

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
APRIL 2, 2009

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

I. Roll Call

PRESENT: D. Brown
T. Longo
D. DePiero
S. Kelly
W. O'Malley
R. Sulik

Mayor Starr was absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. O'Malley seconded that the minutes of the March 19, 2009 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 Resolution Nos. 57-09, 63-09, 67-09, 68-09, and 16-09, which were on the agenda for Board consideration, and "legal fees and diversity," which did not pertain to any agenda action items. Mr. Brown requested that Mr. Edwards come forward and address his comments to the Board regarding agenda action items.

Mr. Edwards stated that he wanted the Board to follow through with its Minority Business Enterprise (hereinafter "MBE") and Women's Business Enterprise (hereinafter "WBE") guidelines until the disparity study is complete in order to ensure inclusion on District projects.

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Mr. Edwards referred Resolution No. 16-09, authorizing entering into contract with Independence Excavating. Mr. Edwards stated that he previously made a verbal and written request for "a contract with Independence." They asked for "more monies on this job" and are now requesting additional funds of \$2.3 million. Mr. Edwards accused Executive Director Ciaccia of engaging in "contract-steering" and "bid-rigging" with Independence Excavating.

Mr. Edwards was saddened by all the "corruption going on throughout Cuyahoga County" and that MBEs have been pushed aside, are not involved, and do not have the opportunity to "steal anything" or "rig anything." Mr. Edwards stated that "the corruption covers up for the diversity."

Mr. Edwards advised that he had an interesting conversation with Mayor Frank Jackson regarding the stimulus funding, and that both Mayor Jackson and himself travelled to Washington D.C., on separate occasions. Mr. Edwards advised that he decided not to attend Mayor Jackson's Synergy event on April 2nd at the Cleveland Convention Center for the reason that contractors, like Kokosing, continue receiving \$6 million jobs, which "is all part of the corruption" and the "good old boys system" and "cutting the deals." Mr. Edwards alleged that they are using minorities and the diversity, and that there are no black contractors or minorities involved in the "corruption scandal throughout Cuyahoga County."

Mr. Edwards requested that "Independence Excavating not be given any contracts because there has been collusion between Independence Excavating and Executive Director Ciaccia." Mr. Edwards alleged that Executive Director Ciaccia and Independence Excavating met and "colluded to steer the job to Independence Excavating."

Mr. Brown requested that Mr. Edwards refrain from making personal attacks and accusations against Board members and District staff. Mr. Edwards questioned how his comments are considered "personal attacks" when he believed them to be true. Mr. Edwards alleged that he is "trying to get to the bottom of exclusion and if the corruption stops, then the black and minority participation would be easy to do."

Mr. Edwards requested that the "Board not vote on any jobs for Independence Excavating because there has been contracts other than what your Bylaws state with \$25,000, and there is collusion that's been going on." Mr. Edwards referenced Resolution No. 16-09, "authorization to modify existing cooperative agreements to increase funding and enter into agreements with the Flats Development," and he alleged that this is collusion.

Mr. Edwards stated that "in the minutes from the January meeting, this has been going on for quite sometime," and an additional request is being made to modify numbers and the

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price. Mr. Edwards thought this to be unfair and suggested that this job should be advertised. Mr. Edwards stated that "favoritism" and "steering" should not go to anyone. Mr. Edwards suggested that "Independence Excavating should be barred from doing work." Mr. Edwards alleged that "criminal activity has been done" and that he would like to see changes implemented, corruption stopped, and increased black and minority inclusion.

IV. Executive Director's Report

Executive Director Ciaccia advised that when he joined the District, discussion was held regarding the role of the Law Director and his or her involvement with the Board. At that time, it was agreed upon that the Law Director would report directly to Executive Director Ciaccia and continue having Board responsibilities. Discussions were held between the Board and staff that situations may arise resulting in the Board's desire to retain special legal counsel on individual matters.

Executive Director Ciaccia advised that at a recent Board meeting a situation arose wherein Ms. Kelly inquired if the Board should seek outside legal counsel for the reason that she wanted an additional opinion on a matter. Consequently, Executive Director Ciaccia and Director of Law, Marlene Sundheimer, discussed Ms. Kelly's concern and determined that engaging special legal counsel for the Board would be an appropriate alternative arrangement, and decided to engage Craig White, Esq. from Hahn Loeser and Parks to represent the Board on various matters as assigned. Executive Director Ciaccia indicated that the Board and staff have a healthy and respectful interaction, and that there are no misgivings between the two, and that this decision was made to provide the Board with alternative options.

Executive Director Ciaccia introduced Mr. White to the Board.

Mr. Brown welcomed Mr. White to the Board meeting. Mr. Brown advised that, on a separate occasion, he spoke with Mr. White directly and that this opportunity provides transparency to the public. It is beneficial to the Board having the Law Director report directly to Executive Director Ciaccia for the reason that the previous arrangement lacked clarity as to whether general counsel should report to the Board or Executive Director.

Mr. Brown indicated that staff should provide the Board with guidance, and was unsure whether the Board benefitted from this arrangement from the previous administration. Conversely, Mr. Brown stated that he is familiar with Ms. Sundheimer's "passion for doing the right thing" and that she advised the Board on various matters "some of which the Board agreed with and some issues the Board may not have liked her recommendation; however, it was the truth."

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Mr. Brown stated that the District desires moving forward with the development of various programs “in the light of day” at a level of competency while utilizing the available tools and resources to ensure a good Small Business Enterprise (hereinafter “SBE”), Disadvantaged Business Enterprise (hereinafter “DBE”), or MBE/WBE program. The District’s subcontracting program must be in compliance with the law, and when the law is ambiguous on particular issues, the Board will have the ability to address any concerns with external legal counsel.

Mr. Brown advised that Mr. White has substantial experience in enterprise governance matters, provides legal counsel to governments and quasi-governments, demonstrated a track record, is part of the community, and understands the challenges facing the District as it pertains to inclusion on projects. It is important for the Board to have someone advise them as they venture down this path in order to meet the current and future needs of the District.

Mr. Brown concurred with Ms. Kelly’s recommendation that the Board seek outside legal counsel who has the ability to educate the Board on successful subcontracting programs throughout the country while assisting with the successful outcome for the District’s program while complying with the law.

Mr. Brown appreciated the engagement of Mr. White. Mr. White indicated that he looks forward to working with the Board on these matters. Executive Director Ciaccia added that staff is mutually comfortable with this engagement and that it will be a positive experience for the staff and Board.

Executive Director Ciaccia moved to the next report item and advised that staff continues transitioning to the SBE Program which is scheduled to commence in June of 2009. Applications are currently being accepted and the disparity study is ongoing. Colette Holt, Esq. is scheduled to update the Board on the status of the disparity study at its April 16th meeting.

Executive Director Ciaccia moved to the next report item and informed the Board that Mr. Brown, Ms. Kelly and he attended Mayor Jackson’s Synergy event. Executive Director Ciaccia was impressed by the amount of people in attendance, which benefitted the District’s outreach initiatives. Executive Director Ciaccia participated on a panel with Joe Calabrese from Greater Cleveland Regional Transit Authority (hereinafter “GCRTA”), Dr. Sanders from the Cleveland Metropolitan School District and Jeff Patterson from CMHA. Executive Director Ciaccia’s experience was positive, and the panel received many good questions.

Executive Director Ciaccia moved to the next report item and advised that the District has not yet received feedback regarding stimulus funding. There is \$224 million stimulus

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funding available to the State of Ohio for wastewater projects whereas the District supplied a list of \$274 million worth of projects. The District is focusing on “green” projects and that 10% of the \$224 million must be allocated to said projects in which the District’s Renewable Energy Facility (hereinafter “REF”) should be a competitive contender. The District arranged with Tim Cosgrove of Squire Sanders and Dempsey to advocate on behalf of the District at the state level. Staff believes additional resources are necessary and decided to augment said advocacy services with Melamed Communications to aggressively obtain funding. Executive Director Ciaccia advised both Mr. Cosgrove and Mr. Melamed that the District’s goal is to obtain at least 10% of the stimulus funding.

Executive Director Ciaccia moved to the next report item regarding the upcoming National Association of Clean Water Agencies (hereinafter “NACWA”) seminar which will be held in Washington D.C. May 5th through May 7th. District representatives will attend the NACWA seminar and Executive Director Ciaccia encouraged Board participation. Executive Director Ciaccia advised that District representatives intend to meet with the federal government and state government to continue Long-Term Control Plan (hereinafter “LTCP”) negotiations, during their visit to Washington D.C., and is scheduling meetings with its delegation as well.

Executive Director Ciaccia requested the Board consider rescheduling the May 7th Board meeting to April 30th due to the schedule conflict with the NACWA seminar. Essentially, there will be three Board meetings in April, but a two week gap between meetings, and one Board meeting in May.

Executive Director Ciaccia moved to the final report item and advised that the District received correspondence from Mayor Mulcahy of Orange Village which is a community partially served by the District. Orange Village joined the District in 1991, and has an agreement precluding them from voting at the Suburban Council of Governments (hereinafter “SCOG”). Orange Village is requesting an amendment to the agreement to allow Orange Village SCOG participation. Executive Director Ciaccia and Mayor Mulcahy are unsure as to why Orange Village was initially excluded from SCOG participation. Staff will bring this formal request to the Board as a resolution at its April 16th meeting.

MOTION – Mr. Sulik moved and Mayor Longo seconded that the May 7, 2009 Board meeting be rescheduled to April 30, 2009 at 12:30 p.m. A roll call was taken and the motion carried unanimously.

The Governance Committee meeting scheduled for May 7, 2009 was also rescheduled to April 30, 2009 at 11:00 a.m. due to the NACWA seminar conflict.

V. Consent Agenda

There were no Consent Agenda items.

VI. Action Items

Authorization to Advertise

Resolution No. 57-09

**West Creek Stream Restoration –
Contract WCSR. Engineer’s estimates:
Alt. (A) \$2,050,000.00. Alt. (B)
\$2,600,000.00.**

Resolution No. 63-09

**Huntington Parking Garage Sewer
Rehabilitation – Contract HSR.
Engineer’s estimate is \$1,200,000.00.**

Mr. Brown inquired about the MBE/WBE goals established for these projects. Executive Director Ciaccia replied that the staff determines MBE/WBE goals on an individual project basis, and that Engineering separates project components in an effort to provide increased subcontracting opportunities. Staff determines its subcontracting goals based on the availability of subcontractors certified with the District. Executive Director Ciaccia assured that the District strives to improve its subcontracting goals and set realistic legitimate goals.

Mr. Brown inquired if the established goals reflect the possible subcontracting opportunities for each project component. Executive Director Ciaccia clarified that goals are established based on the availability of subcontractors, certified with the District, specializing in that particular specialty or field. Situations occur when subcontracting opportunities are available; however, there are no qualified subcontractors certified with the District specializing in that particular field.

Executive Director Ciaccia advised that the District needs to increase its number of certified subcontracting firms. At the Synergy forum, many subcontracting firms provided Executive Director Ciaccia with their business cards and were advised to certify their firms with the District, but some firms do not desire certification with government agencies.

Executive Director Ciaccia advised that goals are established based on the number of firms certified with the District, and that prime contractors receive credit for the engagement of MBEs and WBEs only if they are certified with the District.

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Mr. Brown stated that non-certified MBE and WBE firms are not precluded from working on District projects, but the prime contractor does not receive credit for non-certified firms. Executive Director Ciaccia affirmed and reminded the Board of the recent project wherein the prime contractor did not receive credit for a WBE because the WBE was not certified with the District, and in actuality, the contractor exceeded the District's WBE goals.

Ms. Kelly inquired if the District is breaking down its contracts into "work categories" to determine if any certified MBE or WBE firms fit within those parameters. Director of Engineering and Construction, Kellie Rotunno, affirmed.

Ms. Rotunno advised that the stream restoration work to be performed under Resolution No. 57-09 requires a contractor with a unique skill set, and not many MBE or WBE firms specialize in this area. This project requires a unique construction environment which presents challenges when establishing subcontracting goals.

The sewer rehabilitation work to be performed at the Huntington Parking Garage, Resolution No. 63-09, is a specialized rehabilitation involving CIPP requiring a contractor with a unique skill set. Based on the specialized construction required for this project, Engineering was unable to identify many subcontracting opportunities.

Executive Director Ciaccia advised that arbitrarily setting MBE 15% and WBE 5% participation goals on every project is challenging since every project is unique and needs to be separated to determine realistic subcontracting opportunities. Since the District's ability to uphold challenge of its current MBE/WBE program is unlikely, it is important to discontinue arbitrarily establishing MBE/WBE goals of 15% and 5%, therefore, Executive Director Ciaccia recommended that the District establish realistic goals on its project.

Mr. Brown appreciated the discussion and encouraged staff to identify the tools used by other entities in developing resources, mentoring or joint-venturing opportunities to transfer skills from these specialized contractors to subcontractors.

Executive Director Ciaccia agreed that the District needs to address many issues, and that Mayor Jackson's Synergy forum was a "step in the right direction." There are many local businesses including MBEs and WBEs that are not familiar with government contracting procedures. The District intends to integrate outreach components into its SBE program and will host bi-annual outreach events to educate contractors. Executive Director Ciaccia expects the imminent large tunneling projects to attract national attention, and the District intends to educate its local contractors to ensure they remain competitive bidders on these projects.

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Ms. Kelly questioned why companies choose not to be certified with the District when they are aware it is the initial step in acquiring a job. Executive Director Ciaccia advised that he spoke with a subcontractor recently who indicated that he had enough work and did not need the District's services to secure jobs. Executive Director Ciaccia speculated that some contractors may not need government contracts. This can also be a "pride" issue whereas some contractors do not want to be associated with such programs. There are many contractors that are uninformed of the District's contracting processes. Ms. Kelly stated that it was "very glaring" that a lot of contractors do not understand the process, and much outreach is required to educate and inform these contractors.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 57-09 and 63-09. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposal (RFP)

Resolution No. 64-09

RFP for retention of state and federal advocacy services. Cost not to exceed \$170,000.00 in total for all two (2) year term agreements.

Mr. O'Malley stated that this is a very important expenditure for the District due to the imminent rate increases resulting from the federal mandates to upgrade infrastructure. Whomever the District engages to bring its message to Washington D.C. in an effort to solicit funding to curtail rate increases will be an integral part of the District. Mr. O'Malley inquired if it was wise to set a maximum limit of \$170,000. Mr. O'Malley was not proposing to have an "open ended purse" but was concerned of "hitting a road block" if the District reached the \$170,000 maximum before the task was completed. Mr. O'Malley inquired if the Board would consider amending Resolution No. 64-09 to omit the maximum of \$170,000 and monitor how monies are allocated for these advocacy services.

Mayor Longo commented that the only way to oversee the spending is to set a maximum limit on contracts. Staff will monitor the contract and alert the Board if additional funding is necessary.

With regards to Mr. O'Malley's concern, Executive Director Ciaccia stated that prior discussion was held regarding the potential engagement of a Washington-type lobbyist on the District's behalf which would be more costly. Moreover, staff would be required to seek additional Board resolution authority prior to entering into agreement.

Mayor Longo advised against entering into an open-ended contract. Executive Director agreed with Mayor Longo and advised that staff does not intend to enter into an open-

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ended contract, and that staff will provide the Board with a fee schedule for the various types of lobbyists.

Mr. Brown commented that Resolution No. 64-09 is important for the District due to the demands being placed upon this organization to mitigate its Combined Sewer Overflows (hereinafter "CSO"), as mandated by the federal government, while simultaneously addressing stormwater concerns. The District intends to conduct its due diligence while being environmentally conscious, but these unfunded mandates are becoming the ratepayers' responsibility during unstable economic times, which Mr. Brown believed to be unacceptable. Mr. Brown asserted that the District needs to "hire somebody that can deliver" in an effort to lessen the burden on the ratepayers. Mr. Brown stated that the anticipated meetings in May with the District's delegation are important because a collaborative approach must be taken to address this issue.

Mr. Brown stated that this is the 40th anniversary since the burning of the Cuyahoga River which was the impetus of the Clean Water Act, and that President Obama indicated that he understood the challenges of urban centers. Mr. Brown advised that this is a great opportunity to build a partnership between the federal government and a large urban center wanting to do the right thing, but not solely at the ratepayers' expense. A new model can be established between the federal and local governments.

Mr. Brown advised that the District can provide an effective lobbyist with the necessary tools to achieve a better outcome rather than simply increasing rates. This is an important effort in which the selected candidate must fully understand their charge and responsibility.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 64-09. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

Resolution No. 65-09

Contract with CH2M Hill for Program Management Phase 2. Cost is \$36,243,892.00.

Executive Director Ciaccia advised that the District engaged CM2M Hill through a competitive process for its Program Management (hereinafter "PM"), Phase 1 which was conducting an ongoing assessment over the past year. PM is a two-phased approach and it was the intent to scope Phase 2 and negotiate a contract for a 5-year term. Executive Director Ciaccia turned discussion over to Ms. Rotunno to present PM Phase 2 to the Board.

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Program Management – Phase 2: Implementation

Ms. Rotunno addressed the PM selection process and provided a brief overview of the PM Phase 1 procedure. In May 2008, RFPs for PM Phase 1 and Phase 2 were sent to nine firms, including the official six long-listed firms. Proposals were received from the Montgomery Watson Harza (MWH) team and the CH2M Hill/Wade Trim team. Staff made its recommendation to the Board to award the PM contract to CH2M Hill and provided the Board with a PM Phase 1 update in December 2008. Ms. Rotunno advised that the District could not define Phase 2 until completion of Phase 1.

The District used a phased approach for PM, and Phase 1 consisted of Task A “to determine where we are” and Task B “to determine where we need to be,” leaving an undefined gap between Phase 1 and Phase 2. PM Phase 2 is to deploy the tools and resources needed in order to position District staff to successfully manage future increases in the execution of the Capital Improvement Program (hereinafter “CIP”).

Ms. Rotunno referred to a graphic and advised that the red bars indicated the planned deliverables for the CIP from 1998 through 2008, and the green bars identify what was actually delivered. The green bar is consistently lower than the red bar and staff delivered approximately \$100 million annually over the past 10-years. Ms. Rotunno advised that the yellow bars on the right represent the years 2009 through 2013. Over the next 5 years, the average construction award will be approximately \$175 million, or a 75% increase in construction. There will be a significant increase in project delivery whereas current staff maximized its production at \$100 million supporting the need for PM.

Ms. Rotunno referred to a slide initially presented to the Board in December of 2008. At that time, PM services were validated to be \$1.152 billion for a 5-year CIP for the years 2009 through 2013, and the average annual CIP was \$230 million. Ms. Rotunno explained that averages within the industry to administer PM ranged from 3% to 18% of the program costs. Furthermore, \$3.5 million would be contributed by District staff resulting in 2.8% to 3.5% to be augmented by the program manager.

Ms. Rotunno advised that the District estimates PM to be 4.6% of the program costs or \$10.65 million annually to administer the CIP, and that \$3.5 million will be completed by District staff resulting in a \$7.15 million gap, requiring the program manager’s assistance. PM will be 3.1% of the District’s CIP which, according to Ms. Rotunno, is very competitive in comparison with other utilities’ PM.

The District requested a total 5-year contract with a not to exceed amount of \$36,243,892.00. Ms. Rotunno advised that the 5-year PM contract will be budgeted with the consultant on an annual basis, and that the District only negotiated and scoped the

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first contract year in the amount of \$7,145,213.00. The remaining contract amount is to be negotiated annually for the duration of said contract.

Ms. Rotunno advised that PM Phase 2 highlights include: MBE and WBE participation for contract year one; MBE, WBE and SBE participation for contract years two through five; At-Risk Fee contract structure; SBE program monitoring and tracking on CIP projects; and the Board will receive monthly CIP reports.

Ms. Rotunno advised that CH2M Hill assembled a very diverse team for PM Phase 2 and introduced representatives from the following MBE, WBE and/or SBE firms. Shirley Schluchter, President of Water Resource and Coastal Engineering (WRCE), is a certified MBE/WBE and qualifies as a SBE. Daniel Atnafu represented Tucker Young Jackson Tull (TYJT) which is a certified MBE but too large to qualify as an SBE. Erin McGuiness represented McGuiness Unlimited which is a Cleveland-based certified WBE and qualifies as an SBE. Ali Parsipour represented Somat Engineering which is an MBE and qualifies as an SBE. Environmental Financial Group (EFG) qualifies as an SBE and will provide financial consulting on PM Phase 2. Glen Stephens is president of his Akron-based engineering services agency which is an MBE and qualifies as an SBE. Andrew Eribo of Ribway Engineering is a Columbus-based MBE firm with local offices and qualifies as an SBE. Ms. Rotunno advised that there was a significant diversification and teaming effort to establish 15% MBE and 5% WBE goals for the first contract year, and that project specific goals will be set from the second through fifth years of the PM Phase 2 contract.

Ms. Rotunno referred to a slide depicting the amount of labor and percent of total labor for MBE and WBE firms. Of the \$7,145,213.00, MBE firms are expected to receive \$1,019,950.00 and WBE firms are expected to receive \$342,500 for the first contract year, or 15% MBE and 5% WBE participation for PM Phase 2.

Ms. Rotunno advised that SBE participation for contract years two through five include many of the same MBE and WBE firms to be utilized during the first contract year. SBE participation for contract years two through five is estimated to cost \$3,831,937.00 or 15.5% of the total contract value, but the District plans to annually negotiate subsequent years of the PM Phase 2 contract including SBE participation.

The District and CH2M Hill developed a Fee-At-Risk contract, establishing a measurement based on Key Performance Indicators (hereinafter "KPI"). If KPIs are achieved, then CH2M Hill will earn the portion of the Fee-At-Risk. If KPIs are not met, then CH2M Hill will earn the base fee and not the additional at-risk fee which, according to Ms. Rotunno, has historically been a 15% fee on professional services contracts. Contract year one has 12% with 3% of the Fee-At-Risk, and years two through five have 10% with 5% of the Fee-At-Risk.

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Ms. Rotunno advised that PM Phase 2 has several KPIs. The development of cost estimating standards is scheduled for May 2009. The development of a Standard Operating Procedure Manual and revamping change order procedures, paperwork, RFI processing and shop processing will commence in June 2009. In September 2009, District staff will begin PM training. The District will develop a Standard Operating Procedures Design Manual in October 2009. In December 2009, the District plans developing Drawing Design Standards and a Management Information System which is an electronic data system for managing construction projects and providing data reports. The District plans awarding 90% of the CIP, and delivering 85% of the projects within 105% of the contractor award amount in December 2009. If CH2M Hill and the team of sub-consultants achieve the aforementioned KPIs, they earn the 3% of the Fee-At-Risk for the first contract year. Conversely, if the KPIs are not achieved, only a portion of the Fee-At-Risk is earned.

Ms. Rotunno closed the presentation with a quote from Aristotle: "We are what we repeatedly do. Excellence, therefore, is not an act but a habit."

Mr. Brown commented that the Fee-At-Risk contract provision somewhat addressed the Board's concern pertaining to the potential ramifications if the program manager did not fully deliver at the desired capacity, and he requested that all KPIs be shared with the Board at regular intervals. Mr. Brown asked "since there will be annual appropriations for the PM contract, is the District precluded from breaking down the PM contract into annual contracts?"

Ms. Rotunno replied that PM is the long-term deployment and commitment of resources resulting in better pricing, value and efficiency. If the PM contract was separated into annual agreements, the consultants could only provide a years worth of resources to the District which could become burdensome resulting in increased pricing for a single-year contract. Executive Director Ciaccia added that the PM contract will be included in the District's annual budget providing the Board with the opportunity to thoroughly inquire and oversee the negotiated contract.

Mr. Brown commented that "finance is one issue" but deliverables and the assurance that the program manager is achieving the desired outcome requires monitoring. In the past, the Board relied on staff to "move things through a process and system" and assumed the District was achieving the desired outcomes. Mr. Brown stated that the expectations escalated and that a "checks and balance" system was implemented, and he wanted to ensure that the Board will be made aware of the KPIs to ensure a better understanding of "where we are versus the targets we set." Mr. Brown indicated that due to the significant level of funding for PM, the District must assure accountability and that those systems are in place to provide a level of comfort.

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Executive Director Ciaccia assured that he intends to provide the Board with a full report on a monthly basis, including an executive summary. Mr. Brown advised that the reports he has viewed are not very user-friendly. Executive Director Ciaccia replied that staff will fashion comprehensible monthly reports for the Board, and that any executive summary issues can be addressed during Executive Director Ciaccia's monthly report. Executive Director Ciaccia stressed the importance of the PM contract as well as effectively carrying out the CIP for the reason that the District will eventually be under a Consent Decree.

Mayor Longo inquired if PM ties into the Calfee report and how the District manages its projects, and whether this is the next level or extension of that project. Executive Director Ciaccia affirmed and stated that the Calfee audit identified the District's limitations from a PM standpoint. This is a prudent approach for the reason that the District does not have the existing resources, nor can it realistically escalate the types of resources needed over the next five years.

Mayor Longo understood that PM was necessary to provide the District with a greater opportunity to better manage its projects, but five years is a long time to enter into contract with a consultant. Mayor Longo was concerned that in three years allegations will be made that a contractor is managing the District, and that "there is an imbalance" and the District must exercise "a degree of flexibility" to remain in control. This can be accomplished through some form of variance of resources and the District should not put all its "eggs in one basket." Mayor Longo advised that he is unsure how to remedy this situation and that construction management of this magnitude is new to him. He wanted to prevent coming to a realization in two years that the District should have approached the situation differently.

Mayor Longo was uncomfortable with relying on monthly reports because there is no form of measurement. He reiterated that "five years is a long time" for professional services contracts, and that three years was more acceptable. Mayor Longo desired holding present discussion on this issue.

Ms. Rotunno responded to Mayor Longo that there is a basis for comparison, and that there is a cash flow Primavera schedule for each project. Every capital project the District anticipates undertaking over the next 30 years is captured electronically. There are 8,000 activities and on a monthly basis the District will assess whether the District is meeting its financials, targets, goals and schedules.

Mayor Longo commented that this feature is beneficial for staff, and the District should be able to monitor, manage and establish benchmarks for PM. Mayor Longo inquired whether the District is guaranteed management control of its projects in order to

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determine that we are “getting our money’s worth and that we leave our options open to take other courses of action.”

Mr. Brown added that the audit indicated that there are many shortcomings within the District’s internal systems, and that better systems be put in place to effectively manage District projects. Mr. Brown stated that the end result of PM is to instill staff with the capability and knowledge to manage and operate PM itself and to deliver the same level of projects on an annual basis as the consultants. Mr. Brown stated that establishing KPIs to monitor PM is beneficial to the program manager and engineering staff because we are all accountable.

Ms. Rotunno agreed and advised that PM is a significant change for the entire District. Although five years may seem extensive, staff needs time to develop the tools, implement standards and endure the necessary training in order to transition its dependence away from the consultant. Ms. Rotunno advised that the Human Resources Department is establishing performance plans for staff which will be used to monitor staff development.

Executive Director Ciaccia advised that the KPIs are a contract component; however, the team is integrated and includes CH2M Hill, Wade Trim and the District. If any party fails to perform at its fullest potential, then the team is affected and KPIs will not be met; therefore, the entire team must perform and be evaluated by the same level of standards.

Mayor DePiero inquired if there is a contract provision allowing the District to terminate the PM contract based on non-performance. Ms. Rotunno affirmed. Mayor DePiero inquired if this was “by agreement of the parties” or if one unsatisfied party can unilaterally terminate the agreement. Ms. Sundheimer expounded that the contract provides the District the ability to terminate without cause, but there are mutual termination provisions for unforeseen circumstances. The District has the authority to terminate for non-performance, poor performance or any change of circumstance within the best interest of the District.

Mayor DePiero commented that he liked the Fee-At-Risk contract provision and questioned if government agencies can incorporate this type of provision into its contracts. Ms. Rotunno affirmed.

Mayor DePiero inquired if there are future opportunities to use the “carrot/stick approach.” Ms. Rotunno affirmed and she indicated that the intent was to “kick off PM as the first risk sharing type of contracting with professional services” and then “share the love” with all design professionals working under the CIP.

Mr. Sulik commented that during PM’s initial discussion, it was the intent to develop staff to eventually eliminate the need for an outside consultant, and he inquired if this

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training is part of the proposal. Ms. Rotunno affirmed and indicated that the first contract year is critical in identifying the tools, resources, document management procedures, contract procedures, construction design and all other procedural matters needed by staff to increase their proficiency skills in PM while reducing their dependence on the consultant. Ms. Rotunno added that as staff sharpens its proficiency skills, it will be difficult keeping up with the significantly increasing CIP, therefore, some sort of augmentation or assistance from a consultant is required through either PM or another mechanism.

Mr. Sulik referred to the KPI indicators and advised that staff indicated delivery of 85% of the projects within 105%. If the District anticipates spending \$1.1 billion over the next five years, this results in "\$150 million worth of projects that could go really awry and not have accountability." Ms. Rotunno stated that this strategic planning metric was "put on the table" by senior staff and Ms. Rotunno believed "we can do better". Ms. Rotunno advised that since joining the District, she has not witnessed a single project exceed 100% of the contract bid, and that this can be adjusted because the "bar is way too low."

Executive Director Ciaccia advised that at some point there may be necessary contract modifications exceeding the initial contract level and the District did not want to set a 100% goal. Executive Director Ciaccia stated that many contracts will be under the amount, but he did not want to designate a figure. Executive Director Ciaccia explained that there may be potential for contract modification due to the uncertainty of the Consent Decree which may or may not dramatically impact what has already been negotiated with the government. It is not the District's intent to come back to the Board, but this is contingent upon the outcome of government negotiations.

Ms. Kelly inquired if there were contingencies or accounting for contract modifications needed to address unforeseen conditions. Executive Director Ciaccia advised that in the budget there are allowances assigned to specific tasks and that the contract can be adjusted, if necessary. Allowances can be excluded from certain tasks and reassigned to others. As it pertains to the budgeted amounts, the District could potentially renegotiate its contract with CH2M Hill and reduce its length from five years to four years with the same cost amount; however, this issue cannot be anticipated at the present time.

Ms. Rotunno referred to page two of the resolution request identifying the total general allowance amount of \$3.1 million which will be considered contingencies for contract years two through five; however, during the first contract year, this amount is allocated to base scope and those specific allowances.

Ms. Kelly inquired whether the District can shorten its commitment for outside PM consultant services if the transition of knowledge to District staff takes less than five years. Mr. Brown inquired if this could be done as an incentive. Ms. Rotunno replied

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that the District decided to annually reevaluate its PM contract to determine staff's PM skill level and then to scope PM accordingly. The District plans to renegotiate its contractual needs with CH2M Hill on an annual basis, and can certainly lessen its dependence upon CH2M Hill as staff increases its project management capabilities, including meeting the schedules, budgets and KPIs.

Ms. Rotunno commented that offering incentive to the program manager to sufficiently train staff to manage PM within a designated timeframe was an interesting concept; however, in order to achieve the necessary 75% productivity increase while utilizing the existing resources, staff would be required to work 75% harder, smarter and longer which could be a lot to ask from existing staff at this point in time. Ms. Rotunno was confident that, over the next five years, the District's need for assistance from the PM consultants would diminish, but a 75% increase through the existing resource pool is a daunting task even for the private sector. Mr. Brown suggested the staff consider incentivizing for the reduction in external resources. Ms. Rotunno advised that this can be addressed within the next one to two years.

Ms. Kelly requested staff to articulate as to the benefit of PM to the ratepayers. Ms. Rotunno advised that PM provides the District with the necessary tools and resources to manage the anticipated increase in the CIP and deliver projects within budget while meeting the commitment schedule imposed on the District by the Consent Decree through the CSO LTCP.

Mr. Brown added that the District needs to remediate its inability to move projects according to its desired capacity, and due to inflation, extensive project duration is more costly to the District. The Board and staff must fully understand the risks associated with deferring projects rather than creating a tool or mechanism to proficiently move projects forward. Mr. Brown stated that the costs should be offset by the District's "additional capacity to get projects out the door and delivered."

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 65-09. A roll call was taken, and the motion carried unanimously.

Mayor DePiero excused himself from the Board meeting. Mr. Sulik was requested to fulfill the capacity of Acting Secretary for the remainder of the Board meeting.

Resolution No. 66-09

Contract with EA Engineering, Science & Technology for Benthic Macro-invertebrate identifications. Cost is \$34,292.00.

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Resolution No. 67-09

Contract with Gartner, Inc. for the renewal of the District's annual subscription agreement that provides information technology research and advisory services. Cost not to exceed \$56,150.00.

Resolution No. 68-09

Contract with Independence Excavating, Inc. for Site Preparation Project – Contract 28F, at the Southerly Wastewater Treatment Plant. Cost not to exceed \$3,952,180.00.

Resolution No. 69-09

Contract with local television and radio stations for customer education about the District's environmental stewardship and work to protect the region's clean water resources. Cost not to exceed \$295,000.00.

Resolution No. 70-09

Contract with ParagonTec to help coordinate Aquabots, the District's annual student robotic program at Stokes Academy Middle School. Cost is \$25,000.00.

Resolution No. 71-09

One (1) year contract with Schindler Elevator Corp. for elevator maintenance at all Wastewater Treatment Plants, and the GJM and EMSC buildings. Cost is \$132,995.80.

Resolution No. 72-09

Contract with the Urban League of Greater Cleveland to support the Wastewater Treatment Internship Program. Cost is \$40,000.00.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 66-09 through 72-09. Without objection, the motion carried unanimously.

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Authorization of Contract Modification

No discussion ensued on Resolution No. 73-09.

Resolution No. 73-09

Final contract modification with Doan Pyramid Electric for close-out of Contract No. 3421, Paging System Replacement Program (PSRP). A cost decrease of \$30,087.78, bringing the total contract price to \$244,108.22.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution No. 73-09. Without objection, the motion carried unanimously.

Authorization to Modify the Existing Cooperative Agreement to Increase Funding and Enter into Other Agreements

Resolution No. 16-09

Authorization to modify the existing cooperative agreement to increase funding and enter into other agreements for Flats East Development, LLC – Contract No. 3403, Resolution No. 223-07, additional funds to complete the District’s Flats CSO Control Project. A cost increase in the amount of \$2,372,240.00.

Executive Director Ciaccia advised that the District initially contributed \$8 million to the Flats East Bank (hereinafter “FEB”) development project in order to mitigate CSOs in the FEB area. Bids for the project were advertised, and the contract was awarded to Independence Excavating (hereinafter “Contractor”) to construct the District’s sewer improvement project. After construction began it became apparent that the scope of work had to be changed from what had originally been proposed, and it became apparent that accomplishing the sewer improvement project would require more than \$8 million resulting in the East Bank Development LLC (hereinafter “Developer”) requesting additional funding from the District.

The District initially rejected the Developer’s request for additional funding. Subsequently, the FEB development project was put on hold due to the current economic downturn and the loss of funding for the development project. In order to keep the District’s sewer improvement project going, the District worked with the Developer and the Contractor to effectuate a modification to the Cooperative Agreement to increase funding from the District, and on June 6, 2008 staff requested the Board authorize

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additional funding in the amount of \$4,852,000 to complete the sewer improvement project.

The Board did not accept staff's proposal and requested staff to firm up the details of the sewer improvement project and determine more solid numbers because the \$4.8 million was an estimated amount. District staff, the Developer and the Contractor researched supplementary funding sources, de-scoped the less critical work and considered competitively bidding a portion of the work as a stand-alone job which resulted in a decreased request for authorization of \$2,372,240.10.

Executive Director Ciaccia advised that the District was recently informed that former Congresswoman Stephanie Tubbs Jones had applied for Section 594 funds through the federal government for the FEB sewer improvement project, and the amount of \$750,000 was approved. Staff is currently obtaining the details for said funding and when it becomes available the District will apply this amount to the FEB project, potentially decreasing the additional funding amount to \$1.622 million.

Mr. Brown appreciated Executive Director Ciaccia's accurate overview of the FEB sewer improvement project and thanked staff for conducting due diligence and honoring the request of the Board by further negotiating funding to an acceptable amount. Mr. Brown commended the staff on its ability to reduce funding from \$4.8 million to \$2.3 million and potentially \$1.6 million, with the grant, and for taking its fiduciary responsibility seriously. Mr. Brown thanked staff for reaching a desirable outcome and protecting ratepayers' funds.

Mr. Sulik advised that past discussion included a grant that would ultimately go back to the Developer and not the District, and he inquired if this was the same grant. Ms. Rotunno indicated that it was not the same grant, and that the Developer is applying for the County loans and Clean Ohio Fund Participation (hereinafter "CORF") funding which will be reimbursed directly to the Contractor through the Developer. This surfaced as the District conducted its due diligence research wherein the Developer informed the District as to the details involving County loans and CORF funding. Ms. Rotunno advised that staff is confident that the amount available from the County loans and CORF funds for the FEB sewer improvement project is \$1.124 million which was not initially incorporated into the requested amount. Executive Director Ciaccia clarified that this amount is going to the Contractor and is incorporated in the reduction.

Mr. Sulik requested clarification as to how staff determined its calculation and reduction for additional funding for the FEB sewer improvement project. Ms. Rotunno advised that the District confirmed the receipt of funding from the County loans and CORF funds of \$1.124 million, renegotiated the agreement and reached a complete and full understanding

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of change orders and additional work required. Project 3 and its associated fee of \$1.4 million were de-coupled from the cooperative agreement.

Mr. Sulik inquired if 1.4 million associated with Project 3 was initially incorporated into the original request for additional funding of \$4.8 million, and whether the District would competitively bid and award a contract for Project 3. Ms. Rotunno affirmed. Mr. Sulik inquired how this could be considered a reduction when the District is eventually required to pay \$1.4 million for Project 3. Ms. Rotunno advised that the District's commitment to fund the FEB sewer improvement project through the terms of the Cooperative Agreement was reduced. Mr. Sulik indicated that aside from the grant monies of \$1.1 million and the \$750,000 Section 594 funds, the project amount in actuality was not decreased because the District is ultimately responsible for the \$1.4 million associated with Project 3, bringing the total additional commitment to \$3.7 million. Executive Director Ciaccia clarified that the FEB sewer improvement project will cost \$11,496,000, and in addition to the initial committed amount of \$8 million, the District will ultimately contribute \$3.7 million, as opposed to \$4.8 million in additional funding.

MOTION – Mayor Longo moved and Mr. O'Malley seconded to adopt Resolution No. 16-09. Without objection, the motion carried unanimously.

VII. Information Item

1. Industrial Pretreatment Program Legal Notice.

VIII. Open Session

There were no items for discussion.

IX. Public Session (any subject matter)

Mr. Edwards registered to speak at Public Session regarding legal fees and diversity but left the meeting prior to Public Session.

X. Executive Session

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

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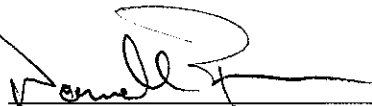
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XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 2:09 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