

BERKSHIRE REGIONAL PLANNING COMMISSION
1 FENN STREET, SUITE 201, PITTSFIELD, MASSACHUSETTS 01201
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SHEILA IRVIN, Chair
KYLE HANLON, Vice-Chair
_____, Clerk
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.
Executive Director

REVISED MEETING NOTICE

There will be a meeting of the

EXECUTIVE COMMITTEE

on Thursday, September 5, 2013, 4:00 p.m.
at the Berkshire Regional Planning Commission Office
1 Fenn Street, Suite 201, Pittsfield, MA

AGENDA

- I. Call to Order, Open Meeting Law Statement & Introductions (4:00)
- II. Approval of Minutes of Executive Committee Meeting of August 8, 2013 * (4:05)
- III. Organization of 2013-2014 Executive Committee and Commission (4:10)
 - A. Executive Committee & BRPC Meeting Dates/Times for January Meetings
 - B. Status of Committee Membership for FY 2014
 - C. Other
- IV. Financial Reports (4:15)
 - A. August Expenditures Report *
 - B. Accounts Receivable Report
 - C. Status of Receipt of Community Assessments for FY 2014
 - D. Other
- V. Delegate & Alternate Issues (4:20)
- VI. Clearinghouse Reviews (4:25)
 - A. DEP Proposed Hazardous Waste & Organic Solid Waste Regulatory Changes
 - B. ENF for Housatonic Street Reconstruction Project (Dalton)
- VII. Items Requiring Action (4:35)
 - A. Approval to Submit Letter of Intent to the Massachusetts Environmental Trust for the Berkshires Easy Green Landscaping Program *
 - B. Consideration of Draft Intergovernmental Agreement between BRPC and Six "Rest of River" Municipalities – recommendation for full Commission *

- C. Consideration of Draft Purpose and Board Composition for BRPC Affiliated Non-Profit – recommendation for full Commission *
 - D. *Approval to Submit Grant Application to the Blue Cross/Blue Shield of Massachusetts Foundation (Catalyst Fund) for Capacity Building in Health Care Organizations **
 - E. Other
- VIII. Committee Reports (5:00)
- A. Commission Development Committee
 - B. Nominating Committee – Vacant Clerk Position
 - C. Regional Issues Committee
 - D. Transportation Committee/Transportation Advisory Committee
- IX. Executive Director’s Report (5:05)
- A. Report on New Contracts/Agreements
 - B. Public Health Alliance Services
 - C. MassWorks Applications Open – Due no later than Friday, September 13th
 - D. FY 2014 State Budget – District Local Technical Assistance and Community Innovation Challenge Grant Funding
 - E. Initiation of Economic Resiliency in the Northern Tier Project
 - F. 5th Annual Regionalization Toolkit Conference – Monday, September 16th, College of the Holy Cross, Worcester
 - G. Citizen Planner Training Collaborative Fall Berkshire Workshops – November 7th and December 5th, Intermodal Transportation Center, Pittsfield
 - H. Other
- X. Old Business (5:10)
- A. September BRPC Meeting
 - B. Other
- XI. New Business (5:15)
- A. Kusik Award Nominations for 2013
 - B. Other
- XII. Adjournment (5:20)

* Items Requiring Action

City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B

PREAMBLE

The cleanup of the Housatonic River of PCBs is viewed as one of the most important regional issues in recent Berkshire County history due to the geographical extent of the cleanup, the duration of proposed cleanup activities and the associated socioeconomic impacts on Berkshire communities. The Housatonic River Watershed encompasses approximately 53% of Berkshire County and contains all or a portion of 26 of the 32 Berkshire communities. The Commonwealth of Massachusetts has designated a portion of the watershed as an Area of Critical Environmental Concern, and the Massachusetts Natural Heritage and Endangered Species Program has noted the rich biodiversity of the Housatonic River Watershed.

The East and Main branches of the Housatonic River between Pittsfield and Sheffield in Massachusetts are heavily contaminated by PCBs due to the handling and disposal operations of General Electric Company (GE). Under the Consent Decree of 1999 and its subsequent amendments GE has agreed to conduct cleanup activities to remove PCBs from the river. GE's Corrective Measures Study has projected cleanup activities could last between five and 50 years, depending on the level of work that is required by the U.S. Environmental Protection Agency (EPA). The impacted section of the Housatonic River in Massachusetts encompasses the City of Pittsfield and the Towns of Lenox, Lee, Stockbridge, Great Barrington, and Sheffield (the "Rest of River Communities." It is expected the Rest of River Communities will experience a series of negative socioeconomic impacts during the cleanup including, but not limited to, property devaluation, damages to road infrastructure, loss of tax revenues, a decrease in outdoor recreation and tourism, and a diminished quality of life for residents near construction sites or along transportation routes.

INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into this ____ day of _____, 2013 by and between the BERKSHIRE REGIONAL PLANNING COMMISSION (hereafter "BRPC"), having principal offices at 1 Fenn Street, Suite 201, Pittsfield, MA 01201, and the municipalities of Great Barrington, Lee, Lenox, Pittsfield, Sheffield and Stockbridge (hereafter "MUNICIPALITIES") , all governmental units as defined under M.G.L. c. 40, §4A.

The MUNICIPALITIES will begin negotiations with GE regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site, as defined by the EPA. The MUNICIPALITIES, while undertaking this action as the six municipalities cited in the Rest of River cleanup studies and/or agreements, are deeply mindful of the impacts and consequences that the cleanup will have on Berkshire County residents, businesses, resources, economic development and municipal operations.

The MUNICIPALITIES have agreed that BRPC shall hire the law firm of Pawa Law Group, P.C., 1280 Centre Street, Suite 230, Newton, MA 02459 (hereafter “Pawa Firm”); that BRPC shall communicate the position of the MUNICIPALITIES to the Pawa Firm for negotiations with GE; and that BRPC shall continue such communications if it is deemed necessary to pursue litigation related to the river, including but not limited to an appeal of EPA’s remedy under the federal Resource Conservation and Recovery Act (“RCRA”). The MUNICIPALITIES have agreed that BRPC shall enter into a contract for legal services with Pawa Firm, and that BRPC will be responsible for all coordination between Pawa Firm and the MUNICIPALITIES; that BRPC shall act as the agent and representative of the MUNICIPALITIES, subject to advice and approval from the MUNICIPALITIES per this Agreement, in assisting the Pawa Firm in these matters; and that BRPC shall act as the MUNICIPALITIES’ fiscal agent as described in Section 2. Notwithstanding the foregoing, the MUNICIPALITIES understand that BRPC is the Pawa Firm’s sole client with respect to negotiations and/or litigation related to Housatonic River Site.

Each party to this Agreement has obtained authority to enter into this Agreement pursuant to M.G.L. c. 40, § 4A. The MUNICIPALITIES have obtained authorization by vote of their Boards of Selectmen or City Council with the approval of the Mayor.

Therefore, in consideration of the mutual promises, payments and agreements contained herein, the parties, intending to be legally bound thereby, agree as follows:

1. Governing Body and Voting Procedures. The MUNICIPALITIES shall form a governing body (“COMMITTEE”) consisting of two representatives from each municipality. The Mayor of Pittsfield shall appoint the two City representatives. The Boards of Selectmen from the Towns of Lee, Sheffield and Stockbridge shall each appoint two representatives from their respective towns. The Town Managers in Great Barrington and Lenox shall each appoint two representatives from their respective towns. Each municipality shall have one vote on the COMMITTEE. A majority of MUNICIPALITIES must have at least one representative present in order to constitute a quorum and to conduct any business. General business shall be conducted using a majority vote of the MUNICIPALITIES present and constituting a quorum. Business involving negotiating positions and final settlement agreements with GE shall require a supermajority vote of the six MUNICIPALITIES.
 - a) The Pawa Firm. The COMMITTEE shall deliberate and provide direction to the BRPC in order for BRPC to provide direction to Pawa Firm regarding the negotiations on the MUNICIPALITIES’ behalf with General Electric regarding compensation for socio-economic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site and, if necessary, in prosecuting litigation (e.g., an appeal of EPA’s remedy under RCRA).

The COMMITTEE shall by majority vote of the MUNICIPALITIES present, establish rules that govern its operating practices, and to vote and approve estimated budgets of time and out-of-pocket costs from Pawa Group and BRPC prior to incurring any costs.

- b. GE. Decisions regarding settlement offers to GE, or acceptance of settlement offers by GE, will preferably be made by consensus of the COMMITTEE. In the absence of complete consensus on such issue(s), the COMMITTEE shall make such decisions by supermajority of all six MUNICIPALITIES. Any position to allow (i.e., to propose or accept a settlement offer or not to pursue an appeal of) an in-county landfill of PCB's from the Rest of River site shall require a unanimous decision of the COMMITTEE.

Any future decisions regarding weighting of votes based on contributions for payments of costs and/or based on socioeconomic impacts suffered by the individual municipalities due to cleanup activities, as well as decisions about any dispersion of settlements from GE to the MUNICIPALITIES, shall require a supermajority vote of all six of the MUNICIPALITIES.

2. Payment of Fees, Costs and Expenses.

- a. The MUNICIPALITIES have agreed to pay all approved fees, costs and expenses, including reasonable out-of-pocket costs, payable by the BRPC to the Pawa Firm, for legal services in accordance with its legal contract, and all approved fees, costs and expenses incurred by BRPC, subject to approval by the COMMITTEE as required in Section 1 of this agreement.
- b. The MUNICIPALITIES have initially funded this Agreement by an appropriation of Sixty Thousand Dollars (\$60,000.00), which is available for payment of costs to the Pawa Firm and BRPC as stipulated in Section 1.a., 2.a., 2.c. – 2.f.
- c. The MUNICIPALITIES have agreed that a negotiating team of COMMITTEE members selected by the COMMITTEE will participate with the Pawa Firm in negotiations between the MUNICIPALITIES and GE. The Pawa Firm will participate in an initial meeting with GE in this matter under a capped fee agreement. Pawa Firm will cap fees on its preparation and participation in the initial meeting at **\$23,000.00** such that any time incurred in excess of the cap will not be billed to BRPC. **The cap does not include out-of-pocket costs.** Pawa Firm will submit estimated budgets for future phases of work for the COMMITTEE's review and approval prior to commencing additional work.

- d. BRPC will review and submit all estimated budgets, including time and out-of-pocket costs, prepared by Pawa Firm to the COMMITTEE for review and approval prior to incurring expenses as set forth in Section 1. Upon receipt of bills from Pawa Firm for time and expenses which have been authorized by the COMMITTEE, BRPC will promptly circulate the bills to the representatives who shall indicate their approval or any concerns within five days to BRPC. If there are no concerns, BRPC will promptly invoice the MUNICIPALITIES who will promptly process payment to BRPC. When all MUNICIPALITIES have paid, BRPC will promptly process payment to Pawa Firm. The MUNICIPALITIES hereby agree to make prompt payment to BRPC so that BRPC may remit payment to the Pawa Firm within 40 days of receiving a bill
 - e. If the Pawa Firm legal services contract is cancelled, the MUNICIPALITIES will be responsible for any fees, costs or expenses, including out-of-pocket expenses, incurred by Pawa Firm and pre-approved by the COMMITTEE and payable by BRPC up to the time of notice of cancellation and further reasonable fees and costs necessary to complete essential tasks and undertake reasonable ministerial responsibilities to properly conclude pending matters.
 - f. The MUNICIPALITIES have agreed to provide compensation to the BRPC for its services in contracting with the Pawa Firm on behalf of the MUNICIPALITIES and in coordinating negotiations and/or litigation between the MUNICIPALITIES and GE. BRPC will submit estimated budgets, including time and direct costs, to the COMMITTEE for review and approval prior to incurring expenses.
 - g. At any point in the future, if additional funds are needed beyond the initial \$60,000 provided in Section 2.b., each municipality's share of costs will be redefined. Approving the redefined share of costs shall require a supermajority vote of the COMMITTEE.
3. Distribution of Future Settlement(s).
- a. The initial payments from any future financial settlement between the MUNICIPALITIES and GE shall be issued to each of the MUNICIPALITIES to reimburse them for their portion of the approved costs incurred under Section 2 of this Intergovernmental Agreement, including any municipality which has withdrawn from the Agreement.
 - b. All efforts will be made to fully reimburse each of the MUNICIPALITIES for costs incurred in negotiating a final settlement agreement with GE. In the event

that the signed settlement agreement between the MUNICIPALITIES and GE does not cover the total amount of the approved costs incurred by the MUNICIPALITIES, initial settlement payments to each of the MUNICIPALITIES shall be proportionally prorated to reflect the costs incurred by each municipality as a percentage of the total costs incurred by the MUNICIPALITIES as a whole. In the event that no settlement funds are recovered as part of the signed agreement between the MUNICIPALITIES and GE, none of the MUNICIPALITIES will receive reimbursement funding.

- c. After payments described in Sections 3.a. and 3.b. have been made, the COMMITTEE will determine the proportional distributions of funds from any settlement(s) between the MUNICIPALITIES and GE depending on circumstances at the time of the settlement(s). Such distributions will be determined by a supermajority of the COMMITTEE. Each Municipality which is a member of the COMMITTEE at the time that negotiations between the MUNICIPALITIES and the GE are finalized and signed by the MUNICIPALITIES and GE shall receive a minimum of 5% of such settlement, net of the payments described in Sections 3.a. and 3.b..

4. Term. The term of this Agreement shall be for three years, commencing with the date of execution of the Agreement. It is further understood and agreed that the initial three year contract may be extended by a majority vote of the COMMITTEE present and constituting a quorum with renegotiations commencing three (3) months prior to the expiration of the three-year period.

5. Termination.

- a. The COMMITTEE, upon majority vote of those present and constituting a quorum, or BRPC may terminate this agreement upon thirty (30) days written notice, without cause. Upon notice of termination, all work shall cease, except that necessary to close the agreement. BRPC will immediately inform the Pawa Firm of the termination and order that all work cease. The MUNICIPALITIES will be responsible for paying the budgeted and pre-approved costs incurred to the date of termination as described in Sections 2.a.-2.f.
- b. Any individual municipality may terminate its involvement in this agreement and the COMMITTEE upon thirty (30) days' notice, without cause. Notification will be submitted to the COMMITTEE and BRPC in writing. The withdrawing municipality will continue to be responsible for paying its share of the pre-

approved budgeted expenses that exist on the date that the termination notice is submitted to the COMMITTEE and will continue to strictly abide by the terms of the Confidentiality and Non-Disclosure section of this Agreement.

- c. An individual municipality withdrawing from this Agreement shall be reimbursed for its contributed costs incurred for negotiations between the MUNICIPALITIES and GE, as described under Section 3.a. and 3.b. An individual municipality withdrawing from this Agreement before negotiations between the MUNICIPALITIES and the GE are finalized and signed by the MUNICIPALITIES and by GE will be deemed to have forfeited its right to any further recovery from any settlements arising out of such negotiations under Section 3.c. The Municipalities hereby acknowledge that in the event any of them withdraw from this contract, the Pawa Firm may continue to represent BRPC in this matter and as agent of the Municipalities who have not withdrawn.
6. Confidentiality and Non-Disclosure. Due to the sensitive nature of the expected negotiations and potential litigation, all municipal representatives currently serving, or who have served, on the COMMITTEE or other municipal officials who have been briefed on the negotiations and/or litigation, as well as involved BRPC staff, shall treat all communications labeled as privileged and confidential and briefings, deliberations and decisions made in Executive Session as privileged and confidential and legally protected, unless and until agreements are reached which require final action in open session. If any municipality determines to withdraw from this agreement, all such communications and briefings, deliberations and decisions shall continue to be treated as privileged and confidential and legally protected unless and until agreements are reached which require final action in open session.

It is the intention of the parties to this agreement that all communications between the Pawa Firm and BRPC, between the Pawa Firm and any of the MUNICIPALITIES and between BRPC and the MUNICIPALITIES concerning the Pawa Firm's legal advice shall be protected by the attorney-client privilege, that all information provided by the Pawa Firm to BRPC and/or the MUNICIPALITIES shall be treated as privileged and confidential attorney work product (whether or not such information is shared by BRPC with the municipalities), and that information shared under this agreement is to be protected from disclosure under the Public Records Act until, at a minimum, any negotiations with GE are concluded.

7. Amendment and Payment Schedules. This Agreement and the payment provisions contained herein, may be amended from time to time but only by a written amendment signed by all parties.
8. Notices. BRPC shall be responsible for providing notice of meetings and copies of all material to the COMMITTEE members and shall provide copies of all agendas to the six municipal clerks for posting to the extent required by the Open Meeting Law. BRPC shall also post all COMMITTEE agendas on its website to the extent required by the Open Meeting Law and shall maintain the official copy of all meeting materials and minutes.
9. Resolution of Disputes. In the event of any dispute between the BRPC and the COMMITTEE whether arising out of this Agreement or under the provisions of this Agreement, the matter may, upon the consent of both parties, be first submitted to a neutral third party for mediation. In this instance, consent of the COMMITTEE shall mean a majority vote of the MUNICIPALITIES present and constituting a quorum. In the absence of the consent of a majority of the COMMITTEE and BRPC, either party may seek dispute resolution through a court of competent jurisdiction.
10. Law Governing. This Agreement and all rights and obligations, including matters of construction, validity and performance shall be governed by the law of Massachusetts.
11. Severability. Should any part of this Agreement be rendered or declared invalid by a court of competent state or federal jurisdiction, such invalidation shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.
12. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Agreement nor the intent of any provision hereof.
13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and any other agreements, whether written or oral, that may exist are excluded from the terms herein.

Daniel Bianchi, Mayor
City of Pittsfield

Chair, Board of Selectmen
Town of Great Barrington

Chair, Board of Selectmen
Town of Lee

Chair, Board of Selectmen
Town of Lenox

Chair, Board of Selectmen
Town of Sheffield

Chair, Board of Selectmen
Town of Stockbridge

Nathaniel W. Karns
Executive Director
Berkshire Regional Planning Commission

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Executive Director

MEMORANDUM

TO: Executive Committee, Berkshire Regional Planning Commission
FROM: Nathaniel W. Karns, AICP, Executive Director
DATE: September 4, 2013
SUBJ: Additional Agenda Item

VII. Items Requiring Action

- D. Approval to Submit Grant Application to the Blue Cross/Blue Shield of Massachusetts Foundation (Catalyst Fund) for Capacity Building in Health Care Organizations

The Executive Committee is requested to authorize the Executive Director to submit a grant application to the Blue Cross/Blue Shield of Massachusetts Foundation (Catalyst Fund) and for the Executive Director to enter into any resulting contracts and agreements. Through the Catalyst Fund, small grants (up to \$5,000) are provided to support capacity building in health care organizations and community-based agencies with health care programs. The grant assists with one-time expenses needed to strengthen an organization's ability to fulfill health care components of its mission. We intend to apply for funds to provide some technology enhancements for public health nursing staff and purchase a vaccine-monitoring system/training package for staff. Any additional revenue would be put towards other training, marketing and outreach materials. No match is required.