

APPENDIX E
RIGHT OF REFERENDUM THEREON

SUMMARY REPORT TO MANAGER
For City Council Meeting of April 27, 2009

SUBJECT: LANDFILL GAS TO ENERGY – RIGHT OF REFERENDUM

INITIATED BY: Noel D. Bush, Utilities Director

RESOLUTION SUMMARY: This resolution will authorize and direct the City Clerk to publish a notice of intent to issue the Bonds related to the financing of the City's Landfill Gas to Energy Project, and the notice of intent shall be published as a one-quarter (1/4) page display advertisement as required by Section 517 of Act No. 34, Public Acts of Michigan, 2001, as amended.

ITEMS ATTACHED:

- 1. Letter of transmittal
- 2. Resolution

COUNCIL ACTION:

- 1. 3/5 vote required to approve resolution.

NDB/jjs



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April 22, 2009

Honorable Mayor and City Council
City of Midland
333 W. Ellsworth Street
Midland, Michigan 48640

SUBJECT: LANDFILL GAS TO ENERGY PROJECT – RIGHT OF REFERENDUM

Dear Councilmen:

The City of Midland continues to develop plans and specifications for a renewable energy project that will utilize landfill gas, created by the decomposition of refuse, to generate renewable electric power and heat for the City's Water and Wastewater Treatment facilities, and other City facilities.

Under the provisions of Section 517 of Act No. 34, Public Acts of Michigan, 2001, as amended ("Act 34") a City may issue municipal securities to pay the cost of any capital improvement items within the limitations provided by law. The issuance by the City of bonds under Section 517 of Act 34 in an amount not to exceed Ten Million Dollars (\$10,000,000) for the purpose of financing costs of acquisition and construction of the capital improvements appears to be the most practical means to that end.

Act 34 requires that the aggregate outstanding balance of municipal securities issued under Section 517 of Act 34 by a City shall not exceed 5% of the state equalized valuation of the property assessed in that City, and after the issuance of the Bonds the outstanding balance of all municipal securities issued under Section 517 of Act 34 by the City will not exceed this limit.

A notice of intent to issue bonds must be published in order to comply with the requirements of Section 517 of Act 34 and Section 5(g) of the Home Rule Cities Act, Act 279, Public Acts of Michigan, 1909, as amended. The Internal Revenue Service has issued Treasury Regulation § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended, governing proceeds of debt used for reimbursement, pursuant to which the City must declare official intent to reimburse expenditures with proceeds of such debt before making the expenditures.

The attached resolution will authorize and direct the City Clerk to publish a one-quarter (1/4) page display advertisement notice of intent to issue the Bonds in The Midland Daily News, as required by Section 517 of Act 34.

Respectfully submitted,

Noel Bush, Utilities Director



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BY COUNCILMAN

WHEREAS, the City of Midland, Counties of Midland and Bay, State of Michigan (the "City") determines it to be necessary for the public health, safety and welfare of the City and its residents to acquire and construct a methane recovery system from the City's landfill and a methane powered electric generating facility, together with any appurtenances and attachments thereto and any related site acquisition or improvements (the "Capital Improvements"); and

WHEREAS, under the provisions of Section 517 of Act No. 34, Public Acts of Michigan, 2001, as amended ("Act 34") a City may issue municipal securities to pay the cost of any capital improvement items within the limitations provided by law; and

WHEREAS, the issuance by the City of bonds under Section 517 of Act 34 in an amount not to exceed Ten Million Dollars (\$10,000,000) (the "Bonds") for the purpose of financing costs of acquisition and construction of the Capital Improvements appears to be the most practical means to that end; and

WHEREAS, Act 34 requires that the aggregate outstanding balance of municipal securities issued under Section 517 of Act 34 by a City shall not exceed 5% of the state equalized valuation of the property assessed in that City, and after the issuance of the Bonds the outstanding balance of all municipal securities issued under Section 517 of Act 34 by the City will not exceed this limit; and

WHEREAS, a notice of intent to issue bonds must be published in order to comply with the requirements of Section 517 of Act 34 and Section 5(g) of the Home Rule Cities Act, Act 279, Public Acts of Michigan, 1909, as amended; and

WHEREAS, the Internal Revenue Service has issued Treasury Regulation § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended, governing proceeds of debt used for reimbursement, pursuant to which the City must declare official intent to reimburse expenditures with proceeds of such debt before making the expenditures; now therefore

RESOLVED, that

1. The City Clerk is hereby authorized and directed to publish a notice of intent to issue the Bonds in *The Midland Daily News*, a newspaper of general circulation in the City.
2. The notice of intent shall be published as a one-quarter (1/4) page display advertisement as required by Section 517 of Act 34, and shall be in substantially the following form:

NOTICE TO ELECTORS AND TAXPAYERS
OF THE CITY OF MIDLAND
OF INTENT TO ISSUE BONDS SECURED BY THE
TAXING POWER OF THE CITY AND RIGHT OF REFERENDUM THEREON

PLEASE TAKE NOTICE that the City Council of the City of Midland, Counties of Midland and Bay, State of Michigan, intends to issue and sell general obligation capital improvement bonds, pursuant to Act 34, Public Acts of Michigan, 2001, as amended, in the maximum aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000) for the purpose of paying costs to acquire and construct a methane recovery system from the City's landfill and a methane powered electric generating facility, together with any appurtenances and attachments thereto and any related site acquisition or improvements.

The bonds may be issued in one or more series and may be combined with bonds issued for other purposes as shall be determined by the City Council. Each series of the bonds will mature in annual installments not to exceed the maximum permitted by law, with interest on the unpaid balance from time to time remaining outstanding on said bonds to be payable at rates to be determined at sale of the bonds but in no event to exceed such rates as may be permitted by law. Bond proceeds may be used for capitalized interest to the extent permitted by law.

SOURCE OF PAYMENT OF BONDS

The City intends to pay the principal and interest of the Bonds from revenues received by the City from the operations of the facility being constructed with bond proceeds. In case of the insufficiency of these revenues, the principal of and interest on the Bonds shall be payable from the general funds of the City lawfully available for such purposes including property taxes levied within existing charter, statutory and constitutional limitations.

RIGHT OF REFERENDUM

THE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS UNLESS A VALID PETITION REQUESTING SUCH A VOTE SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS RESIDING WITHIN THE CITY IS FILED WITH THE CITY CLERK WITHIN FORTY-FIVE (45) DAYS AFTER PUBLICATION OF THIS NOTICE. If such petition is filed, the bonds may not be issued without an approving vote of a majority of the qualified electors of the City voting thereon.

THIS NOTICE is given pursuant to the requirements of Section 517 of Act 34, Public Acts of Michigan, 2001, as amended, and Section 5(g), Act 279, Public Acts of Michigan, 1909, as amended. Further information concerning the matters set out in this notice may be secured from the City Clerk's office.

I hereby certify that the foregoing is a true and complete copy of a resolution duly adopted by the City Council of the City of Midland, Counties of Midland and Bay, State of Michigan, at a Regular meeting held on _____, 2009 at ____:____ o'clock p.m., prevailing Eastern Time, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act 267.

I further certify that the following Members were present at said meeting: _____

_____ and that the following Members were absent:
_____.

I further certify that Member _____ moved for adoption of said resolution and that Member _____ supported said motion.

I further certify that the following Members voted for adoption of said resolution:
_____ and that the following Members voted against adoption of said resolution: _____.

City Clerk

3. The City Council does hereby determine that the foregoing form of notice of intent to issue the Bonds, and the manner of publication directed, is adequate notice to the electors of the City and is the method best calculated to give them notice of the City's intent to issue the Bonds, the purpose of the Bonds, the source of payment of the Bonds, the security for the Bonds, and the right of referendum of the electors with respect thereto. The City Council does hereby determine that the newspaper named for publication is hereby determined to reach the largest number of persons to whom the notice is directed and the newspaper complies with the requirements of Act No. 247, Public Acts of Michigan, 1963.

4. The City may incur expenditures for the Capital Improvements prior to receipt of proceeds of the Bonds, and may advance moneys for that purpose from the City's general fund to be reimbursed from proceeds of the Bonds when available. The City shall keep a specific record of all such expenditures.

5. The City hereby makes the following declaration of intent for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

(1) The City reasonably expects to reimburse itself for the expenditures described in (2) below with proceeds of debt to be incurred by the City.

(2) The expenditures described in this paragraph (2) are to pay certain costs associated with the Capital Improvements which were or will be paid subsequent to sixty (60) days prior to the date hereof or which will be paid prior to the issuance of the debt from the general funds or capital fund of the City.

(3) As of the date hereof, the maximum principal amount of debt expected to be issued for reimbursement purposes, including reimbursement of debt issuance costs, is \$10,000,000 which debt may be issued in one or more series and/or together with debt for other purposes.

(4) A reimbursement allocation of the expenditures described in paragraph (2) above with the proceeds of the borrowing described herein will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the Capital Improvements are placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the debt to be issued for the Capital Improvements to reimburse the City for a capital expenditure made pursuant to this Resolution.

(5) The expenditures for the Capital Improvements are "capital expenditures" as defined in Treas. Reg. § 1.150-1(b), which are any costs of a type which are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of "placed in service" under Treas. Reg. § 1.150-2(c)) under general Federal income tax principles (as determined at the time the expenditure is paid).

(6) No proceeds of the borrowing paid to the City in reimbursement pursuant to this Resolution will be used in a manner described in Treas. Reg. § 1.150-2(h) with respect to abusive uses of such proceeds, including, but not limited to, using funds corresponding to the proceeds of the borrowing in a manner that results in the creation of replacement proceeds (within Treas. Reg. § 1.148-1) within one year of the reimbursement allocation described in paragraph (4) above.

6. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are hereby rescinded.

YEAS:

NAYS:

ABSENT:

I, Selina Tisdale, City Clerk, City of Midland, Counties of Bay and Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by a yeas vote of all the Councilmen present at a regular meeting of the City Council held Monday, April 27, 2009.

Selina Tisdale, City Clerk