



Staff Report

Agenda Item: **AGREEMENT FOR INDUSTRIAL WASTE WATER DISPOSAL WITH CLARKDALE METALS** – Discussion and consideration of an Agreement between Clarkdale Metals Corporation and the Town of Clarkdale to accept Clarkdale Metals' industrial waste water.

Staff Contact: Sherry Bailey, Community Development Director
Wayne Debrosky, Utilities Director

Meeting Date: July 13, 2010

Background: Clarkdale Metals came to the town requesting that we consider accepting their industrial waste water. The staff has been working with them to identify the amount of water per month they need to get rid of and establishing the quality of the water per Town Code and the Arizona Department of Environmental Quality regulations. We have reached an agreement that provides for 68,000 gallons per month with the provision that, if necessary, in one particular month, the Utilities Director can allow additional discharge into our system. All of the water discharged must meet regulations and code requirements, and each batch is tested to guarantee that the requirements are met. Clarkdale Metals has agreed to pay the Town twelve and one-half cents a gallon for us to accept their industrial waste water. The Agreement also provides for outside lab verification of the water quality for up to twelve times a year. That cost will be picked up by Clarkdale Metals.

This contract goes for one year. At this time we do not know if they will need to continue the contract past this year. The intent on their part is still to reuse as much of the water as possible when they get their complete system working.

Recommendation: Staff recommends approval and execution of the Agreement for Industrial Waste Water Disposal with Clarkdale Metals.

AGREEMENT FOR DISPOSAL OF INDUSTRIAL WASTE WATER

This AGREEMENT is made and entered into this _____ day of July, by and between The Town of Clarkdale, a municipal corporation, (hereafter call the “Town”) and Clarkdale Metals Corporation, LLLC, a Nevada limited liability company (CMC).

RECITALS

WHEREAS, Clarkdale Metals Corporation, is a private company processing smelter slag within the Clarkdale town limits; and,

WHEREAS, the Town of Clarkdale owns and operates the municipal wastewater treatment plant in the Town of Clarkdale; and

WHEREAS, Clarkdale Metals Corporation desires to dispose of operations process water at the wastewater treatment plant;

NOW THEREFORE, in consideration of the mutual promises and valuable considerations for acceptance and disposal of the CMC industrial process water, the parties agree to the following:

AGREEMENT

1. RATES FOR HANDLING

CMC agrees to pay and the Town agrees to accept twelve and one half (\$0.125) cents per gallon for industrial waste water deposited into the Town system as provided for in this agreement.

2. TERM OF AGREEMENT

This agreement shall be operative for a period of twelve months, commencing _____, and ending _____.

3. CONDITIONS OF DISPOSAL

- a. All water to be disposed shall be delivered by a CMC water truck, with a Purchase Order specifying the date the load is delivered and the assigned CMC lot number for the load. The total number of gallons for each load will be calculated as the entire capacity of the delivering water truck, and that capacity will be reflected on each Purchase Order.
- b. The water intended for disposal by CMC must substantially meet Town industrial standards as established by Town ordinance.

- c. CMC shall provide a water analysis, prepared by their laboratory, for each batch showing that the load is substantially within the Town's industrial water disposal standard. The water analysis will be delivered and inspected by a Clarkdale Utility Department employee prior to disposal of the load in the Town's system.
- d. The Town reserves the right to conduct random water analysis tests to confirm the quality of the disposal water and to confirm the analysis conducted by CMC. The cost of up to 12 tests per year will be reimbursed to the Town by CMC. The costs for the Town's tests will be included in the invoice sent to CMC by the Town on the next normal billing cycle following the test. The town is requiring split samples to be coordinated with the town, one per month, which will be analyzed by CMC laboratory, and by a certified laboratory chosen by the Town of Clarkdale.
- e. The Town will be contacted by CMC before each disposal and a Clarkdale Utility Department employee will accompany the CMC truck driver to a Town manhole specified by the Town for disposal of the load.
- f. The Town agrees to accept truck disposals Monday through Thursday, 6:00 a.m. to 4:00 p.m. In the event it becomes necessary to dispose of water on Friday, Saturday or Sunday, CMC agrees to pay a minimum call out cost equal to a three hour call out rate in addition to the specified disposal rate per gallon.
- g. The Town agrees to accept up to 68,000 gallons per month of industrial treated waste water. However, the Utilities Director, after being contacted by Clarkdale Metals Corporation, may accept additional gallons on an event by event basis.

4. CANCELLATION OF AGREEMENT

This agreement may be cancelled by either the Town or CMC on thirty (30) days written notice and is deemed automatically cancelled if no disposal is performed under this agreement for a period of sixty (60) consecutive days.

The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS § 38-511.

5. INDEMNIFICATION

CMC agrees to defend, indemnify, and hold harmless the Town, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses, relating to or arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, or services of CMC, its agents, or employees in performance of this Agreement.

6. NOTICE

All notices, demands or other writings to this Agreement to be sent or provided to either party shall be deemed to have been properly served when made in writing and deposited in the U.S. mail, registered or certified, and addressed as follows:

To Town: Town of Clarkdale
Attention: Gayle Mabery, Town Manager
P.O. Box 308
Clarkdale, AZ 86324

To CMC: Clarkdale Metals Corporation
Tom Piccioli, Development Manager
P.O. Box 910
Clarkdale, AZ 86324

7. LEGAL ARIZONA WORKERS ACT COMPLIANCE

CMC hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to CMC employment of its employees, and with the E-Verify requirements of A.R.S. §23-214 (A).

8. MEDIATION

If a dispute arises out of or relates to this Agreement, or breach thereof, including, but not limited to, governmental or proprietary uses, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

IN WITNESS WHEREOF, Clarkdale Metal Corporation and the Town have executed this agreement on the day and year herein above written.

CLARKDALE METALS CORPORATION

TOWN OF CLARKDALE

Authorized Signature

Gayle Mabery, Town Manager

Print Name and Title

Print Name and Title

ATTEST:

Kathy Bainbridge, Town Clerk

Approved as to Form:

Robert Pecharich, Town Attorney
Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C.
125 North Granite St.
Prescott, AZ 83301