

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
JUNE 17, 2010

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

I. Roll Call

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

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

II. Approval of Minutes

**MOTION** – Mr. O'Malley moved and Ms. Kelly seconded that the minutes of the June 3, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP").

On Tuesday, July 15<sup>th</sup>, District representatives met with members from the state and federal governments to discuss draft language of the Consent Decree. Executive Director Ciaccia advised that the District and governments agree on certain issues including the level of control and that the District is a high-burdened community. Executive Director Ciaccia stated that greenhouse gas was incorporated into the discussion and that good discussions were held as it pertains to green infrastructure. Flexibility and the program

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term and penalties are still being negotiated. The governments would like to file the Consent Decree in court by September 30, 2010, which is the end of their fiscal year. According to Executive Director Ciaccia, it is possible to reach this date if we can come to terms on the aforementioned outstanding issues.

Executive Director Ciaccia provided the Board with a timeline under the assumption that the Consent Decree is completed by September 30<sup>th</sup>. Executive Director Ciaccia would ideally prefer that the elements of the Consent Decree be presented to the Board for consideration and action to be taken at the September 2<sup>nd</sup> Board meeting. Executive Director Ciaccia anticipates holding an Executive Session at the August 19<sup>th</sup> Board meeting to discuss elements of the Consent Decree in detail. According to Executive Director Ciaccia, this timeline is achievable and it would be within the District's best interest to move forward with the Consent Decree. Although he could not specifically address details at this time due to the pending litigation, Executive Director Ciaccia advised that the all parties have been earnestly working together rather than against each other in an effort to resolve this issue.

Mr. Brown advised that the Board is looking forward to the opportunity to review the proposed settlement and to have their questions and comments addressed especially as it relates to the procedural impacts the CSO LTCP will place on the District. Mr. Brown was interested in receiving the outcome of the District's proposed concerns and the governments' counterproposal especially since those implications will have financial ramifications. Mr. Brown requested that the Board be fully apprised of the terms, conditions and strategies prior to taking action on the resolution in September.

Executive Director Ciaccia replied that as it relates to the levels of control and various projects to be completed, "nothing has changed in the negative" since the last discussion in with the Board during Executive Session and from the District's perspective, "there has been a little more positive movement." Executive Director Ciaccia indicated that much pressure will be placed on both negotiating teams given the anticipated date of August 19<sup>th</sup> to hold an Executive Session. In order to reach the September 30<sup>th</sup> deadline, the negotiating teams will need to come to terms in July.

Mr. Brown commented that since this is a long-term strategy to be completed over 20 to 30 years and this will result in rate implications, it is important for the Board to be provided with an opportunity to conduct its due diligence.

Mayor Starr questioned how they arrived at the September deadline. Executive Director Ciaccia replied that the governments are targeting a September 30<sup>th</sup> deadline since it is the end of their fiscal year and that this is not a mandatory deadline.

Deputy Executive Director F. Michael Bucci added that we are beginning to conduct a rate study and once the program is known, we can incorporate that into the next 5-year

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rate cycle. Mayor Starr inquired as to the expiration date of the current rate structure. Mr. Bucci replied December 31, 2011.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). June 11<sup>th</sup> was the deadline for the member communities to make their group selections. Judge Pokorny mandated that each member community select a group which included: 1) the group in opposition to the District implementing the SMP; 2) the communities not situated within Cuyahoga County; 3) the consent group; or 4) the partial agreement/partial opposition group. Executive Director Ciaccia advised that there is a non-response group, which was not one of Judge Pokorny's original options.

Sixteen communities opposed the District's authority to implement the SMP. Eleven communities are not situated within Cuyahoga County. Ten communities consented to the District implementing the SMP. Twelve communities have selected to partially agree and partially oppose the District's SMP. Twelve communities did not respond. At this point there are 34 member communities that do not oppose the SMP and 27 communities in opposition to the SMP. We assume that the communities that were non-responsive will not be participating in this case.

On June 22<sup>nd</sup>, there will be a hearing on Judge Pokorny's disclosure of a potential conflict of interest due to his involvement with the Catholic Diocese. The communities in opposition requested a hearing on this matter.

On June 23<sup>rd</sup>, Calfee Halter & Griswold (hereinafter "Calfee") will conduct Paul Murphy's deposition. Mr. Murphy is currently the Law Director for the City of Lyndhurst and is also a former District employee that worked under William Schatz in the Law Department. The District will depose Mr. Murphy in order to determine whether there is a potential conflict of interest in this matter.

June 25<sup>th</sup> is the deadline for each group to select a lead attorney, and the communities in opposition to the SMP are objecting this process as well, and this matter will go forward as a hearing.

Judge Pokorny scheduled a settlement conference on July 1<sup>st</sup> at 9:00 a.m. wherein he will also conduct a hearing on the District's Motion in Opposition for Preliminary Judgment. On July 29<sup>th</sup>, there will be a hearing on the Defendant's Motion for Preliminary Judgment.

Executive Director Ciaccia moved to the next report item regarding the government advocacy services. Legislation was attached to a bill which allowed for agencies under Ohio Revised Code §6119 to offer more than one deferred compensation program. Governor Strickland signed the bill this week and it will become effective in 90 days.

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Executive Director Ciaccia commented that this is a small victory as we continue to pursue other issues.

Executive Director Ciaccia moved to the next report item regarding the District's finances. Our financials are good from a budgetary standpoint. At 42% of the year completed, the District's operating expenses are at 36.6%. We are holding the line on expenses.

Executive Director Ciaccia noted that we should be at 42% on the operating revenue but we are at 38.5%, which is problematic. We can speculate that this resulted from customers not paying their bills due to the economy, but Executive Director Ciaccia indicated that the decrease in operating revenue stems from some issues the City of Cleveland Division of Water (hereinafter "CWD") is encountering with the new billing system.

The revenues for 2010 are estimated and CWD is having trouble getting some of the bills out to the customers in timely fashion. The District's cash is down 8% from last year at this time. The District is working with the CWD in an effort to correct these problems. The District recently entered into a contract with IBM to correct some of the financial reporting issues. The District is assisting the CWD and providing temporary help.

Executive Director Ciaccia explained that the CWD's billing system is generating bills for various reasons and some customers are not being billed in a timely fashion which is impacting our revenues. The District is working closely with the CWD and Executive Director Ciaccia advised that both agencies are aware of these problems. Teams have been established in an effort to correct the situation.

Mayor DePiero inquired as to which agency is handling the billing inquiries from our customers. Executive Director Ciaccia replied the CWD handles the District's billing and customer service related matters and therefore the customers contact this agency directly for any billing inquiries. The CWD refers calls regarding the Summer Sprinkling Program to the District.

Mayor DePiero inquired whether we have received any complaints from our customers regarding the CWD's services or the duration of time callers are being put on hold. Executive Director Ciaccia affirmed.

Mayor DePiero inquired as to what steps are being taken to rectify this situation and whether we could direct telephone inquiries pertaining to sewer calls to an alternative telephone number. Director of Information Technology Humberto Sanchez replied that District representatives will be meeting with the CWD on Monday, June 21<sup>st</sup> to discuss the District's desire to have more access to the billing system in an effort to assist the CWD with customer service and call overflow.

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Executive Director Ciaccia, Mr. Sanchez and Director of Finance, Jennifer Demmerle, will be meeting with Chris Nielsen, Barry Withers and their staff to discuss how the District's customer service representatives can assist the CWD.

Executive Director Ciaccia explained that during the last billing system conversion, which occurred in 1985, the CWD faced similar challenges and "it took us several months to dig out of it." This current process will take time and effort in order to rectify the situation and the District fully intends assisting the CWD during this transition.

Executive Director Ciaccia advised that the District is watching its revenues very closely. Rate increases are forthcoming and we need to conduct our audit. The District will request an extension on its audit from the Auditor of the State of Ohio, which is due at the end of June. Executive Director Ciaccia explained that the State Auditor completes a SAS-70 report on the CWD and therefore it is unlikely that the District will have its audit completed.

Mayor Starr inquired about the 8% decrease. Executive Director Ciaccia replied that the cash amount remitted to the District is down 8% from last year at this time.

Mayor Starr inquired how the staff arrived at 8%. Executive Director Ciaccia replied that the revenue is based on estimates. Ms. Demmerle added that the District operates on an accrual basis and not a cash basis. Those revenue numbers include unbilled portions of the revenue and that cash is actual cash in the door, which is down 8%.

Mayor Starr commented that problems encountered with the new billing system have been well-documented, and he questioned as to what we can expect when the CWD implements stormwater billing.

Executive Director Ciaccia advised that the CWD is projecting that the billing issues will be corrected by the time the District is ready to implement stormwater billing. Deputy Executive Director, F. Michael Bucci added that the billing issues are estimated to be corrected in 20 weeks and additional resources will be added to expedite this process. Executive Director Ciaccia explained that the stormwater fee will be a flat rate and therefore should not pose the same types of problems that the CWD is encountering with consumption billing and meter readings.

Executive Director Ciaccia advised that the total cash balance is decreasing which was expected since we awarded \$280 million in construction contracts last year. Those projects are now ongoing and the costs are being drawn from our capital account. The District anticipates going to the bond market later this year to issue new debt in order to ensure that our capital account is healthy as we continue to implement our Capital Improvement Program (hereinafter "CIP").

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Raftelis Financial Consultants began conducting the rate study on May 27<sup>th</sup> which will be used to determine the rates for our next rate cycle from 2012 through 2016. Executive Director Ciaccia explained that this will primarily be a “construction-driven analysis” since construction will drive the rates over the next several years.

The District’s annual O&M [operations and maintenance] is approximately \$100 million and the capital budget is estimated to be around \$250 million per year. The District intends keeping its O&M numbers in line, but if we cut our O&M expenses by 3%, it would not make an appreciable difference.

Executive Director Ciaccia indicated that a significant task will be the identification and development of affordability programs suited to this region. Said program must exceed what is currently being offered to qualifying customers through the Homestead Exemption program.

The rate study analysis will also include the examination of how the rates are structured namely whether it is appropriate to have an entire consumption-based configuration. We need to create a formula that is suited to this region and also factors in the District’s large CIP.

Executive Director Ciaccia informed the Board that he will keep them apprised as to the status of the rate study analysis and that they can anticipate having preliminary results provided to them in September. The rate study analysis will be finalized after January 1, 2011.

Executive Director Ciaccia moved to the next report item regarding the contract review being conducted by Bricker & Eckler LLP (hereinafter “Bricker & Eckler). He then turned discussion over to Mr. Bucci to address the issues raised by Mayor Starr at the May 20<sup>th</sup> Board meeting.

Mr. Bucci advised that Mayor Starr provided staff with a draft Request for Proposal (hereinafter “RFP”) for the consideration of forensic fraud audits. In response to Mayor Starr’s concerns regarding contingency audits, Mr. Bucci met with Internal Audit Manager, John Wasko, and the Internal Audit Department. They developed a list of 17 firms and script questions. An email was forwarded to the Board informing them of the names of the firms to be contacted as well as the script questions. Discussion was turned over to Mr. Wasko to provide the Board with those findings.

Mr. Wasko began his presentation by providing the Board with an overview of the recent changes to the Internal Audit (hereinafter “IA”) function at the behest of the Board and Executive Director Ciaccia. The IA staff was augmented and construction audits and external audit resources have increased.

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An Audit Committee was formed and the Board members that sit on said committee are Mayor Starr, Mayor DePiero and Mr. O'Malley. An Audit Committee meeting schedule was established. Internal audits of purchasing and duplicative payments have been conducted, and those findings can be shared with the Board and Audit Committee.

Mr. Wasko advised that 17 firms were contacted and interviewed regarding forensic audits and construction contingency audits. Mr. Wasko referred to a slide depicting the names of the firms contacted by the District, which included "the big four" and "other firms that had either worked with the District or expressed an interest in working with the District within an audit capacity."

Mr. Wasko advised that the next couple of slides will show the results of the telephone script. Question #1 was "Do you perform forensic audits?" Mr. Wasko advised that 15 of the 17 firms responded in the affirmative.

Four out of the 17 firms responded in the affirmative to performing forensic audits on a contingency basis. The majority of the firms perform construction contract audits, but not on a contingency basis. Mr. Wasko identified those four consulting firms as McDonald & Associates, Inc., CBIZ/Fraud Solutions, LLC, BDF & Associates, and the Farragher Group. Mr. Wasko noted that these are not CPA firms. Those four firms would work on a conditional contingency basis and the fee structure would be based on the identification of recoveries and not the actual recoveries and therefore they had no problem going back 10 years or more. They do prefer assessing active contracts or contracts having retainage being withheld or still having payments owed to the contractor.

The firms not willing to perform audits on a contingency would perform those services on a fee basis. CPA firms performing forensic and construction contract audits are prevented from performing audits or attest work on a contingency basis per the Accountancy Board of Rules. They would however engage this type of audit on consulting basis although they prefer conducting audits on a fee basis. Most firms would only audit projects within a three to five year range and the CPA firms prefer auditing active contracts.

Mr. Wasko concluded his presentation and there were no questions from the Board.

Executive Director Ciaccia moved to last report item regarding the three pending litigation matters. A continuance was granted on the hearing scheduled for June 28<sup>th</sup> regarding the Mill Creek Tunnel 3 (hereinafter "MCT-3") case.

A hearing is scheduled on June 28<sup>th</sup> on the District's Motion for Leave to Amend its Counterclaim and Third Party Complaint to include the civil fraud and conspiracy of \$7.5

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million, which is the amount of the legal settlements stemming from the MCT-2 and MCT-3 projects.

The mediation continues in the *KM&M Joint Venture v. NEORS*D matter pertaining to the Big Creek Interceptor 3-D (hereinafter "BCI-3D") project. There has been dialogue between the mediator and the involved parties and Executive Director Ciaccia will report on this at a subsequent meeting.

The mediation continues in 3320 Woodland matter and Executive Director Ciaccia advised that further discussion will take place in September.

V. Action Items

Authorization to Issue Manual and Begin Accepting Credit Applications

Resolution No. 165-10

Authorization to issue final Stormwater Fee Credit Policy Manual and begin accepting Stormwater Fee Credit Applications.

**MOTION** – After discussion, Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution No. 165-10. Without objection, the motion carried unanimously.

Executive Director Ciaccia turned discussion over to the Director of Watershed Programs, Frank Greenland, to discuss the Stormwater Fee Credit Policy Manual (hereinafter "Credit Policy"). The draft Credit Policy was presented to the Board on April 1<sup>st</sup>. Mr. Greenland provided the Board with an update as to what has transpired since his initial presentation. Once the Credit Policy is adopted, staff can begin working with the customers on how to obtain possible stormwater (hereinafter "SW") credits.

The District will offer SW credits as a financial incentive for customers to manage SW at the source. This would reduce regional costs and encourage sustainable environmental stewardship throughout this region.

Mr. Greenland referred to the four categories of SW credits that will be offered to the customers. The 25% individual residential property credit will be available to residential property owners and is easily attained. The 25% SW quality and 25% SW quantity credits will be attainable by all customers and are more difficult to obtain since they involve constructed facilities and engineering requirements. The 25% education credit is available to schools throughout the region.



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Subsequent to the Board presentation in April, staff distributed the draft Credit Policy to the member communities and other interested parties on April 6<sup>th</sup>. The Credit Policy was also posted on the District's website.

The District attended the Euclid Creek Watershed Council Technical Committee meeting on April 23<sup>rd</sup> to discuss the Credit Policy with their engineers.

On April 26<sup>th</sup>, the District held a meeting for all member communities. This meeting was publicly noticed and representatives from approximately 30 communities were present. District representatives responded to many questions during this meeting.

The deadline for the communities to submit their comments to the District was May 10<sup>th</sup>. The District received comments from 10 attendees representing nine communities during the Euclid Creek Watershed Council Technical Committee meeting and from the representatives present at the public meeting on April 26<sup>th</sup>. Written comments were received from four member communities, ArcelorMittal, consultants, vendors and one resident.

Mr. Greenland advised that based on the comments and discussion, there were not many substantive changes made to the Credit Policy. We did however attempt to make it more aesthetically pleasing and easier to understand.

Mr. Greenland indicated that there was much discussion regarding the percentage of roof areas and downspouts for the individual residential property credit that needed to be connected in order to achieve the credit. Many communities are revising their ordinances to allow for rain barrels. Mr. Greenland advised that "we listened to communities and made an appropriate compromise" with respect to the reduced roof area and number of downspouts, which was modified from 75% to 50%.

Mr. Greenland advised that we increased the language as it pertains to being in compliance with local community building and zoning codes. Initially proposed in the draft Credit Policy was a SW quality credit and industrial NPDES permit quality credit. Those separated in the finalized document to clarify what an industry must do in order to qualify for the industrial SW quality credit.

Additional language was added to the Credit Policy in order to clarify the types of curriculum required from schools in order for them to achieve the education credit.

Mr. Greenland indicated that in the finalized Credit Policy the SW credit categories have been separated into individual sections. General applications for SW credits and the procedures are addressed at the end. Appendices will be included and were provided as handouts to the Board. Application forms, instructions, fact sheets regarding the

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residential property credit and requirements on riparian/wetland setbacks, which are applicable to the volume credit, were also included in the finalized Credit Policy.

Mr. Greenland discussed the various outreach measures that will be used by the District. The Credit Policy will be made available on the District's website at [www.neorsd.org/stormwater](http://www.neorsd.org/stormwater) and hard copies can be mailed to the individuals upon their request. Watershed is working with the Director of Administration and External Affairs, Constance Haqq, and her staff. A two page handout is being distributed during community events and the District will also participate in outreach activities. The District will hold workshops during the summer regarding commercial/industrial credits and send bill stuffers and utilize media.

Mr. Greenland provided the Board with an image depicting the SW website which holds information pertaining to SW credits, applications, procedures and the Credit Policy. According to Mr. Greenland, the District has received a lot of "hits" on its SW webpage and on the Credit Policy since the April meetings. Posted on the website was a link to an interview involving Manager of Environmental Programs, Kyle Dreyfuss-Wells, on how to achieve SW credits. Mr. Sulik added that Ms. Dreyfuss-Wells "had a nice presentation in the newspaper" regarding the types of SW management they were doing at her home.

Mr. Greenland advised that staff is making recommendation that the Board consider adopting the finalized Credit Policy at today's meeting. The Credit Policy is not a "stagnant" document and is subject to change as we strive to employ best practices. The District recently received a substantive comment from the Ohio Department of Natural Resources (hereinafter "ODNR") suggesting a change to the volume credit and we will be evaluating this suggestion and will come back to the Board if we decide to modify the Credit Policy.

Mayor Starr inquired as to the amount of a "typical" stormwater bill and what would be the minimum return on investment a customer can achieve for employing stormwater practices on their property. Mr. Greenland advised that the average residential customer will be billed \$57 per year for SW and can achieve a 25% reduction in that annual bill for the institution of the individual residential property credit. Mr. Greenland added that many customers have already implemented this type of SW management and some may choose to employ these practices as environmental stewards rather than a direct return on investment. The District desires rewarding customers taking the initiative to manage SW.

Mayor Starr referred to Action Item #11 on today's agenda (Resolution No. 175-10) pertaining to small-scale SW demonstration projects and he inquired whether this was related to the Credit Policy. Mr. Greenland indicated that they are not related and are separate issues. Many of the small-scale SW demonstration projects are for community-owned properties. If a property owner employs measures of bioretention and rain gardens, then he or she may be eligible for that SW credit.

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Mr. Brown thanked Mr. Greenland and the staff for their diligence and being responsive to the communities and the Board which was to promulgate the guidance for the Credit Policy in advance of instituting the SW fee.

Mr. Brown inquired whether the District responded to all questions posed by the various member communities or any other interested parties. Mr. Greenland replied that we verbally responded to all questions posed during the meetings and that we are responding to each written comment and that this process is similar to how we handled Title V.

Mr. Brown commented that some of the required SW practices including disconnected downspouts, rain gardens, pervious pavement and gravel driveways conflict with local building and zoning codes. He suggested that we facilitate and guide member communities by developing model ordinances regarding the SW regulations.

Mr. Greenland replied that it is the District's intent to assist the member communities through this process. The District is also compiling the local ordinances in an effort to determine the customers' ability to achieve SW credits.

Mr. Greenland stated that the City of Parma "is a great example." They are in the process of changing their local ordinances and the District has been working closely with the City Engineer. The process of changing ordinances and practices takes time, and the District would like to maintain its leadership role through this process going forward.

Mr. Brown commented that implementing SW practices with guidance is important since there is the potential for negative impacts to properties or adjacent properties if not SW measure are installed incorrectly. Mr. Greenland replied that the District is striving to be a leader in technical guidance and will continue its involvement with communities as the SMP is implemented. We will make appropriate shifts when necessary.

Mayor DePiero commented that he appreciated Mr. Greenland highlighting the City of Parma as a "great example."

Authorization to Advertise

Resolution No. 166-10

Vehicle replacements for use by various  
District departments. Anticipated  
expenditure: \$275,000.00.

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Resolution No. 167-10

Walworth Run Interceptor Realignment.  
Engineer's opinion of probable construction  
cost: \$9,500,000.00.

**MOTION** – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution Nos. 166-10 and 167-10. Without objection, the motion carried unanimously.

Mr. Brown requested a brief explanation of Resolution No. 167-10, Walworth Run Interceptor Realignment (hereinafter "WRIR") project.

Director of Engineering and Construction, Kellie Rotunno, advised that the Ohio Department of Transportation (hereinafter "ODOT") approached the District about relocating its sewers so that the construction of the innerbelt bridge could be facilitated in a more expeditious manner. ODOT will reimburse the District for the infrastructure adjustments.

Authorization to Enter Into Contract

Resolution No. 168-10

Two (2) year requirement contract with Roth Brothers, Inc. for the maintenance and repair services for the Heating, Ventilation, Air Conditioning and Refrigeration (HVAC/R) systems at all District facilities. Cost: \$334,964.00.

Resolution No. 169-10

Three (3) year contract with Solar Testing Laboratories, Inc. for testing and construction inspection services (TCIS-28). Cost: \$2,069,052.02.

Resolution No. 170-10

Two (2) year contract with Aon Risk Services Northeast, Inc. for Risk Management Services. Cost: \$255,000.00 including \$5,000.00 travel contingency.

**MOTION** – Mr. O'Malley moved and Ms. Kelly seconded to adopt Resolution Nos. 168-10 through 170-10. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 171-10

Transfer Contract No. 09001963 from Ciba Corporation to BASF Corporation for final clarifier polymer at the Southerly Wastewater Treatment Plant.

Resolution No. 172-10

Final adjustment deduct order for Contract No. 3435 with Triad Engineering & Contracting for the Easterly Interceptor Lakeside Avenue Improvement Contract at East 53<sup>rd</sup> Street. A cost decrease in the amount of \$181,352.88, bringing the total contract price to \$1,012,730.91.

Resolution No. 173-10

Modify Contract No. 09002121 to enable Wichert Insurance Services, Inc. ("Wichert") to serve as the District's third-party administrator and to authorize Wichert to procure necessary insurance coverage on behalf of the District to establish the District's new insurance program. Modification cost not to exceed \$50,000.00, for a revised total amount of \$290,000.00. Insurance procurement cost not to exceed \$630,340.00 from July 1, 2010 to June 30, 2011.

**MOTION** – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 171-10 through 173-10. Discussion was held and without objection, the motion carried unanimously.

Mayor Starr referred to Resolution No. 173-10 and he commented that listed on page three, "additional coverage" includes employees, elected officials and volunteers and that public officials liability is identified as "exclusion." He questioned, "Who are you referring to, us?" Mr. Bucci explained that Travelers Insurance cancelled our coverage effective July 1, 2010 due to Mr. Schatz pleading guilty to criminal charges. The District is seeking to replace this coverage and will bring this back to the Board for consideration at the July 2<sup>nd</sup> meeting.

Mayor Starr requested a further explanation as to the potential impacts of not having this type of insurance coverage. Mr. Bucci replied that according to the Board's Bylaws, the

District must have this type of insurance coverage; however, the Bylaws are not specific as to the level of coverage.

A recommendation was made a few years prior by the IA Department to have \$7.5 million for the blanket employee dishonesty coverage and \$5 million for faithful performance of duty of the Finance Director. At that time, the Finance Director was not bonded, and the Finance Director was making wire transfers on behalf of the District with no insurance coverage in place.

According to Mr. Bucci although the \$7.5 million is extraordinarily high, it is not unusual to have that type of coverage. The faithful performance of duty coverage of \$5 million is "extremely unusual" and the District was the only customer of Travelers Insurance that carried this type of insurance at that level. Typically, the amount of said coverage is around \$100,000 or \$200,000. Mr. Bucci explained that the District is in the process of obtaining quotes from other insurance carriers.

Mayor Starr questioned as to whether the exclusion applies to all employees. Mr. Bucci replied "all employees including Board members."

Mayor Starr inquired if they will be excluded right now wherein Mr. Bucci stated "just until we get coverage."

Mayor Starr questioned, "Who are the elected officials?" Mr. Bucci replied all staff members covered by this policy. Mayor Starr questioned, "Elected officials is the staff?" Mr. Bucci clarified that he was referring to the blanket employee dishonesty policy for \$7.5 million.

Mayor Starr referred to the "additional coverages" and the "exclusions" and then Mr. Bucci clarified that the policy encompasses employees, elected officials and volunteers even though the District does not employ elected officials they are listed.

Mayor Starr inquired as to the amount the coverage is for the seven Board members. Mr. Bucci requested that Richard Studenic from Wichert Insurance come forward to address the Board's comments regarding the insurance coverage.

Mr. Studenic explained that the District's insurance program is broken down into several coverage parts, which is similar to public entity coverage. The item listed on page three "is an exclusion for public official coverage, not public officials [and] the reason for that is you will also see an exclusion for employment practices." For instance, in a general liability policy there is an exclusion for automobiles since those are covered elsewhere under a separate policy. Public officials are not excluded; however, public officials' coverage is excluded since there is a separate policy for public official coverage.

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Mayor Starr inquired whether there is another policy. Mr. Studenic indicated that there are several. Mayor Starr questioned if they are typically called D&O. Mr. Studenic affirmed that is called D&O in a for-profit company and in the public sector it is referred to as public entity management liability protection.

Mayor Starr questioned whether the District has D&O coverage and what the amount of that coverage is. Mr. Studenic replied that “the coverage is \$1 million underlying with the current \$10 million umbrella.”

Executive Director Ciaccia advised that the District has been extensively reviewing its insurance coverage and that there is a tremendous amount of valued assets within this organization. The risk consultants have recommended that the District be insured at the proposed level and deductibles in an effort to keep the premiums down. Executive Director Ciaccia indicated that the District has opted for this type of coverage over a self-insured approach for the reason that if a catastrophic event occurred, the District would have to issue short-term debt in order to pay the claim or build a reserve, but ultimately this would fall onto the customers. The annual premiums under the proposed insurance plan are less than a percent of the District’s budget, and we feel it prudent to obtain good insurance coverage.

Authorization to Enter Into Agreement

Resolution No. 174-10

Water Pollution Control Loan Fund (WPCLF) Agreement for the financing of the Southerly Renewable Energy Facility – Contract 28. Anticipated program year 2010 loan amount: \$53,308,111.00, awarded at the WPCLF’s third-quarter standard interest rate, which will be determined on July 1<sup>st</sup>.

Resolution No. 175-10

Agreements with member communities for small-scale stormwater demonstration projects. Cost: \$29,504.00.

Resolution No. 176-10

Agreement with the Ohio Department of Health for bathing beach monitoring. Cost: \$8,770.00.

**MOTION** – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 174-10 through 176-10. Discussion was held and without objection, the motion carried unanimously.

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Mr. Brown referred to Resolution No. 174-10, the Renewable Energy Facility (hereinafter "REF"), and he commented that "we already have one part of the commitment." Mr. Brown questioned if "they are asking for a signature and/or an agreement that would facilitate our opportunity to fund the rest of it?"

Ms. Demmerle affirmed and stated that the \$39 million already received was part of the 2009 Water Pollution Control Loan Fund (hereinafter "WPCLF") program. The remaining portion was for the 2010 WPCLF program. Ms. Demmerle explained that we were capped last year at \$39 million and the District is making its loan application to fund the remainder of the REF project.

### VI. Information Item

#### Program Management Status Report and Update – April 2010.

Ms. Rotunno reminded the Board that the District launched the Euclid Creek Tunnel (hereinafter "ECT") project pre-advertisement of its public outreach campaign. A web page was designed and will communicate the ECT project information to prospective bidders. A link to the Small Business Enterprise (hereinafter "SBE") was added to the ECT web page.

The District is promoting its SBE outreach program and will host a contractor connection event at the Great Lakes Science Center on June 29<sup>th</sup>. Ms. Rotunno acknowledged Ms. Haqq and Contract Compliance Manager, Tiffany Jordan, and their staffs for the assistance they provided to setup of this event. Ms. Rotunno described this event as an "innovative" approach to get contractors to "meet and mingle" with SBEs in advance of the bid being advertised. The SBEs will be showcasing their skills and capabilities to the non-local prime contractors attending this event. Ms. Rotunno encouraged interested parties to attend this event at the Great Lakes Science Center on June 29<sup>th</sup>.

Ms. Rotunno discussed the Key Performance Indicators (hereinafter "KPIs") for the projects awarded through the end of April 2010. She advised that the District is lagging behind on three projects. Consequently, the District is spending \$15 million less than what was projected.

Ms. Rotunno advised that the design contract negotiations are taking longer than expected, which has impacted the KPI for project awards. There are many design contracts being negotiated and the consultants are familiarizing themselves with the District's new contracting terms. Furthermore, projects are being awarded to consultants that have not engaged with the District in the past and therefore there is a learning curve for those consultants. Ms. Rotunno was hopeful that as we become accustomed to the



new terms and conditions, the number of projects will increase and we will be tracking closer to our goal.

Ms. Rotunno indicated that the bids are coming in less than what was projected and this is good news; however, it has impacted the District's award value which is \$15 million behind our goal to date.

If internal resources are used to perform design projects, then those projects count towards the total count but do not impact the value amount since we do not have an assigned award value for in-house design projects. Consequently, the KPI is lagging and the District intends to adjust its tracking and reporting processes of the in-house design projects.

The KPI for performance related to the average bid in the engineer's estimate is at 70% through April 2010. We were 12.9% under the average and the District's goal is to be plus or minus 10%. The District did not award any new projects in April but is still tracking well with that KPI range of plus or minus 10% through June 2010.

Through the end of April 2010, the District is tracking 100% on its construction contract delivery within 105% of the base contract amount. According to Ms. Rotunno, the District is diligently managing contractor allowances in the field.

Ms. Rotunno stated that 91% of the District's projects closed out within 105% of the base contract amount through June 2010. The goal was 85% and we are therefore exceeding that KPI.

The EILIC-53 project closed out under the former MBE/WBE [Minority Business Enterprise/Women's Business Enterprise] program. Ms. Rotunno referred to a graphic depicting the MBE/WBE goals. The blue line represented the District's Goal and the red line represented the bid commitment. The contractor met the MBE bid commitment; however, did not fulfill the District's MBE goal. The contractor exceeded the District's WBE goal and their commitment goals. Ms. Rotunno indicated that the primary reason why the contractor failed to meet the MBE goals was that "he extended to us a value of engineering solution that saved us a half of a million dollars and was able to eliminate some jet-grouting on that project.

Mayor Starr referred to the collection system construction data listed on page 13 and he requested clarification on the "estimated percentage of contract to be used towards the financial conditions of contracts when completed with budgeted funds. Mayor Starr inquired whether those estimates are the projected final amounts spent on the contract. Ms. Rotunno explained that this is the "roll up for the professional services component of the collection system projects" and "we are not picking up on any major deviations at this point in time."

Mayor Starr commented that "assuming that this is correct, this is wonderful work that you are doing. Something that we were told in the past...couldn't be done and information that was never provided to us."

Executive Director Ciaccia concluded by stating that "this is what Program Management is really all about...being able to take a look at the entire picture and being able to project out as well." Mr. Brown agreed and added that "it's also what accountability is all about."

VII. Open Session

No items for discussion.

VIII. Public Session (any subject matter)

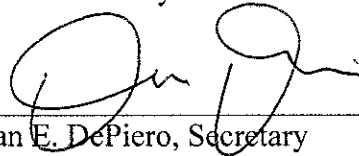
No members from the public registered to speak at Public Session.

IX. Executive Session

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

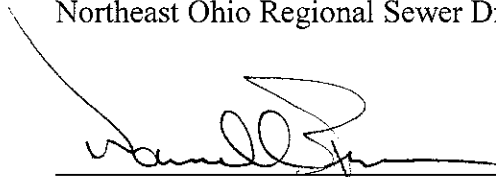
X. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. Sulik seconded the motion to adjourn at 1:40 p.m. Without objection, the motion carried unanimously.



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



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