

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JANUARY 15, 2009

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Mr. Brown.

I. Roll Call

PRESENT: D. Brown
T. Longo
D. DePiero
G. Starr
R. Sulik
S. Kelly

Mr. Liberatore was absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Mr. Sulik moved and Ms. Kelly seconded that the minutes of the December 18, 2008 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Mr. Norman Edwards registered to speak at public session regarding the East Bank Flats project, Board of Trustees' Bylaws, and the diversity program. Executive Director Ciaccia advised that Resolution No. 16-09 was on the agenda for Board consideration pertaining to the Flats East Bank (hereinafter "FEB") project, however, the remaining issues do not pertain any agenda items. Mr. Brown requested that Mr. Edwards come forward to address his comments to the Board on the agenda items. All other comments will be held for the appropriate public session.

Mr. Edwards stated that according to the Bylaws, "anything over \$25,000 has to be bid out, unless it is an emergency project and then it goes to \$75,000," and stated that that he "has a problem with Independence Excavating again getting an \$8.5 million project."

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 2 of 27

Mr. Edwards stated that he “was at the Port Authority meeting last Friday and the \$500 million redevelopment project of the Flats has been on hold indefinitely.” Mr. Edwards alleged that on every project Independence Excavating was involved with, the District had dealings with them, and he claimed that Independence Excavating does not hire “blacks or minorities.” Mr. Edwards stated that “we keep going repetitively over the same items, the same items, the same items.”

Mr. Edwards alleged that the Board gave Independence Excavating an \$8.5 million job and according to the Bylaws, procurements over \$25,000 must be put out to bid. Mr. Edwards indicated that he did not understand the Board as a whole unit, and stated that “either somebody is missing something here or the public is being deceived.” Mr. Edwards argued that “Independence Excavating should not be given a project of this size and money unless they bid on the job.”

Mr. Edwards alleged that the Wolstein Group, or Diversified Development is “not on the project and probably will never ever complete the project” because “Scott Wolstein has huge financial problems, like most other developers.”

Mr. Edwards stated that with “with all of the monies and all of the funds being asked for infrastructure and bailout, black contractors and black tradesmen have been excluded.” Mr. Edwards alleged that Independence Excavating does not hire black subcontractors or black tradesmen.

Mr. Edwards stated that it is January 2009 and “this has been going on, only two new Board members, Mr. Liberatore and Mayor DePiero, and the rest of the Board has been here long enough.” There are attorneys and accountants on this Board, and Mr. Edwards stated that he does not understand how the tax dollars continue to be misused.

Mr. Edwards stated that “however you construe it; I understand the County is supposed to kick in funds and the City is supposed to kick in funds. This is colluding with Independence Excavating. If they don’t bid it straight out, it is totally illegal by your [Board] standards and Bylaws. However you try to twist it. However you try to put it down. It is illegal and it has to stop.” Mr. Edwards declared that he will not stop “fighting for black contractors and minorities and black tradesmen, black and minority.” Mr. Edwards alleged that “we are still not getting our share” and it is “still diverted.”

Mr. Edwards indicated that he does not understand how a “project is stopped and on hold.” He alleged that the project “is not going to go” and “it will be five (5) years before a developer comes in.” Mr. Edwards stated that “if we [District] were not part of the process prior, then just because Independence is hurting does not mean we should take care of them and stroke them.”

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 3 of 27

Mr. Edwards stated that “when you Google in NEORS on the computer, Independence Excavating has a huge ad on there, the only contractor. It is totally terrible. You are advertising for them. You are giving them our money and you are telling them you don’t have to use black or minority contractors, and you don’t have to use tradesmen, and you’re giving them a free pass. We’ve had enough. The changes need to be, there has to be some accountability here, and I don’t see it from this Board at all. And it’s the same thing over and over and over again. How do we stop it, Mr. President? How do we stop it?”

Mr. Brown advised that this discussion was held previously, and he was unsure as to why Mr. Edwards continues to believe that the FEB project was not competitively bid. The City of Cleveland “put money” into this project, and it was decided that it would be best if a construction manager was on this project. As a result, a construction manager was put in place under the auspices of the Port. Mr. Brown advised that the project was competitively bid and Independence Excavating was determined to be the lowest bidder. The District is subject to state law; therefore, projects must be competitively bid and awarded to the lowest and best bidder. Mr. Brown advised that failing to abide by state law subjects the Board and District to legal action.

Mr. Brown advised that the District is required to improve the FEB sewer system and the effects and impacts of combined sewer overflow (hereinafter “CSO”) in the FEB area irrespective of the FEB project going forward. The FEB project provided an opportunity to facilitate the CSO issues in this area, and the District needed to spend money in order to change the FEB sewer system. Mr. Brown stressed that the District will complete the CSO project irrespective of the FEB project for the reason that it is a condition of the permits issued by the Ohio Environmental Protection Agency (hereinafter “EPA”). Mr. Brown advised that he understood Mr. Edwards’ concerns; however, the Board operates within the parameters as set forth by the operating procedures, laws and policies established to govern contracting procedures pertaining to District projects.

Mr. Edwards stated that according to Diversified Development, Great Lakes Construction was the lowest bidder on the excavating and infrastructure work. Mr. Edwards indicated that he read the DOJ reports “where Independence bid.” Mr. Edwards requested that the Board provide its bid documentation for the reason that Diversified Developers or the Port Authority lists Great Lakes Construction rather than Independence Excavating as the lowest bidder. Mr. Edwards stated that he would like this information to be shared for the reason that he “cannot find where they were the low bidder.”

Mr. Brown suggested that Mr. Edwards make public requests to the District and the Port Authority to obtain the information he is requesting. Mr. Edwards advised that he already made this request with the Port Authority. Mr. Brown advised Mr. Edwards if he compared “those two bits of information, they should bring some clarity” to this issue.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 4 of 27

Mr. Edwards reiterated that he has obtained the Port Authority's documentation, but has yet to receive the District's information. According to Mr. Edwards, "the Port has no contract or dealings with Independence Excavating at all, and that was clarified Friday." Mr. Edwards expressed that he was "happy" with the information provided by the Port.

Mr. Brown suggested that Mr. Edwards review the documentation including the project agreement which designated the construction manager, their parameters, and how the project and work will be entered into. The District, City of Cleveland and other entities were parties to this agreement, and the Port Authority became the "oversight" as to how the construction manager was engaged and the handling of the contracts.

Mr. Edwards stated that he clearly understood what Mr. Brown said, however, his point was that "Independence Excavating did not bid through the Port Authority or have a contract with the Port Authority."

IV. Executive Director's Report

Executive Director Ciaccia advised that included in the Board packets was a copy of his monthly report; however, some of the issues he will discuss are not incorporated into the formal report.

Executive Director Ciaccia advised that prior to entering into the third round of meetings with the suburban communities and the City of Cleveland, staff will present updates to the Stormwater Management Program (hereinafter "SMP") to the Board. Executive Director Ciaccia indicated that staff can project exactly what this program will entail including identifying projects, O&M projections needed to continue carrying out the SMP, revenue requirements, and the proposed organizational structure. Executive Director Ciaccia intended to present this information to the Board, prior to entering its third round of meetings, in an effort to obtain their reactions and make any necessary finishing touches before finalizing and going forward with the SMP.

Executive Director Ciaccia advised that the District continues working with the Cleveland Water Department (hereinafter "CWD") on the installation of the billing system in order to include a line item specific to stormwater charges. CWD foresees going live with its new system in 2009 (midyear), however, stormwater is expected to commence in 2010. Thus, there will be no stormwater fee for 2009.

Executive Director Ciaccia advised that the District is working with CWD on its contracts with Bearing Point and TMG, program manager, to ensure that the program modifications are carried out in order to accommodate the District's particular portion of the bill. Executive Director Ciaccia advised that the District is scheduled to have meetings with CWD in the short term.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 5 of 27

Executive Director Ciaccia moved to the next report item and advised that on behalf of the Association of Ohio Metropolitan Wastewater Agencies (hereinafter "AOMWA"), a meeting was held on Wednesday, January 14th in Governor Strickland's office with his representative, Jessica Lynch, [Executive Assistant, Agriculture, Environment, Commerce, Insurance Policy, Natural Resources and PUCO]. Meeting attendees included Ms. Lynch, Executive Director Ciaccia, the Utilities Director for the City of Columbus, Water and Sewer Director for the City of Akron and Tim Cosgrove of Squires, Sanders and Dempsey (hereinafter "SS&D").

Executive Director Ciaccia advised that the intent of this meeting was to elevate the message from the communities as to identifying the kind of exposure the ratepayers should expect pertaining to the District's commitments of the CSO Long-Term Control Plan (hereinafter "LTCP") negotiations as well as the overall reduction in CSOs. Furthermore, discussions included the economic stimulus package relating to the CSO LTCP. Executive Director Ciaccia informed Ms. Lynch that he was pleased that the Federal and State negotiators are allowing the District to move forward with some of the Easterly LTCP projects, and he stated that since the new EPA director has come on board, there appears to be positive movement in this regard.

Executive Director Ciaccia stated that the cities of Akron and Columbus expressed their appreciation on some issues being handled by the administration, however, some challenges still need to be addressed including time frames and additional controls from a science and a cost-benefit standpoint. Consequently, Ms. Lynch agreed to schedule a follow-up meeting to include Director Korleski of the Ohio EPA to further discuss outstanding issues.

Executive Director Ciaccia described the meeting to be positive, and he emphasized that the meeting was not adversarial, but rather their intent was to work cooperatively with the administration for the reason that "there has been some positive movement" and the other state utilities are in agreement with this assessment.

Executive Director Ciaccia advised that the group, as well as, the Governor's office, is hopeful that the stimulus package will be in the form of grants instead of loans. Loans are not going to be productive for the District due to debt service coverage requirements, and adding more loans to what we already have on our books to carry out existing projects will not be beneficial to the District. According to Executive Director Ciaccia, Ms. Lynch indicated that "the story changes each day" and the government is unsure of the outcome. The Governor's Office expressed its desire for grants, or a grants and loans program. Executive Director Ciaccia added that if funding becomes available, that the District, being a sewer agency, will compete with many other infrastructure projects, if in fact there is going to be any funding. Executive Director Ciaccia advised that the District

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 6 of 27

continues putting its projects forward, and has submitted a list of projects to NACWA, Build Up Greater Cleveland and NOACA, all of which are lobbying on behalf of the District. Executive Director Ciaccia stated that the District is putting its projects out there, but "right now there is not a clear picture."

Executive Director Ciaccia moved to the next report item to discuss the District's financials, and he advised that the District is on an accrual basis and that these are not the final numbers. The District is slightly under its revenues at year's end, which is not unexpected due to the economy and conditions of the District's delinquencies. The District projected being ahead due to the expected \$1.7 million reimbursement from a grant for the West Creek project, however, the District received \$1.3 million which was slightly lower than the initial amount expected.

Executive Director Ciaccia stated that the District did well in its operations and maintenance expenses ending at 91.38% of its budget, and he advised that this percentage will increase slightly as some of the accruals come in.

Executive Director Ciaccia stated that from a rate study perspective, the District is staying under its budget. There was a difference between the revenues in the operating budget and projected rate study figures for the reason that interest income on some capital investments was included. Executive Director Ciaccia stated that the District is well ahead of what was projected in the rate study revenues, and is under on its operations and maintenance. Executive Director Ciaccia expressed that he was confident the District will carry out its projects that need to get done through 2011 and maintain a successful organization from a financial perspective.

Executive Director Ciaccia commended Director of Finance, Jennifer Demmerle, and her staff on receiving a Certificate of Achievement from the GFOA. The District won this award before, as well. Executive Director Ciaccia stated that Monica Johnson and her financial department staff "did a great job in getting that award."

Executive Director Ciaccia indicated that action agenda item No. 9 (Resolution No. 9-09) will be withdrawn.

Mayor Starr requested a status update as to Moreland Hills becoming a member community. He questioned if this was close, or if it would be decided within the next month or two. Director of Law, Marlene Sundheimer, advised that the project agreements are being finalized in order complete the membership agreement. Deputy Executive Director, Michael Bucci, added that the agreements are being finalized, and that the Board authorized accepting Moreland Hills as a member community. The construction project will commence in 2009, and the District will not start accepting flow from Moreland Hills until 2010.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 7 of 27

Mayor Starr inquired if the agreement will be finalized in a month or two. Ms. Sundheimer indicated that the final community service agreement should be signed in January.

V. Consent Agenda

Mr. Brown advised that there was no Consent Agenda.

VI. Action Items

Mr. Brown inquired if the resolutions following action item No. 9 require renumbering due to the intent to withdraw Resolution No. 9-09. Ms. Sundheimer clarified that it is not necessary to renumber the resolutions by excluding Resolution No. 9-09. Mr. Brown stated that he recalled having to renumber items in the past and was looking for clarification.

Authorization to Advertise

No discussion ensued on Resolution Nos. 1-09 through 3-09.

Resolution No. 1-09

One (1) year requirement contract for elevator maintenance service for all District facilities. Anticipated expenditure is \$125,000.00.

Resolution No. 2-09

One (1) year requirement contract for lawn maintenance services for EMSC and off site facilities. Anticipated expenditure is \$88,000.00.

Resolution No. 3-09

Incinerator Refractory purchase for the Easterly, Southerly and Westerly WWTPs – Contract NO. IR-13A. Estimated cost is \$160,000.00.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution Nos. 1-09 through 3-09. Without objection, the motion carried unanimously.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 8 of 27

Authorization to Purchase

No discussion ensued on Resolution No. 4-09.

Resolution No. 4-09

Open market purchase of nitric acid solution for use at the Southerly WWTP. Anticipated expenditure is \$48,000.00.

MOTION – Mayor DePiero moved and Mayor Longo seconded to adopt Resolution No. 4-09. Without objection, the motion carried unanimously.

Authorization to Enter into Agreement

Resolution No. 5-09

Authorizing payment of Railroad Protective Liability Insurance to CSX Railroad Facility as part of Facility Encroachment Agreement No. CSX618476. Cost is \$6,000.00.

Resolution No. 6-09

Authorizing payment of Railroad Protective Liability Insurance to CSX Railroad Facility as part of Facility Encroachment Agreement No. CSX618477. Cost is \$3,000.00.

Resolution No. 7-09

Sponsorship Agreement for the 2009 Water Resource Restoration Sponsor Program.

Resolution No. 8-09

Water Pollution Control Loan Fund (WPCLF) loan agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for the WPCLF financing of the Dugway East Interceptor Relief Sewer project.

Mayor Starr referred to Resolution No. 7-09 and inquired about the water resource restoration and funding of various watershed projects. Of the seven (7) projects identified on the list, Mayor Starr pointed out that some of the projects are not within the District's 60 member community service area. He stated that he is not against regionalism; however, he requested further explanation as to why some projects lie outside the District's service area.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 9 of 27

Mr. Brown indicated that Mayor Starr raised a good issue, and he requested an explanation as to how these particular projects become available, are funded, and whether there is a qualification process. Mr. Brown suggested that the District engage in some outreach services in order enlighten member communities of the qualifications needed in order to obtain this free money.

Executive Director Ciaccia stated that this is an excellent program and that a presentation was made to the Board a couple of months ago regarding this issue. The state of Ohio created a program in which interest money from WPCLF loans is applied to environmental restoration type projects.

Mr. Brown inquired if these monies are a grant or loan. Mr. Bucci replied that it is a payment in lieu of interest with respect to the District. Mr. Brown clarified that he wanted to know if this is grant money or loan money for the community. Director of Watershed Programs, Frank Greenland, stated that to the community, it would be a grant.

Executive Director Ciaccia advised that the District received a slight discount on its interest rate as being a part of this particular program resulting in some financial benefit to the District. When the District decided to participate in this program, it was viewed from a holistic standpoint for the reason that communities outside of the service area affect the District's watershed. The District decided to entertain projects impacting the service area including the three (3) rivers (Rocky River, Chagrin River and Cuyahoga River) and stormwater management, and that priority was given to projects within the service area. The West Creek Preservation project was the only member community project that made it through the State's process, and the District intends to sponsor this project. The remaining projects were evaluated and it was decided that they were worthy of funding. Executive Director Ciaccia indicated that although the Grand River is not one of the three (3) rivers within the District's service area, it was a good project for the District to sponsor in an effort to strengthen its relationship with the Cleveland Museum of Natural History.

Mr. Greenland stated that a list of the potential projects was turned over to the Ohio EPA wherein they develop criteria to score and rank projects throughout the State. These seven (7) projects ranked as a priority for either direct funding, or for consideration in the event a project does not go forward, or additional funding becomes available.

Mr. Greenland advised that there are five (5) river basins and when the District looked into regional stormwater management, it was determined that these projects provide benefits to the Cuyahoga County flooding situation. The Grand River project is a property purchase allowing for the preservation of the land along the river, and it also provides the District an opportunity to strengthen its relationship with the Museum of Natural History.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 10 of 27

Mr. Greenland added that the real benefit is technology based. WQIS investigators undergo credible data protocols as required by the Ohio EPA. The investigators' skills will be enhanced for the reason that they will see stream segments, fish species and other parameters beyond what is typically seen in our streams, which is good for the District's credible data standing.

The Geauga Park District project is on the Chagrin River and is a stream restoration project. The District will not manage the design for the project, but will be on the design team which allows the District to strengthen its skill base for stream restoration activity. According to Mr. Greenland, stream restoration activity will increase in the future, and he stated that "these are solid recommendations."

Mr. Brown inquired if these seven (7) projects scored the highest, or if they were identified on a list that the District selected from. Mr. Greenland stated that "these were the seven (7) highest scored projects" that the District was "attached to in terms of a sponsor." Mr. Greenland advised that the District "looked for more projects" and made a broadcast, but were surprised at the shortage of Cuyahoga County projects. Mr. Greenland speculated that the "word is out" and the District intends to see more Cuyahoga County projects going forward.

Mr. Brown inquired if the Cuyahoga River included areas of remediation such as the nearest shore area. Mr. Greenland stated that the Cuyahoga watershed includes everything from Hiram down which impacts Cleveland and the District's service area. Mr. Brown stated that Doan Brook affects the near shore area. Mr. Greenland advised that Doan Brook could be a potential project and that Euclid Creek is an ongoing project.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 5-09 through 8-09. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

**Resolution No. 9-09
(WITHDRAWN)**

Contract with August Fiberglass Coatings, Inc. for the purchase of sodium hypochlorite tanks for use at the Westerly WWTP. Cost is \$26,750.00.

Resolution No. 10-09

Contract with AECOM for engineering services during construction of Mill Creek Interceptor Rehabilitation Phase 2 (MCIR-2). Cost not to exceed \$505,270.00.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 11 of 27

Resolution No. 11-09

Contract with Marous Brothers Construction for Westerly Low Level Interceptor Riverbed Street Bypass Pumping (WLLI-BP). Cost not to exceed \$978,225.00.

Resolution No. 12-09

Contract with Montgomery Watson Harza Americas, Inc. for engineering services during construction of the Lee Road Relief Sewer. Cost not to exceed \$1,788,694.14.

Resolution No. 13-09

Contract with Cambridge Computing Services, Inc. for procurement and implementation of storage area network. Cost not to exceed \$639,974.39.

Resolution No. 14-09

Contract with NEC Unified Solutions, Inc. for a three (3) year renewal of the Cisco SMARTnet Maintenance Contract. Cost not to exceed \$254,640.00.

Executive Director Ciaccia advised that Mark Ricchiutto from Marous Brothers was present at the meeting, and they were the low bidder on the temporary pump station project. Mr. Brown welcomed Mr. Ricchiutto to the Board meeting.

Mayor Starr requested if Executive Director Ciaccia could expound upon action item No. 10 (Resolution 10-09) pertaining to the Mill Creek Interceptor Rehabilitation (MCIR-2) project. He specifically questioned if "this is the one that has gotten all the attention?"

Executive Director Ciaccia replied that part of the MCIR-2 project will remediate some of the problems including the collapse which raised concerns about the landfill located near the Southerly plant. Resolution 10-09 is for the engineering services during construction, and that the District is bidding the project.

Mayor Starr stated that the mayor of Cuyahoga Heights specifically asked him about the timetable on the rehabilitation issue. Mayor Starr advised that this is visible from I-77 and that he drove past the location a few weeks ago. Executive Director Ciaccia advised that the construction will not be located in the same area as the collapse, and that the District is desirous of avoiding this area altogether. Executive Director Ciaccia inquired

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 12 of 27

if Director of Engineering, Kellie Rotunno, or Sewer Design Manager, Richard Switalski could explain the timetable.

Executive Director Ciaccia explained that he and the mayor of Cuyahoga Heights exchanged letters in 2008, and that most of the Mayor's concerns are contingent upon the outcome of the pending lawsuit. Executive Director Ciaccia speculated that not much is going to happen until there is some resolve pertaining to this issue. The District will not ask for any easements or changes in the collapsed area. Executive Director Ciaccia advised that he does not foresee anything transpiring until this matter is resolved.

Mayor Starr inquired if once this is bid out, will the District "have some basis of legal damages as part of our continuing lawsuit?" Ms. Rotunno explained "that this particular part of the project is purely for lining and rehabilitation of sections of the Mill Creek Interceptor," and that "the failures in the Chapek Parkway area are not related to this particular authorization." Mayor Starr asked if this one is relining the other where there the actual collapse occurred. Ms. Rotunno stated that is correct. Mayor Starr inquired how close in proximity is it to the collapsed portion? Ms. Rotunno stated that "it is the Mill Creek Interceptor, so it is connected."

Executive Director Ciaccia stated that there are upcoming projects that will be bid relative to the collapse which will help define the District's actual damages.

Mr. Brown moved discussion to confer about the specifications of the Lee Road Relief Sewer (LRRS) project, Mr. Brown stated that there is over three-quarters of a mile of 72-inch sewer and tunnel, almost a half mile of 72-inch sewer, install, cut and cover which he explained as a method used in conventional construction. Mr. Brown stated that the project commences in April, and inquired if the District identified how the open-cut section will impact traffic, businesses and the residential areas.

Ms. Rotunno referred to a graphic depicting the LRRS project area, as well as, the open-cut portion, and stated that it begins at Shaft 2, continuing down to Shaft 1. There will be tunneling in order to tie in at Shaft 14, essentially where the Mill Creek Tunnel will be located, and the District will tie into the Mill Creek Tunnel.

Ms. Rotunno stated that she does not have information readily available to comment on the open-cut section of the LRRS, traffic control provisions or traffic patterns. Ms. Rotunno assured the Board that the Engineering Department will look into the current proposal to determine the adequacy of onsite notification to motorists of any changes in traffic or lane patterns in the surrounding area. Ms. Rotunno advised that staff will provide the Board with a status update regarding their findings.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 13 of 27

Mr. Brown stated that the LRRS project area is used to access I-480; therefore, he recommended that the project be coordinated to have the least amount of impact for the shortest period of time.

Mayor Longo inquired if the resolution for the LRRS project was for design services only, and he questioned when the project design will commence. Mayor Longo advised that this would provide the Board with “details as to what options are going to be available to the District, whether it is open-cut.”

Executive Director Ciaccia explained that the aforementioned resolution is actually for design services during construction and the project design was completed. Mayor Longo questioned if this is for construction management? Ms. Rotunno affirmed and advised that construction is scheduled to commence in April 2009. Executive Director Ciaccia added that the LRRS project is currently out to bid.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 10-09 through 14-09, and to withdraw Resolution No. 09-09. Without objection, the motion carried unanimously.

Authorization to Enter into Contract Renewal

No discussion ensued on Resolution No. 15-09.

Resolution No. 15-09

Contract with Automatic Data Processing, Inc. to continue payroll processing and technical services in 2009. Cost not to exceed \$70,000.00.

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 15-09. Without objection, the motion carried unanimously.

Authorization of Agreement Modification and
Authorization to Enter into Other Agreements

Resolution No. 16-09

Authorization to modify the cooperative agreement to increase funding and enter into other agreements for Flats East Development, LLC – Contract #3403, Resolution No. 223-07, additional funds to complete the District’s Flats CSO Control project.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 14 of 27

Mr. Brown requested that Executive Director Ciaccia provide the Board with an explanation regarding the request to increase funding for the FEB project.

Executive Director Ciaccia began discussion by referring to a comment made by Mr. Brown during his discussion with Mr. Edwards pertaining to the District's intent of reducing the overflows in the FEB area, more specifically CSO-092, which is a combined sewer overflow at the site where the Flats East Bank project is currently located which flows into the Cuyahoga River. CSO-092 overflows approximately 26 times per year which discharges about 4 million gallons of CSOs into the Cuyahoga River.

Executive Director Ciaccia explained that, in 2002, as part of the District's CSO LTCP, it was intended to reduce the overflows at CSO-092. The project estimated that \$5 million worth of work was needed in order to mitigate or reduce the overflows to no more than four (4) per year according to the plan at that time, and in order to accomplish this task, a storage tank was going to be added at the FEB site. Discussions began regarding the FEB development project and whether that project could integrate the District's \$5 million plan to mitigate CSOs into this FEB development area. Executive Director Ciaccia stated that subsequently, the project cost was escalated into 2007 dollars, and an \$8 million figure was used to determine the cost of the storage tank in 2008 dollars. That \$8 million figure became the basis as to what the District was willing to contribute for FEB to construct the Sewer Project.

In 2005, the District was approached by the developers for the FEB project wherein Metcalf & Eddy, the engineers working for the District at that time, evaluated five (5) additional alternatives other than the storage tank alternative. It was determined that a complete sewer separation and pump station that was going to pump sanitary flow would be the most suitable alternative for the FEB area at an estimated to cost \$11.1 million, at that time. This alternative would result in zero CSOs per year, which the EPA was pushing for, and hence, the additional cost.

In September of 2007, the Board authorized \$8 million toward the project, which was the original escalated estimate for the single storage tank. The Port Authority, Flats East Bank Development (hereinafter "Developers"), the City of Cleveland and the District entered into a Cooperative Agreement for the funding and construction of the CSO Sewer Project. Per the Cooperative Agreement, any costs of the CSO Sewer Project which exceeded the \$8 million funds provided by the District would be paid by FED.

Executive Director Ciaccia advised that as the FEB design work began, it was determined that the storm and sanitary sewers could not be separated for some of the older existing buildings that would remain in this area for the reason that these building were not plumbed to allow for sewer separation. This resulted in the project design shifting back to a combined sewer arrangement which would require the pump station to accept both

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 15 of 27

CSO and sanitary sewer overflow (hereinafter "SSO"), therefore, the pump station needed to be upsized.

Mr. Brown stated that he understood the design to be a "hybrid" and not a "combined sewer." Executive Director Ciaccia clarified that it is a hybrid. Mr. Brown questioned if the old system is combined and if the new sections are separate. Executive Director Ciaccia affirmed.

Executive Director Ciaccia stated that in June of 2008, the Developers put the FEB project out to bid, and Great Lakes Construction and Independence Excavating both submitted bids. Great Lakes Construction works at the FEB site; however, they are not working on the FEB CSO Sewer Project for the reason that the project was awarded to Independence Excavating. Independence Excavating's bid was \$2 million less than Great Lakes Construction for the CSO Sewer Project.

The Developers obtained a Permit to Install (hereinafter "PTI") from the Ohio EPA which is significant. Executive Director Ciaccia speculated that going to zero CSOs hastened the issuance of the permit, and on July 15, 2008, the Developers entered into contract with Independence Excavating.

Executive Director Ciaccia stated that when factoring in the engineering and the \$9.5 million bid from Independence Excavating, it became apparent to the Developers that they were looking at a shortfall from the original estimated cost of \$11.1 million and the District's project contribution of \$8 million. Consequently, the Developers approached the District to inquire whether the District was willing to put more money into the FEB CSO Sewer Project. In August of 2008, Executive Director Ciaccia reported to the Board that, at a meeting with the Developers, he denied their request for additional project money. Executive Director Ciaccia stated that the District was party to an agreement, and they had a "great deal," therefore, he "was not going to take the good deal off the table."

In October of 2008, the economic crisis hit the country, and the overall FEB development project shut down due to financial strains resulting from the global economic conditions. The District's CSO Sewer Project was at risk of shutting down as well. District representatives attended a meeting at Cleveland City Hall wherein Mr. Brown was also in attendance. At this meeting, it was made apparent that the project was in severe jeopardy. The District offered a zero percent loan to the Developers to keep the project going; however FEB was not able to make a commitment due to the indefinite status of the overall program.

Executive Director Ciaccia stated that the District needs to complete this project and will suffer significant consequences if the CSO Sewer Project shuts down. It would cost the

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 16 of 27

District approximately \$2.5 million more to complete the project at the \$12.5 million current cost, and an estimated \$2 million more for demobilization, remobilization and rebidding this as a District project. Executive Director Ciaccia stated that it is within the best interest of the District to "keep this contractor on the job and keep this job going to completion."

Of its \$8 million contribution, the District paid \$2.5 million thus far and approximately \$1.2 million is pending in outstanding invoices, bringing the total amount to \$3.7 million. There is approximately \$4.3 million left to be paid by the District in order to keep the project going. When the District hits the \$8 million figure, the project will be partially complete.

Executive Director Ciaccia referred to an outline that was provided to the Board previously which identified certain action items to be completed if the CSO Sewer Project goes forward. Some contract scope items could be eliminated from the current construction contract, which would decrease project costs without affecting the function of the CSO project.

Executive Director Ciaccia advised that \$734,000 worth of items were identified and will be deleted if the CSO Sewer Project goes forward, and that these costs will be incurred by the Developers. The demolition of the old pump station was removed from the project scope. If the pump station needs to be moved in the future for construction of buildings, then this would become the responsibility of future developers.

The District intends to identify and quantify all additional existing claims with the contractor and consultants that could add to the overall project costs. The District intends to work with the Developers, City of Cleveland, and Cuyahoga County to confirm any and all other potential funding sources. Executive Director Ciaccia indicated that there is potential Clean Ohio Revitalization Funds (hereinafter "CORF") and County Brownfield funding of \$1.67 million, which will reduce the District's commitment, and that the District will continue working towards obtaining this money.

Executive Director Ciaccia advised that the District confirmed the exact not to exceed project funding shortfall.

The District prepared the resolution request which was brought to the Board as an action item, and intends to draft and execute a revised cooperative agreement upon Board approval of the additional funding. The price and cost of the particular work to be completed will change. Executive Director Ciaccia advised that the agreement between the Developers, Port Authority, Independence Excavating and the District requires modifications in order to provide the protection and authority needed to carry out the project, more specifically, project management, and cost and change order controls.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 17 of 27

Executive Director Ciaccia stressed that these modifications need to assure that the District has control and "that there is a cap put on this particular project."

Mayor Starr inquired as to who the contract manager is for the FEB CSO Sewer Project. Ms. Sundheimer replied that Flats East Development is the project manager for the entire project. Mayor Starr questioned if that is a non-profit corporation. Ms. Sundheimer stated that she believed it to be a for-profit corporation. Mayor Starr inquired if they have a professional construction manager. Ms. Sundheimer advised that "they hired a consultant to act as on-site construction manager on their behalf." Mayor Starr questioned if they are overseeing the District's work as well? Ms. Sundheimer affirmed.

Executive Director Ciaccia advised that Don Frantz, a representative from Flats East Bank Development was present at the meeting to respond to any direct questions. Mr. Brown inquired if his company was engaged to provide this oversight. Ms. Sundheimer affirmed. Mayor Starr inquired as to the name of Mr. Frantz's company. Ms. Sundheimer replied that the company's name is Metro Consulting, and that they are the current project management company overseeing this particular project.

Mayor Starr inquired who the design engineers are for the project. Ms. Sundheimer replied that the design engineer is Wade Trim.

Mayor Starr stated that "this is a very important project for the economic development of Cleveland and also the region," and he questioned if the original parties involved were the City of Cleveland, the Port Authority, the Flats and the Developer. Ms. Sundheimer advised that the developer is "The Flats East Development, LLC." Mayor Starr questioned if that is the Wolstein Group. Mr. Brown affirmed.

Mayor Starr inquired if the original project agreement was for \$8 million. Ms. Sundheimer explained that the District made an initial \$8 million commitment to this project based upon the cost estimate for the District's CSO Sewer Project.

Mayor Starr questioned if there was an original agreement with the Developer to pay a percentage of the District's costs. Ms. Sundheimer replied that the District, as part of the Cooperative Agreement, entered into the four-way agreement, and that its contribution to cost of the project would be \$8 million. Furthermore, this was not a percentage of the actual cost, but it was a flat \$8 million.

Mayor Starr inquired who would have been responsible for covering the remaining costs other than the District. Ms. Sundheimer advised that the remaining cost of the project was to be paid from other funding sources, including the County, CORF funds, and the rest was coming from the Developer. Mayor Starr inquired if "the rest" was the difference between \$12.85 million and \$8 million. Ms. Sundheimer affirmed. Mayor

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 18 of 27

Starr questioned if the Developer was going to pick up the remaining costs. Ms. Sundheimer affirmed, and Executive Director Ciaccia added that with the exception of the \$1.67 million they were counting on from the Clean Ohio Revitalization Fund. Mayor Starr stated that this money is not in hand yet. Executive Director Ciaccia advised that the money is not available at this point, and that the Developer would have had to pick up the \$4.8 million.

Mayor Starr indicated that this is a CSO project with a stormwater component. He explained that when mayors handle similar projects, an area wide assessment is conducted. If vacant properties cannot be assessed due to being undeveloped, then the developer usually asks for a protective agreement. Therefore, in the future when the properties are developed, "you will then have to pay your fair share amount that we are picking up now for you." Mayor Starr inquired if there are any guarantees to ensure that the District will be reimbursed \$5 million in the future if the parcel is developed by the existing or new developer.

Executive Director Ciaccia stated that there is no guarantee, the District is suffering a leverage problem, and the project is at risk of coming to a halt. The District does not have much negotiating room pertaining to the terms with the Developer. Executive Director Ciaccia explained that initially the District offered the Developer a zero percent loan, tantamount to what Mayor Starr previously stated, for the reason that the Developer could not obtain a loan from the bank. However, the Developer was not seemingly in the position to accept that type of offer, leaving the District's project at severe risk.

Executive Director Ciaccia stated that the District can take the risk, and pay up to the \$8 million for this project, but what if the contractor pulls off the project due to lack of funding?. The District will need to repackage the remainder of the job and put it out for bid, at the District's expense. Furthermore, the costs are expected to increase, therefore, the District recommended Resolution No. 16-09 to the Board for authorization to increase its funding for completion of the project.

Ms. Sundheimer added that the District's project has no benefit to the Developer for the reason that this particular project and infrastructure will be owned and operated by the District or the City of Cleveland. The District inserted its infrastructure project within the FEB development project. Ms. Sundheimer stated that there was never an intention that it would be owned by anyone other than Water Pollution Control or the District, which both own some of the infrastructure. The District is a third party beneficiary of a component of the overall development project. Ms. Sundheimer stated that having some kind of benefitting owners is not quite apt to this situation and that in the case of these particular project funds, there are no other beneficiaries besides the City of Cleveland Water Pollution Control and the District.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 19 of 27

Mayor Starr stated that neither the existing Developer nor a future developer will benefit from the rate payer's investment of approximately \$13 million. Ms. Sundheimer replied there will be no private benefit, and that this project was to build the District's infrastructure.

Mayor Starr inquired as to the stormwater and sanitary plan, and he questioned if it "will empty into this holding tank or sewer now?" Ms. Rotunno stated that the infrastructure for this project is the conveyance of sanitary and storm flows from the existing Flats buildings and infrastructure into the Easterly WWTP. CSOs from this location will continue flowing into the Easterly plant regardless of whether there is a new developer. Ms. Rotunno advised that the existing infrastructure will remain, but will be reconfigured to eliminate CSOs from discharging into the Cuyahoga River, and that the District will own a pump station in the Flats.

Mr. Brown added that there was "two (2) pump stations and a couple of overflows that activated," which per the Ohio EPA needed to be addressed.

Executive Director Ciaccia indicated that regardless of whether the property remains vacant, the District needs to complete its project. Mayor Starr agreed with Executive Director Ciaccia's comment and stated that his intent was to "protect our dollars of the tax payers to say the developer has a recognized benefit in both sanitary and storm and the development of this parcel."

Mayor Starr inquired as to the acreage of the parcel. He commented that regardless of the parcel's size, if there is a benefit to the Developer, then the Developer is obligated to contribute certain costs of the development, similar to a home developer putting in a street, they would put in sanitary storms, water mains and pay for soft costs. Mayor Starr questioned if the District is protected and if the Developer will receive a benefit from the future development of the FEB area.

Ms. Rotunno advised that the parcel size is about 40 acres, and that certain project elements that would otherwise benefit the current Developer were eliminated, including shifting infrastructure to accommodate future building footprints. In the event the Developer chooses to reconfigure the infrastructure to accommodate the proposed footprint, then it becomes their responsibility, and not the ratepayers.

Ms. Rotunno explained that the CSO level of control changing from four (4) overflows to zero overflows discharged into the Cuyahoga per year from CSO-092 benefits all parties leasing, occupying or owning property in the FEB area, as well as the environment and the ratepayers.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 20 of 27

Mayor Starr stated that he is "not against the payment of it," and inquired how it will be protected in the future if the parcel is developed. Mayor Starr then questioned if there is an agreement assuring that the District will be reimbursed the extra \$5 million not initially paid by the Developer. Executive Director Ciaccia stated that "with the current Developers, no."

Mayor Starr gave a hypothetical scenario of a new future investor coming in such as Donald Trump. Executive Director Ciaccia advised that if a new developer is desirous of making changes to the parcel, this then becomes a leverage situation opening up negotiations, however, this is a hypothetical situation and could vary contingent upon the circumstances.

Mayor Starr moved discussion to the issues raised about the initial bidding process, and he questioned whether the Port Authority or if the Developer bid out the FEB CSO Sewer Project. Ms. Sundheimer stated that the Developer bid out the project, and in accordance with the cooperative agreement, they are an agent of the Port Authority responsible for all bidding and construction management.

Mayor Starr commented that they were the legal agent, and inquired if Ms. Sundheimer believed this to be a legal bid. Ms. Sundheimer stated "yes, that is my legal opinion." Ms. Sundheimer further explained that the State of Ohio bidding requirements and contractors paying prevailing wages were followed. Five (5) to six (6) pre-qualified bidders received bid packages, and Independence Excavating submitted the lowest bid.

Mayor Starr referred to Page 2 and stated that the total construction cost for the CSO project is listed as \$8,531,000. He inquired what this amount represented. Ms. Rotunno replied that the amount represented the bid received from Independence Excavating.

Mayor Starr referred to the identified change order amount listed as \$394,000, and he inquired if the amount represented the existing change orders. Ms. Rotunno responded that "those are change orders that were approved and negotiated by Flats East Development that have been executed to date." Mayor Starr questioned if the change order amount is 22% percent over the original contract amount, by dividing 394 into 8. Mr. Sulik and Ms. Rotunno stated it is approximately 2%.

Mayor Starr inquired if there are contingencies of \$250,000. Ms. Rotunno affirmed and stressed the importance of noting that these are project costs allocated to construction, design, equipment and a future project yet to bid, which were annotated on Page 2 as Project 3.

Mayor Starr questioned if the cost of materials and labor profit margins will be the same on the new extension of the contract. Ms. Sundheimer advised that the amendment is a

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 21 of 27

contract between Developer and Independence Excavating. They will either amend or carry out a change order or contract modification that will effectuate the changes, but the District is not a party to this agreement.

Mayor Starr questioned if the District is funding the project while Developer is running it. Ms. Sundheimer affirmed and stated that “nothing changes from the original agreement.” The District remains its funding source for its particular project, but “Flats East Development would be the project manager and execute the contract.”

Executive Director Ciaccia clarified that as part of executing the modification, certain authorities and protections need to be worked out for the District. Executive Director Ciaccia assured that prior to the District contributing any funding, they must execute the modification giving the District authority over all change orders and respective negotiations, terms, conditions, and placing a cap on this project in order to bring it to a conclusion.

Ms. Sundheimer summarized discussion and explained to the Board that staff sought Board approval to add additional monies to the allotted \$8 million bringing the total project contribution amount to \$12,850,000, which is the cap the District will place on this project. The second modification is to amend the agreement between Flats East Development and Independence Excavating to effectuate the aforementioned cap on the FEB project, and to provide the District with the authority to review and approve all change orders using District bid documents and change order processes to effectuate the contract going forward using District standards as opposed to the contractor’s standards.

Ms. Kelly requested clarification on the total amount requested for the project. She inquired if the allotted \$8 million plus the \$4.85 million is specifically for sewer work only. Ms. Sundheimer affirmed.

Ms. Kelly inquired if the District spent \$2.5 million and is committed to \$1.2 million for outstanding invoices. Ms. Sundheimer affirmed.

Ms. Kelly inquired if the \$1.67 million is a commitment or anticipated grant money the District hopes to receive in order to offset the \$4.85 million. Ms. Rotunno advised that the District hopes to receive the \$1.67 million, and in a best case scenario, the Developer will be fully reimbursed for those costs resulting in the District not having to use \$4.85 million in its entirety. Furthermore, the \$1.67 million is allocated to specific project components reimbursable under those programs.

Ms. Kelly commented that the staff sounded optimistic that this grant money will come to fruition. Ms. Rotunno stated that staff is “hopefully optimistic” that it will receive the grant; however, the amount was not accounted for in the request to the Board.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 22 of 27

Ms. Kelly questioned when the District expects to receive the grant money should it be awarded the grant. Ms. Rotunno stated that the reimbursement process begins after project completion, and that appropriate paperwork is filed with the respective agency. There is a 60-day waiting period for some of the reimbursement.

Ms. Kelly inquired if the financial consequences to shut down, remobilize, rebid and restart this as a District project have been considered. Ms. Rotunno advised that it would cost the District an estimated \$2 million in "walk away costs" to demobilize, remobilize and repackage the bid documents under a District program. Ms. Rotunno clarified that the estimated \$2 million "walk away costs" is in addition to the amount incorporated into the Board request for supplementary funding (Resolution No. 16-09).

Mayor Longo stated that if this development was not on the drawing board a year ago, then the District would not be involved with a project of this caliber at this time. However, due to the demands from the EPA, when the opportunity arose with the Developer, the District saw this as an opportunity to control its costs and to get the project completed in a timely matter. Executive Director Ciaccia advised that the \$8 million project was incorporated into the District's CSO LTCP, which was stalled due to negotiations with the government. When the FEB Sewer Project came into fruition, it seemed to be the best time to move forward with the District's project due to the expected amount of development and construction.

Mayor Longo stated that when this opportunity presented itself, the Board authorized the Director, at that time, "to get involved and come back" in which they came back with this development agreement. Executive Director Ciaccia affirmed and stated that he believed it to be an "appropriate move" with "good intentions" and that he could not criticize it.

Mr. Brown clarified that this was always an early action project listed under the existing infrastructure and buildings that were part of the City of Cleveland's Flats, and that there was approximately \$7 million identified to complete this project. Mr. Greenland added that the District "had to do the project" in the Flats, and that it was scheduled early as part of the District's CSO LTCP. EPA negotiations delayed the District's project, and then this opportunity presented itself. Mayor Longo added that the PTI was included in the FEB project opportunity as well, which is a "huge obstacle" to overcome.

Mayor Longo summarized the situation as the District "entered into agreement, time drags on, the developer now, the economy gets hit with this economic crisis, the developer pulls out and now we're [District] in the middle of a project." Mayor Longo stated that "normally when a project goes in we [District] are building the conveyance for sewage and stormwater and it is up to the developer or the private sector to tie-in."

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 23 of 27

Mayor Longo referred to the “non-perform work” figure of \$734,000, and questioned if this was part of the initial costs. Ms. Rotunno stated that this cost was associated with the relocation of the CSO-092 outfall pipe, which would have been the footprint for future development and alignment of the potential roadway. Thus, there is no need to relocate this pipe if that development is not being built. As mentioned earlier by Executive Director Ciaccia, the existing pump station will not be demolished as part of the District’s project.

Mayor Longo inquired as to what is covered under the \$1.3 million of “future work” if anything at all. Ms. Rotunno requested that the graphic for the Flats be initialized as a reference for the Board. The graphic indicated work as originally contemplated, and the CSO-092 existing pipe was initially crosshatched from the new pump station location to the Cuyahoga River. Ms. Rotunno referred to the pipe’s original location as “relocated CSO-092,” and advised that this pipe will no longer be moved.

Ms. Rotunno referred to the lower center section of the graphic and identified two (2) callouts for Sewer Separation Project 3 which the lines were indicated in blue. Ms. Rotunno stressed that these are future projects to be bid and are not included in the current contract with Independence Excavating. Mayor Longo inquired if this separate project will be handled by the Flats Development Group. Ms. Rotunno responded “yes” and that it is covered by the Cooperative Agreement.

Mayor Longo stated that the discussed changes “had nothing to do with any new construction being tied into these facilities,” the District has to put these facilities in, and that “some of this other work will take care of itself in the future.” Mayor Longo commented that if the area is developed again, then it becomes the developer’s responsibility to tie into this. Ms. Rotunno affirmed. Furthermore, as a result of the District meeting its CSO obligation by getting the level of control down to zero, the District will not have any further obligations in this area, therefore, any reconfiguration would become the responsibility of the developer.

Mayor Longo summarized the advantages to be that the District does not have to undergo the PTI process, the District will save an estimated \$2 million in costs, and moving forward with the existing project makes it easier for the District to continue its mission of cleaning up the overflows into Lake Erie. Ms. Rotunno affirmed.

Mr. Brown inquired as to who is applying for the \$1.67 million grant. Ms. Sundheimer advised that Flats East Bank Development under the development agreement and as an agent of the County Port Authority will apply for the reimbursement. If they receive the reimbursement, that money goes directly to the contractor. Initially, construction of the qualified portion happens first, the application is reviewed, and if the work qualifies, the funds come back on a reimbursement basis. Therefore, money was set aside in the event

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 24 of 27

these pay requests are rejected. If the request qualifies for payment through these funding sources, that amount will be deducted from the District's total. Ms. Sundheimer advised that this is how the District guarantees the project is completed and that the work is paid for.

Mr. Brown inquired if the County is part of this process as well, and if they put sewer related monies into this project. Ms. Sundheimer advised that the County is a funding source, but not contributing funds directly to the project. Executive Director Ciaccia added that the County contributes to the development but not the project itself. Ms. Rotunno included that the County has Brownfield funding in addition to the \$1.67 million Clean Ohio Revitalization Fund.

Mr. Brown stated that the District has about \$3.7 million in construction completed or invoiced on the committed \$8 million authorized by the Board. Mr. Brown commented that as per the overview given, it was made known that if additional funds are not made available, then the Developers will shut the project down, and he inquired if this is pertaining to the future. Ms. Rotunno stated that the District hopes this is a future matter, but that the \$8 million is being shared by a number of parties involved on this job including Independence Excavating, Wade Trim the design professional, and equipment vendors.

Mr. Brown stated that it seemed many issues were left undetermined including agreement language and terms and conditions that need to be negotiated. Mr. Brown expressed that the Board did not "have a level of comfort acting on this today." Although the detailed discussion was positive, Mr. Brown felt that it would be within the best interest of the Board, prior to committing additional public funding to this project, that the Board obtain answers to its outstanding questions including reviewing the agreement language.

Mayor Starr agreed with Mr. Brown and felt uncomfortable turning over almost \$13 million of ratepayers' money to the Flats East Development which is an LLC or a limited liability corporation under Ohio law. Mayor Starr indicated that if negligence or mismanagement of the project money occurs, which he stated was a hypothetical situation, you cannot collect or sue on assets or personal assets. Furthermore, the proration of the amount of money and the contributors to this project must be clarified.

Mayor Starr inquired if we exhausted all legal contract remedies in terms of actual possible reimbursement by a future developer of some amount of money that the District will be putting into the development. Initially, the Developer was going to contribute; however, due to the economic conditions of this country, this is no longer the case.

BOARD OF TRUSTEES

Regular Meeting

January 15, 2009

Page 25 of 27

Mayor Starr agreed that this project is needed and that zero overflow should be the District's goal, however, there are still some unanswered questions, and he described the discussions as a "healthy exchange and a healthy exercise of questioning."

Mr. Sulik expressed his concern that there is no incentive for the Flats Development Corporation to "really push" the \$1.67 million grant application for the reason that it is not their money. He suggested that language be inserted into the agreement establishing an oversight or follow-up in the application process to ensure that those monies come back to the District and not the Developer.

Executive Director Ciaccia agreed and stated that the aforementioned comments from the Board were excellent points, and that he understood the Board's reluctance in not wanting to proceed with acting upon this Resolution at this time. Staff intends to work diligently to provide the Board with the requested information in order to tie-up any loose ends. Executive Director Ciaccia expressed his desire of bringing Resolution No. 16-09 back to the Board at the February 5th Board meeting.

MOTION – Mayor Longo moved and Mr. Sulik seconded to hold Resolution No. 16-09 in abeyance until the Board receives further input from Executive Director Ciaccia and his staff. Without objection, the motion carried unanimously and Resolution No. 16-09 was held in abeyance.

Authorization of Contract Modification

No discussion ensued on Resolution Nos. 17-09 and 18-09.

Resolution No. 17-09

Final contract modification for close-out of Contract No. 3344, Southerly and Westerly District Interceptors Relining and Replacement Contract (SWDIRARC). Cost decrease of \$254,660.23 bringing the total contract price to \$11,338,539.77.

Resolution No. 18-09

Final contract modification for close-out of Contract No. 3350, Effluent Screw Pump Rehabilitation (ESPR-2). Cost decrease of \$76,746.00 bringing the total contract price to \$2,397,254.00

MOTION – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution Nos. 17-09 and 18-09. Without objection, the motion carried unanimously.

Appropriation of Easement

No discussion ensued on Resolution Nos. 19-09 and 20-09.

Resolution No. 19-09

Appropriation of one (1) permanent easement (LRRS-1P) and one (1) temporary easement (LRRS-1T), owned by Colombo Enterprises, Inc., necessary for construction of the Lee Road Relief Sewer project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$16,930.00.

Resolution No. 20-09

Appropriation of four (4) permanent easements (MCI-MB-1P, 2P, 3P, 4P) and four (4) temporary easements (MCI-MB-1T, 2T, 3T, 4T), owned by Harvard Refuse, Inc. and Sable Realty, Inc., necessary for construction of the Mill Creek Interceptor Main Branch project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$21,500.00.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 19-09 and 20-09. Without objection, the motion carried unanimously.

Authorization of Easement

No discussion ensued on Resolution No. 21-09.

Resolution No. 21-09

Acquire from CDR Properties one (1) permanent easement (Parcel 1P) and one (1) temporary easement (Parcel 1T) necessary for construction of the Train Avenue Relief Sewer project. Consideration of \$55,000.00.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 21-09. Without objection, the motion carried unanimously.

VII. Information Item

1. Stormwater Update Presentation.

Executive Director Ciaccia stated that due to the lengthy discussion held on the Flats East Bank Development project, he would defer to the Board as to whether they would prefer going forward with the Stormwater Update Presentation or moving it to the February 5th Board meeting. Executive Director Ciaccia advised that the stormwater update was a significant presentation and that he is desirous of presenting this information to the Board before it enters its third round of discussions with the member communities.

The Board recommended moving the Stormwater Update Presentation to the February 5th Board meeting.

VIII. Open Session (no items for discussion)

IX. Public Session (any subject matter)

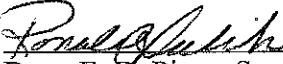
Mr. Edwards was no longer present at the meeting.

X. Executive Session

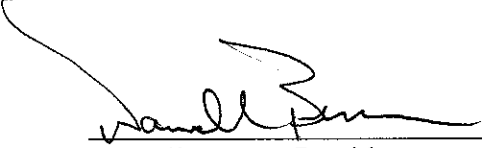
Mr. Brown stated that there were no matters for discussion in Executive Session.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mayor DePiero seconded the motion to adjourn at 2:08 p.m. Without objection, the motion carried unanimously.



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



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