with revisions to that Program hereafter adopted by the Board. The WRA is responsible for maintaining in continuous effect the types and amounts of insurance necessary to satisfy insurance required by WRA loan agreements, grant agreements and revenue bond covenants.

Section 3.9 Obligations to Operating Contractor to Purchase Insurance to Protect Operating Contractor. The WRA shall authorize the purchase of insurance to protect the Operating Contractor from risks associated with acting as the WRA's Operating Contractor. Except for Public Officials and Excess Public Officials Liability Insurance policies, the WRA shall ensure, to the satisfaction of the Operating Contractor, that all WRA liability insurance policies are endorsed to include the Operating Contractor as an Additional Insured and that the WRA insurance is primary and non-contributory to any insurance or self-insurance available to the Operating Contractor. The WRA shall also ensure that all WRA insurance policies endorsed to include the Operating Contractor as an Additional Insured are also endorsed, to the satisfaction of the Operating Contractor, to preserve the governmental immunity of the Operating Contractor as provided for under Chapter 670 of the Code of Iowa.

Section 3.10 Obligations of WRA to Notify the Operating Contractor. Prior to each annual insurance policy renewal, the WRA shall provide the Operating Contractor with a copy of the insurance specifications to be used for those policies in which the Operating Contractor is to be included as an Additional Insured. The WRA shall notify the Operating Contractor of any planned changes or alterations to any insurance policy to which the Operating Contractor is included as additional insured. The WRA shall not make any change or alteration to which the Operating Contractor objects and the Operating Contractor shall not unreasonably object to any such change or alteration

Section 3.11 Retaining Insurance Broker and Advisory Services. The WRA shall retain insurance advisory and broker services no later than March 1, 2012 by competitively selecting, through an RFP process, an insurance broker to market insurance coverage, 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.

Section 3.12 Provide Operating Contractor Copies of All Insurance Policies. The WRA shall provide the Operating Contractor complete copies of all WRA insurance policies in which the Operating Contractor is included as an Additional Insured.

Section 3.13 Provide Current List of All Properties. The WRA shall maintain a current list of all properties owned by the WRA and the estimated replacement value of all properties broken down by building, contents and vehicles.

Section 3.14 WRA Responsible for Payment of Insurance Premiums, 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 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 or insurance reserve funds.

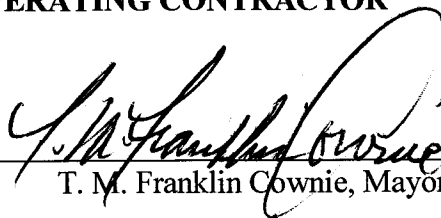
Section 3.15 Budgeting and Payment of Insurance Premium Costs; Budgeting and Payment of Participating Community Contributions Required for Creation and Maintenance of Insurance Reserves. (a) The premium cost of the insurance coverages authorized by the Board as set out in the WRA Insurance and Risk Management 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).

5. That Article IV, Section 4.4(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 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.

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 Third Amendment are hereby incorporated therein and made a part thereof.


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

By   
T. M. Franklin Cownie, Mayor

Attest:

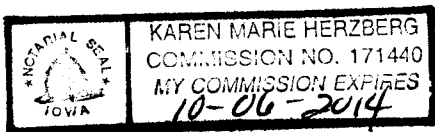
  
Diane Rauh  
City Clerk

Approved as to Form:

  
Kathleen Vanderpool  
Deputy City Attorney

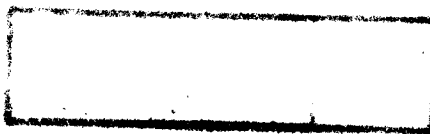
STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK )

On this 27<sup>th</sup> day of February, 2012 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. 12-0299 of the City Council on the 27<sup>th</sup> day of February, 2012 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.




Karen Marie Herzberg  
Notary Public in and for the  
State of Iowa





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

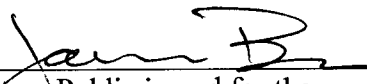
By   
Mark Miller, Chair, WRA Board

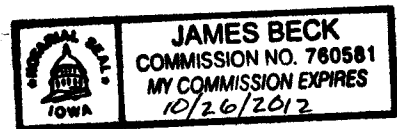
Attest:

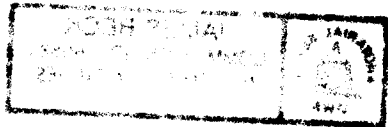
  
E.J. Giovannetti, Secretary, WRA Board

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK    )

On this 20 day of December, 2011 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark Miller and E.J. Giovannetti, 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. 11- 183, adopted by the WRA Board on the 20 day of December, 2011, and that Mark Miller and E.J. Giovannetti 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





WRA Board Resolution No. 11 - 183

Agenda Item Number

Date: December 20, 2011

21

**RESOLUTION APPROVING AMENDMENT NO. 3 TO  
OPERATING CONTRACT BETWEEN THE WRA AND THE CITY OF DES MOINES  
TO ADDRESS INSURANCE MATTERS**

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

**WHEREAS**, on April 19, 2004, the City Council approved Roll Call No. 04-845 approving the Operating Contract between the WRA and the City; and

**WHEREAS**, on March 7, 2005, the City Council approved Amendment No. 1 to the WRA Operating Contract between the WRA and the City of Des Moines; and

**WHEREAS**, on June 20, 2006, the WRA Board approved Amendment No. 2 to the WRA Operating Contract by Resolution No. 06-67 and on July 10, 2010 by the Des Moines City Council, by Resolution No. 06-1353; and

**WHEREAS**, on September 20, 2011, the WRA Board requested legal counsel to draft an amendment to the Operating Agreement pertaining to WRA Insurance and Risk Share Policies to allow, where possible, WRA to have separate insurance policies/programs from the City of Des Moines effective July 1, 2012.

**NOW THEREFORE, BE IT RESOLVED** by the Des Moines Metropolitan Wastewater Reclamation Authority that Amendment No. 3 to the Operating Contract between the WRA and the City of Des Moines is hereby approved and the Board Chair and Secretary are hereby authorized and directed to execute and attest, respectively, said Amendment No. 3 to WRA Operating Contract for and on behalf of the WRA.

WRA Board Resolution No. 11 - 183

Agenda Item Number

Date: December 29, 2011

21

Moved by Schneider to adopt.

AGENCY ACTION	YEAS	NAYS	PASS	ABSENT
Miller	✓			
Hadden	✓			
Ash	✓			
Steenhoek				✓
Arentsen	✓			
Klein				✓
Becker	✓			
Coleman				✓
Moore				✓
McKinley	✓			
Vander Waal	✓			
Sanders	✓			
Sandor	✓			
Mahannah	✓			
Giovannetti	✓			
Sassatelli	✓			
Garvey	✓			
Kooistra	✓			
Schneider	✓			
Smith	✓			
TOTAL	16	0	0	4

**CERTIFICATE**

I, E.J. Giovannetti, 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.

E.J. Giovannetti, Secretary

MOTION CARRIED APPROVED

Mark Miller  
Mark Miller, Chair

**CITY OF DES MOINES**  
**OFFICE OF CITY CLERK**

**TO: James Beck**

**DATE: March 5, 2012**

**FROM: City Clerk's Office**

**RE: City Council Agenda of  
February 27, 2012**

We are transmitting herewith the following from the City Council Agenda of: February 27, 2012

**ROLL CALL**

**SUBJECT**

**12-0299**

**Amendment #3 to operating contract with Des Moines Metropolitan  
Wastewater Reclamation Authority (WRA) to address insurance matters.  
(2)**

Thank you.



Diane Rauh  
City Clerk

DR:kh  
Attachments

cc: Roll Call  
File

★ Roll Call Number

12-0299

Agenda Item Number

34

Date February 27, 2012

**RESOLUTION APPROVING AMENDMENT NO. 3 TO  
OPERATING CONTRACT BETWEEN THE DES MOINES METROPOLITAN  
WASTEWATER RECLAMATION AUTHORITY AND THE CITY OF DES MOINES  
TO ADDRESS INSURANCE MATTERS**

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

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WHEREAS, on September 20, 2011, the WRA Board requested legal counsel to draft an amendment to the Operating Agreement pertaining to WRA Insurance and Risk Share Policies to allow, where possible, WRA to have separate insurance policies/programs from the City of Des Moines effective July 1, 2012; and

WHEREAS, on December 20, 2011, by Resolution No. 11-183, the WRA Board approved Amendment No. 3 to the Operating Agreement.

(Continued on Page2)





★ Roll Call Number

12-0299

Agenda Item Number

34

Date February 27, 2012

NOW THEREFORE, BE IT RESOLVED by the Des Moines City Council that Amendment No. 3 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. 3 to the Operating Contract for and on behalf of the City of Des Moines.

Moved by Meyer to adopt.

APPROVED AS TO FORM:

Kathleen Vanderpool
Deputy City Attorney

(Council Communication No. 12-102)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

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.

T. M. Franklin Council Mayor

Diane Rauh City Clerk

