

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JUNE 18, 2009

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
D. DePiero
S. Kelly
W. O'Malley
G. Starr
R. Sulik

Mayor Longo was absent.

The Secretary informed the President a quorum was in attendance.

II. Swearing in of the Officers

Mr. Lawrence K. English, Deputy Director of Law, administered the Oaths of Office to Darnell Brown, Mayor Starr, and Mayor DePiero.

Board of Trustees Elected Officers
2009 – 2010

Darnell Brown, President
Mayor Gary W. Starr, Vice President
Mayor Dean E. DePiero, Secretary

III. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the June 4, 2009 Board meeting be approved. Without objection, the motion carried unanimously.

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IV. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak at Public Session.

V. Executive Director's Report

Executive Director Ciaccia moved discussion to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP"). The District continues finalizing its version of the Financial Capability Assessment (hereinafter "FCA") which is to be in compliance with the government's guidance document. Executive Director Ciaccia referred to the discussion held at the June 4th meeting wherein he explained that the District reached an impasse on this issue with the government. Based on the District's assessment, the District exceeds the 2% median household income threshold making it a high-burdened community. The CSO LTCP negotiations are ongoing between the District and the government.

At a previous meeting attorneys for the Department of Justice indicated that they would forward a draft Consent Decree to the District by May 29th, but failed to meet this deadline. Executive Director Ciaccia received email correspondence from the District's legal counsel, David Burchmore, Esq., of Squire Sanders and Dempsey, which indicated that the government will produce a draft Consent Decree sometime after June 23rd.

The District submitted its version of the CSO LTCP in September 2008 and was initially scheduled to meet with the government on June 23rd to discuss the government's version of the CSO LTCP; however, this has been delayed at the government's request. The meeting was rescheduled for July 21st. Executive Director Ciaccia expressed that this is not a harmful delay, and an important factor is that the District has been able to move forward with its Euclid Creek Storage Tunnel (hereinafter "ECT"), Tunnel Dewatering Pump Station (hereinafter "TDPS"), and Dugway Storage Tunnel (hereinafter "DST") projects. The government's delay has not affected the process of mitigating those CSOs. The District eagerly anticipates receiving the government's version of the CSO LTCP.

Executive Director Ciaccia informed the Board that Constance Haqq, Director of Administration and External Affairs (hereinafter "AEA"), and her staff are working diligently to convey the District's message with respect to the magnitude and importance of the CSO LTCP, including the upcoming Consent Decree and District's financial obligations. The District also chose to utilize television and radio advertising methods in an effort to convey this message to the public.

Executive Director Ciaccia moved to the next report item, the Stormwater Management Program (hereinafter "SMP"). At the June 4th Board meeting, Marlene Sundheimer,

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Director of Law, presented the Board with her legal opinion regarding the District's authority to institute the SMP. Ms. Sundheimer's legal opinion was disseminated to law directors of the District's member communities, and the District has not yet received any responses regarding the legal opinion. Summit County has indicated that they may not agree with some of the legal points raised by Ms. Sundheimer; however, a dialogue has been established between the District's Law Department and the legal counsel for Summit County. As a charter county, Summit County has a unique legal framework.

Executive Director Ciaccia pointed out that Mayor Currin of Hudson and Mayor Lyons of Richfield are both involved with the Northern Ohio Mayors and Managers Association and have been very prominent in their support of regional cooperation and the necessity for regionalism. The District feels confident that both Mayor Currin and Mayor Lyons will concur that the District's proposed SMP would benefit Summit County communities as well as the Greater Cleveland and Akron regions.

The District continued into its third round of meetings with member communities, including the Summit County communities. Further, the District met with organizations including the Northeast Ohio Four County Regional Planning and Development Organization (hereinafter "NEFCO"), which is Summit County's equivalent of NOACA, the Building and Homeowners Association, the Akron Home Builders Association, and the Doan Brook Watershed Partnership Board. Ms. Haqq and the AEA Department met with local religious leaders to discuss how the CSO LTCP will impact the churches and the community. Executive Director Ciaccia advised that the District intends to meet with Lorain County since Columbia Township is a member community.

Mayor Starr inquired whether there was any significant opposition to the proposed SMP. Executive Director Ciaccia did not believe that there would be opposition, but speculated that Summit County and Lorain County will present the two biggest challenges in framing the program. Executive Director Ciaccia deferred Mayor Starr's inquiry to Frank Greenland, Director of Watershed Programs.

Mr. Greenland explained that the City of Hudson has a stormwater management program in place which is generating some revenue. The District serves less than half of the Cuyahoga Watershed in Summit County, and how the District's SMP in northern Summit County meshes with the broader program is a concern. Another issue not specific to Summit County is the dispersal of the revenues collected and whether communities will receive a return on their investments in terms of maintenance and capital. Mr. Greenland speculated that discussion from Summit County and Lorain County will include the merits of the SMP. Mr. Greenland advised that the District currently serves a small portion of Columbia Township but now has an agreement to serve the entire community.

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Mayor Starr advised that several months ago he spoke with Mayor Kuchta of Macedonia, who at that time indicated the desire of having an opt-out option for the SMP for the reason that half of Summit County is already served by a stormwater program. Mayor Starr inquired whether opting out or receiving some type of credit will be an option of the proposed SMP. Mr. Greenland advised that there are no opt-out provisions in the District's proposed SMP, and emphasized that Summit County's stormwater program is devoted to Phase II compliance and not to operation, maintenance and capital. According to Mr. Greenland, the District's SMP differs significantly from the current Phase II compliance program. Mr. Greenland indicated that the District is working hard and has met with the Summit County representatives in an effort to develop a better understanding on their part of the District's SMP and how it relates to their current needs.

Mr. Brown commented that communities in Cuyahoga County have undertaken Phase II compliance similar to what Summit County municipalities have done. Although there might have been intent to coordinate activities through model ordinances, he was under the impression that under Phase II communities were not provided the opportunity to plan, coordinate and leverage the ability to contribute to regional infrastructure improvements that would have been beneficial to a common watershed area.

According to Mr. Greenland, the District's program is significantly different and the member communities have been receptive as to the merits of the SMP. Mr. Brown interjected that "the biggest issue is who pays and how much." Mr. Greenland corroborated Mr. Brown's comment and added that another imminent issue is whether the revenue will be distributed equitably across the region. The member communities are concerned as to what benefits they will receive by paying into the SMP.

Mr. Brown stated that timing has not put the District at an advantage for the reason that this would be another fee during a significant economic downturn. The Board must consider the downside of not implementing a regional SMP when contemplating the program with a "what's-in-it-for-me" mentality. It is important to offset the costs of the SMP as much as possible, and this is where the lobbyist and advocacy services will be instrumental. Furthermore, public outreach is an essential component to enlighten the public that the SMP is not just a benefit, but is a necessity. Mr. Brown stated that the City of Cleveland shares the same concerns with the suburban municipalities.

Mr. Greenland indicated that member communities understand the SMP components as the District enters its third round of meetings. Discussions have evolved to include potential problems that may arise during the initial phases as well as long-term effects of the SMP. Mr. Brown replied that member communities are ultimately concerned about whether their needs are being met. There are common challenges that need to be addressed, but at a significant cost. The federal government is mandating that the District

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be in compliance, therefore, a balance between what comes out of pocket from the customers versus federal funding needs to be reached.

Executive Director Ciaccia moved to the next report item regarding Program Management (hereinafter "PM"), and reported that the District continues making significant changes in how the District manages its Capital Improvement Program (hereinafter "CIP"). Executive Director Ciaccia exhibited a draft of the first monthly PM report and indicated that he is presently reviewing it to ensure that the format is comprehensible to non-engineers. The information with the PM monthly report is significant and includes a great deal of information with respect to cash flow for the entire CIP broken down by contract and subcontract. PM will be more efficient than earlier management methods and financial surprises will be eliminated. The District will also be better prepared prior to any financial undertakings, including possible debt financing. Executive Director Ciaccia anticipated that the Board will receive its first PM monthly report at the July 16th meeting and on a monthly basis thereafter.

Mr. Brown suggested that since PM is a significant investment for the District, it would be beneficial for the Board to incorporate tracking indicators and measurable outcomes into the monthly PM reports. Mr. Brown commented that PM was implemented in an effort to facilitate the District with getting its projects completed in a timely fashion while obtaining the most competitive pricing. The Board is desirous of obtaining a greater understanding as to the benefits of the PM method and the advantages of its project deliverable approach versus the former project management methods.

Kellie Rotunno, Director of Engineering and Construction, provided the Board with an explanation of the format used for the PM reports. Included with the executive summary is a concise performance summary with respect to project close-outs and change order percentages and a summary of project awards with respect to what the District planned and where that curve is tracking. The detailed PM contract report and the achievement of key performance indicators (hereinafter "KPIs"), which are established at the beginning of the project, summarizes the milestones and achievements made through that contract.

Executive Director Ciaccia moved to the next report item, government relations, and indicated that Darnella Robertson, Government Affairs Specialist, held a meeting with Congresswoman Marcia Fudge's staff to discuss the proposed SMP and Small Business Enterprise (hereinafter "SBE") program.

Executive Director Ciaccia advised that the District is expected to receive \$10 million in stimulus funding under the American Recovery Act, and \$7 million in loan funding for the Mill Creek Interceptor – Main Branch, Train Avenue Relief Sewer and Cuyahoga Valley Interceptor Lift Station projects. According to Executive Director Ciaccia, the Ohio Environmental Protection Agency (hereinafter "OEPA") suggested that staff bring

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this matter to the Board for consideration and formal acceptance of the stimulus funds at its July 2nd meeting.

Executive Director Ciaccia advised that member communities expected to receive stimulus funding include the City of Brook Park, the City of Lyndhurst, the City of Parma and the Village of Richfield. The Village of Moreland Hills received funding to decommission its plant because they are joining the District. The cities of Lakewood and Rocky River, which are not member communities, received stimulus funding. The cities of Euclid and Solon, which also are not member communities, are no longer on the list to receive funding. Executive Director Ciaccia indicated that the District is pleased to have received stimulus funding and any additional funding provided to the member communities will be advantageous for the District.

Executive Director Ciaccia advised that the District is reviewing the RFPs issued for federal advocacy services and anticipates bringing this matter to the Board for consideration at its July 2nd meeting.

Executive Director Ciaccia moved to the next report item regarding the City of Cleveland, Division of Water (hereinafter "CWD") billing system. CWD is getting closer to implementation of its new billing system and discussions continue between CWD and the District regarding the new billing agreement. The District received correspondence from Commissioner Nielsen of CWD, which included various issues to be addressed between the District and CWD regarding the billing collection agreement.

Executive Director Ciaccia explained that sludge is taken from CWD and shipped to the District's wastewater treatment plants (hereinafter "WWTP") for incineration. The District receives approximately \$1 million annually for providing said services to CWD and CWD is desirous of negotiating a rate reduction. CWD is looking into alternative facilities at the Baldwin Plant to handle its residuals through installing drying beds.

CWD is planning to update its water meters to accommodate an automated meter reader system. This will require replacing water meters with automatic meters. CWD would like for the District to be financially involved in the meter replacement program, which would affect the District's billing rate. The automated meter reading will be a significant capital outlay for CWD and partnering with other entities on the meter replacement program will make the program more affordable. The meter replacement benefits CWD, the District, and communities served by CWD. The District is going to research those issues and determine how this will affect its current billing agreement with CWD.

CWD is planning to implement its new combined billing system, which includes both sewer and water on a single bill, by August 31, 2009. No major glitches have been depicted thus far; however, CWD will run its AS 400 system on a parallel track after they

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go live with the new billing system in order to assure that the new billing system is running properly.

Executive Director Ciaccia advised that converting to the new billing system is a significant undertaking, and once the newly formatted bills are issued, customers will have questions. We will all need to be prepared and take initiative in assuring a smooth transition.

Mayor Starr inquired if the City of Cleveland's residuals differ from biosolids. Executive Director Ciaccia replied that CWD's residuals include organics and dirt that settles from the lake water as it is processed through the water treatment plant. CWD then sends its sludge residuals through a force main to the District's Easterly facility and then onto the Southerly WWTP for incineration. Mayor Starr inquired if \$1 million paid by CWD for those services covers the District's costs to perform this service. Executive Director Ciaccia affirmed.

Mayor Starr questioned where CWD's sludge is taken if the District's incinerators are not working. Executive Director Ciaccia replied that it is taken to a landfill. David McNeeley, Director of Operation and Maintenance, advised that in this event, the District will attempt storing the residuals. Mayor Starr inquired as to the percentage of CWD's residuals are incinerated at the plant. Mr. McNeeley explained that CWD's flows and loadings are monitored at their facilities, but the flow is not segregated when it enters the Southerly WWTP and is combined with other solids at the facilities.

Executive Director Ciaccia moved to the next report item regarding the SBE program. The SBE program kicked off on June 1st and SBEs continue to become certified with the District. Project subcontracting goals are now based on the SBE program. The disparity study is ongoing and NERA Consulting (hereinafter "NERA") received 75% of the data they have requested. Executive Director Ciaccia advised that NERA's consultants will provide a status update to the Board at an upcoming meeting.

Executive Director Ciaccia advised the Board that he wanted to discuss a few miscellaneous items. He referred to a meeting held in April 2007 wherein the Board received a presentation on the Doan Brook project. The City of Cleveland (hereinafter "City") allocated \$5.5 million from projects at the airport which was to be used for an environmental project, and Doan Brook was the chosen project. Executive Director Ciaccia advised that the scope of the project has changed. Findings and orders from the EPA were recently settled, and the EPA and the City agreed that this will be a \$2.5 million project. Executive Director Ciaccia indicated that when the initial presentation was given to the Board at a meeting in April 2007, the Board allocated up to \$1 million for professional services including the management of the design plan for the Doan Brook project. Executive Director Ciaccia explained to the Board that the project's scope

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is smaller than what was initially proposed in 2007 and that there may be opportunity to obtain additional funding in an effort to enhance this project to incorporate stormwater management components. Currently, the scope of the Doan Brook project includes the restoration of walls along Doan Brook, but essentially has no stormwater management components at this point.

Executive Director Ciaccia stated that the District continues working with the City regarding a memorandum of understanding as to the scope of the Doan Brook project, the involved parties, and other available funding options. Staff will bring this issue back to the Board for consideration at that time. Executive Director Ciaccia recalled substantial discussion held during his transition period on the Doan Brook issue, and he wanted to inform the Board of the recent developments.

Mayor Starr questioned if Doan Brook flows near Martin Luther King Boulevard. Executive Director Ciaccia affirmed and advised that Doan Brook flows through University Circle and the Cultural Gardens. Mayor Starr inquired "if this is a mitigation issue over wetlands." Ms. Rotunno advised that the Doan Brook project is related to the Cleveland Airport and the Abrams Creek culvert. The City's original proposed Doan Brook project scope was scaled back and "they have brokered different deals with the EPA and scaled back their commitment to Doan Brook to the order of \$2.5 million to \$3 million." Mayor Starr indicated that there was controversy involving the Cultural Gardens wherein some of the groups were protesting. Executive Director Ciaccia replied that this was the Veteran's Group.

Executive Director Ciaccia moved to the next report item regarding the allegations made that methane gas was detected at the unfinished Mill Creek Tunnel (hereinafter "MCT"). The District continuously monitors this site, and no methane gas has been detected. Mr. Brown requested further clarification from Executive Director Ciaccia on this issue. Executive Director Ciaccia clarified that the District did not find appreciable and detectible levels of methane gas in the MCT.

Mr. Brown questioned over what period of time. Ms. Rotunno replied that the District actively monitors the MCT Shaft 13A on a 22-hour 5-day basis. The District instituted a monthly monitoring program and walks the full length of the tunnel section where methane gas was initially detected and measurements are collected around the perimeter interior section of the tunnel to analyze for methane. The District conducted this analysis on May 21st and found no detectible concentrations of methane gas in the MCT. Ms. Rotunno advised that this process will be conducted again at the end of June and every month thereafter until project completion and the tunnel is in service.

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Mr. Brown inquired whether methane gas extraction systems were in place and operating, and Ms. Rotunno affirmed. Mr. Brown inquired whether these mechanical systems operate independent of staff. Ms. Rotunno affirmed.

Mr. Sulik questioned when the MCT project will be completed. Executive Director Ciaccia explained that the District has been involved in litigation with the contractor over this issue. The project redesign has been completed, and this portion of the project will be bid in July. Mr. Sulik inquired if the manhole has to be completed, and Ms. Rotunno indicated that this is Shaft 14 and is incorporated into the same project.

Ms. Kelly questioned as to the basis of the methane gas allegations. Executive Director Ciaccia explained that this resulted from the contractor locating gas during tunnel boring, which was the asserted basis for the long delay and claim that became the main focus of the lawsuit. The contractor pulled off the job prior to the project's completion. Alleging that gas was still present, the contractor sent a letter to all of the suburban fire departments. The District tested at this site and did not find any alarming issues. Subsequent to the contractor's allegations, Norman Edwards began coming to the Board meetings and raising methane gas issues.

Ms. Kelly inquired whether the District tested for methane gas immediately following the allegations made by the contractor. Executive Director Ciaccia affirmed and indicated that the District continues to test for methane gas at the MCT site.

Mr. Brown inquired if testing and monitoring at the MCT site preceded the allegations. Executive Director Ciaccia affirmed. Ms. Rotunno added that the monitoring and testing is a bit more extensive, and the District analyzes this site in more frequent intervals. The District measures within the gas zone and 500 feet beyond where the gas intrusion within the tunnel initially occurred. The District continues monitoring and testing on a monthly basis to ensure that the tunnel conditions are not changing, and no one is currently working in the tunnel. Mr. Brown inquired whether internal or external staff conducts the monitoring and testing at the MCT site. Ms. Rotunno replied that the monitoring and testing is conducted internally by the District engineering staff with support from the Sewer System Maintenance and Operation (hereinafter "SSMO") staff.

Executive Director Ciaccia moved to the next report item and reminded the Board that the District will hold a press conference on June 22nd to acknowledge the 40th anniversary of the burning of the Cuyahoga River. The District is proud of its efforts in assuring the rebirth of the Cuyahoga River. Executive Director Ciaccia indicated that the District received good publicity regarding life returning to the Cuyahoga River. Representatives of *The Plain Dealer* went on the District's electro-fishing boat, which generated attention from other media sources who are interested in taking that journey as well. Executive Director Ciaccia stated that everyone should celebrate this positive event on June 22nd.

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Executive Director Ciaccia moved to the next report item, a brief financial report. From a budgetary standpoint, the District is doing well with 63% of funds available and 58% of the year is concluded.

Executive Director Ciaccia moved discussion to address the issue raised at the June 4th meeting regarding the biosolids hauling contract, which was approved by the Board. A Taxpayer's Demand action was filed on behalf of Ohio Bulk Transfer (hereinafter "OBT") and the District received no indication that this matter will be taken any further after the District had formally responded to OBT.

Furthermore, Ms. Sundheimer responded to Mayor Starr's Board inquiry regarding certain aspects of the OBT issue. Mayor Starr thanked Executive Director Ciaccia and Ms. Sundheimer for the follow-up to his response. Mayor Starr indicated that he respects and protects the attorney/client privileged nature of the document provided. According to Mayor Starr, Ms. Sundheimer indicated that she will redline or highlight what is truly executive-session material and separate out the factual information that can be revealed to the public.

Mayor Starr publicly acknowledged Executive Director Ciaccia, Dave McNeeley, and Lisa Mack for their fine work in the contract review and composition of the memorandum which resulted in significant cost savings to the rate payers for the biosolids hauling contract. Executive Director Ciaccia acknowledged Mayor Starr's comments. He thanked both Dave McNeeley and Terry Meister, and indicated that they did a good job analyzing the real needs of the District and the risks associated with changes made within the contract.

Executive Director Ciaccia advised that the District will haul a fair amount of biosolids this year due to maintenance work being completed on the incinerators at those sites. Had the District exercised its second year renewal option with OBT, this would have resulted in increased costs to the District for the hauling of its biosolids.

Mr. McNeeley indicated that this was a collaborative effort, and he publicly acknowledged Terry Meister, Lisa Mack, Ramona Lowery and Ernie Bertok for assisting in the analysis to determine the best option for the District.

Mr. Brown stated that we all appreciate the fine work that was done. The District Board and staff are responsible to research all options to efficiently reduce costs in an effort to mitigate the impacts on the ratepayers. Mr. Brown stated that the staff was challenged and allowed to use their intellect and resources to come back to the Board with a recommendation that is within the best interest of the District, and he applauded the staff on their efforts.

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Executive Director Ciaccia moved to the last report item and advised the Board that Assistant Directors of Law, Julie Blair and Regina Massetti, were successful at mediation in obtaining an easement for the Lee Road Relief Sewer (hereinafter "LRRS") project at \$4.88 per square foot, the property owner wanted \$12 per square foot.

VI. Consent Agenda

There were no Consent Agenda items.

VII. Action Items

Authorization to Advertise

No discussion ensued on Resolution No. 127-09.

Resolution No. 127-09

**Southerly Wastewater Treatment Plant
Ferric Chloride Tanks. Expected
expenditure of \$125,000.00.**

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 127-09. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposal

Resolution No. 128-09

**Easterly District Long Term Control Plan
Tunnel Dewatering Pump Station.**

Resolution No. 129-09

**Internal Audit Professional Services from
2009-2011. Cost not to exceed
\$383,400.00.**

Mayor Starr commented on Resolution No. 129-09 regarding the management of the Internal Audit Department and RFPs for professional services. He stated that the Audit Committee worked "earnestly with staff to design specifications for this bid for payroll, utility, accounts payable, purchasing, inventory, SBE and most importantly construction audit services to help supplement and oversee to ensure we are getting proper expenditure of money and that the quality of government is being enhanced." Mayor Starr acknowledged the Audit Committee members, Mr. Bucci, John Wasko and Jennifer Demmerle.

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Mr. Brown thanked Mayor Starr for his comments and indicated that this was another opportunity to enhance business operations at the District while identifying the current and future needs.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 128-09 and 129-09. Without objection, the motion carried unanimously.

Authorization to Purchase

No discussion ensued on Resolution No. 130-09.

Resolution No. 130-09

Purchase under the Ohio Department of Administrative Services State Procurement Program one (1) replacement loader/backhoe for use at all District facilities. Cost not to exceed \$79,673.54.

MOTION – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution No. 130-09. Without objection, the motion carried unanimously.

Authorization to Enter into Agreement

No discussion ensued on Resolution No. 131-09.

Resolution No. 131-09

Agreement for the Walworth Run Green Infrastructure Feasibility Study with the Ohio Department

MOTION – Ms. Kelly moved and Mr. O'Malley seconded to adopt Resolution No. 131-09. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 132-09

Contract with Brown and Caldwell to perform the Combined Sewer Overflow Rehabilitation Contract. Cost not to exceed \$4,193,362.00.

**Resolution No. 133-09
(HELD)**

Contract with Mark Haynes Construction to perform the West Creek Watershed Restoration. Cost of \$1,847,868.45.

Resolution No. 134-09

One (1) year requirement contract with Polydyne, Inc. for 150,000 pounds of liquid polymer to assist in the gravity belt thickening process at the Southerly Wastewater Treatment Plant. Cost of \$267,900.00.

Mr. Brown questioned the accuracy of the SBE percentages indicated in the resolution request for Resolution No. 133-09. Ms. Rotunno agreed that the SBE percentages were calculated incorrectly, however, the cost numbers were accurate. Mr. Brown speculated that a significant portion of the work required for the contract under Resolution No. 133-09 consists of earth moving and hauling of dirt, and that this work can be performed by a Minority Business Enterprise (hereinafter "MBE"), Women Business Enterprise (hereinafter "WBE") or SBEs.

Executive Director Ciaccia advised that Mark Haynes Construction intends to utilize two additional SBEs for \$55,000; however, those firms are not certified with the District and cannot be included as SBE participation goals on this project. Ms. Rotunno added that Mark Haynes Construction is a specialized SBE firm, but is not located in the four-county area required under the SBE Program, and therefore, is not eligible to be certified as an SBE with the District.

Executive Director Ciaccia recommended that Resolution No. 133-09 be held, and staff will bring its recommendation back to the Board with the accurate percentages for SBE participation goals on this project.

Mr. Sulik inquired if Mark Haynes Construction can handle this type of project given that it is a SBE. Ms. Rotunno advised that this particular project involves the rearranging of stream materials which is more of an art than a science. This contract does not involve traditional earth moving. Ms. Rotunno expressed that the District is confident that Mark Haynes Construction can handle this highly specialized project, and that said company has expertise in this area.

Resolution No. 133-09 was held.

MOTION – Ms. Kelly moved and Mr. O'Malley seconded to adopt Resolution Nos. 132-09 and 134-09. Without objection, the motion carried unanimously.

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Authorization of Contract Modification

No discussion ensued on Resolution Nos. 135-09 through 138-09.

Resolution No. 135-09

Contract No. 3292, professional services for the Southerly Wastewater Treatment Plant Renewable Energy Facility, Malcolm Pirnie, Inc. Cost not to exceed \$11,735,167.00.

Resolution No. 136-09

Contracts 3498, 3499 and 3502 extending professional audit services until December 31, 2009.

Resolution No. 137-09

Final adjusting deduct order and close-out of Contract No. 3373, Southerly Second Stage Aeration Tank Rehabilitation (ATR-2), Nerone & Sons, Inc. Cost decrease in the amount of \$302,382.01, bringing the total contract price to \$5,650,617.99.

Resolution No. 138-09

Final adjusting deduct order and close-out of Contract No. 3515, Southerly Digester A Decommissioning (28A), Nerone & Sons, Inc. Cost decrease in the amount of \$35,064.03, bringing the total contract price to \$818,135.97.

MOTION – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution Nos. 135-09 through 138-09. Without objection, the motion carried unanimously.

Authorization to Ratify Expenditures and Modify Contract

Resolution No. 139-09

Ratifying expenditures and extending Contract No. 3411 with Virginia J. Ainslie for federal advocacy services provided between January 2009 through June 30, 2009. Cost increase in the amount of \$20,000.00, bringing the total contract price to \$45,000.00.

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Mayor Starr commented that Virginia Ainslie has provided federal advocacy services for the District for over 10 years. This past spring, Mayor Starr met with Ms. Ainslie while in Washington D.C. to discuss environmental issues and potential grants available to the District. Mayor Starr believed that the former administration underutilized Ms. Ainslie's services. Ms. Ainslie is very knowledgeable and insightful and represents solely non-profit entities in the Cleveland area, including the Northeast Ohio Areawide Coordinating Committee (hereinafter "NOACA"), which is a boutique niche. Mayor Starr indicated that he was very impressed with Ms. Ainslie and hopes that the District can continue to utilize her effectively.

Executive Director Ciaccia advised that staff is reviewing RFPs and will bring its recommendation to the Board for consideration.

MOTION – Mayor Starr moved and Ms. Kelly seconded to adopt Resolution No. 139-09. Without objection, the motion carried unanimously.

Authorization to Implement Watershed Grants Program

Resolution No. 140-09

Authorization to Implement Watershed Grants Program. Cost not to exceed \$200,000.00 for 2009.

Executive Director Ciaccia turned discussion over to Kyle Dreyfuss-Wells, Manager of Environmental Programs, to present the Board with an overview of the new 2009 Watershed Grants Program (hereinafter "WGP").

Ms. Dreyfuss-Wells advised that the WGP is a new program for 2009 and referred to a map depicting the District service and watershed area, which includes the Rocky River, Cuyahoga River, Lake Erie tributaries and parts of the Chagrin River. The aforementioned watershed areas have watershed organizations, namely the Chagrin River Watershed Partners; the Cuyahoga Community Planning Organization; the Friends of Big Creek; the Doan Brook Watershed Partnership; Friends of Euclid Creek, the Euclid Creek Watershed Council; Rocky River Watershed Council; and the West Creek Preservation Committee.

Those organizations are newly established within the past 10 years, and provide services to local governments and residents with stormwater concerns through education, demonstration projects and technical assistance. Ms. Dreyfuss-Wells described the watershed organizations as being on the front line of stormwater management in addressing the direct questions presented by local officials and their residents. The operating funds for said watershed organizations are increasingly limited and not provided clearly through available state and federal grant programs. Furthermore,

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available grant funding for such programs are decreasing. Ms. Dreyfuss-Wells stated that the work conducted by those watershed organizations directly support the District's initiative and ongoing commitment to regional stormwater infrastructure.

Ms. Dreyfuss-Wells indicated that the efforts for this purpose are doubling and that the WGP will support the necessary operating costs for those organizations. The District will consider supporting non-profit 501(C)(3) organizations having a track record of success, proven local government support, and elected officials supportive of this work and a willingness to provide a 12-month plan to move forward with this initiative while taking advantage of the WRRSP and other available programs. Ms. Dreyfuss-Wells advised that the operating support will enable the watershed organizations to respond quickly whereas the state and federal grant programs have more specific guidelines in order to obtain funding that necessarily does not provide direct support.

Ms. Dreyfuss-Wells informed the Board that a request for applications will be disseminated for the WGP and responses will be reviewed against competitive criteria. Furthermore, the District is desirous of responding to local governments interested in undertaking small scale demonstration projects including bio-retention cells, rain gardens and rain barrels. Ms. Dreyfuss-Wells presented the Board with photographic images of the various small scale demonstration projects including a bio-retention cell located in a parking lot, rain garden areas and rain barrels, all of which help with stormwater management.

Ms. Dreyfuss-Wells concluded her presentation and advised that District staff was seeking to obtain Board authorization to implement the WGP for 2009 and that the funding for the WGP was incorporated into the 2009 budget for Watershed Programs. Ms. Dreyfuss-Wells indicated that staff would seek Board consideration prior to making any direct authorizations to watershed organizations for the WGP.

Mr. Brown thanked Ms. Dreyfuss-Wells for her presentation and advised that in order to move the District's mission forward, it is critical to support those watershed agencies that work collaboratively with municipalities, and that agencies working collaboratively with local municipalities are more likely to receive state and federal funding. Mr. Brown stated that the support of those wastewater agencies is crucial in keeping them in operation and it leverages their collective resources for obtaining financial support to improve the environment, which helps the overall region.

Ms. Dreyfuss-Wells agreed with Mr. Brown and added that applicants are being required to submit a 12-month plan of work in order to have direct accountability for the dollars provided by the District.

Mr. Brown recommended the approval and adoption of the 2009 WGP.

MOTION – Mayor DePiero moved and Mr. O’Malley seconded to adopt Resolution No. 140-09. Without objection, the motion carried unanimously.

Add-On

Resolution No. 141-09

**Authorization of the issuance of Requests
for Proposals for Electric Power
Generation for the Southerly Wastewater
Treatment Plant.**

Executive Director Ciaccia advised that Resolution No. 141-09 requested authorization for the District to obtain RFPs for electric power generation at the Southerly WWTP. The Public Utilities Commission of Ohio (hereinafter “PUCO”) has provided the opportunity to obtain competitive bids for power generation services provided by First Energy, which will result in substantial cost savings for the District. Executive Director Ciaccia turned discussion over to Mr. English.

Mr. English advised that historically electrical power had been generated, distributed and transmitted by a single entity, but since being deregulated nationwide, these components are broken out and different corporate entities are now responsible for providing those services.

Mr. English stated that First Energy sought a rate program from the PUCO, which resulted in ongoing litigation. The parties recently entered into an agreement which enabled First Energy to auction its generating capacity for distribution by the successful bidder. Eleven different companies acquired parts of the generation services and are now able to sell that power to retailers with whom the District can contract. The auction amounts were significantly lower than anticipated, which provided the opportunity for the District to receive contractual savings on the generation component at the Southerly WWTP.

Mayor Starr inquired if this same contractual process could be used at the Easterly and Westerly WWTPs. Mr. English advised that the District recently entered into an agreement with Cleveland Public Power (hereinafter “CPP”) to provide services at the Easterly and Westerly WWTPs. Executive Director Ciaccia added that the contract between the District and CPP is for a 10-year period; however, the District will research whether this service can be provided to the George J. McMonagle Building and outlying pump stations.

MOTION – Ms. Kelly moved and Mr. O’Malley seconded to add and adopt Resolution No. 141-09. Without objection, the motion carried unanimously.

VIII. Information Item

1. Auditor of State Representative Letters.

Executive Director Ciaccia referred to the comments he made at the June 4th meeting regarding correspondence received from the Auditor of State of Ohio (hereinafter "Auditor") which required the District to obtain letters from the Board as it pertains to certain contractors named in the investigation being conducted in Cuyahoga County. The Auditor provided the District with a template letter, which has been revised and included in the Board packets. Executive Director Ciaccia advised that the District's external auditor agreed with the suggested revisions and that the Auditor did not seem to have any problems with the District's modifications made to the letter. Executive Director Ciaccia advised that the Auditor will consider releasing the District's audit only if they receive the signed correspondence from the Board.

Mr. Brown commented that the District's practice is to award contracts to the lowest and best bidder, and Executive Director Ciaccia agreed. Mr. Brown commented that sending a letter affirming that the District follows its established policies and procedures seemed redundant for the reason that the Board already follows this protocol as part of its fiduciary responsibility by signing notices of disclosure, which speaks to the issue of whether or not they personally benefit from contracts. Such disclosure forms are on file and signed by the Board annually.

Mr. Bucci advised that as a result of the Cuyahoga County probe and the twelve companies listed, the Auditor of State is requiring sign-offs if the District conducted business with any of those companies. Those requirements are throughout Northeast Ohio, and the Auditor wants representatives that are in decision-making positions to attest that there was no improper influence in awarding those contracts.

Mr. Brown inquired if the Auditor is requiring signatures from each individual Board member. Mr. Bucci affirmed and he indicated that if the District conducted business with one those companies and if the amount was under \$25,000, then whoever was the decision maker on that transaction would also be required to sign off on the Auditor's letter; however, in reference to the 12 companies listed, the latter resulted in no such transaction.

Mr. Brown requested clarification from Mr. English on the Auditor's request. Mr. English advised that he could not speak directly as to the motivation of the Auditor's request, but as to the actual representations, staff revised the Auditor's generic form to include only specific transactions. Furthermore, the District worked with Mr. Craig White, Esq., legal counsel to the Board, to ensure that he was comfortable with the

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revisions. Mr. English stated that although the Auditor's request may seem redundant, it appeared to be a mandatory requirement in order to move forward with the audit.

Ms. Kelly inquired whether the signed disclosure forms would satisfy the Auditor's request. Mr. English replied that, in this instance, the Auditor wants to ensure that the District's external auditors are fully informed of this issue, and that the materials Ms. Kelly made reference to are sent to the State of Ohio rather than the external auditors. Mr. Bucci clarified that the District's disclosure forms are on file in the Internal Audit Department and are not required by the State of Ohio. Conversely, the Auditor is requiring that if the District made any payments in 2008 to any of those 12 firms, then the Board members can either individually sign a letter or collectively place all signatures on one single letter.

Mr. Bucci explained that the District's audit agreement is a three-party agreement, and the District currently uses Ciuni & Panichi to perform external audit services. The District is required by state law to have an audit conducted by an auditor of the State's office. The Auditor has historically allowed the District to use an independent firm for the reason that most of their work is for municipalities or schools. Since this is a special district, this would require special training of the Auditor's staff and from an economical standpoint, it made more sense to allow the District to contract for this work. Mr. Bucci advised that by entering into a three-party agreement, the District must first satisfy the external auditors and then the external auditors must satisfy the state auditor.

Mr. Sulik questioned if this will become an ongoing process. Executive Director Ciaccia stated that he was unsure because Cuyahoga County is not the only entity being investigated throughout the entire state of Ohio, but this investigation has been pinpointed by the Auditor's office.

Executive Director Ciaccia advised that this is an informational item at this point, and that the generic templates have been modified indicating that to the best of the Board's knowledge there was no undue influence by others. The Board's signatures will need to be obtained in order to get the District's audit released.

Mr. Brown requested comments from Mr. White regarding this issue. Mr. White advised that this issue can be further discussed in executive session. Furthermore, the language in the letter was changed to state "to the actual knowledge" where it had previously stated "to the best of your knowledge."

Mr. Brown suggested that if the Board requested further clarification on this issue, then it should adjourn into executive session. Ms. Kelly so moved and no Board members seconded the motion to enter into executive session to discuss matters related to the

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request from the Auditor on signing a particular document related to contracts entered into by the District. The Board did not adjourn into executive session.

IX. Open Session

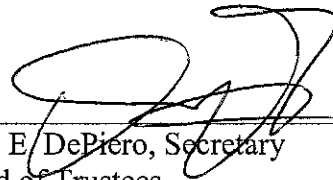
No items for discussion.

X. Public Session (any subject matter)

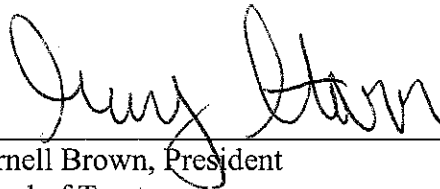
No members from the public registered to speak at Public Session.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. O'Malley seconded the motion to adjourn at 1:52 p.m. Without objection, the motion carried unanimously.



Dean E. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District