

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
APRIL 16, 2020

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

President Brown opened the meeting by addressing the COVID-19 pandemic, and read the following statement:

The COVID-19 pandemic continues to be a matter of serious concern and remains a state of emergency. As such, the District is again conducting its Board meeting via live stream videoconference using the Zoom video communications tool; and pursuant to House Bill 197, members of the public may have access to the meeting using the Zoom login link found on the top of the District's website, www.neorsd.org, to watch the Board's discussions and deliberations through the videoconference.

The District issued a public notice that regularly scheduled meetings will be held electronically until the emergency ends, and with specific login instructions for the public posted on the District's website. The notice and login also informed members of the public who wished to address the Board to make such request known to the Chief Executive Officer through the Zoom system prior to the start of the meeting.

I. Roll Call

PRESENT: Darnell Brown
Ronald Sulik
Samuel Alai
Terence Joyce
Jack Bacci
Timothy DeGeeter
Sharon Dumas

The Secretary informed the President that a quorum was in attendance, remotely.

II. Approval of Minutes

MOTION – Ms. Dumas moved, and Mr. Sulik seconded to approve the Minutes of the April 2, 2020, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

There were no items.

IV. Chief Executive Officer's Report

Kyle Dreyfuss-Wells, Chief Executive Officer, provided an update regarding the District's continuing efforts to protect staff and maintain critical infrastructure during the ongoing COVID-19 pandemic.

As reported on April 2, 85% of District staff are on a modified schedule or teleworking. In accordance with CDC and ODH guidance, the District has implemented a policy for, and will be distributing, face coverings to all employees. Additionally, the COVID-19 Leave Policy has been modified pursuant to current CDC guidelines. All COVID-19 related policies are available on the District's intranet.

The District is performing budget projections based on various scenarios from high to low impact and is preparing for a potential 20% to 30% loss of revenue, equaling \$70 million to \$110 million for 2020, respectively, which could have impacts for several years. The District is planning accordingly, with an immediate focus on the delay of cash funded projects in the capital improvement program and the stormwater program, while taking steps to limit spending and hiring as the revenue implications become clear.

The District is in contact with the Ohio Water Development Authority, which provides funding for much of the District's Capital Improvement Program. This funding is guaranteed for the coming months.

Funding from the Ohio Public Works Commission, which many of the District's member communities rely on, is in question due to the delay in the capital budget. The District is monitoring the situation.

At the federal level, at NACWA's request, the District sent letters to the Ohio delegation articulating the potential revenue implications to water and wastewater agencies.

Ms. Dumas asked Ken Duplay, Chief Financial Officer, to expound on the 20% to 30% projected revenue loss. Mr. Duplay explained that those are extremely conservative estimates. The District is working with the Cleveland Division of Water to carefully monitor available information regarding consumption and collections, which is now received weekly, rather than monthly. The March monthly report notes on-budget revenue.

Mr. Duplay further explained that the projections are based on conservative estimates in relation to a combination of decline in consumption and collection rates for a period ranging from months to several years. The District will continue to refine the projections as more information becomes available, prepare for the worst-case scenario, and adapt if the numbers are better than expected.

Ms. Dumas asked whether the 20% to 30% revenue loss projection was applied to the first three months of 2020 and Mr. Duplay confirmed that it was not.

Ms. Dreyfuss-Wells added that the District obtained information from utilities in Washington State, which reported 20% decline in consumption due to the COVID-19 pandemic. Mr. Duplay stated that the information from those utilities was combined with the District's collection data from 2008 through 2010 to create the initial revenue loss projections.

President Brown added that it would be prudent to account for potential decrease in consumption by large industrial customers in the District's assessment. Mr. Duplay confirmed that those customers are included in the analysis.

Mr. Joyce asked whether the District has experienced a delay from suppliers to provide PPE. James Bunsey, Chief Operating Officer, explained that the District already had a good amount of N95 masks and placed an additional order for several mask types to ensure proper protection. Ms. Dreyfuss-Wells added that the District issued policies on the appropriate use of N95 respirators, half and full-face shields, and face coverings.

President Brown asked whether the District is performing temperature monitoring. Ms. Dreyfuss-Wells advised that there is a policy in place requiring employees to self-monitor their temperature before reporting to a District facility. Thermometers are provided to all employees who need them. Temperatures are not being taken onsite due to social distancing concerns.

Ms. Dreyfuss-Wells concluded her presentation by providing some examples of the staff's creativity and innovation in adjusting to the changes of the past month.

The maintenance staff is currently on two-week rotations to maximize social distancing and ensure coverage in case of illness.

Ms. Dreyfuss-Wells read a quote from Kate Rybarczyk, Westerly WWTP Maintenance Manager: "The situation keeps changing and you have to be able to adapt. The highest priority is to make sure the equipment stays up and running and operators can do what they need to do."

The Customer Service Department has adapted to teleworking, responding to over 1,000 customer calls and 500 emails since March 19.

Ms. Dreyfuss-Wells commended District staff for adapting to the changes and continuing their work.

Constance Haqq, Chief Administrative Officer, reported that the District has selected Elizabeth Brooks as its new Director of Human Resources. Ms. Brooks has over 20 years of Human Resource experience. Most recently, she managed her own human resources consulting firm and has previously provided human resource consulting services to the District. She will begin work on May 4 and will be introduced at the next Board meeting.

V. Action Items

Authorization to Re-Bid

Resolution No. 117-20 Authorization to re-bid the W. 3rd Quigley/Westerly Miscellaneous CSO Control project with an anticipated expenditure of \$12,100,000.00.

MOTION – Ms. Dumas moved, and Mr. Joyce seconded to adopt Resolution No. 117-20. After the following discussion, without objection, the motion carried unanimously.

President Brown asked for additional information regarding the bidding process of the project related to Resolution No. 117-20.

Devona Marshall, Director of Engineering and Construction, explained that after two unsuccessful attempts at bidding the project, the design was reevaluated. Through the reevaluation process, the District was able to mitigate some risks associated with the project by changing the flow strategy. This allowed for reduction in the length of required sewer in the soft ground, which limits the potential amount of dewatering on behalf of the contractor.

This process also resulted in a reduction of work required at Clark Fields, which has an ongoing project with USEPA and the City of Cleveland to cap the contaminated soil at the site.

Through these design changes and risk mitigation, the engineer’s estimate was reduced from \$12.6 million to \$12.1 million.

Authorization to Purchase

2. Resolution No. 118-20 Authorizing the purchase of annual software maintenance and support services for the District’s Enterprise Oracle Software Applications and Databases in an amount not-to-exceed \$758,362.95.

MOTION – Mr. Sulik moved, and Mayor Alai seconded to adopt Resolution No. 118-20. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 119-20 Authorization to enter into a project agreement with the City of Middleburg Heights to reimburse the City for design, permitting and construction costs for the Abram Creek Detention Basins Near Big Creek Parkway project in an amount not-to-exceed \$3,800,000.00.

Resolution No. 120-20 Authorization to enter into a professional services agreement with Brown and Caldwell Consultants for the Brookside Culvert Repair project in an amount not-to-exceed \$1,675,541.33.

MOTION – Mayor Alai moved, and Ms. Dumas seconded to adopt Resolution Nos. 119-20 through 120-20. After the following discussion, without objection, the motion carried unanimously.

President Brown noted that, regarding Resolution No. 119-20, the area has had a history of flooding and asked for additional information regarding the intended outcome of the project and cost reimbursement to the City of Middleburg Heights.

Frank Greenland, Director of Watershed Programs, explained that Abrams Creek runs along Big Creek Parkway in Middleburg Heights, on a very tight corridor with little to no floodplain. The area floods on an annual basis, sometimes with repetitive flooding.

The area was studied under the Rocky River Master Plan. The District has worked closely with the city to plan remediation. It was agreed that the District will finance \$3.8 million of the \$5.5 million project. The District will finance most of the design and construction, while the city handles easements and property acquisitions.

There will be three basins constructed to provide both local and regional benefits. The city will perform the design and construction with District oversight. The project will be ongoing for an extended period of time and require significant property acquisition.

The expected outcome is to increase the flood protection from the current one- to two-year level to a ten-year level of protection. It would be significantly more expensive to achieve a higher level of protection. The city also agrees that this is an appropriate first step.

President Brown noted that some projects have resulted in a five-year level of flood protection rather than ten-year. Mr. Greenland explained that in combined sewer areas, it is often a five-year level and separate sewer areas are usually able to attain ten-year protection.

Authorization of Contract Modification

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| Resolution No. 121-20 | Authorizing final adjusting change order for Contract No. 17004239 with Independence Excavating, Inc. for the Woodland Central Green Infrastructure project by decreasing the contract amount by \$1,417,792.27, thereby bringing the total contract amount to \$9,998,507.73. |
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MOTION – Mr. Sulik moved, and Mayor Alai seconded to adopt Resolution No. 121-20. After the following discussion, without objection, the motion carried unanimously.

President Brown asked for clarification regarding the cost fluctuations associated with Resolution No. 121-20. Ms. Marshall explained that the District encountered significant contamination and solid waste issues during the construction process that were well beyond what was anticipated. There was a contract modification during construction with an increase of \$2.1 to aid in remediation of the contamination and waste disposal. The District worked closely with the

contractor and the EPA to cap the contaminated soil on-site, which resulted in significant reduction of overall costs that were anticipated in the original contract modification for off-site disposal.

Property Related Transaction

- Resolution No. 122-20 Authorizing the District to acquire one permanent stormwater easement on property known as part of PPN 601-35-027, located at 8865 Brecksville Road, in the City of Brecksville, owned by TRC Brecksville Investors, Ltd., necessary for the construction and maintenance of the Chippewa Creek Bank Stabilization at Route 21 Brecksville project with total consideration of \$1.00.
- Resolution No. 123-20 Authorizing the District to declare its intent to appropriate two parcels in fee simple on property known as PPNs 133-09-001 and 133-09-018, located on Aetna Road and E. 77th Street, in the City of Cleveland, and to declare its intent to appropriate one temporary easement on property known as a portion of PPN 133-09-019, located on E. 77th Street, in the City of Cleveland, owned by D&B Realty Holdings Co., Ltd., necessary for the construction and maintenance of the Miscellaneous Combined Sewer Overflow Improvements project, and to authorize the appraised fair market value of \$6,500.00 to be deposited with the Cuyahoga County Probate Court as compensation to the owner.
- Resolution No. 124-20 Authorizing the District declare its intent to appropriate one permanent easement and one temporary easement on property known as being a portion of PPN 008-30-019, located on W. 3rd Street, in the City of Cleveland, owned by ISG Cleveland West, Inc., nka ArcelorMittal Cleveland, LLC, necessary for the construction and maintenance of the West 3rd Quigley/Westerly Miscellaneous CSO project, and to authorize the appraised fair market value of \$800.00 to be deposited with the Cuyahoga County Probate Court as compensation to the owner.
- Resolution No. 125-20 Authorizing the District to acquire one parcel in fee simple on property known as PPN 552-11-050, located at 6996 Donna Rae Drive, in the City of Seven Hills, owned by Maria M. Kofinas, aka Maria M. Kafas, necessary for the construction and maintenance of the Hemlock Creek Bank Stabilization-Seven Hills project, and to allow for the entirety of the payment to be disbursed to Innovative Title and Escrow Services, LLC with total consideration of \$270,000.00 plus closing costs.

Resolution No. 126-20 Authorizing the District to declare its intent to appropriate one temporary easement on property known as being a portion of PPN 008-30-016, located at West 3rd Street, in the City of Cleveland, owned by Midland Properties Group, LLC, necessary for the construction of the West 3rd Quigley/Westerly Miscellaneous CSO project, and to authorize the appraised fair market value of \$2,600.00 to be deposited with the Cuyahoga County Probate Court as compensation to the owner.

Resolution No. 127-20 Authorizing the District to acquire one permanent and one temporary easement on property known as being a portion of PPN 107-26-001, located at 1819 East 101st Street, in the City of Cleveland, owned by Case Western Reserve University, necessary for the construction and maintenance of the Doan Valley Regulators/Relief Sewer project with total consideration of \$32,550.00.

MOTION – Ms. Dumas moved, and Mr. Sulik seconded to adopt Resolution Nos. 123-20 through 127-20. Without objection, the motion carried unanimously.

Authorization to Amend Agreement and Ratification of Expenditures

Resolution No. 128-20 Authorizing an amendment to District Agreement No. 20000121 with Nimble Talent, LLC for strategic human resources consulting services to ratify expenditures of \$3,362.50 incurred in March 2020 and in excess of the Agreement’s current \$50,000.00 not-to-exceed amount, and to further authorize an additional \$6,000.00 for additional services through April 30, 2020, for an amended total not-to-exceed Agreement amount of \$59,362.50.

MOTION – Mr. Sulik moved, and Mr. Joyce seconded to adopt Resolution No. 128-20. Without objection, the motion carried unanimously.

VI. Information Items

Ms. Marshall provided her monthly update of the Capital Improvement Program for March 2020, beginning with cash flow. March closed at 80% of planned. This is up from February, which closed at 69% of planned. The District paid out \$21.1 million in the month of March, with a year-to-date total of \$44.3 million.

Regarding key performance indicators (KPI), design was completed on two projects, the Westerly Grading and CSOTF Wash-down Replacement Project, and the Westerly Tunnel Dewatering Pump Station Project, both of which were completed within 60 days of planned, meeting the KPI.

The District awarded the construction contract for the Westerly Primary Settling Tank Drive Replacement Project within 60 days of planned, meeting KPI. This project also met the KPI as it relates to the engineer's estimate as the average of the three lowest bids were within 10% of the estimate.

Regarding the impact of COVID-19 on the construction program, the District currently has thirty-seven construction projects in various stages of completion. Of those, eight projects are in the pre-construction phase with one recent construction award, three design-build projects that are in the pre-construction phase, and four projects that are actively bidding. There are twenty-one projects in the active construction phase, of which five are Consent Decree projects. The remaining eight projects are in the close-out phase, meaning they have either achieved substantial completion or are in close-out and the construction is coming to an end.

Ms. Marshall noted that of the twenty-one projects in active construction, the District has received notice of potential delays for twelve of them. However, only the Westerly Storage Tunnel Project has ceased construction activities due to the inability to practice social distancing in the confined work areas.

The District recently bid the GJM Remodeling Project and received ten bids, five of which were under the engineer's estimate.

Although the District has received notice of potential delays, there has not been significant impact to the construction program, with the exception of the Westerly Storage Tunnel Project.

Construction project impacts of COVID-19 that have been seen include contractors' amended project-specific safety plans to implement measures such as social distancing and the use of respirators, and the inability of out-of-town subcontractors or equipment vendors to travel. At this juncture, it is unknown if these issues will impact the final completion schedules. This will depend on how long this mode of operation continues.

As previously discussed, on March 20, the construction on the Westerly Tunneling Project was temporarily halted, due to the inability to maintain appropriate social distancing, with the intent to resume operations on May 4. The project is scheduled for significant completion in January 2021, however, the impact of this delay on the schedule is currently unknown. Of note, this project is part of Control Measure 14, which is required to achieve full operation by the end of 2024. The issue currently of greatest concern is coordinating the Westerly Tunnel Dewatering Pump Station project, which is currently out to bid, and to ensure that the appropriate constraints are in place for these contracts to work together. The Westerly Tunnel Dewatering Pump Station project is scheduled for substantial completion in the summer of 2023, allowing for room in the schedule as relates to the 2024 achievement of full operation requirement.

There is potential that the District will have to issue non-compensable contract extensions to its contractors without assessing liquidated damages.

Another potential impact is the delay in achievement of full operation for some of the Consent Decree Control Measures. The five contracts in construction associated with the Consent Decree span Control Measures 6, 8 and 14. The District has *force majeure* requirements in its Consent Decree and has informed the EPA and DOJ of these events, or is in the process of doing so, to allow for more time to achieve full operation without penalty.

In closing, Ms. Marshall advised the Board that there are three additional projects that are scheduled to advertise for construction in April, May, and possibly June. There are two Consent Decree projects and as previously mentioned, three design-build projects that will be moving into the construction phase in May or June.

Mr. Joyce asked how large the GJM remodeling project is. Ms. Marshall advised that the engineer's estimate was approximately \$340,000 and the bids were very competitive, with five coming in under the engineer's estimate and three within 10% of the estimate.

Open Session

There were no items.

VII. Public Session (any subject matter)

There were no items.

VIII. Executive Session

There were no items.

IX. Adjournment

MOTION – President Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Alai moved, and Mr. Joyce seconded the motion to adjourn at 1:10 p.m. Without objection, the motion carried unanimously.



Timothy J. DeGraeter, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



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