

May 12, 2015

The regular meeting of the Otsego County Board of Commissioners was held at the County Building, 225 West Main St., Room 100. The meeting was called to order at 9:30 a.m. by Chairman Ken Borton. Invocation by Commissioner Paul Beachnau, followed by the Pledge of Allegiance led by Paul Sopsich

Roll Call:

Present: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Erma Backenstose, Richard Sumerix, Doug Johnson, Ken Borton, Bruce Brown.

Motion by Commissioner Doug Johnson, to approve the regular minutes of April 28, 2015 with attachments. Motion by Commissioner Doug Johnson to amend the regular minutes of April 28, 2015 to read Commissioner Doug Johnson commented on Proposal 1. Ayes: Unanimous. Motion carried. Minutes approved as amended.

Consent Agenda:

Motion to adopt OCR 15-17 Discharge of Mortgage of James E. Colby and DeMarus A. Colby

Roll Call Vote:

Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Erma Backenstose, Richard Sumerix, Doug Johnson, Ken Borton, Bruce Brown.

Nays: None.

Motion carried/Resolution adopted. (see attached)

Motion to adopt OCR 15-18 National Police Week.

Roll Call Vote:

Ayes: Julie Powers-Gehman, Paul Beachnau, Paul Liss, Lee Olsen, Erma Backenstose, Richard Sumerix, Doug Johnson, Ken Borton, Bruce Brown.

Nays: None.

Motion carried/Resolution adopted. (see attached)

Motion to approve the Bank Escrow Agreement. Ayes: Unanimous. Motion carried. (see attached)

Motion to approve the FY 2015 General Fund/Capital Projects Budget Amendment. Ayes: Unanimous. Motion carried. (see attached)

Administrator's report:

John Burt reported the bid package on the Community Center is out; EMS bid package almost ready; Recycling Committee; Vanderbilt Zoning issues.

Department Head Report:

Dona Wishart reported on the Commission on Aging.

City Liaison, Township and Village Representative:
Bill Wishart report on the City Council meeting.

Correspondence:
Rachel Frisch reported on the March Financial reports.

New Business:

Motion by Commissioner Paul Liss, to approve the May 5, 2015 Warrant in the amount of \$66,048.76. Ayes: Unanimous. Motion carried.

Motion by Commissioner Paul Beachnau, to approve the May 12, 2015 Warrant in the amount of \$445,319.68. Ayes: Unanimous. Motion carried.

Public Comment:
Chairman Ken Borton opened up the meeting for public comment.

Board Remarks:

Commissioner Paul Beachnau reported on the Leadership Program Graduation June 2, 2015 at the Otsego Club; State of the Community lunch May 12, 2015.

Commissioner Julie Powers-Gehman reported on the DDA.

Commissioner Lee Olsen Thanked John Burt for attending the Charlton Township meeting; attended the Veterans Coffee at the Airport.

Commissioner Paul Liss congratulated John Burt on his commander's award at the VFW.

Commissioner Bruce Brown had no report.

Commissioner Richard Sumerix reported on Bagley Township Nuisance Complaints.

Commissioner Doug Johnson reported on the Parks and Recreation meeting.

Commissioner Erma Backenstose reported on the trash in the County; cleaning up properties in the County.

Chairman Ken Borton is setting up a meeting with representatives of Bagley Township and the County Treasurer; MAC Environmental and regulatory affairs Committee meeting; Elmira Township meeting; Veterans Coalition meeting.

Meeting adjourned at 10:38 a.m.

Kenneth C. Borton Chairman

Susan I. DeFeyer, Otsego County Clerk

RESOLUTION NO. OCR 15-17
AUTHORIZING RESOLUTION
OTSEGO COUNTY BOARD OF COMMISSIONERS
May 12, 2015

WHEREAS, the Otsego County Board of Commissioners is the owner of a property located at 864 Valleyview Court, Gaylord, Michigan 49735 and has a mortgage recorded in the office of the Register of Deeds for Otsego County Michigan, in Liber 885, Pages 815-828 and a Loan Modification In Liber 900, Pages 592-593 in the name James Edward Colby, a.k.a James E. Colby and DeMarus A. Colby, husband and wife, and

WHEREAS, said Mortgage has been paid in full; now, therefore, be it

RESOLVED, that Otsego County hereby issues a DISCHARGE OF MORTGAGE to James Edward Colby, a.k.a James E. Colby and DeMarus A. Colby, husband and wife, and be it further

RESOLVED, that the Otsego County Administrator, on behalf of the Otsego County Board of Commissioners, be authorized to sign said document.

OCR 15-18
Proclaiming National Police Week & Police Memorial Day
OTSEGO COUNTY BOARD OF COMMISSIONERS
May 12, 2015

WHEREAS, The Congress of the United States of America has designated the week of May 10th through May 16th, 2015 to be dedicated as "NATIONAL POLICE WEEK" and May 15th of each year to be "NATIONAL PEACE OFFICERS MEMORIAL DAY"; and

WHEREAS, The members of law enforcement agencies protect life and property throughout the County of Otsego and play an essential role in safeguarding the rights and freedoms of our citizens; and

WHEREAS, The County of Otsego desires to honor the valor, service and dedication of its own Sheriff Deputies, especially those who have given their lives in the line of duty; and

WHEREAS, The County of Otsego further desires to recognize and appreciate the duties, hazards, and sacrifices of law enforcement personnel; and

WHEREAS, The Board of Commissioners calls upon the citizens of Otsego County to take a moment on May 15th, to remember those fallen officers who made the ultimate sacrifice for their fellow man; now, therefore, be it

RESOLVED, that we proclaim the week of May 10th to May 16th to be "POLICE WEEK" and call upon all our citizens in this community to especially honor and show our sincere appreciation for the Sheriff Deputies of this County by deed, remark and attitude; and be it further

RESOLVED that the flags be flown at half-staff on May 15th in honor of Deputy Carl L. Darling, Jr., who gave his life in the line of duty on May 3, 1986; Sergeant Larry C. Washburn, who died while on duty on May 15, 1994 and Deputy John K. Gunsell, who died in the line of duty on September 12, 2004.

AGREEMENT REGARDING ESCROW ACCOUNT

This Agreement Regarding Escrow Account (the "Agreement"), dated as of the date specified on the initial signature page of this Agreement, is entered into by and among Wolverine Power Supply Cooperative, Inc. ("Company"), Otsego County, Michigan ("County"), and CoBank, ACB, a federally chartered instrumentality of the United States ("Bank"), and sets forth the rights of County and the obligations of Company with respect to the InvestLine account of Company at Bank identified at the end of this Agreement as the Collateral Account (hereinafter referred to as the "Escrow Account"). The Escrow Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for reporting purposes and integrated with the Escrow Account by an arrangement in which amounts held in subaccounts are posted only to the Escrow Account. The Escrow Account is not a deposit account, as that term is defined in the Uniform Commercial Code.

- 1. County's Rights in Escrow Account.** County has required that Company fund the Escrow Account in connection with Company's development of a peaker plant in Otsego County, Michigan (the "Plant"). Upon decommissioning of the Plant, Company is obligated to restore the site upon which the Plant is constructed to a condition approved by County (the "Restoration Obligations"), and the Escrow Account is provided by Company as support for the Restoration Obligations. The Escrow Account and all sums now or hereafter maintained in or payable or withdrawable from the Escrow Account are referred to herein as the "Escrow Account Funds". In furtherance of the intentions of the parties hereto, this Agreement constitutes written notice by County to Bank of County's rights in the Escrow Account.
- 2. Release of Escrow Account Funds.** Bank shall have no obligation to release the Escrow Account Funds without the prior written consent of County. Company and County hereby authorize and instruct Bank to release the Escrow Account Funds to (a) Company, only upon Bank's receipt of written notice from County confirming Company's satisfaction of the Restoration Obligations, or otherwise authorizing Bank to release the funds to Company, or (b) County, upon Bank's receipt of written notice from County confirming Company has not satisfied the Restoration Obligations within the required timeframe. The date Bank receives either such written notice from County is referred to in this Agreement as the "Release Date". Company agrees and acknowledges that Bank is entitled to rely on any such notice received from County, and in no event shall the release of Escrow Account Funds require Company's consent. Following the Release Date, Bank will release the Escrow Account Funds to the designated party and the Escrow Account will be closed.
- 3. Bank Fees.** Company agrees to pay all Bank's fees and charges for the maintenance and administration of the Escrow Account and for the treasury management and other account services provided with respect to the Escrow Account (collectively "Bank Fees"), including, but not limited to, the fees for (i) balance reports provided on the Escrow Account, (ii) funds transfer services received with respect to the Escrow Account, (iii) funds advanced to cover overdrafts in the Escrow Account (but without Bank being in any way obligated to make any such advances), and (iv) duplicate bank statements. If not otherwise promptly paid by Company through other sources of funding (including other accounts of Company at Bank), the Bank Fees will be paid by Company by sending a check to Bank in the amount of such Bank Fees or, so long as doing so would not result in an Available Escrow Account Funds Balance which is less than the Minimum Balance Amount, by Bank debiting one or more of the Escrow Account on the Business Day that the Bank Fees are due, without notice to County or Company. If there are not sufficient funds in the Escrow Account to cover fully the Bank Fees on the Business Day Bank attempts to debit them from the Escrow Account, such shortfall or the amount of such Bank Fees will be paid by Company to Bank, without setoff or counterclaim, within five (5) calendar days after demand from Bank. County agrees to pay any Bank Fees within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent such Bank Fees are not paid in full by Company within five (5) calendar days after demand on Company by Bank.

4. **Account Documentation.** Except as specifically provided in this Agreement, County and Company agree that the Escrow Account will be subject to, and Bank's operation of the Escrow Account will be in accordance with this Agreement. All documentation referenced in this Agreement as governing any Escrow Account is hereinafter collectively referred to as the "Account Documentation". To the extent that any conflict may exist between this Agreement and the Account Documentation, this Agreement shall control.
5. **Bankruptcy Notice; Effect of Filing.** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company, Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency. With respect to any obligation of County hereunder which requires prior demand on Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company will automatically eliminate the necessity of such demand on Company by Bank, and will immediately entitle Bank to make demand on County with the same effect as if demand had been made on Company and the time for Company's performance had expired.
6. **Legal Process, Legal Notices and Court Orders.** Bank will comply with any legal process, legal notice or court order it receives in relation to a Escrow Account if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.
7. **Indemnification.** Company will indemnify, defend and hold harmless Bank, its officers, directors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) (collectively "Losses and Liabilities") Bank may suffer or incur as a result of or in connection with (i) Bank complying with any binding legal process, legal notice or court order referred to in the immediately preceding section of this Agreement, (ii) Bank following any instruction or request of County, including but not limited to any request to release the Escrow Account Funds, or (iii) Bank complying with its obligations under this Agreement. To the extent such obligations of indemnity are not satisfied by Company within five (5) days after demand on Company by Bank, County will indemnify, defend and hold harmless Bank and the other Indemnified Parties against any and all Losses and Liabilities which Bank may suffer or incur as a result of or in connection with any of the foregoing reasons.
8. **Bank's Responsibility.** This Agreement does not create any obligations of Bank, and Bank makes no express or implied representations or warranties with respect to its obligations under this Agreement, except for those expressly set forth herein. In particular, Bank need not investigate whether County is entitled under County's agreements with Company to give Bank written consent to release the Escrow Account Funds, and Bank is in no way responsible to monitor Company's obligations to maintain the Minimum Balance Amount in the Escrow Account. Bank may rely on any and all notices and communications it believes are given by the appropriate party. Bank will not be liable to Company, County or any other party for any Losses and Liabilities. In no event will Bank be liable for any damages, whether or not the likelihood of such damages was known to Bank, and regardless of the form of the claim or action, or the legal theory on which it is based. Any action against Bank by Company or County under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.
9. **Termination.** This Agreement may not be terminated by Company. This Agreement may be terminated by County or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated immediately upon written notice (i) from Bank to Company and County should Company or County fail to make any payment when due to Bank from Company or County under the terms of this Agreement, or (ii) from County to Bank on termination or release of County's rights in the Escrow Account; provided that any

notice from County under clause (ii) of this sentence must contain County's acknowledgement of the termination or release of its rights in the Escrow Account. Company's and County's indemnifications made, and the limitations on the liability of Bank accepted, by Company and County under this Agreement will continue after the termination of this Agreement with respect to all the circumstances to which they are applicable, existing or occurring before such termination, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination will also survive such termination. If this Agreement is terminated pursuant to this Section 10 prior to the Release Date, Bank will transfer the Minimum Balance Amount in accordance with County's written instructions, and any amount over the Minimum Balance Amount to Company, provided that Bank's fees, if any, with respect to such disposition must be prepaid directly to Bank at the time of termination by cashier's check payable to Bank or other payment method acceptable to Bank in its sole discretion.

10. **Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement. This Agreement does not amend or otherwise modify any other agreement between Company and County.
11. **Notices.** All notices from one party to another must be in writing, must be delivered to Company, County and/or Bank at their contact addresses specified after their signatures to this Agreement, or any other address of any party communicated to the other parties in writing, and will be effective on receipt. Any notice sent by a party to this Agreement to another party must also be sent to all other parties to this Agreement. Bank is authorized by Company and County to act on any instructions or notices received by Bank if (i) such instructions or notices purport to be made in the name of County, and (ii) Bank reasonably believes that they are so made.
12. **Successors and Assigns.** Neither Company nor County may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld or delayed. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of County, which consent will not be unreasonably withheld or delayed; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.
13. **Governing Law.** This Agreement will be governed by and be construed in accordance with the laws of the State of Colorado, without regard to conflict of laws principles. This state will also be deemed to be Bank's jurisdiction, for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.
14. **Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.
15. **Counterparts.** This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures were on the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a "pdf" file) will be effective as delivery of a manually executed counterpart of the Agreement.
16. **Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company, on the one hand, and Bank and County, on the other hand, with respect to (i) the rights of County in the Escrow

Account and Escrow Account Funds, and (ii) Bank's obligations to County in connection with the Escrow Account and Escrow Account Funds.

This Agreement has been signed by the duly authorized officers or representatives of Company, County and Bank on the date specified below.

Date: March __, 2015

Escrow Account Numbers:

Company's InvestLine Accounts at CoBank,
ACB # [ACCOUNT NUMBER]

Wolverine Power Supply Cooperative, Inc.

Otsego County, Michigan

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for Notices:

Address for Notices:

[SIGNATURE PAGES CONTINUE]

COBANK, ACB, as Bank

By: _____

Name: _____

Title: _____

Address for Notices Prior to November 30,
2015:

CoBank, ACB

5500 S. Quebec Street

Greenwood Village, Colorado 80111

Attn: John Kemper

Email: jkemper@cobank.com

Address for Notices After November 30, 2015:

CoBank, ACB

6340 S. Fiddlers Green Circle

Greenwood Village, Colorado 80111

Attn: John Kemper

Fax: jkemper@cobank.com

