

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
AUGUST 7, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:35 p.m. by Mr. Brown.

I. Roll Call

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

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

**MOTION** – Ms. Kelly moved and Mr. Liberatore seconded that the minutes of the July 17, 2008 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Mr. Brown inquired if any members from the public were registered to speak at the meeting. Executive Director Ciaccia advised that Mr. Rick Thomas from Comfort Systems USA, Inc. registered to speak at the meeting regarding agenda action item Resolution No. 186-08 recommending the award for heating, ventilation, air conditioning and refrigeration (hereinafter “HVAC”) systems at all District facilities.

Mr. Brown asked Mr. Thomas to come forward and address the board and Mr. Thomas thanked the Board for allowing him to comment. Mr. Thomas stated that Comfort Systems USA, Inc. was the lowest bidder for the District’s HVAC contract. He indicated that there were multiple written communications between the District and Comfort Systems USA, Inc. Mr. Thomas stated that Comfort Systems USA, Inc. visited all District facilities, as required by the bid specifications, to review all HVAC equipment to

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be maintained and serviced. He indicated that Comfort Systems USA, Inc. provided the District with customer references and contacts in support of its qualifications as an HVAC contractor. Comfort Systems USA, Inc. is a billion dollar national corporation qualified to provide its services to the District. Mr. Thomas considered the bid of Comfort Systems USA, Inc. to be responsive to District bid specifications.

Mr. Thomas explained that bidders were required to provide licenses for the aforementioned services, and at the time of the bid proposal, Comfort Systems USA, Inc. indicated it would submit its licensure prior to the contract being awarded in which they have complied. Issues arose with the bid from Comfort Systems USA, Inc. because they did not provide a State of Ohio refrigeration contractor license. In discussions held with the State of Ohio, Mr. Thomas stated that a State of Ohio refrigeration contractor is a specialty trade designated for the food industry, and in his opinion, this license is not applicable to the contract. Mr. Thomas stated that Comfort Systems USA, Inc. did provide a State of Ohio HVAC contractor license, which covers all mechanical services on heating, ventilation and air conditioning equipment. Comfort Systems USA, Inc. also provided its registrations with the City of Cleveland. Mr. Thomas stated that Comfort Systems USA, Inc.'s position is that they were the lowest, most responsive bidder on this project and that the Board should take this into consideration.

Mr. Brown thanked Mr. Thomas and requested that Executive Director Ciaccia address Mr. Thomas's concern regarding the bid specifications requirements and need for a refrigeration contractor's license for this contract.

Executive Director Ciaccia stated that Mr. Thomas accurately expressed the tenor of the conversations held between the District and Comfort Systems USA, Inc. At first, the District rejected the bid of Comfort Systems USA, Inc. because licenses were not submitted at the time of the bid. The Law Department reviewed the bid language and it was determined to have a certain ambiguity. The District decided to give the contractor the benefit of the doubt and Executive Director Ciaccia was prepared to hold the District's HVAC recommendation resolution until the next Board meeting. Prior to holding the resolution, however, the District became aware that Comfort Systems USA, Inc. did not have a State of Ohio refrigeration contractor's license. Executive Director Ciaccia addressed this concern with staff and the claim of the contractor that refrigeration licenses are generally used for the food industry. The District has two (2) large refrigeration units at its Environmental Maintenance and Services Center (EMSC) for laboratory purposes that have to be maintained as a part of this contract. This was the basis for the bid specifications requiring a refrigeration contractor's license. Executive Director Ciaccia explained that this was a valid bid requirement and that he cannot recommend awarding the contract to Comfort Systems USA, Inc. because they did not meet the bid specifications requirements. Other bidders did meet the bid specifications requirements and it would be unfair to make an exception to Comfort Systems USA, Inc.

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in this regard. Executive Director Ciaccia stated that the District will move forward with its recommendation in accordance with Resolution No. 186-08 on the agenda's action items.

The District's HVAC/R contract expires on August 31, 2008 and it is necessary to provide for these repairs and maintenance services. It would be an option to reject all bids and rebid this contract, but the current contract would lapse due to the timeframe. Executive Director Ciaccia stated that this would also require changes to the bid specifications, and he does not agree with the need to make any modifications.

Ms. Kelly questioned if it has been past practice to require the State of Ohio refrigeration contractor's license. Executive Director Ciaccia affirmed.

Mayor Starr questioned if the remaining six (6) bidders submitted all proper licenses. Executive Director Ciaccia stated that four (4) of the seven (7) bidders did submit proper licenses.

Mayor Starr requested the names of the three (3) companies that did not submit proper licenses. Executive Director Ciaccia stated that he did not have that information with him. Mayor Starr questioned if Roth Brothers, Inc., the company being recommended to receive the award for this contract, submitted all proper licensure. Executive Director Ciaccia affirmed and indicated that Roth Brothers, Inc. submitted all proper licenses with its bid, as required under the bid specifications.

Mayor Starr inquired if the District has an internal department that could handle its HVAC repair and maintenance services, and Director of Operations and Maintenance Dave McNeeley stated that the District does not.

#### IV. Board President's Committee Appointments

Mr. Brown stated that in accordance with the Bylaws, three (3) standing committees remain: the Audit Committee, Finance Committee and Governance Committee. Mr. Brown stressed the importance of continuing with this work and stated that the aforementioned committees should include three (3) Board members and will meet on an as needed basis throughout the year.

Mr. Brown recommended Mayor DePiero, Mr. Liberatore and Mayor Starr for the Audit Committee, which is expected to meet quarterly to review policies, audit plans and reports, study the risk profile of the District and review existing controls.

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Mr. Brown recommended Ms. Kelly, Mr. Sulik and himself for the Finance Committee, which is expected to meet quarterly to review budget reports, policy updates and bond decisions.

Mr. Brown recommended Mayor DePiero, Mayor Longo and himself for the Governance Committee, which is expected to meet monthly and then eventually quarterly to review court order related issues, recommend Bylaws updates and review and recommend any governance updates.

Mr. Brown encouraged any interested Board members to attend committee meetings and indicated that public notice will be issued for these meetings.

### V. Executive Director's Report

Executive Director Ciaccia advised the Board that there were five (5) matters for discussion in his report. The first issue was Combined Sewer Overflows (hereinafter "CSO") and the District's ongoing negotiations with the federal government.

Executive Director Ciaccia stated that the City of Columbus has reached an agreement with the State of Ohio concerning its Long-Term Control Plan (hereinafter "LTCP") for CSO and Sanitary Sewer Overflows (hereinafter "SSO"). Executive Director Ciaccia advised that the City of Columbus's CSO LTCP is approximately \$700 million over a twenty (20) year period, with an additional twenty (20) years to address SSO issues. This is important to the District because the State of Ohio set its limit for CSO LTCP at twenty (20) years as opposed to the District's requested thirty (30) year plan. Furthermore, the District's negotiations include the State of Ohio and the federal government and the District is unsure if the federal government plans to involve itself with negotiations between the State of Ohio and the City of Columbus. The City of Columbus has agreed to high rate treatment on its CSO wet weather facilities, which is of major significance to the District because as negotiations continue, the federal government is leaning towards high rate treatment for CSOs for the District, which will result in high costs. The District will continue to analyze the City of Columbus's CSO LTCP and SSO plan as it proceeds with negotiation with the State of Ohio and the federal government.

Executive Director Ciaccia advised that the staff will be meeting twice a month with the Ohio EPA and federal government regarding its CSO LTCP and held a conference call on August 6, 2008 to discuss the Euclid Creek Storage Tunnel (hereinafter "ECT") project and the dewatering pump station at Easterly. Progress is being made; however, the District will incur significant costs as it pertains to the high rate treatment for its CSOs.

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Executive Director Ciaccia informed the Board that Senators George Voinovich and Sherrod Brown introduced a bill on August 4, 2008 that will require the EPA to modify the affordability guidance that EPA has used since 1997. The current guidance focuses on median household income. Senators Voinovich and Brown's bill places more emphasis on local poverty statistics, housing costs, utility expenses and impacts on the economy. The bill also includes \$1.8 billion over five (5) years for financially troubled cities for planning, design and structural updates for aging sanitary sewer infrastructure. Deputy Director of Law Lisa Hollander provided comments on the legislation and the District's previous visit to Washington D.C. that included Mayor Starr and Ms. Kelly proved to be influential as well. Executive Director Ciaccia stated that he is unsure whether this will prove to be successful, but the bill is pending which may require lobbying efforts by the District. The bill will not eliminate the need for CSO mitigation nor will it result in a reduction of costs for the total CSO LTCP, but the District may receive some financial relief such as grant monies.

Mayor Starr requested the identification of cities, aside from Columbus and Akron, which are on a twenty (20) year CSO LTCP schedule. Director of Watershed Programs, Frank Greenland, advised that the City of Columbus is on a twenty (20) year CSO LTCP. The City of Akron's CSO LTCP is currently being reviewed by federal and State of Ohio authorities and there is no schedule at this time. The City of Cincinnati had an interim consent decree which placed them on an eighteen (18) year schedule to construct approximately \$1.6 billion of wet weather improvements including CSO. The interim consent decree authorized the City to prepare its CSO LTCP and if the costs exceed \$1.6 billion, then the court will address the possibility of extending its CSO schedule.

Mayor Starr stated that the District has publicly discussed annual rate increases of 15% to 20% between 2011 and 2016. He inquired if these rate increases were based on a twenty (20) or thirty (30) year schedule, wherein Executive Director Ciaccia advised it is based on a twenty (20) year schedule. Although there may be a slight cost difference with the thirty (30) year schedule, increased construction costs will need to be considered over a longer timeline. Deputy Director Michael Bucci added that the twenty (20) year plan will result in higher rates more quickly at approximately 15%, whereas the thirty (30) year plan results in initially lower rate increases.

Mayor Starr was under the impression that if the District was able to stretch its CSO LTCP timeline, it would result in lower cost increases to the ratepayers for the correction of any CSO and SSO issues. Executive Director Ciaccia stated that although it may seem more affordable to ratepayers if the District stretched its timeline, the costs incurred will actually be the same or more if the District followed the thirty (30) year plan. Mr. Bucci explained that it is similar to a house note in which a thirty (30) year mortgage results in lower payments over a longer period of time.

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Mayor Starr questioned if affordability issues will factor into the District's CSO LTCP timeline. Executive Director Ciaccia stated that the affordability issues are being discussed during negotiations and the District and government exchanged a lot of information pertaining to this matter. He explained that passage of the proposed house bill will help the District with its negotiations.

Mr. Brown questioned if additional due diligence will be required with local delegations to ensure support of the proposed house bill. He stated that the main issue is whether an entity has the ability to afford utility costs. Mr. Brown commented that it was irrelevant whether a community was rated number 1, 6, 12 or 20 in poverty, but if the District was not an affordability case, who is? Executive Director Ciaccia confirmed that the District will develop its lobbying strategies for this bill.

Mayor Longo requested clarification of the Franklin County agreement and the duration of its CSO/SSO LTCP. Mr. Greenland stated that it spans over a period of forty (40) years. Mr. Greenland explained Franklin County has twenty (20) years from a previous consent decree to address CSO and treatment plant issues. An additional twenty (20) years, forty (40) years in total, was agreed upon to address SSO issues. In 2016, the City of Columbus is required to revisit its affordability analysis and propose a new schedule in an attempt to expedite the forty (40) year timeline.

Mr. Brown had two comments regarding the geographic footprint of urban centers that have CSO systems similar to the City of Cleveland. The first issue is the required level of construction. The second issue is the ability for major cities within the state to have capacity to construct these facilities simultaneously while remaining on schedule. Mr. Brown stated that these issues should be brought up by the District as it continues with Ohio EPA and federal government negotiations.

In response to Mr. Brown's concerns, Mr. Greenland advised that the District had these discussions previously and that these issues will most likely be revisited during affordability negotiations.

Executive Director Ciaccia moved to the next report item regarding the District's meeting with representatives for the East Bank Flats (hereinafter "Flats") project. The Board passed a resolution in September 2007 authorizing the District to apply \$8 million towards the infrastructure for said project with the intent of offsetting its CSO LTCP costs. The Flats project scope was to include separate stormwater and sanitary systems, but has since been modified. Executive Director Ciaccia advised that some of the older buildings being renovated at the site cannot accommodate the proposed separate system, and that the design plans will need to be modified. The pump station will need to be upsized and the Flats East Bank Development Corporation (hereinafter "FED") has received an economic shortfall as it relates to the sewer infrastructure being installed.

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Executive Director Ciaccia advised that the FED met with the District to explain the issues and it is understandable why the Flats project will not be able to accommodate the initial design plan. Executive Director Ciaccia stated that the design and engineering contract, from an economic perspective, was a good deal and the bids taken were legitimate. Executive Director Ciaccia stated that he advised the FED that he would apprise the Board as to the project hurdles, but at this point the District has committed to allotting only \$8 million.

Executive Director Ciaccia stated that the District will own the Flats' infrastructure due to the combined stormwater and sanitary system resulting in recurring operating costs. Executive Director Ciaccia advised that his intention was to inform the Board about the Flats project and that he will continue to update them on any issues.

Mr. Brown stated that the City of Cleveland has not yet met with FED regarding the issues brought forth by Executive Director Ciaccia. In order to reach a better understanding, he recommended the District, City of Cleveland and FED meet to discuss the scope of the Flats project. Mr. Brown advised that he was under the impression that new streets and construction would have separate storm and sanitary systems. The anticipated challenges are maintaining existing structures in which sanitary and stormwater systems cannot be separated due to the existing plumbing and the need to accommodate separate stormwater and sanitary systems. Mr. Brown stated that as far as owning and operating these stormwater and sanitary systems, the City of Cleveland should remain the local collector system and the pump station operator will need to be addressed between the District and City of Cleveland. Mr. Brown stated the City of Cleveland also understands the project issues and the need for creating a hybrid model which will result in higher costs; however, the District has made its financial commitment and additional costs should be considered by the FED first.

Mayor Starr questioned who the developer is for the Flats project. Executive Director Ciaccia replied that the developer is Scott Wolstein of the Wolstein Group.

Mayor Starr questioned the amount of the shortfall. Executive Director Ciaccia advised that this is currently being analyzed, but the District was initially approached with the shortfall amount of \$3.9 million less certain grant monies they received. Executive Director Ciaccia estimated that the total would be approximately \$2 million.

Mayor Starr questioned if, from an engineering standpoint, it would be physically impossible to build a separate stormwater and sanitary system. Executive Director Ciaccia stated that it is not physically impossible, but could become very costly. Mr. Brown explained that this would require internal improvement to existing remaining buildings making it cost prohibitive.

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Mayor Starr stated that the District is spending billions of dollars to separate its CSO issue. He questioned if the EPA would approve the combined sewer. Mr. Greenland stated that the District's strategy has never been to completely separate all stormwater and sanitary systems, and that partial separation will be implemented where it can be supported. Mr. Greenland added that stormwater management will also be an effective tool to deal with quality issues.

Mayor Starr questioned if a "mixed brew" will continue to be sent to the District for treatment at its facilities. Mr. Greenland affirmed that some combined sewage will continue to be treated at the plants.

Executive Director Ciaccia added that the FED did receive its permit to install, approved by the Ohio EPA.

Ms. Kelly requested staff to inform the Board of the amount expended by the District thus far for the Flats project. Director of Finance, Jennifer Demmerle, advised that the District invested \$500 thousand and an additional \$300 thousand is still outstanding for design work completed by Wade Trim, therefore, a total of \$800 thousand of the \$8 million has been committed by the District for said project. Ms. Demmerle stated that it is operated on a reimbursement basis.

Ms. Kelly questioned when the District will be made aware of the actual amount of the economic shortfall. Executive Director Ciaccia stated that he assigned the Director of Engineering and Construction, Kellie Rotunno, to this task, but he is sure the amount of \$2 million, mentioned in the earlier discussion, will be the actual amount of the economic shortfall.

Executive Director Ciaccia stated that he is struggling with the philosophical issues as it relates to the request of an additional \$2 million from the District. Executive Director Ciaccia stated that he understands why the Flats project costs will increase, but the District has already committed to \$8 million, and he is not ready to make a recommendation to the Board for additional money, at this time.

Executive Director Ciaccia moved to his next report item regarding the District's Strategic Plan. He informed the Board that a presentation will be made by staff at the August 21, 2008 Board meeting. Staff will present six (6) goals with eighteen (18) strategic initiatives for Board consideration. Different metrics have been outlined associated with the Strategic Plan, and programs will be developed supporting these metrics. There will be an assignment of leaders and schedules. Costs to implement the programs will be incorporated into the 2009 financial budget.



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Executive Director Ciaccia thanked the team of URS, which helped facilitate the staff through the process of preparing its Strategic Plan. Executive Director Ciaccia stated that he feels the process will be beneficial and is looking forward to receiving the Board's feedback following the presentation.

Executive Director Ciaccia moved to his next report item regarding an impromptu visit by Mayor Don Plusquellic and Service Director, Rick Merolla, of the City of Akron. Mayor Plusquellic and Mr. Merolla met with Executive Director Ciaccia and Mr. Bucci regarding the City of Akron placing its sewer system for lease. The proceeds of the lease will be used to establish a scholarship fund for Akron students.

Mr. Brown questioned if there were any interested prospects. Mayor Longo questioned if Executive Director Ciaccia was recommending the District purchase the sewer system in which Executive Director Ciaccia replied, "no". Executive Director Ciaccia stated that Mayor Plusquellic received some concerns from his community regarding the City's sale proposal, and that the City of Akron has now decided to rethink the sale proposition and move towards a possible leasing option. Mr. Brown requested clarification as to what Mayor Plusquellic's proposal entailed. Executive Director Ciaccia stated that he has not yet seen the City's request for proposal (hereinafter "RFP").

Executive Director Ciaccia suggested the District consider pursuing, at a minimum, gathering of information because the City of Akron is located at the headwaters of the Cuyahoga River, and from a stormwater management standpoint, there may be possible opportunity for the District. Executive Director Ciaccia stated that he is interested in engaging the City of Akron on its proposition without spending a lot of money, and that he did want to apprise the Board of his desires prior to moving forward with further discussions.

Mr. Brown was concerned that the City of Akron is another large entity being required by the federal government to comply with a CSO LTCP which ultimately costs a significant amount of money. Executive Director Ciaccia agreed with Mr. Brown and stated that CSO LTCP would be a significant factor. Furthermore, Mayor Plusquellic is desirous of placing rate caps as a lease stipulation. Consequently, the rate caps will inhibit the Lessee's ability to obtain the necessary funding in order to comply with the federal government's requirement of a CSO LTCP. Mr. Brown was unclear as to how leasing the City of Akron's sewer plant would be beneficial to the District.

Mayor Starr stated that the District's assets are its three (3) sewage treatment plants, and was unclear as to how the City of Akron will connect to the District's facilities. Executive Director Ciaccia stated that there would be no physical connection, but that the Mayor's preference was to lease and operate the City's system to a public entity.

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Executive Director Ciaccia stated that this would be a significant financial commitment, and that Mayor Plusquellic's proposal includes a large amount of money for a scholarship program benefitting Akron students. Executive Director Ciaccia stated that he advised Mayor Plusquellic that if the District were to consider this proposal, it is interested in members of this region benefitting as well.

Executive Director Ciaccia advised the Board that the District is desirous of continuing communication with the officials of the City of Akron so that it may provide a formal response.

Mayor Starr questioned if the City of Akron wants to turn its sewer system including the benefits and burdens over to the District. Executive Director Ciaccia concurred.

Mr. Brown requested the District complete its due diligence and return to the Board with its findings. Executive Director Ciaccia indicated that he would.

Executive Director Ciaccia moved to his last report item and thanked Board members for their support and hard work since he joined the District over nine (9) months ago. He stated that the interfacing between the Board and staff has always been respectful and Executive Director Ciaccia stated that he appreciated that. Change has been constant and communication between the Board and District staff has become more open. Executive Director Ciaccia stated that the Board meeting minutes have become very significant giving the reader a greater sense of the discussions held at each meeting. Furthermore, Executive Director Ciaccia stated that the Board and staff embrace diversity and feel it is of the utmost importance by senior staff and throughout the entire organization.

Executive Director Ciaccia stated that he wanted to clarify comments made at the July 17<sup>th</sup> Board meeting by Mr. Norman Edwards of the Black Contractors Group, Inc. which were reflected in the meeting minutes. Executive Director Ciaccia wanted to address subsequent correspondence received from Mr. Edwards as well.

Executive Director Ciaccia stated for the record that there was no indication that the Black Contractors Group is incorporated under the Secretary of State of the State of Ohio.

The Director of Administration and External Affairs, Constance Haqq, and Executive Director Ciaccia had a meeting with Mr. Edwards, which was initiated by the District. Consequently, Mr. Edwards attended the July 17<sup>th</sup> Board meeting and made statements at public session which were reflected in the meeting minutes. Mr. Edwards sent correspondence which included his subcontracting desires in which the District responded. The District received copies of recent letters from Mr. Edwards addressed to Cuyahoga County wherein he was objecting to Ozanne Construction's involvement on a

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County project. Mr. Edwards sent correspondence objecting to the District hiring certain individuals. Furthermore, Mr. Edwards has talked with Ms. Haqq and Executive Director Ciaccia and left several voice mail messages as well.

In response to the July 17<sup>th</sup> Board meeting minutes, Executive Director Ciaccia wanted to address a few statements. Executive Director Ciaccia referenced a comment on page three (3) of the minutes which reflected a remark made by Mr. Edwards. Mr. Edwards alleged that former General Counsel, Bill Schatz, did not allow him to speak at public meetings. Executive Director Ciaccia stated that there is not any indication that Mr. Schatz, or any District representative prevented Mr. Edwards from speaking in a public forum. Mr. Edwards may have received a letter as to the protocol for speaking at a Board meeting, but he was not forbidden from doing so.

Mr. Edwards stated that 90% of District contracts were awarded to KMM&K, Independence Excavating and Nerone and Sons. Executive Director Ciaccia researched the District's contracts for the past fifteen (15) years and discovered that out of one hundred and sixty-six (166) projects, these three (3) firms accounted for thirty-four (34) of the projects or 20.4%. Nerone and Sons received a total of 12.6%. KMM&K was awarded 6%. Independence Excavating was awarded three contracts since 1993 or 1%.

Mr. Edwards indicated that he filed a lawsuit against MetroHealth Center concerning a Project Labor Agreement (hereinafter "PLA") and that the court ruled in his favor. Executive Director Ciaccia confirmed that a case referenced by Mr. Edwards was filed in federal court and that the case was subsequently dismissed by the court. An appeal was filed and subsequently dismissed in the Federal Court of Appeals.

Executive Director Ciaccia made reference to Mr. Edwards' comments on page three (3) regarding the District's Granger Road project. Executive Director Ciaccia stated that the District did not have project on Granger Road, but there was a construction trailer site on Granger Road for the Mill Creek Tunnel project. This site was provided to the District by KMM&K as a location to park its construction trailer. In addition, the construction trailer site allowed for other vehicles with no relation to the Mill Creek Tunnel project to park there as well. Therefore, the idle trucks that Mr. Edwards made reference to were not related to any District projects.

Executive Director Ciaccia addressed Mr. Edwards' comment regarding the District "buying out Bill Schatz." When Mr. Schatz retired, the Board authorized the District to pay Mr. Schatz up to \$50,000 should the District require his services. Thus far, Mr. Schatz has not received any payment from the District. After nine (9) months into his tenure with the District, Executive Director Ciaccia does not anticipate that Mr. Schatz's services will ever be required in any way.

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Executive Director Ciaccia addressed the comments made by Mr. Edwards regarding Mr. Brown which were also reflected in the July 17<sup>th</sup> meeting minutes. Executive Director Ciaccia stated that he had the opportunity to work with Mr. Brown for most of his public service career. They were fellow commissioners at the City of Cleveland in the utilities department, and each fought to reach and exceed the City's subcontracting goals. Mr. Brown and Executive Director Ciaccia have stressed the importance of diversity especially in crafting the subcontracting program. Therefore, Executive Director Ciaccia stated that he found Mr. Edwards' comments to be "hollow and without basis".

Executive Director Ciaccia stated that the District received written correspondence from Mr. Edwards with regard to Ozanne Construction. Ozanne Construction has not been awarded any District contracts, but was listed as a subcontractor on Montgomery Watson's proposal for program management (hereinafter "PM") services. Montgomery Watson was not awarded the project; therefore, the correspondence concerning Ozanne Construction is irrelevant.

Executive Director Ciaccia continued by stating that, while employed by the City of Cleveland, he had the opportunity to meet Leroy Ozanne who was a "great guy". He created a credible company before subcontracting programs, goals and initiatives were established. Executive Director Ciaccia stated that Mr. Ozanne's son stayed true to his father's objectives, and felt the District should defend, on record, individuals that have done well in the community.

Executive Director Ciaccia stated that recent correspondence was received from Mr. Edwards demanding that Executive Director Ciaccia and Ms. Haqq be terminated due to hiring Tiffany Jordan, a former Contract Compliance Officer for Cuyahoga County, as the new Contract Compliance Manager for the District. Executive Director Ciaccia introduced Ms. Jordan and stated that she was one (1) of ten (10) applicants who applied and completed the interview process, and Ms. Jordan's credentials made her a qualified candidate for the position. Executive Director Ciaccia stated that, in his possession, is a tape recording of the County Commissioners' June 19<sup>th</sup> Board meeting wherein Mr. Edwards indicated that the County was doing a good job on the monitoring of the Juvenile Justice Center and that he likes what he sees there. Executive Director Ciaccia was unsure as to why Mr. Edwards suddenly questioned Ms. Jordan's credibility after complimenting the County on its program.

Executive Director Ciaccia stated that he received a phone call from Mr. Edwards to discuss various subcontracting programs. Mr. Edwards stated that the Chicago Water Reclamation District, the District's sister agency in Chicago, has an absolute requirement that there be 30% minorities on every job site. At the time, Executive Director Ciaccia stated he questioned the accuracy of this information, and Mr. Edwards stated that 'it is absolute', and referred to himself, in a telephone message, as a 'diversity expert'.

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Executive Director Ciaccia contacted Dick Lanyon, Executive Director of the Chicago Reclamation District, and he advised that Chicago tailors its subcontracting goals on a per project basis similar to the District's current MBE/WBE program.

Executive Director Ciaccia stated that Mr. Edwards closed the telephone discussion by declaring that he believes there will be 'violence in Cleveland'. Executive Director Ciaccia stated that he did not believe this to be a personal threat, but rather a general statement of what Mr. Edwards assumes will happen. Executive Director Ciaccia was unsure if Mr. Edwards was trying to intimidate him and advised him that he did not take his comment lightly.

Executive Director Ciaccia stated that he brought these issues to the Board for two (2) reasons. First, he wanted the record to reflect the District's responses to Mr. Edwards' comments. Secondly, Executive Director Ciaccia expressed that, with the Board's consent, he would prefer not having himself or District staff continue communications with Mr. Edwards any longer because these discussions have proven to be counterproductive.

Mayor Starr commended Executive Director Ciaccia on his eloquent response. He stated that government officials have critics that appear at public meetings and write letters to the editor and that their alleged claims may or may not be true. Mayor Starr stated that the Board, an overseer of the District, has to determine what information is valid and the credibility of the individual making the allegations.

Mayor Starr asked Executive Director Ciaccia if he agreed with any of Mr. Edwards' allegations. Executive Director Ciaccia stated that he agreed with certain points and those are clearly reflected in the July 17<sup>th</sup> Board meeting minutes.

Mayor Starr pointed out Mr. Edwards' allegations regarding the District's lack of enforcement of its MBE/WBE program and stated that he may have had a legitimate point. Executive Director Ciaccia stated that he, himself, raised this issue at the July 17<sup>th</sup> Board meeting.

Mayor Starr questioned if the District wanted to address the issue of front companies and no work performed. Executive Director Ciaccia stated that the District continues to research this issue and that, as part of the audit process, a meeting was held to discuss one particular instance. Executive Director Ciaccia stated that the issues he raised regarding pass-through and front companies are not unique to the District.

Ms. Kelly thanked Executive Director Ciaccia for rebutting Mr. Edwards' comments and providing the Board with concrete information addressing his allegations. Ms. Kelly showed her appreciation to Executive Director Ciaccia for defending Mr. Brown. She

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empathized with Mr. Edwards and understands that he may have experienced some discriminatory practices; however, the District is working to remedy these problems. Ms. Kelly agreed that the District should be held accountable for its future performances as it continues to move forward with implementation of direct and positive programs designed to correct these issues. Ms. Kelly agreed with Executive Director Ciaccia and stated that, "at this point it would be counterproductive to continue any future communication with Mr. [Edwards] at this time." Ms. Kelly stated that Mr. Edwards should monitor the progress that will be made by the District as the new program is developed.

Mr. Brown agreed with his colleagues and stated that they spoke eloquently about the due diligence conducted by the District. He agreed that it is important for the Board to have context concerning its actions taken. Mr. Brown stated that the District should not be concerned with allegations deemed unfounded. Mr. Brown stated that the District has recognized its shortcomings as it pertains to collecting data for its subcontracting program and is working to remedy the situation. Mr. Brown stated that at the close of the July 17<sup>th</sup> Board meeting he advised Mr. Edwards to hold the District accountable for its future performances.

Mr. Brown stated that he did not challenge Mr. Edwards on the issues he raised, but that the Board and staff are willing to address these issues and cannot "work with innuendo and lies." Mr. Brown stated that he appreciated the position the Board is taking, felt closure with this topic and wanted to continue focusing on the steps needed to implement the District's program.

Mayor Longo commended Executive Director Ciaccia for addressing Mr. Edwards' comments. He was impressed with how Mr. Brown conducted himself at the July 17<sup>th</sup> Board meeting while Mr. Edwards confronted him. Mayor Longo stated that if Mr. Edwards had documentation supporting his allegations, then this information should have been presented to the Board for review. The meeting minutes document the discussions held and since Executive Director Ciaccia addressed these allegations in a public forum, members from the public wanting to refute his claims can do so during open session. Mayor Longo concurred with Mr. Brown and agreed that it is time to move on. Executive Director Ciaccia agreed as well and stated that it is time to "move forward instead of dwelling on the past," and that the District has its hands full with pending investigations and lawsuits.

VI. Consent Agenda

Sewer Use Code Matters

No discussion ensued on Resolution Nos. 182-08 and 183-08.

**Resolution No. 182-08**

**Authorizing SSCBOUTS Application No. 1348 for Pioneer Manufacturing, 4529 Industrial Parkway, Cleveland, Ohio 44135, referenced account #01-382-962-007. Estimated savings to customer is \$4,522.00.**

**Resolution No. 183-08**

**Water Leak Adjustment Request Review – application of Council Gardens. Estimated savings to customer is \$174.11.**

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 182-08 and 183-08. Without objection, the motion carried unanimously.

VII. Action Items

Authorization to Advertise for Bids

No discussion ensued on Resolution Nos. 184-08 and 185-08.

**Resolution No. 184-08**

**Three (3) year requirement contract for Substation Preventative Maintenance and Repair at all District facilities and the Environmental and Maintenance Services Center (EMSC). Estimated expenditure is \$975,000.00 (over a three [3] year period).**

**Resolution No. 185-08**

**Spring and Jennings Roads Stormwater Outlet Replacement contract for the replacement of a part of the Spring-Jennings automated regulator. Engineer's estimate is \$530,000.00.**

**MOTION** – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution Nos. 184-08 and 185-08. Without objection, the motion carried unanimously.

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Authorization to Award

No discussion ensued on Resolution Nos. 186-08 and 187-08.

**Resolution No. 186-08**

**Two (2) year requirement contract for the maintenance and repair services for the heating, ventilation, air conditioning and refrigeration systems at all District facilities to Roth Brothers, Inc. Cost is \$334,964.00.**

**Resolution No. 187-08**

**Spring and Jennings Roads Stormwater Outlet Replacement contract for engineering services during construction to Arcadis. Cost not to exceed \$107,200.00.**

**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded to adopt Resolution Nos. 186-08 and 187-08. Without objection, the motion carried unanimously.

Authorization to Issue RFP

No discussion ensued on Resolution No. 188-08.

**Resolution No. 188-08**

**Easterly facilities plan improvements, screenings conveyor replacement and grit removal rehabilitation.**

**MOTION** – Ms. Kelly moved and Mr. Liberatore seconded to adopt Resolution No. 188-08. Without objection, the motion carried unanimously.

Authorization to Accept Option Year

No discussion ensued on Resolution No. 189-08.

**Resolution No. 189-08**

**To continue the maintenance and repair services agreement for stand-by generator maintenance systems at all District facilities with Ohio Caterpillar. Cost not to exceed \$324,844.00.**

**MOTION** – Mr. Liberatore moved and Mayor Starr seconded to adopt Resolution No. 189-08. Without objection, the motion carried unanimously.



Authorization of Contract Modification and Close-Out Deduct

No discussion ensued on Resolution No. 190-08.

**Resolution No. 190-08**

**Southerly Early Action projects – Contract SEA-2C. Cost decrease of \$159,159.30, bringing the total not-to-exceed contract amount to \$4,195,640.70.**

**MOTION** – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution No. 190-08. Without objection, the motion carried unanimously.

Authorization to Amend Resolution

**Resolution No. 191-08**

**Amending Resolution No. 227-84, Salary Reduction Pick-Up Plan for the Ohio Public Employees Retirement System (OPERS).**

Mayor Starr requested further clarification from the staff regarding Resolution 191-08.

Ms. Demmerle stated that nothing has changed with regard to OPERS and that this resolution was simply a housecleaning item. There was a resolution from 1984 that the District needed to update to cover certain classes of employees for OPERS contributions, such as students. Ms. Demmerle stated that the District continues to follow federal and state laws with regard to retirement benefits and this resolution is for OPERS to have a record of the Board's resolution for its files.

**MOTION** – Mr. Liberatore moved and Mayor Longo seconded to adopt Resolution No. 191-08. Without objection, the motion carried unanimously.

Authorization to Retain Legal Counsel

**Resolution No. 192-08**

**Engaging Roetzel & Andress as special legal counsel to provide legal and other related expert services to the District in its labor negotiations.**

Ms. Kelly requested staff provide the Board the names of the other seven (7) firms that were considered. Director of Law, Marlene Sundheimer, stated that proposals were received from Baker & Hostetler; Jackson Lewis; Littler Mendelson; Squire, Sanders & Dempsey; Tucker, Ellis & West, LLP; Walter Haverfield, LLP; and Zashin & Rich.

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Ms. Kelly asked which firm previously represented the District with its labor negotiations. Director of Law, Marlene Sundheimer, stated that the firm was formerly known as Duvin Cahn, but they have since disbanded and now Craig Brown, the District's former legal representative, has joined the firm of Littler Mendelson.

Executive Director Ciaccia introduced Attorney Tom Colaluca from Roetzel & Andress to the Board and advised that he will be representing the District with its labor negotiations.

Mr. Liberatore advised the Board that he will abstain from voting on Resolution No. 192-08. Mr. Brown requested the secretary carry out a roll call.

**MOTION** – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 192-08. The motion carried with one abstention vote by Mr. Liberatore.

VIII. Information Items

1. Northeast Ohio Regional Sewer District Financial Report and Investment Advisor Performance Report for the Six Month Period Ending June 30, 2008.

Executive Director Ciaccia advised Board members that Finance Director Jennifer Demmerle will give a brief overview of the District's six (6) month financial report.

Ms. Demmerle stated that included in the Board members' packets is the District's Financial Investment Second Quarter Report which included an income statement, balance sheets, and various department reports. The District's operating revenue is up 5% from this time last year due to the rate increase effective in January 2008. The District continues to operate within an overall operating budget of \$98 million, as the rate study projected. As of June 30, 2008, the District spent 47% of its budget. The District is 3% over its rating expenses from 2007. Ms. Demmerle stated that salaries, benefits and utilities continue to make up 74% of the District's operating budget. The District's cash and investment balances have continued to remain steady at \$295 million. The District's investments continue to perform above its benchmark. The Merrill Lynch 90-day, one-day Treasury bill has a 2.34% return. Due to market volatility, the District has kept its investments to one to two years.

There were no follow-up questions for Ms. Demmerle by the Board.

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2. Rules for Public Participation.

Executive Director Ciaccia informed Board members that staff has drafted rules for public participation and media protocol in the public meeting room. He turned the discussion over to Ms. Haqq.

Ms. Haqq stated that the draft Rules for Public Participation is for discussion purposes only. Staff would like to provide individuals and the media attending public meetings with information as to the rules for speaking at a Board meeting. In addition, staff is desirous of placing this information on the District website. Ms. Haqq suggested the draft Rules for Public Participation be referred to the Governance Committee for discussion at its next meeting which is scheduled for September 4, 2008.

Mr. Brown agreed with Ms. Haqq and stated that this matter should be referred to the Governance Committee for deliberation and a recommendation to the full Board.

**MOTION** – Ms. Kelly moved and Mr. Sulik seconded that the Rules for Public Participation be referred to the Governance Committee. Without objection, the motion carried unanimously.

Mayor Starr inquired if Board members will be given the opportunity to make comments or observations. Mr. Brown affirmed.

Mayor Starr stated that some members of the public attend Board meetings on their lunch hour and are given an opportunity to speak at the first Public Session on agenda related issues only. If they want to speak on issues not related to agenda items, they may wait one to two hours for the second Public Session. He questioned why the Public Session cannot be all encompassing at the beginning of the meeting.

Ms. Haqq reminded Mayor Starr of previous discussions held at prior Board meetings regarding this issue. The format for Public Session is a decision made by the Board and the Governance Committee can bring this matter up for discussion at its next meeting if it is desirous of changing the order of public participation.

Mayor Starr inquired about the three (3) minute time limitation. Ms. Haqq indicated that the time limitation has been modified to five (5) minutes in accordance with Robert's Rules of Order which governs the Board meetings. She requested Board members to please disregard the three (3) limit time restriction.

Mr. Brown questioned if the time limit can be extended and if so what the maximum time duration is for a public speaker in accordance with Robert's Rules of Order. Ms. Haqq

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advised that the individual can speak up to twenty (20) minutes, at the discretion of the chair.

Mayor Starr questioned the rationale as to why there are so many rules for the media about staging and location.

Ms. Haqq stated that the District is desirous of assisting the media with its hookups without disrupting the Board meeting. The District's IT Department informed Ms. Haqq that the meeting room has the capacity for the media to plug its equipment into the wall enabling them to have access to the District's sound system so there is no need for a separate microphone to be placed in the front of the room; therefore, if they need to move out equipment, this will prevent the meeting from having to be interrupted.

Mayor Starr questioned the language that stated if the media arrives late; it will not be permitted to attach station microphones to District microphones. Ms. Haqq referred this question to Director of IT, Humberto Sanchez. Mr. Sanchez stated that if the media arrives late, moving its equipment into the room and trying to establish a connection with outlets such as the podium could disturb the meeting. Mayor Starr inquired if the District received media disturbances in the past. Mr. Sanchez and Ms. Haqq stated not to their knowledge.

Mayor Starr questioned the basis for the rule stating that if the media places a microphone on the podium, it may not be removed until the meeting is adjourned. Ms. Haqq stated that again this is in effort to eliminate meeting disturbances. Mayor Starr reiterated his question and inquired as to why the media will be prohibited from removing its equipment prior to the meeting adjourning. Ms. Haqq stated that these concerns can be addressed in the Governance Committee meeting and changed by the Board.

Mayor Starr questioned the need for "escorts" for the media to meet with a District representative. Ms. Haqq stated that this has been the protocol used by the District. Staff accommodates the media by ensuring that a member from the public information staff is available for any questions.

Mayor Starr asked Ms. Sundheimer if the regulations set forth in the Rules for Public Participation and Media Protocol are "a restraint on time, place or manner under the First Amendment free speech." Ms. Sundheimer stated that she has not yet analyzed the proposed drafts in that context, and that this being a charge on the Governance Committee, the Governance Committee will take a closer look at the proposed protocol to assure the Board and public that it is not the intent of the District to infringe upon the rights of free speech or association or impair the media from doing its job.

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Mr. Brown stated that the draft Rules for Public Participation and Media Protocol has been referred to the Governance Committee and it would be appropriate to allow this committee to complete its due diligence. Mr. Brown welcomed all interested members of the Board and the community to the meeting to participate in the discussion, or to submit any comments and concerns in writing to the Governance Committee which would deliberate these issues prior to making its recommendation to the Board.

Mayor DePiero was appreciative to the staff for providing a draft from which to work. He stated that he believed the Governance Committee can be a little more flexible with time restrictions and allowing the media to remove its equipment from the podium.

IX. Open Session (no items on agenda)

X. Public Session

Executive Director Ciaccia informed the Board that there were no requests from the public to speak. At this point, a member from the public interjected stating that he did not sign in but wished to speak at Public Session. Executive Director Ciaccia advised that this would be at the discretion of the Board. Mr. Brown requested the gentleman to identify himself.

Mr. Gus Hoyas stated that he is the chairman of the Hispanic Business Association. Mr. Brown granted him the opportunity to speak. Mr. Hoyas showed his appreciation to Executive Director Ciaccia on his earlier comments. Mr. Hoyas explained that he was present at the meeting on behalf of 200 Hispanic businesses as well as 400 regional Hispanic businesses in surrounding counties. He stated that what the District "went through last week was appalling." Mr. Hoyas stated that the District does have its shortcomings, and he is aware that the District is addressing these issues. Mr. Hoyas stated that he wanted the record to reflect that the Hispanic business community is desirous of building a relationship with the District and would like to "work out some of the kinks that we are facing with the contracts." Mr. Hoyas stated that he will follow up with Executive Director Ciaccia to meet in order to discuss economic development opportunities with the District.

Mr. Brown was appreciative of Mr. Hoyas' comments and indicated that he looks forward to working with his organization. Mr. Brown stated that the Board and District are open to this type of engagement.

Executive Director Ciaccia stated that staff will meet with Mr. Hoyas and the District is looking for partners within the Hispanic community. He thanked Mr. Hoyas for his comments.

XI. Executive Session

Mr. Brown indicated there was a matter for discussion at Executive Session.

**MOTION** – Mayor Longo moved and Ms. Kelly seconded the motion to adjourn for Executive Session to discuss legal matters related to the proposed privilege log, waiver of privilege, and other issues related to the federal grand jury subpoenas, and that all discussions be kept confidential based upon attorney-client privileged communications, and the requirements of the Ohio Ethics Code. The secretary called a roll and without objection, the motion passed unanimously.

The Board met in Executive Session from 2:00 p.m. to 2:17 p.m.

XII. Approval of Items from Executive Session

**Resolution No. 193-08**

**Authorizing the waiver of the District's privilege by the Board of Trustees relative to certain documents determined to be responsive to federal grand jury subpoenas.**

Mayor Starr requested staff give the public an overview as to what has been provided to the public or to the government agencies. He requested an explanation from staff as to why certain information will not be provided to the public or government agencies.

Ms. Sundheimer stated that the District requested the Board consider a resolution to waive attorney-client privilege on certain documents that it deemed to be responsive to the federal subpoena. These documents were covered by attorney-client privilege either because it was a privileged attorney-client communication or attorney work product. The process the District went through to separate these documents are privileged, however, could be waived because the underlying legal matter has been resolved and there would be no harm to the District in waiving its privilege. These documents were logged on a privilege log. These documents will be released to the federal government after they have been properly processed, given Bates numbers and turned into electronic format. Ms. Sundheimer explained that this is the subject matter for Resolution No. 193-08.

Ms. Sundheimer explained that some documents will not be turned over to the federal government because they have been deemed to retain the attorney-client privilege. A majority of these documents involve the District's pending litigation more specifically, the District's contract with KMM&K, KM&M and CSO litigation, which will retain its privileged status and not be turned over to the federal government.

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Mayor Starr questioned who the decision-makers were in deciding what documents should be considered attorney-client privileged. Ms. Sundheimer advised that the decision was made by District attorneys, Deputy Director of Law, Lawrence English and herself, as well as Calfee attorneys retained by the District to assist in cooperating with the federal investigation. Furthermore, the District requested attorneys involved with outside litigation to review the documents, as well, and they provided an opinion as to which documents should be released or retained.

Mayor Starr questioned if the attorney-client privileged documents all relate to civil litigation and not criminal. Ms. Sundheimer concurred. Mayor Starr stated that the privilege logs were never distributed to Board members. Ms. Sundheimer stated that he was correct.

Mayor Starr commented that in municipal government, council members of cities would not be allowed to vote on matters if they did not receive due notice to review and examine and study prior to voting.

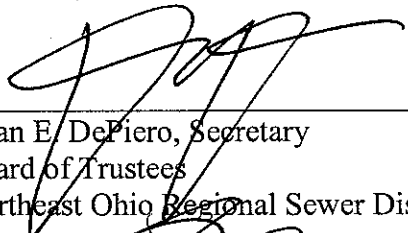
Ms. Sundheimer stated that she disagreed that the Board members did not receive due notice in this matter.

Mayor Starr stated that Board members have been inconvenienced by having to examine the documents on site at the District, and that he will refer to the material and relevant issues he raised which are reflected in the Board meeting minutes of July 17<sup>th</sup> to justify his vote on Resolution No. 193-08.

**MOTION** – Mr. Liberatore moved and Mr. Sulik seconded to adopt Resolution No. 193-08. The motion carried with one “no” vote by Mayor Starr.

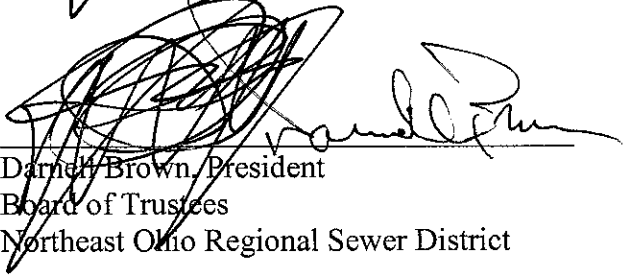
XIII. Adjournment

Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. The meeting adjourned at 2:25 p.m.



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



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