

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JULY 3, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:42 p.m. by Mr. Brown.

I. Roll Call

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

Mayor Longo and Mr. Liberatore were absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mayor DePiero seconded that the minutes of the June 19, 2008 Board meeting and special Board session, be approved. Without objection, the motion carried unanimously.

III. Public Session (no one registered to speak at the public session)

Executive Director Ciaccia advised Board members that a member of the public registered to speak on a non-specific agenda item and this falls under the second public session agenda item.

IV. Executive Director's Report

The Executive Director stated that the monthly departmental report will be given at the July 17, 2008 Board meeting, however, he did elaborate on a couple of issues. He informed Board members that due to increased fuel costs and recent public scrutiny as it relates to the use of public vehicles, staff will no longer be authorized to use District vehicles for commuting purposes, with the exception of the Chief of Security. Executive

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 2 of 21

Director Ciaccia assured Board members that this cutback will not hamper District operations.

The Suburban Council of Governments (hereinafter "SCOG") held the first of its two (2) annual meetings on June 26, 2008 wherein elected officers were appointed and the Executive Director gave a report. Mayor Longo was re-appointed as Chairman. Mayor Leiken was elected as the Vice Chairman. Mayor Welo was elected as Secretary. A quorum was present with approximately twenty-seven (27) mayors or designees in attendance. Executive Director Ciaccia advised that in accordance with SCOG Bylaws, mayors are permitted to send designees on his or her behalf but this must be submitted in writing. Executive Director Ciaccia informed Board members that proxy voting is no longer permissible by this type of organization under state law and emphasized the importance of a quorum (1/3 or twenty (20) members) being present to conduct business.

Executive Director Ciaccia informed Board members that he and the Director of Administration and External Affairs, Constance Haqq, met with Dr. Eugene Sanders, Chief Executive Officer of the Cleveland Metropolitan School District. The main purpose for this meeting was to inform Dr. Sanders of the cooperative efforts between the District and Cleveland Metropolitan School District. Discussion was held as to the proposed rate increases resulting from Combined Sewer Overflows (hereinafter "CSO") and the ongoing negotiations between the District and federal government as it pertains to this issue. In addition, the Stormwater Management Program (hereinafter "SMP") and fees related to this program were also discussed. Executive Director Ciaccia advised that the Cleveland public school system is a major stakeholder as the District moves forward with the SMP, and the District appreciated the meeting with Dr. Sanders as well as his feedback and suggestions. The District intends to be as visible as possible and this meeting was held to extend its public outreach program.

Executive Director Ciaccia stated that due to recent negative publicity of past practices, it is important to present positive information to the public. Discussion was turned over to Ms. Haqq to inform the Board of recent outreach program efforts implemented by the District. Ms. Haqq informed Board members of the "*Where Does it Go?*" campaign designed to help the public understand District operations and its importance and value. Ms. Haqq informed the Board they will view three (3) video clips: 1) Executive Director Ciaccia's interview with Lee Jordan of NewsChannel 5 discussing the "*Where Does It Go?*" campaign; 2) WKYC Channel 3 news clip with Obie Shelton discussing the District's Wastewater Prep Program and its partnership with Collinwood High School designed to educate students on District operations and assist with summer employment opportunities throughout the District; and 3) Wally the Waterdrop starring in "*Where Does It Go?*". Ms. Haqq thanked Public Information Specialist, Jean Chapman, and Communications Specialist, John Gonzalez, for their assistance.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 3 of 21

Board members viewed the three (3) videos which can be accessed via the internet www.wheredoesitgo.org, www.newschannel5.com, and www.wkyc.com.

Executive Director Ciaccia explained that the Wally the Waterdrop Segment was completed by District staff and did not require outside consulting services. In an effort to educate the public on the environment, the District plans to secure public access airtime to run this segment.

Mayor Starr complimented staff on the Wally the Waterdrop segment as being informative. Mr. Sulik stated that the segment was well-done.

Mayor DePiero was impressed with the WKYC Channel 3 news segment and stated that he considered the student internship program to be excellent and is hopeful that it continues in the future.

Executive Director Ciaccia stated that WOIO Channel 19 completed an interview with the District focusing on the student interns working in the laboratories.

Mr. Brown stated that the Board has held discussions regarding the necessity for community outreach. He stated that the recent news segments and the "*Where Does It Go?*" campaign are good public outreach tools and thanked District staff for their efforts.

V. Consent Agenda

Sewer Use Code Matters

No discussion ensued on Resolution Nos. 154-08 through 158-08.

Resolution No. 154-08

Acceptance of Hearing Examiner findings regarding Richard Yerick on behalf of Scott Colangelo.

Resolution No. 155-08

Authorizing SSCBOUTS Application No. 1323 for Lakeside Yacht Club, 4851 N. Marginal Road, Referenced Account: 01-369-216-005. Estimated savings to customer is \$3,892.00.

Resolution No. 156-08

Authorizing SSCBOUTS Application No. 1344 for Alcoa Cleveland Works, 1600 Harvard Avenue, Cuyahoga Heights, Ohio 44125, Referenced Accounts: 20-378-382-004, 20-378-381-006, 20-378-380-008, 20-378-378-002, 14-378-379-003, 14-378-377-007, and 14-378-376-009. Estimated savings to customer is \$39,515.00.

Resolution No. 157-08

Authorizing SSCBOUTS Rescind, Ms. Florence Matthews, M.D., 15801 Parkland Drive, Shaker Heights, Ohio 44120, Referenced Account: 32-375-193-003.

Resolution No. 158-08

Authorizing Water Leak Adjustment, Walgreens #4130, 3020 Mayfield Road, Cleveland Heights, Ohio 44118, Account Number Referenced: 2053080. Estimated savings to customer: \$2,056.86.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution Nos. 154-08 through 158-08. Without objection, the motion carried unanimously.

VI. Action Items

Authorization to Award

No discussion ensued on Resolution Nos. 159-08 and 160-08.

Resolution No. 159-08

One Year Requirement Contract to Tidewater Products, Inc. for Final Clarifier Polymer at the Southerly Wastewater Treatment Plant. Cost: \$274,800.00.

Resolution No. 160-08

Contract CRM-1 to Nerone & Sons, Inc. for Canal Road Modifications at the Southerly Wastewater Treatment Plant. Cost not to exceed \$72,765.00.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 5 of 21

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 159-08 and 160-08. Without objection, the motion carried unanimously.

Authorization for Contract Modification

No discussion ensued on Resolution Nos. 11-08a and 161-08.

Resolution No. 11-08a

Additional funds due to exceeding \$25,000.00 allotment of single-agency temporary staffing with Ajilon Professional Staffing, LLC. Cost increase of \$4,197.77.

Resolution No. 161-08

Roofing renovations Contract RRN-4, Contract No. 3385, Contractor: Industrial First, Inc. Cost: (\$31,020.89) – Closeout deduct for non-performed bid items.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 11-08a and 161-08. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

No discussion ensued on Resolution No. 162-08.

Resolution No. 162-08

Professional Services for new functionality in the Information Access System (IAS) from Malcolm Pirnie, Inc. Cost not to exceed \$48,579.00.

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 162-08. Without objection, the motion carried unanimously.

Authorization to Retain Calfee, Halter & Griswold

Resolution No. 163-08

Continued Retention of Calfee, Halter & Griswold in the on-going investigation by the Federal Bureau of Investigation and other government agencies.

Mayor Starr requested the Executive Director advise the Board as to the amount paid to Calfee, Halter & Griswold (hereinafter “Calfee”) thus far. Executive Director Ciaccia explained that the Board initially retained Calfee for three (3) issues: 1) interim staffing

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 6 of 21

of the Director of Law position (Ms. Gigi Benjamin), 2) contract auditing (Pete Comodeca), and 3) interfacing with the government as it relates to the ongoing Federal Bureau of Investigation (hereinafter "FBI") investigation. Executive Director Ciaccia advised that the District has paid Calfee a total amount of \$707,000 for all professional services performed thus far.

Mayor Starr inquired as to the final termination date of the contract between the District and Calfee. Executive Director stated that the District is currently engaged with Calfee only as it relates to the FBI investigation, and the District fully complied with four (4) subpoenas received by the FBI. Calfee assigned Ms. Gina Davidson to represent the District on this matter. The firm, JurInnov, assisted the District with the organization and transfer of documents into electronic format. Interfacing with the FBI continues and they will have additional questions as it relates to the documents submitted to them by the District. The District anticipates certain employees may be interviewed regarding the ongoing investigation and Ms. Davidson's legal services will be needed to assist with these matters. Executive Director Ciaccia informed Mayor Starr that he cannot fully give a Calfee contract termination date as it is contingent upon the completion of the FBI investigation.

Mayor Starr questioned the need of a criminal defense attorney being present at employee interviews. Executive Director Ciaccia stated that Ms. Davidson is not acting in the capacity of a criminal defense attorney. Instead, Ms. Davidson represents the District as a potential victim of a crime. Executive Director Ciaccia requested Ms. Davidson report to the podium to assist with addressing Mayor Starr's concerns.

Ms. Davidson explained that the government's investigation is ongoing and the District has provided the FBI and U.S. attorney's office with all requested information. Ms. Davidson stated that, to her knowledge, the government is currently sorting through the documents. During this review process, questions may arise that Ms. Davidson will be prepared to answer. Furthermore, a document may lead to the request of additional information, and Calfee will fully cooperate with any requests on behalf of the District. Ms. Davidson explained that the investigation may lead to employee interviews. She will be able to assist employees with the process if he or she so chooses. Ms. Davidson stated that she agreed with Executive Director Ciaccia and stated that if a crime has been committed, the District is the victim and, unfortunately, victims are often inconvenienced by the legal processes.

Mayor Starr inquired if Ms. Davidson's services included legally representing all employees being interviewed and invoking certain privileges. Ms. Davidson stated that has not been determined.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 7 of 21

Mayor Starr again questioned the need for a criminal defense attorney for this type of investigation and if this type of representation would impede the investigation. Ms. Davidson explained that it is common for a victim of crime to consult with competent legal counsel familiar with the criminal justice system in order to understand the process and be knowledgeable of the investigation.

Mayor Starr stated that public employees subject to a criminal investigation typically retain their own outside legal counsel. He explained that his objection to this issue is the use of taxpayers' dollars for this engagement. Executive Director Ciaccia informed Board members that if a District employee is being criminally investigated, he or she will not be represented by the District and would need to consult with outside legal counsel at the employee's own expense. Furthermore, the District has been required to submit documentation to the government on matters currently under litigation and certain information is considered privileged and confidential. Ms. Davidson is expected to interface on these issues as to protect the District's interests. Ms. Davidson explained that government investigators are interested in viewing only those documents that they have a legal right to view and do not want their investigation tainted by evidence that cannot be used. This includes any and all communication(s) between the District and its attorneys, internal or external, on any legal matter which resulted in confidential communication for the purpose of giving or receiving legal advice. She explained that this review contributed to a large amount of the District's expense. Furthermore, Ms. Davidson explained that an abundance of questions have stemmed from what is and is not considered privileged and confidential.

Mayor Starr referred to Executive Director Ciaccia's memo dated June 23, 2008, wherein page two (2) references the exclusion of attorney client privileged and/or work product privileged information. Mayor Starr stated that the free flow of information and public disclosure is essential in order to address past contracting issues over the last twenty (20) or more years. He inquired as to which party is responsible for making the determination as to what documents are classified as confidential attorney client privileged and therefore are being excluded. Ms. Davidson stated that the privilege belongs to the District. Mayor Starr questioned who is responsible. Ms. Davidson explained that the initial review is conducted by Calfee attorneys. Mayor Starr specifically questioned if Ms. Davidson is personally involved with this review. Ms. Davidson stated that the review is conducted by attorneys under her supervision. In an effort to be cost effective, Calfee trains a team of attorneys with lower hourly rates to conduct these reviews. The team develops a subset of documents requiring mid-level Calfee associates' review. A smaller subset of documents may require additional review. Calfee conducts a quality control review of the entire base to ensure that the attorneys are doing a good job. Some matters require additional review by the District's legal staff to determine whether a document is to be considered privileged and confidential.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 8 of 21

Ms. Davidson explained that Calfee intends to submit all pertinent documents to the government, but should not waive privileges on behalf of the District. The District should be aware of all information being submitted. If the District chooses to knowingly submit a privileged document to the government, then this is a conscious decision made by this agency. Executive Director Ciaccia explained that the District received commendation by the government as to its cooperation in this process. Ms. Davidson agreed and added that the government has indicated they have never received this level of cooperation from an entity. Ms. Davidson ensured the District has not gone beyond what has been requested, but has enabled the government to its investigation as quickly as possible. Ms. Davidson reiterated that if a crime has been committed, the District is a victim.

Mayor Starr requested an itemized list of all communications including dates, participants and criteria used to claim privilege. Ms. Davidson suggested Mayor Starr obtain legal advice from the Law Director. Law Director, Marlene Sundheimer, stated that this matter should be discussed in Executive Session and inquired if Mayor Starr is requesting a listing of all documents determined to be privileged. Mayor Starr affirmed and requested the reasoning behind the determination and dates. Mayor Starr referred to the statement 'could be privileged' in Executive Director Ciaccia's June 23rd memo and indicated that the determination of what is considered privileged and confidential could be construed as open to individual subjective judgment. Mayor Starr stated that the Board should be entitled to this information.

Ms. Davidson stated that in an investigation of this nature, Calfee turns over a privileged document log to the government, listing by identification number any documents withheld due to attorney/client privilege and accompanied by an explanation as to the determination. Ms. Davidson informed Board members that the investigation has not yet reached this point, but she will share this information with the appropriate District representative. Mayor Starr asked if the Board is entitled to this list. Ms. Davidson suggested Mayor Starr confer with Ms. Sundheimer.

Mayor Starr referred to the following passage in the aforementioned memo: "The documents raised numerous issues regarding persons and companies that have done business with the District over a period of nearly twenty (20) years." Mayor Starr requested clarification as to the identification of the former general counsel referenced in said memo. Ms. Davidson clarified that former general counsel is Mr. Schatz. Mayor Starr stated that the Board is obligated to identify the issues as well as the significant cost overruns. Ms. Davidson reiterated that with the Law Director's consent she would be obliged to forward this information to the Board.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 9 of 21

Ms. Sundheimer stated that she preferred having this discussion in Executive Session and explained that the purpose of the presentation was to update Board members on the status of the investigation, more specifically, activities that have transpired since the November 2007 update. Ms. Sundheimer stated that she fully anticipated these questions and will prepare a special Executive Session presentation at the July 17th Board meeting.

Mayor Starr agreed that Ms. Sundheimer be allowed time to prepare the information, but suggested the presentation be given at a public meeting. He is unclear if this information is not permissible under Ohio law.

Mayor Starr inquired as to where e-mails, diskettes and confidential communications by the former general counsel were obtained. Ms. Sundheimer explained that all documents electronic and paper were obtained from the District. Mayor Starr stated that, in his opinion, documents obtained from the District are considered public record and should be released to the public. The attorney/client privilege belongs to the client. In this case, attorney/client privilege that would apply to private clients of the former general counsel would have no impact on the District. Ms. Davidson explained that if a government agent discovers a document belonging to a client of an attorney that is not the District's, the review is brought to a halt and Ms. Davidson is contacted. A "taint team" is assigned to review and ensure that no other documentation of this sort is included. The government does not want to review these types of documents. It would be considered a lack of cooperation if these types of documents were not screened out.

Mayor Starr stated that the attorney/client privilege cannot be used against the client if he inserts it in a private cause of action in the court of law. It should be disclosed to the Board where these vast amounts of monies have gone over the past 20-35 years. Ms. Davidson stated that the government is not desirous of viewing any documents containing privilege belonging to anyone including the District or otherwise.

Mr. Brown suggested District staff conduct due diligence and address the Board of its findings in Executive Session wherein it will be determined whether the subject matter be disclosed to the public. He would prefer not impeding this investigation by disclosing pertinent information to the public that the FBI may want to pursue. Mr. Brown stated that he understands and shares Mayor Starr's interests, but it would be prudent to allow the Law Director to prepare and present the information in Executive Session. The Board could then make a determination if this information should be made public.

Mayor Starr thanked Mr. Brown and indicated that his questions were answered. He also thanked Ms. Davidson for being present and available at the meeting.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 10 of 21

Executive Director Ciaccia advised that staff will be prepared to discuss this information in Executive Session at the July 17th Board meeting. Executive Director Ciaccia clarified that Calfee was retained for three (3) separate issues and the costs incurred for the investigation thus far is \$301,000 of the \$707,000 previously indicated. An additional \$175,000 was paid to JurInnov for its services in the transferring of documents into electronic format.

Mayor Starr inquired as to Ms. Davidson's hourly rate. Ms. Davidson stated that it is set by Calfee and exceeds \$400/hour. She stated that every effort is made to use and train Calfee and contract attorneys at a lower hourly rate to address these issues efficiently, effectively and economically.

Mayor DePiero indicated that he shares Mayor Starr's concerns as to the disclosure of this information, but does not want to jeopardize pending litigation matters and negotiations or expose the ratepayers or the District.

Mr. Brown stated that Calfee's monthly billing statements should be submitted to the Board for review to ensure the Board understands any and all financial exposure. Furthermore, Mr. Brown indicated that the Board should be well positioned to recuperate any costs associated with the alleged crime.

Mayor DePiero requested clarification as to the duration of Calfee's "continued retention" by the District as indicated by the language in the resolution request. He questioned how often the Calfee billing will be brought to the Board for review. Executive Director Ciaccia stated that he intends to address this in his monthly Board reports and recommended having a thorough review on a quarterly basis.

Executive Director Ciaccia stated that it was decided to discuss the Calfee matter in Open Session at the Board meeting, but it is important not to discuss business that may potentially compromise the government's investigation. The District intends to be in compliance with state law as it relates to matters to be discussed in Executive Session. Mr. Brown stated that the Board anticipates the Law Director's guidance on this issue. Executive Director Ciaccia requested the Board's consent to incorporate Calfee billing updates into his monthly report and holding quarterly reviews. He received the Board's approval and consent.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 163-08. The motion carried with one "No" vote by Mayor Starr.

Authorization to Adopt Budget

Resolution No. 164-08

**Operating Budget for year ending
December 31, 2009.**

Executive Director Ciaccia informed the Board that in accordance with the Ohio Revised Code (hereinafter "ORC") an interim budget for 2009 must be filed by July 2008.

Finance Director Jennifer Demmerle stated that state and local governments are required to file a tax budget by July 15th. The District does not levy taxes and fulfills this requirement by filing its operating budget. Prior to final adoption in March 2009, the budget will be modified through the District's budget process.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 164-08. Without objection, the motion carried unanimously.

Add-On Resolution

Resolution No. 165-08

**Authorizing the Executive Director to
finalize a ten (10) year agreement with
Cleveland Public Power to supply
electricity to the Easterly and Westerly
Wastewater Treatment Plants.**

Executive Director Ciaccia advised Board members that the District requested proposals for electric service for the District's three (3) wastewater treatment plants (hereinafter "WTP"). Cleveland Electric Illuminating Company (hereinafter "CEI") advised that it will not submit a proposal. Cleveland Public Power (hereinafter "CPP") submitted a proposal for all three (3) WTPs. The District recommended renewing its electric service contracts with CPP at the Easterly and Westerly WTPs. The District will continue researching electric service at the Southerly WTP.

Executive Director Ciaccia advised that the District is currently at tariff for CPP and by accepting this arrangement the District will annually save approximately \$282,000 or 8% in electrical costs. If the District accepts this arrangement by July 11, 2008, CPP agreed to commence billing effective May 2008.

Mr. Brown inquired as to the duration of this agreement. Executive Director Ciaccia advised that the service agreement is for ten (10) years.

Executive Director Ciaccia stated that the president of CEI indicated they do not negotiate electric rates. CPP was willing to negotiate rates 8% below its tariff.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 12 of 21

Mayor Starr asked if ten (10) year agreements are customary. Executive Director Ciaccia stated that it was not. Mayor Starr questioned why the District is agreeing to the ten (10) year duration. Executive Director Ciaccia indicated that the District is desirous of locking in its rates. Director of Operations and Maintenance, Dave McNeeley, stated that there are certain capital costs included such as main substation upgrades which will provide an opportunity for the District to recuperate these costs over a longer period of time.

Mayor Starr inquired as to when the District last requested proposals for electrical service. Mr. McNeeley advised that it was approximately fifteen (15) years ago and at that time it was for a ten (10) year agreement as well. Mayor Starr stated that electrical service was much more competitive and recalled receiving calls from affiliated parties whereas now there is very little competition.

Executive Director Ciaccia advised Board members that CEI has been under a rate freeze for a number of years and in April 2009 the rate freeze will no longer be in effect. CEI will then have an opportunity to significantly increase its rates. Executive Director Ciaccia stated that CPP locking in its rates with the District could create a customer class situation. Mayor Starr questioned if CPP has the ability to adjust rates due to inflation. Mr. McNeeley advised that there is a clause within the contract that allows CPP to adjust its costs. Mayor Starr inquired as to how much. Mr. McNeeley stated there is no cap on the adjustment.

Mayor Starr commented that there does not seem to be many options for the consumer for gas and electric. Sometimes allowing the consumer alternative options such as NOPEC confuses the public. Mayor Starr indicated that his office is flooded with calls from the public concerning energy options. He questioned if the District had any alternative options to choose from. Executive Director Ciaccia stated that aside from CPP and CEI there were no other alternatives. Mr. Brown advised that it is uncommon to have a choice for an electric utility in most industries.

Executive Director Ciaccia advised it may be too risky for the District to sign a ten (10) year agreement with CPP for the Southerly WTP at this time. He indicated that CPP may ultimately provide electrical service to the District's Southerly WTP but this would require major investments. Mr. McNeeley stated that First Energy was not comfortable with the duration of a ten (10) year agreement. Furthermore, recent legislation stalled the negotiating process and, according to Mr. McNeeley, the electricity field is in a state of flux.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 13 of 21

Mayor Starr stated that his concern is the undefined potential increase. Deputy Director of Law, Lawrence English, explained that there is not a cap within the agreement. If there are changes in CPP operating costs such as fuel, this is considered a pass-through and not a rate augmentation. Mr. English explained that additional components of the bill are set unless Cleveland City Council passes legislation approving modifications, which is subject to public review and comment. Mr. English advised changes are not unilateral but structural changes to CPP's rates.

Ms. Kelly inquired if the agreement incorporated an opt-out clause. Mr. English stated that the contract does not include an opt-out clause. The District sought opt-out options that were not accepted. Mr. English advised that the District has the ability to stop proceeding on any contract that the District doesn't believe is no longer fair and subject it to a lawsuit challenge.

Mr. Bucci stated that CPP historically charged less than First Energy's tariff cost at the Easterly and Southerly WTPs, resulting in savings in electrical service.

Mr. McNeeley clarified that permitted adjustments include energy and environmental charges.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 165-08. The Secretary called the roll, and the motion carried with one “No” vote by Mayor DePiero.

VII. Information Items

1. 2008 Government Finance Officers Association Annual Budget.

Ms. Demmerle advised Board members that the District submitted its 2008 budget document to the Government Finance Officers Association (hereinafter “GFOA”) to be evaluated against reporting standards. Meeting GFOA's reporting standards could result in the receipt of the only nationally recognized award for governmental budgeting. This is the second year the District presented its budget to the GFOA for evaluation, and Ms. Demmerle wanted to inform the Board of the District's submittal.

2. 2007 Comprehensive Annual Financial Report.

Ms. Demmerle informed Board members that the District completed its audit and the 2007 Comprehensive Annual Financial Report (hereinafter “CAFR”) was submitted to the GFOA for evaluation against its reporting standards. If the CAFR meets GFOA's reporting standards, the District could receive a nationally recognized award for the document. This is the twelfth year the District presented its CAFR to the GFOA for

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 14 of 21

evaluation. Ms. Demmerle anticipated that by the first meeting in August she will have the results from the audit available for Board review.

3. Presentation on Program Management.

Executive Director Ciaccia stated that the District obtained proposals for program management (hereinafter "PM") services for administration of its Capital Improvement Program (hereinafter "CIP"). Two (2) proposals were received and reviewed by an evaluation team. A recommendation was then made by the evaluation team. The presentation was designed to fully inform Board members of the criteria established by the evaluation team which assisted in its recommendation. Executive Director Ciaccia was desirous of beginning fee negotiations through the Engineering Department for PM services. His goal was to present PM Phase 1 to the Board for approval at the July 17th Board meeting. Executive Director Ciaccia advised Board members that PM Phase 1 could potentially result in a larger program in the future. He introduced Devona Marshall, Planning Manager in the Engineering Department, who gave the presentation.

Mr. Brown stated that the District has a responsibility to its ratepayers to produce a significant CIP that will be run efficiently and effectively. The District should be accountable for its program in both timeliness and meeting budget requirements. Mr. Brown stated that in the past when the District is challenged on certain contracting issues, fault was found with the Board because it passed the resolution of authorization. Mr. Brown favored the PM process for all significant contracts in order to facilitate a better understanding by the Board for what it authorizes. Thus, the Board fully understands and can defend any decision or recommendation it makes.

Mr. Brown stated that the staff designed a program scope consistent to what was agreed upon by the Board for PM; however, it is important for the Board to fully understand what it is getting for its investment. He further stressed the importance of a transparent process from the consultant to the staff and to the Board about the milestones of the agreement and whether milestones are being met. Mr. Brown advised that this is a five (5) year commitment and the Board must familiarize itself with PM projects to assist in the resolution authorization process. Mr. Brown concluded by advising the Board that, in his opinion, PM is one of the most important decisions made by the Board in the next five (5) years.

Mayor Starr concurred with Mr. Brown's comments and principles. He requested the presentation include reasons as to why the District chose to implement PM and identify if this type of program was implemented in the past.

Executive Director Ciaccia informed Mayor Starr that a full PM presentation was given in a past Board meeting detailing why the District chose the method of program delivery.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 15 of 21

He advised that staff will re-address these points during its presentation. Executive Director Ciaccia stressed that PM could be a five (5) year engagement; however, staff will be requesting Board approval for the implementation of Phase 1 which is a six (6) month engagement.

Ms. Marshall advised Board members that she will be serving as the project manager on Phase 1, the assessment planning phase of PM. Ms. Marshall stated that her presentation will include the consultant evaluation and selection process used for PM, and the selection committee recommendation and reasons supporting the recommendation of CH2M Hill/Wade Trim (hereinafter "CH/WT") team for its project.

Ms. Marshall stated that the evaluation and selection process used to procure PM professional services is similar to the process used for the procurement of engineering services. Requests for Proposals (hereinafter "RFP") were issued to six (6) firms that performed PM services to other wastewater utilities. The District received three (3) additional requests to issue RFPs to McGinnis Unlimited, a local Women's Business Enterprise firm; Navigant, a business management firm from Pennsylvania; and Calfee requesting on behalf of a client. The District received two (2) proposals from CH/WT and Montgomery Watson. Ms. Marshall informed the Board that of the nine (9) firms that received the RFP, five (5) of those firms were on at least one of the proposing teams.

The firms were required to respond in writing to pre-interview questions developed by the selection committee upon review of the written proposals. Each firm received about thirty (30) questions. The responsive firms were required to participate in an interview including a one (1) hour presentation and a thirty (30) minute question and answer session. Furthermore, interviewees were required to respond in writing to post-interview questions, which were not incorporated due to time constraints, and each firm received approximately four (4) questions from the selection committee.

The evaluation included two (2) main steps: 1) General pass/fail requirements had to be met by each firm including Equal Employment Opportunity (hereinafter "EEO") requirements, 15% Minority Business Enterprise (hereinafter "MBE") and 5% Women Business Enterprise (hereinafter "WBE") goals, 80% local participation, and no conflicts of interest as prohibited by law; 2) The consultants were evaluated on five (5) weighted scoring criteria by the selection committee: staff experience, qualifications and commitment (25%), firm experience and past performance on similar projects (25%), method of accomplishing the scope of work (25%), quality of the written proposal (10%), and quality of the interview (15%). Selection committee members ranked the firm, giving them either a 9 or a 10 in each category.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 16 of 21

The selection committee was comprised of three (3) members from engineering, one (1) from District administration, one (1) from legal, one (1) from finance and one (1) from operations. IT staff provided valuable review, questioning and feedback during the process but was not a voting member.

Ms. Marshall stated that the evaluation and selection process yielded unanimous selection of the CH/WT team and the overall scores of each selection committee member was incorporated into the presentation handout.

Ms. Marshall outlined why the selection committee decided CH/WT team was most qualified to provide the District with PM services. CH specializes in PM and has been the top ranked PM firm by *Engineering News Record* for the fourth straight year.

The District's ten (10) year CIP will be wet-weather driven and its CSO Long-Term Control Plan program will consist of projects set forth under a Consent Decree, which mandates milestones and reporting. Ms. Marshall advised that CH/WT had extensive wet-weather experience including thirty (30) projects that were CSO Consent Decree driven. Furthermore, one-third (1/3) of CH/WT wet-weather experience and one-half (1/2) of its CSO Consent Decree experience was in Region V, and this regulator experience will be valuable to the District specifically in its ongoing CSO negotiations and eventual Consent Decree requirements. Furthermore, CH/WT's deep tunnel experience will be invaluable to the implementation of the District's CSO Long-Term Control Plan.

Ms. Marshall identified Mr. Tim O'Rourke from the Wade Trim team as the proposed Assistant Program Manager for PM and advised that he was involved with the development of the District's CSO Long-Term Control Plan as well as the Easterly and Southerly WTPs no feasible alternative analyses which are related to the Long-Term Control Plan. Mr. O'Rourke is also involved with the District's ongoing negotiations with the Department of Justice (hereinafter "DOJ").

Ms. Marshall indicated that CH/WT has extensive experience with the integrated approach to PM and the District is desirous of implementing an integrated PM program to assist with CIP delivery. Existing District staff is to be augmented and trained given the tools, processes and procedures for development of a self-sustaining program.

Ms. Marshall referenced an example of an integrated PM model implemented by CH. This project was for a seventeen (17) year Milwaukee CSO deep tunnel program worth \$2.3 billion and delivered one (1) year ahead of schedule. Ms. Marshall stated that CH also implemented an integrated approach for Iraq's first water and wastewater infrastructure program, which was ultimately transitioned to Iraqi staff. The project

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 17 of 21

manager for the project was Mr. John Barron who will also be CH's manager for the District's program.

Ms. Marshall stated that the selection team also recommended CH/WT because of its local presence. Together, the CH/WT team has over sixty-five (65) years of local service and commitment and local resources will be supplemented as necessary by state and national expertise to ensure an effective and efficient program.

Ms. Marshall stated that PM phase 1 is a six (6) month assessment and planning phase and staff will be requesting authorization to award a contract to CH/WT at the July 17th Board meeting. Phase 2 is the five (5) year project construction phase anticipated to commence in February 2009.

Mr. Brown inquired as to why only two (2) out of nine (9) firms responded to the PM RFP. Ms. Marshall explained that some of the firms such as WT and URS preferred being sub consultants. Malcom Pirnie Inc. (hereinafter "MPI") chose not to pursue the RFP because they were interested in upcoming design work.

Director of Engineering and Construction, Kellie Rotunno, added that the RFP precluded any firm from pursuing design work if their PM participation exceeded 10%. Executive Director Ciaccia added that this provision was included so that the program manager does not manage its own design projects, which is a conflict of interest.

Mr. Brown inquired if CH/WT had experience with PM engagements where there was a transition process to transition the program back to the agency at the end of the engagement, and whether there was a satisfactory outcome. He was interested in discovering whether other agencies sustained its PM program after being transitioned. Mr. Brown questioned if staff had an opportunity to complete a reference check.

Executive Director Ciaccia informed the Board that Mr. Barron and Mr. O'Rourke from CH/WT were present at the meeting to discuss any questions the Board may have. He then turned the discussion over to Ms. Rotunno to address Mr. Brown's questions. Ms. Rotunno stated that the selection committee was impressed with Mr. Barron's ability to transition a self-sustaining PM program in Iraq and he received a positive recommendation for his experience on that program. Ms. Rotunno advised that the City of Milwaukee was satisfied with CH's performance and Mr. Barron again received a positive recommendation.

Mr. Brown questioned if Mr. Barron will be PM's project manager and if he will be dedicated to the District's program to which Ms. Rotunno stated that Mr. Barron will be 100% committed to both Phase 1 and 2. Furthermore, Mr. Barron is willing to relocate to Cleveland with his family.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 18 of 21

Mr. Brown requested staff elaborate on innovative alternatives and enhancements to the scope of the program discussed previously. Ms. Rotunno explained that innovative alternatives include the phased approach to PM. In order to determine the most effective solution for implementation of the five (5) year program, every department within the District will be involved with assessment and development.

Mr. Sulik inquired as to what PM Phase 1 will be assessing. Ms. Marshall stated that there are two main tasks incorporated into Phase 1: 1) CIP management needs and assessment which includes resources assessment (people, process and procedures) and validation of the ten (10) year CIP program; and 2) Implementation of PM, performance metrics, subcontracting program evaluation and definition, CIP controls and reporting standards.

Mayor DePiero questioned how the fees will be calculated for PM services. Ms. Rotunno advised that fees will be calculated on an hourly basis wherein the firm will submit estimated hours for the scope of work defined. Mayor DePiero inquired as to the annual amount budgeted by the District for PM for 2008 and beyond. Ms. Demmerle stated that \$8 million was budgeted in the 2008 capital plan. Executive Director Ciaccia clarified that \$8 million was a placeholder, not knowing at that point what the actual resource gap was going to be. He stated that PM is an attempt to close a significant project delivery gap which was unknown until recently. Executive Director Ciaccia stated that the District has a better understanding as to the significance of the project delivery gap and indicated that PM Phase 1 will be substantially less than \$8 million.

Ms. Kelly questioned if staff is aware of the amount of the District's investment for PM Phase 1. Ms. Rotunno advised that the estimate cost of Phase 1 is between \$500,000 to \$1 million contingent upon the staff mix and actual scope of work. Ms. Rotunno referred to the past presentation of various PM models within the region, which estimated PM to cost between \$5 million and \$14 million annually contingent upon the percent of construction value. Ms. Rotunno advised that the five (5) year period will exceed the original amount of \$8 million earmarked for this program.

In order to obtain a better understanding of past procedures versus new approaches, Mr. Brown requested staff to inform the Board of any inefficient processes or project deliveries identified in the assessment. He is interested in discovering the most effective and cost efficient way of addressing gaps in services. Mr. Brown indicated his interests included the consultant's identification of projects to be implemented during Phase 2 and associated costs.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 19 of 21

Executive Director Ciaccia explained that staff fully intends to update the Board continuously on PM developments. PM will give staff and the Board an abundance of information pertaining to the District's ability to deliver projects efficiently, timely and holistically.

Mr. Brown indicated that his primary concern is ensuring that the scope of the program and outcome actually coincide with the original plan for PM. Mr. Brown requested staff ensure that, in accordance with the RFP, the consultant is in compliance with the goal of 80% local business participation.

Ms. Kelly requested that the consultants be introduced to the Board. Executive Director Ciaccia introduced both consultants, Mr. Barron and Mr. O'Rourke, to the Board.

In response to Mr. Brown's previous comment regarding Board responsibility for assuring the District meets expected outcomes at the end of the process, Executive Director Ciaccia stated that he will never hide behind the fact that the Board approved something. He stated that if the Board approves something it is because he brought it to the Board and sold the Board on approving it. Before matters are brought to the Board for consideration and approval, Executive Director Ciaccia assured the Board that he and District staff will have done their due diligence upfront in order to bring good recommendations.

In response to Executive Director Ciaccia's comments, Mr. Brown indicated that his comments are based on past experience and too often the Board relied on the recommendations by former Executive Director and District staff without truly understanding and challenging the issues. He stressed that not all decisions and outcomes were negative, but he felt the Board should have a better understanding of business proposals and become more hands-on in the processes.

Executive Director Ciaccia showed his appreciation for the Board's involvement since he joined the District. He informed Board members that his full team of senior staff was present at the meeting for the first time since he joined the District and indicated that it has been a real pleasure working with each one.

Mayor Starr asked when PM was first established. Executive Director Ciaccia stated it has been around for decades. Ms. Rotunno added that PM was invented by the U.S. government as an efficient way to conduct business. Executive Director Ciaccia stated that during his tenure at the Cleveland Water Department, a \$750 million plant enhancement program was overseen by a PM consultant and it was successful.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 20 of 21

Mayor Starr questioned if this is a better way of doing business. Executive Director Ciaccia indicated that from the District's standpoint it is a better way, especially as it relates to project delivery.

Mayor Starr questioned if PM is being utilized to reestablish the credibility of future District procurement processes in light of the fact that the District plans to spend two and a half billion dollars over the next 20 to 30 years contingent upon EPA negotiations. Executive Director Ciaccia affirmed.

Mayor Starr questioned if PM savings could be quantified so the Board can determine the program's success. Executive Director Ciaccia assured the Board that deliverables, milestones and metrics will be established to assist in gauging PM success. Executive Director Ciaccia stated that the Board will receive monthly PM reports that will be used for discussion which will identify metrics needed to gauge each project's overall success, how the consultant is doing, and how we are doing overall.

Mr. Brown stated that his greatest concern is project delivery and meeting set time lines for deliverables. He indicated that deferring projects two (2) or three (3) years because of the District's inability to manage these programs properly is a greater expense to the District due to increased costs of construction materials. Mr. Brown was encouraged by the ability to transfer PM knowledge to District staff with the outcome of obtaining a self-sustaining program. He stated that PM will be beneficial to the ratepayers indefinitely.

Ms. Rotunno added that PM is an opportunity to move forward quickly on numerous projects. PM consultants will alleviate the District from overstaffing for development of this program. The District will also benefit by obtaining new tools for program delivery.

Ms. Kelly stated that the phased approach was selected to enable staff and PM consultants to identify key performance indicators to facilitate with gauging the program's success. As the District transitions into Phase 2, the phased approach allows for creativity with contracting and consultant's fees based on performance indicators.

VIII. Open Session (no items on agenda)

IX. Public Session

Executive Director Ciaccia stated that Mr. Norman Edwards signed out and was no longer in attendance to speak at Public Session.

BOARD OF TRUSTEES

Regular Meeting

July 3, 2008

Page 21 of 21

X. Executive Session

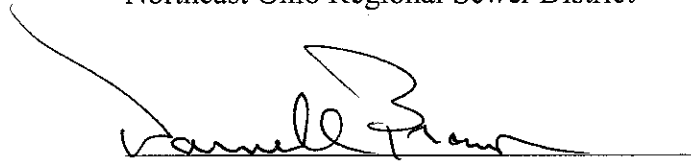
Mr. Brown indicated there were no items for discussion at Executive Session.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 2:34 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