YPSILANTI COMMUNITY UTILITIES AUTHORITY
BOARD OF COMMISSIONERS MEETING
Wednesday, June 26, 2019 – 3:00 p.m.
YCUA Administration Building
2777 State Road
Ypsilanti, MI  48198-9112


Members Absent:  Larry J. Doe.

1. CALL TO ORDER:  Ms. Stumbo called the meeting to order at 3:00 p.m.

2. MINUTES OF THE PREVIOUS MEETING:  Motion by Jason to receive and file the minutes of the May 22, 2019 meeting as presented.  Support by Ichesco.  In favor: All.  Opposed: None. (Motion carried.)

3. NEW BUSINESS:

A. Request to Approve - YCUA Resolution No. 19-5 re: Retirement for Kevin Busch – Jeff Castro

Motion by Jason to Approve YCUA Resolution No. 19-5 re: Retirement for Kevin Busch.  Support by Ichesco.

Mr. Castro advised the Board that Kevin Busch is a fleet and maintenance mechanic for YCUA and has completed 28 years and two months of service.  He indicated that Mr. Busch has requested retirement as of June 28, 2019.  Mr. Castro explained that this resolution announces his retirement and commends him for his service.

In favor: All.  Opposed: None. (Motion carried.)

B. Request to Approve – YCUA Resolution No. 19-6 Authorizing Issuance of $9.5 Million 2019 Wastewater System Bonds for Fourth Quarter SRF Project 5676-01 (City of Ypsilanti and Charter Township of Ypsilanti) – Jeff Castro
Mr. Castro advised the Board that this resolution authorizes the referenced bond issue and was prepared by YCUA bond attorney Tom Colis. He indicated that the bond sale covers two projects: the wastewater treatment plant incinerator rehabilitation in the amount of $4,297,000 and the west tertiary filter improvements in the amount of $4,370,000. Mr. Castro explained that resolutions tentatively awarding the construction contracts for these two projects will be presented in the following two agenda items.

He pointed out that these projects are eligible for funding through the state revolving fund low interest loan program administered by the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

Ms. Stumbo inquired as to why this came in so far over what was anticipated. Mr. Castro responded that the projected cost was originally about $8.3 million compared to the actual bids which came in closer to $9.6 million due to contractor concerns over possible federal tariffs. Mr. Castro added that, despite this concern, it is important to move forward and utilize fund balance if necessary, 60% of the cost of which is paid by WTUA, with YCUA’s 40% portion covered approximately 75% by the township and 25% by the city.

YCUA engineer Scott D. Westover then addressed the Board on the cost increase, citing not only uncertainty over tariffs and the trade situation but also a tight labor market that has been in place since the 2008 recession.

Ms. Stumbo inquired as to whether there will be a savings if the tariffs don’t happen. Mr. Westover responded that a full discount is not likely to take place if the trade war bidding doesn’t occur.

Ms. Stumbo inquired as to when the work will take place. Mr. Westover responded that there is some uncertainty as to when an actual order will get placed for some of the major equipment due to approvals on fabrication and other procedures that need to take place. He added that the small number of bidders also speaks to the tightness in the labor market but that he is comfortable with the amount of due diligence in the bidding procedure. Mr. Westover reiterated that, although these numbers are not favorable, moving forward on these projects is very important.

Motion by Jason to approve YCUA Resolution No. 19-6 Authorizing Issuance of $9.5 Million 2019 Wastewater System Bonds for Fourth Quarter SRF Project 5676-01 (City of Ypsilanti and Charter Township of Ypsilanti). Support by Ichesco. In favor: All. Opposed: None. (Motion carried.)
C. **Request to Approve – YCUA Resolution No. 19-7 re: Tentative Award of Construction Contract for WWTP Incinerator Rehabilitation in the Amount of $4,297,000 (SRF Project Account No. 5676-01)** – Scott D. Westover

Motion by Jason to approve YCUA Resolution No. 19-7 re: Tentative Award of Construction Contract for WWTP Incinerator Rehabilitation in the Amount of $4,297,000 (SRF Project Account No. 5676-01). Support by Bodary.

Mr. Westover advised the Board that he was disappointed that there was only one bidder on this project, but that he is comfortable with the proper steps taken and the state agrees. He indicated that there were about six contractors at the pre-bid meeting, so he was surprised when only one submitted a bid.

Ms. Stumbo asked whether the city and township have both approved this award. Mr. Castro responded affirmatively.

Ms. Stumbo then asked for more information on the sole bidder. Mr. Westover responded that they are J.F. Cavanaugh of Farmington Hills, who has done a number of YCUA projects in the past such as the Big Four pump stations and the grit improvements project five or six years ago. Mr. Westover explained that staff is very happy with their work.

Ms. Stumbo then inquired as to whether they have done incinerator projects before. Mr. Westover responded that they do general mechanical work that lends itself to the components of the incinerator.

Ms. Stumbo asked if they are a union shop. Mr. Westover responded affirmatively.

In favor: All. Opposed: None. (Motion carried.)

D. **Request to Approve – YCUA Resolution No. 19-8 re: Tentative Award of Construction Contract for WWTP West Tertiary Filter Improvements in the Amount of $4,370,000 (SRF Project Account No. 5676-01)** – Scott D. Westover

Motion by Bodary to approve YCUA Resolution No. 19-8 re: Tentative Award of Construction Contract for WWTP West Tertiary Filter Improvements in the Amount of $4,370,000 (SRF Project Account No. 5676-01). Support by Jason.

Mr. Westover advised the Board that Midwest Power Systems of Milford was the low bidder on this project. He indicated that their most recent work for YCUA was on the replacement of the WTUA header pipes at the headworks. Mr. Westover explained that they, too, have done a number of
projects for the Authority over the years and staff is comfortable that they can perform this work.

Ms. Stumbo inquired as to whether these contractors are insured. Mr. Westover responded affirmatively and indicated that the very stringent insurance requirements are set forth in the bidding documents. YCUA attorney Thomas E. Daniels interjected that there are also performance bonds in place in the complete insurer’s package. He added that all of this material is carefully reviewed with each project, even though the process is very routine, to make sure that the proof of insurance and insurance certificates are in compliance with the specifications.

Ms. Stumbo asked why this is only a tentative award. Mr. Westover responded that this is a required step in the revolving fund program because everything is technically tentative until the loan closes in August. He added that YCUA has never had a loan not go through, so this is simply procedural.

Ms. Stumbo inquired as to whether the contractor is union. Mr. Westover responded that, as a very small company, they are not union but they use mostly union labor and pay prevailing wage.

In favor: All. Opposed: None. (Motion carried.)

E. **Request to Approve – YCUA Policy Updates re: Michigan FOIA Law**
   – Jeff Castro

Motion by Jason to approve YCUA Policy Updates re: Michigan FOIA Law. Support by Bodary.

Mr. Castro advised the Board that this revision removes facsimile as an option for FOIA requests. He indicated that YCUA receives very few faxes and, as the technology has become increasingly obsolete, the Authority has eliminated several unused fax numbers. Mr. Castro explained that, as a result, YCUA would like to update its FOIA procedures to include email and personal delivery as the submission options. He pointed out that the vast majority of FOIA requests are received via email.

In favor: All. Opposed: None. (Motion carried.)

F. **Discussion – Report to YCUA Board on Sewer Backup Policies and Practices**– Jeff Castro

Mr. Castro advised the Board on the current practices involving sewer backups caused by sewer laterals (service leads) and a sewer main.
He indicated that, for sewer backups caused by service leads between the home and sewer main, YCUA’s existing 2010 policy states that the homeowner is responsible for any issues between the home and the sewer main. Mr. Castro explained that, in the event that a customer opts to replace a service between the home and the property line, the Authority will cover replacement from the property line to the sewer main as a courtesy if needed, if the customer signs a sewer lead agreement. He pointed out that the agreement invokes part of Public Act 222, which states that the property owner owns the entire service lead all the way to the main and that the YCUA portion is done as a courtesy with no responsibility for it.

Mr. Castro also explained that, if the backup occurs between the property line and the sewer main, if excavation is needed, YCUA will make the repair if a sewer lead agreement is signed.

He further advised that this is a tremendous service to the community that is not offered elsewhere and has the potential to save residents $10,000 - $15,000 with road permits and restoration costs. This policy was then discussed in detail.

Mr. Castro stated that the current issue is with back-ups in sewer mains under the road that are caused by tree roots, heavy rain events, or blockages by grease or other debris. He acknowledged that if it’s determined that the backup is caused within the sewer system, the current practice is that YCUA will take responsibility for cleaning the backed up basement, at a typical cost of $1,000 - $2,000, and allow homeowners to submit a claim to the Authority’s insurance company for replacement of damaged items within the home. Mr. Castro confirmed that, although replacement of household items has been past practice, it is not covered by any policy and, effectively immediately, it will no longer occur.

He explained that YCUA’s original 1983 policy did not provide for cleaning basements, but that the Authority replaced that policy in 2004, which established basement cleaning as standard operating procedure. Mr. Castro pointed out, however, that nowhere in any policy is YCUA required to replace items in the home.

Mr. Castro advised the Board that the Authority’s policies need to be updated to include the sewer service lead agreement and reflect Act 222 with language stating that YCUA will accept financial responsibility of cleaning homeowners’ basements if it is determined that the flooding was the result of a defect in the sanitary system. He indicated that a defect would not include roots, grease, or debris blockages or heavy rain events.
such as the one recently experienced. Mr. Castro explained that this language is in full compliance with Act 222.

He pointed out that staff is requesting the Board to approve rescinding this portion of the current policy effective immediately while a new set of policies are prepared for approval at the July meeting.

Mr. Daniels advised the Board that the two existing policies are close to but not entirely consist with Act 222, which is an addition to the governmental tort liability statute that provides immunity to municipal sewer system operators and sewer authorities unless the backup is caused by a defect in the system of which the authority was aware and failed to take reasonable steps to correct within a reasonable period of time. He indicated that this language needs to implemented in YCUA’s policies and can be done in a much more concise and more legally enforceable way by specifically invoking Act 222. He then reviewed the existing policies at length, discussing the vagueness and impreciseness of the existing language that exposes YCUA to potential liability beyond what Act 222 provides for.

Mr. Daniels explained that the two issues are: 1) when will YCUA replace a lead and what portion of the lead will be repaired, and 2) liability for sewer backups. He pointed out that that replacement of personal property will not be included. Mr. Castro interjected that, since 2002, YCUA has replaced personal items in 85% of sewer backups caused by issues in the main, which has become unsustainable in light of the increasing severity of recent rain events.

Mr. Daniels also explained that, unless these policies are updated, the Authority is subject to potentially costly liability due to the vagueness of the language in the existing policy as well as past practices not provided for under any policy that need to be discontinued.

The matter was then discussed further. Mr. Castro added that these policy changes will be communicated to the public through a notice included with the bills and information to be made available online. He indicated that these changes will be communicated in the same way the 2010 changes were addressed with the public.

Mr. Jason inquired as to any precedence that might exist that allows for past practice to be interpreted as policy and, if so, whether everything been has done to rescind that past practice. Mr. Daniels responded that this is an excellent point but that concern has been avoided thanks to the excellent communication by YCUA staff to customers. He further advised that, unfortunately, until new policies are in place, this potential liability
exists. Mr. Daniels stated that it is laudatory that YCUA’s culture has provided this very generous service to the community, but that staff can now see how extremely costly this practice has become.

Mr. Castro summarized the discussion by outlining the options at hand: the Board can immediately rescind the policy that permits the cleaning of basements for events caused by anything other than a defect in the system and operate under Act 222 until a new policy can be submitted in July or keep the existing policy in place until that time.

Ms. Stumbo commented that she cannot support revoking the current policy without new policy language in place. YCUA Human Resources Director Kevin Welch interjected that the only concern with continuing the cleanup process over the next month is that it will remain an expectation that YCUA will go to extreme measures in some cases when, for example, homeowners want carpet or drywall replaced. Mr. Daniels interjected that staff’s current practice is to do only what needs to be done to return basements to safe and sanitary conditions and to explain that cosmetic repairs will not be done.

Mr. Welch also clarified that residents need to be made aware of the importance of insurance riders that cover sewer backups, which is not typically included in a standard homeowner’s policy. Mr. Daniels indicated that communication is being drafted to address this with the public as well as informing customers that practices that historically were done above and beyond legal requirements will no longer be available. He added that revised policies will be presented for the Board’s approval at the July meeting.

Mr. Welch made the suggestion that staff investigate continuing to clean basements for the next month but then submitting them to any existing homeowner’s policies for reimbursement. Mr. Daniels responded that this can be looked into. He added that, in the past when a homeowner’s has insurance that has covered replacement of personal property and / or exorbitant cosmetic repairs, YCUA has received subrogation claims from the insurance companies. He indicated, in those cases, the Authority has informed the insurance companies that YCUA has no liability under Act 222. Further discussion then took place.

Informational only; no motion from the Board required.
G. **Request to Approve – Authorization to Seek Bids re: Recirculated Flow Pumps Improvements (O & M Expense Account No. 901-550)** – Scott D. Westover

Motion by Bodary to provide Authorization to Seek Bids re: Recirculated Flow Pumps Improvements (O & M Expense Account No. 901-550). Support by Jason.

Mr. Westover advised the Board that bids will be sought pursuant to the Authority’s purchasing policy and a recommendation will be presented to the Board by the August meeting.

In favor: All. Opposed: None. (Motion carried.)

H. **Request to Approve – Authorization to Seek Bids re: 2019 Spoils Disposal (O & M Expense Account No. 901-560)** – Scott D. Westover

Motion by Jason to provide Authorization to Seek Bids re: 2019 Spoils Disposal (O & M Expense Account No. 901-560). Support by Bodary.

Mr. Westover advised the Board that this was last done in 2011 and 2013 and the anticipation then was to repeat the process every two to three years. He indicated that this is overdue at this time.

Mr. Westover explained that the spoils are temporarily stored on the Service Center site, south of the building toward Holmes Road. He pointed out that the spoils will be disposed of at Arbor Hills landfill.

Mr. Westover also explained that spoils are sand, clay, concrete, and other materials excavated from sewer and water lateral repairs.

In favor: All. Opposed: None. (Motion carried.)

I. **Fund Balance Report** – Dwayne Harrigan

Informational only; no motion from the Board required.

J. **Financial Report – Authority Net Assets** – Dwayne Harrigan

Informational only; no motion from the Board required.

K. **Usage Report – Consumption Report** – Dwayne Harrigan

Informational only; no motion from the Board required.

L. **Attorney’s Report** – Thomas E. Daniels

Mr. Daniels advised the Board that staff is investigating the possibility of filing a claim against anyone associated with the outside contractor that worked on the Martz Road sewer main in 2001. He indicated that there is
some evidence indicating that the recent rupture was caused by a failure in that work. Mr. Daniels confirmed that, due to the time frame, there may be a statute of limitations that applies but that there also may be some exceptions that might apply.

Mr. Bodary commented that the area appears in the photos to be different from the surroundings, suggesting subpar work or materials. Mr. Westover responded that staff believes that the damage occurred during the 2001 sewer construction on the property across the street, most likely when a backhoe or other heavy equipment struck the force main. He added that what appears to be excavator teeth marks can be observed, which would have removed the first couple of layers of piping and compromising the overall integrity. Mr. Castro added that the other contractors working at the time concurred that this happened.

Mr. Westover advised that the emergency repairs were just over $500,000. Ms. Stumbo asked for clarification on how emergency expenditures are approved by the Board. Mr. Castro outlined the process. Mr. Westover interjected that a third contractor’s bill has not yet received but that, when all costs are in, the payment will come before the Board for final approval.

Ms. Stumbo inquired as to whether this was submitted to YCUA’s insurance. Mr. Castro responded that the claim was denied.

M. Human Resources Report – Kevin M. Welch

Mr. Welch advised the Board that 20 or so training programs are ongoing throughout the month. He indicated that two WWTP and two Service Center employees received higher certifications.

Mr. Welch explained that most recent actuary report shows that the correction to the defined benefit plan is now at 60%, which negates the continuation of the correction plan and, hopefully, this will continue to increase under YCUA’s continuing efforts.

He pointed out that the mechanic position is tentatively filled, contingent upon receiving all of the applicant’s 12 certifications, which he hopes will be completed by August 5th.

Mr. Welch also explained that job offer has also been extended to a new HR director, subject to a background investigation, with a start date of July 15th and a two-week training period.

N. Director’s Report - Jeff Castro

There was no Director’s Report for the month.
4. **OLD BUSINESS:** There was no Old Business for the month.

5. **OTHER BUSINESS:** Ms. Stumbo thanked Jeff Castro and Sreedhar Mullapudi for their attendance at the recent PFAS public meeting in West Willow, which was hosted by EGLE. She indicated that their ability to put things in understandable terms really aided in a worthwhile discussion.

6. **STATEMENTS AND CHECKS:** Motion by Ichesco to pay the current month’s bills in the amount of $3,551,909.77. Support by Bodary. In favor: All. Opposed: None. (Motion carried.)

7. **PUBLIC COMMENTS:** There were no Public Comments for the month.

8. **ADJOURNMENT:** Motion by Jason to adjourn the meeting at 4:09 p.m. Support by Bodary. In favor: All. Opposed: None. (Motion carried.)

Respectfully submitted,

MICHAEL BODARY, Vice Chair