

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

May 10, 2021, 8:30 a.m. RPBCWD Board of Managers Continuation of May 5, 2021,  
Monthly Meeting

#### PRESENT:

Managers: Jill Crafton, Treasurer  
Larry Koch  
Dorothy Pedersen, Vice President  
Dick Ward, President  
David Ziegler, Secretary

Staff: Amy Bakkum, Administrative Assistant  
Terry Jeffery, Interim District Administrator and Watershed Planning Manager

*Note: this meeting was held remotely via meeting platform Zoom in abidance with state mandates in response to Covid-19.*

#### 9d. Approve Contract with SRF for Design and Construction Administration Services for the St. Hubert Opportunity Project

- 1 Interim Administrator Jeffery stated an addendum to the District's contract with SRF would be  
2 needed to address the revisions to scope of services as discussed by the Board two meetings ago.  
3 He said to additions include educational services, water reuse tasks, final design tasks and  
4 construction services.
- 5 Manager Koch asked for more clarification about the services revisions. Interim Administrator  
6 Jeffery provided more detail about certain services that were included in SRF's original scope's  
7 not to exceed amount, but now the District has capacity to do some of those services in-house.  
8 Manager Koch said there is a written resolution as required by the recorded revision by the  
9 District's bylaws to adopt this. He said he won't approve anything retroactively and he won't  
10 approve anything with blanks in it. He recommended SRF go back and do their work.
- 11 Interim Administrator Jeffery explained why the contract includes services that were already  
12 completed and what services remained to be completed. Manager Koch asked if Administrator  
13 Bleser had the authority to approve the contact. Attorney Smith said the governance manual  
14 provides the Administrator delegated authority by the Board to spend up to \$10,000 for change  
15 orders. He said his best guess is the former Administrator understood that authority to cover this  
16 additional scope for professional services. Attorney Smith say it is legal counsel's view that the  
17 term change order is a term in construction agreements and further that the District's Governance  
18 Manual provides that when the Administrator does issue such change orders, the Administrator  
19 informs the Board.

20 Manager Koch asked for more details on what this contract states the District will pay for and  
21 what it isn't paying for, and he remarked that this is bad contract administration. Interim  
22 Administrator Jeffery said the total upcharge for the three additional scopes is \$18,399. He said  
23 that amount will be reduced by \$5,000 because the educational graphics can now be done in  
24 house by District staff.

25 Manager Pedersen moved to approve the administrative contract with SRF up to \$18,399 for the  
26 St. Hubert Opportunity Project. Manager Crafton seconded the motion. Attorney Smith said staff  
27 and legal counsel's recommendation is that the Board authorize the District Administrator to  
28 execute the agreement.

29 Manager Koch said he is not going to approve what he considers to be a bad job of presenting a  
30 contract amendment. He said there should be a spreadsheet and a resolution instead of wasting  
31 time debating. Manager Pedersen said she sees this as one of those items that is a result of the  
32 transition between the former District Administrator and Interim District Administrator. She said  
33 the District's legal counsel has reviewed the contract, and staff and legal counsel recommend this  
34 action. Upon a roll call vote, the motion carried 4-1 as follows:

35

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

36

**9e. Approve Cooperative Agreement with St. Hubert**

37 Interim Administrator Jeffery provided background about the cooperative agreement, noting  
38 the biggest change from the previous draft is that now the playground equipment is outside  
39 the scope and some indemnification language was added to agree the District would ensure  
40 any consultant or contractor working on behalf of the District indemnifies St. Hubert.

41 Manager Crafton moved to approve the Cooperative Agreement. Manager Pedersen  
42 seconded the motion. Manager Koch commented this agreement is one of the more poorly  
43 drafted agreements he has had the occasion to review, because it is redundant, inconsistent,  
44 not complete, includes no exhibits, and includes is an indemnification provision on page 7.  
45 He commented on the termination language and said there's a host of items that need to be  
46 reviewed and revised in this contract. Manager Koch asked why maintenance is being  
47 capped and said he's not in favor of maintenance caps. He noted the bids are \$50,000 over  
48 estimate.

49 Attorney Smith said the cap on maintenance is consistent with the Scenic Heights  
50 Elementary school reforestation project since there was apprehension about the maintenance  
51 exposure. He noted that from a practical aspect, it's his understanding that it's best for the  
52 maintenance plan to be developed and agreed to after the project is constructed.

53 Administrator Jeffery reported that St. Hubert is contributing to the project \$45,000 plus the  
54 playground costs and the project has been awarded a Metropolitan Council grant in the  
55 amount of \$75,000, and \$63,865 from Clean Water Legacy grant funds, and \$25,000 from  
56 Carver County SWCD for engineering design costs.

57 Manager Koch said he doesn't think the agreement should include a cap and it has  
58 redundancies that should be avoided. He also asked about how the contract addresses people  
59 to access the property and educational signage. Administrator Jeffery said signage is part of  
60 the project and if it's not addressed in the contract, he will make sure it's addressed in the  
61 maintenance agreement. Manager Koch recommended the District develop a template for a  
62 cooperative agreement and a template for a maintenance agreement. He added that he thinks  
63 developing a maintenance agreement after project construction is bad practice and should be  
64 part of the overall approval.

65 Upon a roll call vote, the motion carried 4-1 as follows:

66

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

67

**9k. Authorize Staff and Attorney to Prepare Contract Documents and Award the St. Hubert Opportunity Project to Apparent Low Bidder Upon Appropriate Vetting**

68 Interim Administrator Jeffery reported bid opening was held May 5<sup>th</sup> and the low bidder is  
69 Minger Construction Company. He noted the bid is for the entire project, not just the water  
70 quality portion. He introduced Ms. Erin Hunker of St. Hubert.

71 Manager Pedersen moved to award the contract to Minger Construction in the amount of  
72 \$270,644. Manager Crafton seconded the motion.

73 Manager Koch commented this isn't a good presentation on bids, and it strikes him as  
74 inconsistent or at least ambiguous with the cooperative agreement. He said the Board shouldn't

75 be agreeing to a contract until it know exactly what St. Hubert will be paying. Ms. Hunker said  
76 that of the base bid by Minger Construction Company, \$13,342.50 will be paid by St. Hubert.  
77 She said St. Hubert will pay all six items in the bid alternate for a cost of \$111,356.00.

78 Administrator Jeffery clarified that St. Hubert has 10 days from when the District awards the  
79 project to the apparent low bidder to approve any of the bid alternates or add-ons. Attorney Smith  
80 said there has been a coordinated discussion, and St. Hubert is tracking each step of this process,  
81 but before the District could share legally all this information with St. Hubert, the District needed  
82 to wait for bid opening and have the Board authorize the contract, after which St. Hubert would  
83 make their final decisions about what's included in the project, which would then be finalized  
84 accordingly. Manager Koch said the District shouldn't award the bid without the contingencies  
85 for acceptance of those items that St. Hubert would pay for. He said this is a calamity that needs  
86 to be reworked.

87 Attorney Smith said he thinks the suggestion is well taken that the motion should include that the  
88 total final contract amount is contingent on St. Hubert's communication of the acceptance of  
89 those alternate pieces. Manager Pedersen amended her motion to include the language about the  
90 total final contract amount being contingent on St. Hubert's communication of the acceptance of  
91 those alternate pieces, as stated by Attorney Smith. Manger Crafton accepted the friendly  
92 amendment. Attorney Smith reiterated that the motion on the table is to award the contract to  
93 Minger Construction, authorize the Interim Administrator to sign the agreement in the amount of  
94 270,644 contingent upon communication from St. Hubert on their acceptance of the alternate.  
95 Manager Koch commented this doesn't make any sense.

96 Upon a roll call vote, the motion carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

98

99 Manager Koch remarked it wasn't clear to him what was being voted on, and he thought it was a  
100 vote to amend the motion.

101 Manager Crafton moved to authorize the Interim District Administrator to sign the watershed-  
102 based implementation funding grant agreement with the Minnesota Board and Water Resources  
103 in the amount of \$63,865 to be applied to the St. Hubert project. Manager Pedersen seconded the  
104 motion.

105 Upon a roll call vote, the motion carried 4-1 as follows:

106

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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### 13. Adjournment

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President Ward referenced comments provided by Manager Koch in previous Board meetings, and he stated that disrespectful and unprofessional comments will not be tolerated in the future.

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President Ward adjourned the meeting and left the meeting.

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Manager Koch noted the meeting is not adjourned because there needs to be a vote, and he asked if President Ward knows how to conduct a meeting. Manager Koch said he thinks the District should have BWSR listen to these dialogs and Hennepin County likely would be interested in these dialogs as well.

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Vice President Pedersen moved to adjourn the meeting. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Absent
Ziegler	Aye

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The meeting adjourned at 9:12 a.m.

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Respectfully submitted,



David Ziegler, Secretary