

CITY OF MALDEN

201 S. MADISON ST. MALDEN, MO 63863

P. 573-276-4502 / F. 573-276-4109

CITY COUNCIL SPECIAL CALLED **EMERGENCY** MEETING

AGENDA

Thursday, February 1, 2024 at 2:00 pm

VIA ZOOM

Meeting ID: 255 098 5566

1. ROLL CALL
2. DUNKLIN COUNTY SEWER DISTRICT #1 RECEIVERSHIP
3. DUNKLIN COUNTY SEWER DISTRICT #1 AGREEMENTS
4. DISCUSSION OF ECONOMIC DEVELOPMENT INCENTIVE
5. OTHER BUSINESS DEEMED NECESSARY

In compliance with the Americans with Disabilities Act, the City of Malden will make every effort to honor requests for reasonable accommodations made by individuals with disabilities. Requests can be responded to more effectively if received by the City as far in advance of the meeting as possible, preferably at least a week. Contact the City Clerk at 573-276-4502.

POSTED:



IN THE CIRCUIT COURT OF THE THIRTY-FIFTH JUDICIAL CIRCUIT
OF MISSOURI, DUNKLIN COUNTY, MISSOURI

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DUNKLIN COUNTY REORGANIZED)
 COMMON SEWER DISTRICT #1,)
)
 Defendant.)

No. 21DU-CC00015

FILED
MAR 05 2021

PAULA S. GARGUS
CIRCUIT CLERK

RECEIVERSHIP ORDER

Upon joint motion of the parties, and for good cause shown, it is hereby ordered as follows:

(1) The Dunklin County Reorganized Common Sewer District #1 is hereby placed in receivership ("the Receivership") under the supervision and authority of this Court.

(2) The City of Malden, Missouri, is hereby appointed receiver for the District (the "Receiver"). This appointment and the authority of the Receiver as set forth in this Order are to be effective immediately upon the entry of this Order.

(3) Until further order of the Court to the contrary, the Receiver is to have exclusive possession and control over all assets of the District and the operations of the district.

(4) The Receiver will assume all responsibilities, functions, duties, powers and authority of the District, and his responsibilities, functions, duties, powers and authority shall include but not be limited to the following:

A. The Receiver may enter into, renew or terminate contracts on behalf of the District, including for operations, accounting, engineering, consulting, or legal services, or for supplies or equipment, or for any other goods or services deemed necessary for efficient and effective operation and maintenance of the District and its sewer system (the "sewer system").

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B. The Receiver shall take such actions on behalf of the District as are necessary to comply with environmental or other laws of Missouri or the United States.

C. The Receiver may access, without limitation, such books, records, documents, electronic data, and facilities of the District as the Receiver deems necessary to carry out the terms of this Order, and to make such items available to consultants, accountants, attorneys or other persons with whom the Receiver contracts or consults on behalf of the District.

D. The Receiver may hire such operators, consultants, professionals, contractors, engineers and attorneys as the Receiver deems necessary for adequate performance of his duties under this Order.

E. The Receiver shall collect fees from customers of the District, and may avail the District of all legal remedies for recovering and collecting arrearages for fees due from customers, including arrearages existing as of the date of this Order.

F. The Receiver may renegotiate accounts receivable, including by agreeing to and implementing payment plans, lien agreements, or other alternatives to account for arrearages.

G. The Receiver may seek to renegotiate debts owed by or to the District, and challenge any contracts that the Receiver determines were entered unlawfully. The Receiver may also seek from the Court relief from any pre-Receivership agreement with a supplier in order to secure financial viability or other interests of the Receivership.

H. The Receiver may adjust the rates and fees that the District charges customers.

I. The Receiver may seek out and apply for grants, loans and other sources of funds to finance the operation of the District and the expenses of such improvement projects as are deemed necessary by the Receiver. The Receiver shall comply with the terms and conditions of current and future grants or loans made to the District, subject to any renegotiation of such terms.

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MAR 05 2021

PAULA S. GARGUS
CIRCUIT CLERK

J. The Receiver shall establish and maintain a fund for responding to sewer overflows and other emergencies.

(5) It is not the intent of this order that the District be dissolved, nor that Trustees not be duly appointed to hold office. Rather, it is the intent of this Order that during the pendency of the Receivership, the powers, authority and functions of the District and the Trustees of the District are to be conferred exclusively on the Receiver.

(6) At the time, and upon intervals ordered by this Court, the Receiver shall file a report which shall include: (1) an inventory of all property and assets in the Receiver's possession or in the possession of others as his agents, (2) in a separate schedule, an inventory of the property and assets of the Receivership not reduced to possession by the Receiver but claimed and held by others, and (3) an accounting of actions taken during the reporting period, actions planned, and the financial status of the District. At regular intervals thereafter, the Receiver shall file an updated report covering the same items. The Receiver shall provide copies of all such reports to the parties and make copies of all such reports available for inspection by customers of the District. The Court may require reports at other times on matters specified by the Court.

(7) The Receiver shall provide such reports to this Court as are required by Missouri law.

(8) The Receiver and his employees, officers and agents shall be entitled to immunity from suit in their personal capacity when acting within the scope of the authority granted by this Order. Absent an order to the contrary, this immunity will apply to any subsequent modification of this Order governing the terms of the Receivership. This immunity shall extend to any good faith, reasonable effort by the Receiver and his employees, officers and agents to act in accordance with the authority granted by this Order, including any good faith, reasonable effort to assume

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possession of and operate the sewer system in compliance with this Order, or to recover debts owed to the District or establish liens therefor.

(9) The Receiver is authorized to provide information concerning the District and its sewer system, including any information concerning its finances and operating costs, to any potential purchaser of the sewer system, and to permit any such potential purchaser to inspect the facilities of the District. However, in the event that the Receiver or any party to this action determines that the sewer system should be sold or otherwise conveyed to any party other than the District, the proposal for such sale or conveyance and the terms of such sale and conveyance shall be presented to the Court for approval.

(10) It is the intent of the parties that the Receiver will be paid from the duly collected revenues of Defendant District at a rate agreed upon between the Receiver, Plaintiff, and Defendant District.

(11) The Trustees and Employees of the District shall provide full cooperation to the Receiver by making all District accounts and funds available to the Receiver, providing all books, records, contracts and other documents of the District to the Receiver, and responding to reasonable requests by the Receiver for information.

(12) The Parties recognize that the Receiver currently is a judgment creditor of Plaintiff, pursuant to an order entered in City of Malden, Missouri v. Dunklin County Reorganized Common Sewer District #1, Dunklin County Circuit Court Case No. 16DU-AC00784 (*Affirmed* Missouri Court of Appeals, Southern District, Case No. SD36182). The Receiver has stated that it will operate the system consistent with best practices and Missouri law. Defendant District has no objection to the appointment of receiver despite its status as a judgment creditor.

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CIRCUIT CLERK

- (13) The Receiver may at any time apply to the Court for modification of the terms of this Order or for instructions on the implementation of this Order.
- (14) The Receivership will continue, and the authority of the Receiver as set forth in this Order will continue, until further Order of the Court to the contrary.

DATE:

3/5/21

JUDGE:

Robert J. Morgan

FILED
MAR 05 2021

PAULA S. GARGUS
CIRCUIT CLERK

SERVICE, MAINTENANCE AND REPAIR AGREEMENT

DATE: August 16, 2021

PARTIES:

Reorganized Sewer District Number 1 of Dunklin County, Missouri (Sewer District)

City of Malden, Missouri (City)

THIS BILLING AND COLLECTION AGREEMENT IS BASED ON THE FOLLOWING FACTS:

- A. Sewer District is a Reorganized Common Sewer District pursuant to Sections 204.600 to 204.640, RSMo.
- B. City has been appointed Receiver of the Sewer District by Order of the Circuit Court in case number 21DU-CC00015.
- C. Sewer District does not have sufficient human resources to provide suitable service, maintenance and repair of sewer district systems and facilities.
- D. City, through its Water and Wastewater Department, employs personnel trained and certified to service, maintain and repair systems and facilities of the same or similar nature to that of the Sewer District.
- E. The Sewer District believes it is in the best interests of the Sewer District for the City to provide such services to the District.
- F. The base fair market value (base rate) for the provision of such services to the District is forty-five thousand six hundred thirty-nine dollars and seventy-two cents (\$45,639.72) per year, plus additional actual costs which might be incurred by the City.


THE PARTIES AGREE:

- 1. **City to provide service, maintenance and repair of sewer district systems and facilities.** As of the effective date of this Agreement, City will provide to Sewer District service, maintenance and repair of sewer district systems and facilities, including emergency repairs as necessary.
- 2. **Sewer District to provide customer list.** Sewer District will provide the name and address of each Sewer District to City. Sewer District agrees to notify City should the name or address change for any customer.

3. **Service Call Number.** City will provide a telephone number for Sewer District customers to utilize to report service outages or system concerns. Such service number shall be provided at the cost of the City but need not be exclusive for use by Sewer District customers. The Sewer District shall be responsible for publishing this number to its customers.
4. **Payment to City for services.** Sewer District will pay to City the base rate of forty-five thousand six hundred thirty-nine dollars and seventy-two cents (\$45,639.72) per year for City's provision of service, maintenance and repair of sewer district systems and facilities. Such annual payment represents the actual cost to the City (including the cost of insurance, additional benefits, taxes, etc.) to employ one employee trained and certified to service, maintain and repair systems and facilities of the same or similar nature to that of the Sewer District annually and will be due City in twelve (12) monthly installments as invoiced by City.
5. **Increase to base rate.** City may raise the base rate in an amount equal to the raise in actual cost to the City to employ one certified employee annually. City shall notify Sewer District of any proposed increase to the base rate no later than forty-five (45) days prior to the effective date of the increase.
6. **Additional Costs Authorized.** The Sewer District shall be responsible for additional costs as follows:
 - (A) Provision of emergency repairs requiring the use of more than one City employee to be paid at the actual rate of pay of the additional employee(s) utilized by City;
 - (B) Provision of emergency repairs on weekends, legally recognized holidays or outside of City's usual working hours to be paid at the overtime, standby or holiday rate; and/or
 - (C) Provision of equipment, specialized tools and/or parts furnished by the City to be paid at the actual cost (or pro-rated portion thereof) to the City.
7. **Termination of Agreement.** Either party may terminate this Agreement by providing to the other party written Notice of Termination not less than sixty (60) days prior to the termination of the Agreement.
8. **Obligations on termination.** Not less than fifteen (15) days prior to the date provided for in the Notice of Termination, Sewer District will provide notification to its customers that City will no longer provide service, maintenance and repair of sewer district systems and facilities following the termination date.
9. **Agreement binding.** This Agreement binds the City and Sewer District and any successor governing body which succeeds their rights and/or responsibilities.

Adopted by Reorganized Sewer District #1 of Dunklin County, Missouri this 16th day of August, 2021.

BY: City of Malden, Missouri, in its capacity as Governing Body of Reorganized Sewer District #1 of Dunklin County, Missouri



Denton Kooyman, Mayor

Adopted by the City Council of the City of Malden, Missouri this 16th day of August, 2021.



Denton Kooyman, Mayor

Attest:



Mandy Lewis, City Clerk

BILLING AND COLLECTION AGREEMENT

DATE: July 13, 2021

PARTIES:

Reorganized Sewer District Number 1 of Dunklin County, Missouri (Sewer District)

City of Malden, Missouri (City)

THIS BILLING AND COLLECTION AGREEMENT IS BASED ON THE FOLLOWING FACTS:

- A. Sewer District is a Reorganized Common Sewer District pursuant to Sections 204.600 to 204.640, RSMo.
- B. City has been appointed Receiver of the Sewer District by Order of the Circuit Court in case number 21DU-CC00015.
- C. Sewer District does not have sufficient financial resources to provide suitable procedures for independent monthly billing and collection services for Sewer District customers.
- D. City, through its Board of Public Works, has established practices and procedures for billing and collection services which could be expanded to provide such services to the Sewer District.
- E. The fair market value for the provision of such services to the District is twenty-five thousand dollars (\$25,000).


THE PARTIES AGREE:

- 1. **City to provide billing and collection services.** As of the effective date of this Agreement, City will provide to Sewer District monthly billing and collection services for Sewer District customers.
- 2. **Sewer District to provide customer list and rates.** Sewer District will provide to City the name, address and applicable billing rate of each Sewer District to City. Sewer District agrees to notify City should the name, address or applicable billing rate change for any customer.
- 3. **Billing.** City will, at stated monthly intervals, bill each Sewer District customer at the customer's address the Sewer District's applicable billing rate.

4. **Collection.** City will collect payment of Sewer District bills from Sewer District customers at an address and under such terms and policies applicable to City's utility customers. Such address, terms and policies shall be provided to each billed Sewer District customer
5. **Collected amounts turned over to Sewer District.** City will, as soon as practical, turn over all sums collected from Sewer District customers to Sewer District.
6. **Late charges.** City will calculate all late charges, if any, on any unpaid accounts as specified by Sewer District policies.
7. **Notification to Sewer District of delinquent accounts.** City will notify Sewer District of any account remaining unpaid more than fifteen (15) days following its due date.
8. **Payment to City for services.** Sewer District will pay to City the sum of twenty-five thousand dollars (\$25,000) annually for City's provision of billing and collection services. Such annual payment will be due City in twelve (12) monthly installments as invoiced by City.
9. **Termination of Agreement.** Either party may terminate this Agreement by providing to the other party written Notice of Termination not less than sixty (60) days prior to the termination of the Agreement.
10. **Obligations on termination.** On the date provided for in the Notice of Termination, City will turn over to Sewer District any sums held by City collected on behalf of the Sewer District and a list of accounts remaining unpaid (together with outstanding balances). Sewer District will, on or before the effective date of termination, notify Sewer District Customers of the termination and provide updated collection information. City will bear no responsibility for collecting any Sewer District accounts following the termination of the Agreement.
11. **Agreement binding.** This Agreement binds the City and Sewer District and any successor governing body which succeeds their rights and/or responsibilities.

Adopted by Reorganized Sewer District #1 of Dunklin County, Missouri this 13th day of July, 2021.

BY: City of Malden, Missouri, in its capacity as Governing Body of Reorganized Sewer District #1 of Dunklin County, Missouri



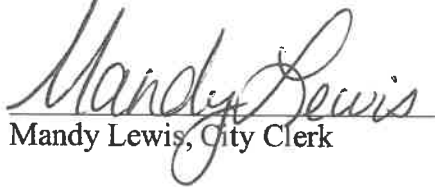
Denton Kooyman, Mayor

Adopted by the City Council of the City of Malden, Missouri this 13th day of July, 2021.



Denton Kooyman, Mayor

Attest:



Mandy Lewis, City Clerk

DUNKLIN COUNTY REORGANIZED SEWER DISTRICT #1

SPECIAL CALLED **EMERGENCY** MEETING

Malden City Council will be holding a special meeting in its capacity of governing body of Reorganized Sewer District #1 of Dunklin County, Missouri

MALDEN CITY HALL P. 573-276-4502 / F. 573-276-4109

Thursday, February 1, 2024
following Malden City Council Meeting

VIA ZOOM

Meeting ID: 255 098 5566

AGENDA

1. ROLL CALL
2. DECLARATION OF EMERGENCY TO PURSUE GRANT
3. OTHER BUSINESS DEEMED NECESSARY

In compliance with the Americans with Disabilities Act, the City of Malden in its capacity of governing body of Reorganized Sewer District #1 of Dunklin County, Missouri will make every effort to honor requests for reasonable accommodations made by individuals with disabilities. Requests can be responded to more effectively if received by the City as far in advance of the meeting as possible, preferably at least a week. Contact the City Clerk at 573-276-4502

POSTED:



RESOLUTION No: 2024-01

A RESOLUTION OF REORGANIZED SEWER DISTRICT #1 OF DUNKLIN COUNTY, MISSOURI DECLARING A STATE OF EMERGENCY WITHIN THE BOUNDARIES OF THE DISTRICT AND AUTHORIZING APPLICATION FOR FUNDING TO REMEDY SUCH EMERGENCY.

WHEREAS, the geographic area within and around the corporate boundaries of Dunklin County Reorganized Sewer District Number 1 (“Sewer District”) experienced heavy rainfall during the month of January, 2024; and

WHEREAS, on or about January 12, 2024, the wastewater system operated by the Sewer District experienced catastrophic failure, leaving the Sewer District’s residents without usable sewer facilities; and

WHEREAS, the Sewer District has been advised by the Missouri Department of Natural Resources (DNR) that the Sewer District’s wastewater system is currently in violation of DNR’s regulations governing sewer districts; and

WHEREAS, it is presently undetermined if the Sewer District’s financial reserves are sufficient to fund the repairs required to restore sewer service to Sewer District’s resident and bring the wastewater system into DNR compliance;

IT IS HEREBY RESOLVED that a state of emergency is hereby declared to exist within the corporate boundaries of Dunklin County Reorganized Sewer District Number 1 upon the passage of this Resolution and shall continue until such time as sewer service shall be restored to Sewer District’s residents and the Sewer District’s wastewater system rendered compliant with regulations set forth by the Missouri Department of Natural Resources.

IT IS HEREBY FURTHER RESOLVED that Denton Kooyman, Mayor of the City of Malden, Missouri, the court-appointed Receiver for Dunklin County Reorganized Sewer District Number 1, or other such person(s) as may be designated by Mayor Kooyman, shall be authorized to pursue and apply for such outside funding, including but not limited to grants or loans, as may be reasonably necessary to remedy the state of emergency.

Adopted by Reorganized Sewer District #1 of Dunklin County, Missouri this 1st day of February, 2024.

BY: City of Malden, Missouri, in its capacity as Governing Body of Reorganized Sewer District #1 of Dunklin County, Missouri

Denton Kooyman, Mayor

Attest:

Jesse Cobb, Deputy City Clerk