

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
AUGUST 19, 2010

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

I. Roll Call

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

*Mr. Brown was absent.*

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

II. Approval of Minutes

**MOTION** – Mayor DePiero moved and Mr. O'Malley seconded that the minutes of the August 5, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") negotiations. The previous schedule has been changed and the negotiations will continue for at least another month. Executive Director Ciaccia anticipates coming to the Board for a public discussion and decision in October.

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Executive Director Ciaccia referred to an article published in *The Plain Dealer* indicating that stormwater billing will not begin on October 1<sup>st</sup>. Twelve Cuyahoga County communities have filed for an injunction to prevent the District from moving forward with the Stormwater Management Program (hereinafter "SMP"). The District has agreed to postpone the billing date and will notify the communities 60 days in advance of implementing stormwater billing. Executive Director Ciaccia advised that the City of Cleveland Division of Water (hereinafter "CWD") is progressing and will be ready to implement stormwater billing, but at this time stormwater billing is at an indefinite stay unless the court makes a ruling in our favor.

V. Action Items

Authorization to Advertise

Resolution No. 237-10

Valves requirement contract.  
Anticipated expenditure: \$46,900.00.

Resolution N. 238-10

Combined Sewer Overflow  
Rehabilitation Contract – Service  
Agreement Contract (CSORC-010).  
Engineer's opinion of probable  
construction cost: \$7,600,000.00.

**MOTION** – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 237-10 and 238-10. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 239-10

Direct purchase from sole source  
vendor, Dearing Compressor &  
Pump Company, for replacement  
parts for the five (5) Gardner Denver  
Process Air Compressors, on an as-  
needed basis, used at Southerly  
Wastewater Treatment Plant. Cost:  
\$100,000.00.

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Resolution No. 240-10

Purchase from Jack Doheny Supplies under the State of Ohio Procurement Program a new Jet-Vac combination for the Sewer System Maintenance & Operation (SSMO) Department. Cost not to exceed \$395,101.80.

**MOTION** – Mr. O'Malley moved and Ms. Kelly seconded to adopt Resolution Nos. 239-10 and 240-10. Without objection, the motion carried unanimously.

Mr. Sulik referred to Resolution No. 240-10 and he inquired if there is a trade-in value for the District's old jet-vac truck. Deputy Director of Operation & Maintenance, Ronald Czerski, anticipated getting at least \$25,000 or more through sale, and if there are no buyers willing to pay this amount, then we will trade-in the vehicle.

Mr. Sulik inquired if this is the gross price or the trade-in price. Mr. Czerski advised that this is the gross price.

Mr. Sulik inquired if trade-in value could be less than \$25,000 wherein Mr. Czerski affirmed.

Authorization to Enter Into Agreement

Resolution No. 241-10

Saint Martin de Porres High School Corporate Work Study Program. Cost not to exceed \$25,500.00.

**MOTION** – Ms. Kelly moved and Mr. O'Malley seconded to adopt Resolution No. 241-10. Without objection, the motion carried with one abstention from Mayor DePiero.

Authorization of Easement

Resolution No. 242-10

Acquire from City Rose Ltd. Parcel 28WD Warranty Deed and Parcel 28T Temporary Easement (Cuyahoga County Permanent Parcel Nos. 112-06-001 & 002) necessary for the construction of the Euclid Creek Tunnel (ECT) Project. Consideration: \$64,100.00.

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**MOTION** – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 242-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 243-10	Contract with Middough, Inc. for the Southerly Wastewater Treatment Center Renewable Energy Facility Program System Integration Management (PSIM-28). Contract Fee: \$7,595,800.00.
Resolution No. 244-10	Contract with MWH Americas, Inc., for the Westerly Electrical Infrastructure Improvements (WEII). Contract Fee: \$1,403,205.26.
Resolution No. 245-10	Contract with Strand Associates, Inc. for the Doan Valley Tunnel Green Infrastructure Alternatives Evaluation. Contract Fee: \$254,977.84.
Resolution No. 246-10	Contract with Super Excavators, Inc. for the Walworth Run Interceptor Realignment (WRIR) project. Contract amount: \$6,884,921.80.
Resolution No. 247-10	Contract with URS Corporation – Ohio for the Green Infrastructure Feasibility Study. Contract fee: \$849,799.00.

Mr. Sulik referred to Resolution No. 247-10 and he inquired if this will tie into our CSO LTCP. Director of Engineering & Construction, Kellie Rotunno, affirmed and she stated that these are the two contracts that we are entering into in an effort to move forward with the CSO LTCP and green infrastructure program.

**MOTION** – Mayor Starr moved and Mr. O’Malley seconded to adopt Resolution Nos. 243-10 through 247-10. After discussion, the motion carried with one abstention from Mayor DePiero on Resolution No. 243-10.

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Resolution No. 206-10

Contract with Bay Mechanical and Electrical for the Incinerator System Rehabilitation (IR-13B) project. Cost: \$6,095,271.85.

**MOTION** – Mayor Bacci moved and Mayor DePiero seconded to adopt Resolution No. 206-10. After discussion, the motion carried with one “Nay” vote by Mayor Starr and one abstention by Mr. O’Malley.

Mayor Starr commented that of the 24 bid packages issued the District received only three bid responses and therefore there were 21 non-bids. He requested some insight as to why contractors were not interested in bidding on this particular District project.

Ms. Rotunno stated that subcontractors are typically in the population of plan holders on engineering and construction projects and become teaming partners with the prime contractors that submit bids. Ms. Rotunno advised that she did not have the data available as to the breakdown of contractors on the bid proposals.

Mayor Starr questioned if there is any reason as to why the District did not receive more interest in this project. Ms. Rotunno indicated that she could not speculate.

Mayor Starr inquired as to which outlets are being used to advertise District bids. Does the District advertise on its website and in the newspaper and are those postings displayed in Northeast Ohio, throughout the State of Ohio or the United States. Director of Finance, Jennifer Demmerle, explained that the District advertises on its website and in the newspaper and wherever the Department of Engineering & Construction would like it to be displayed.

Mr. O’Malley commented on the sizeable number of projects related to the Renewable Energy Facility (hereinafter “REF”) at Southerly. This \$6 million contract seems to overlap what we are planning to do under the scope of the REF project and that a portion of this contract will be abandoned in the future. Mr. O’Malley therefore questioned the necessity of conducting this particular project.

Ms. Rotunno replied that this project was analyzed closely and that it includes the incinerator rehabilitation at the Easterly, Westerly and Southerly plants. Maintenance work will also be conducted under this contract at Southerly which will cost about \$200,000 per year over the next three years after the REF goes live. The District believes that this amount is consistent with the operational needs and will provide a good risk/reward ratio on this investment.

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Ms. Kelly was surprised that there was not more interest in this contract given the project size and current economic conditions. Ms. Kelly questioned if the District has identified how many companies are qualified to do this type of work and why we may not be receiving interest from other companies.

Ms. Rotunno indicated that it is the contractor's business decision as to which jobs they would like to chase. The District can conduct its due diligence as the owner and determine if there is anything we can do to gain more interest in our projects including packaging bids differently or the way in which we advertise our projects. The District has been receiving more bidders on its construction projects. Ms. Rotunno speculated that the low amount of bidders on this particular project could be attributed to the way the bid was packaged or that the types of work that was packaged together might be so unique that the firms were not comfortable performing that type of work.

Ms. Kelly requested that Ms. Rotunno explain the use of the word "unique" when related to this discussion. Ms. Rotunno stated that this is an incinerator rehabilitation project. Hanna Zabbriskie, a specialized contractor, is listed as a subcontractor to Bay Mechanical, and 31.5% of this job is incinerator rehabilitation and brick work. Bay Mechanical will be conducting the supporting HVAC and electrical work needed to support the incinerator rehabilitation. Ms. Rotunno advised that this mixture of trades is unique in the way we typically package District projects. We do not frequently advertise for incinerator rehabilitation and this is a unique operational need to keep those incinerators running.

Ms. Kelly inquired if Ms. Rotunno could speculate as to how many companies might be qualified to do this type of work. Ms. Rotunno advised that she did not have that data readily available; however, this information could be retrieved from our vendor registration.

### VI. Information Items

#### 1. Disparity Study Update.

Executive Director Ciaccia advised that the District replaced its former Minority and Women's Business Enterprise (hereinafter "MBE/WBE") program with a Small Business Enterprise (hereinafter "SBE") program, which is race and gender neutral. At that time, the District did not have disparity study results to support the former MBE/WBE program. Executive Director Ciaccia stated that a disparity study was conducted by NERA Economic Consulting (hereinafter "NERA"). Ms. Collette Holt, Esq. was present at the meeting to provide the Board with an overview of those findings. Senior staff held an internal meeting on August 18<sup>th</sup> in which Executive Director Ciaccia described as a good meeting that provided a lot of information. Executive Director Ciaccia thanked Ms.

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Kelly and the Board's special legal counsel, Craig White, for attending. Executive Director Ciaccia turned discussion over to Ms. Holt.

Ms. Holt commented that is great to be back in Cleveland and to be almost finished with the disparity study. Ms. Holt thanked Ms. Kelly for attending yesterday's meeting and she stated that it is not often that Board level leaders make that type of commitment.

The draft disparity study was completed and sent to senior staff. Although a lot of work has been completed, there is still more work that needs to be performed.

NERA was asked to evidence whether it is relevant for the District to develop a race- and gender-conscious affirmative action program and to make recommendations based on the evidence gathered. The objective is to ensure that the District is operating a fair and open system to ensure that everyone in the community has an opportunity to compete for the District's prime contracts and subcontracts.

Ms. Holt advised that NERA analyzed over 23,000 prime contracts and over 1,000 subcontracts during the study period which included fiscal years 2004 to 2008 and approximately \$375 million worth of projects. Eighty-four percent of that spending went to firms with establishments in region of Northeast Ohio. Those contracts and subcontracts were distributed amongst 107 detailed industry codes that account for almost 100% of District spending.

NERA analyzed the availability of firms within that market which is defined in Chapter 3 of the Disparity Study. NERA identified over 216,000 relevant establishments in that market in construction related services (hereinafter "CRS") which includes architects, engineers and surveyors. Ms. Holt stated that Dun & Bradstreet (hereinafter "D&B") data was used to customize an M/WBE master directory so that proper race and gender could be assigned to those firms. Ms. Holt advised that the D&B data does provide some race and gender identifiers, but you need to go beyond that data in order to obtain a good list. NERA contacted approximately 5,000 of those firms in order to verify the race and gender of their owners.

Ms. Holt referred to a slide depicting the current "head-count availability" of firms in those 107 industry codes in the Northeast Ohio region. The data was broken down by race, gender and industry code. Ms. Holt noted that minority females are considered as minority-owned firms and not women-owned firms. NERA follows the approach used by the federal government and US Census by counting minority females as minorities for this purpose.

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Ms. Holt referred to a slide depicting the District's availability which is weighted to reflect the District's spending patterns. For example, deep tunnel work is weighted more than office supplies.

NERA also examined whether there are continued barriers for M/WBE firms in the overall economy for the Northeast Ohio region. Census data was used to examine whether M/WBE firms form businesses and earn profits from businesses at the same rate as similarly situated white male-owned firms. NERA's findings showed adverse and statistically significant disparities for all types of MBEs and white females in all areas of procurement and throughout the economy. Ms. Holt stated that there is very strong evidence supporting that outside the operation of an affirmative action program, M/WBE firms continue to face significant discriminatory barriers to their business development and success.

NERA examined Federal Reserve data and their survey which included data of M/WBE firms' ability to access business capital. Ms. Holt explained that it is very difficult for M/WBE firms to access operating capital in order to grow their firms. MBE firms' loan denial rates were substantially higher than similarly situated white males even accounting for differences in credit worthiness and balance sheets, which can be obtained through the Federal Reserve. Ms. Holt stated that even today black-owned firms suffer significant discrimination in the market for business loans.

NERA also examined the utilization of M/WBE firms in District contracting. Ms. Holt explained that the study period included when the District was operating its former MBE/WBE program. The new SBE program has been operating for more than one year and those data are not included in the disparity study findings. NERA found evidence of adverse disparities between the utilization and availability for some groups in some contracting industries despite the operation of the MBE/WBE program.

Conversely, the District's former MBE/WBE program seemed to provide other groups with opportunities to fully and fairly participate in District contracting. Ms. Holt referred to Table B which depicted the District's overall utilization during the study period by industry, race and ethnicity. Ms. Holt advised that the former MBE/WBE program made some progress.

NERA examined anecdotal evidence and conducted a large-scale mail survey which inquired about individuals' business experience and the findings showed that more MBEs than non-MBEs reported disparate treatment even when you control for size, qualifications and experience. MBEs reported that contractors would use them on jobs having "goals" but did not use them, or often would not even solicit them, in the absence of goals. Ms. Holt indicated that this is important evidence and that some courts have agreed for the need of some type of remedial intervention.



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NERA also conducted interviews with business owners and there were over 150 attendees. MBEs reported that they continue to face barriers within the marketplace and most importantly that there are negative perceptions about their qualifications and abilities. MBEs reported being excluded from industry networks and having difficulties obtaining work on an equal basis. MBEs backed up the survey results related to discrimination and access to capital.

Ms. Holt concluded her presentation by informing the Board that the preliminary report was given to senior staff and that NERA looks forward to working with the District in an effort to finalize study and make recommendations as to how the District should proceed.

Ms. Kelly advised that she attended yesterday's meeting involving the disparity study findings which was given to senior staff. Said meeting lasted approximately two hours. Ms. Kelly congratulated NERA on the "fine work they have done" and District staff for the amount of data that they needed to provide to NERA in order for them to complete their evaluation. Ms. Kelly advised that there is much information that she would be happy to share with the Board. Ms. Kelly believed this to be very important information since we have an opportunity to craft a very meaningful program. Ms. Kelly advised that at first she was unsure as to why this process was taking so long, but after receiving and reviewing the notebook of information, she now appreciates the amount of work and research that has gone into this recommendation. Ms. Kelly encouraged the Board to take this information very seriously since we have an opportunity to craft a meaningful program that will impact this community.

Mr. Sulik advised that he initially worked with Ms. Kelly on the formation of the SBE program and the disparity study. Mr. Sulik indicated that he too questioned the duration of this process, but he now sees the significant amount of work that went into this process. Mr. Sulik agreed that the District will have an opportunity to formulate a very effective M/WBE program. If the program is challenged in the future, we will have the evidence to protect ourselves. It has been a long time coming but will be a very worthwhile study and program to adopt.

Executive Director Ciaccia thanked the Board for their comments. A lot of work was put into the development of the SBE program and we continue to do a lot of work on the SBE program. It will take time to put together a meaningful new program. Executive Director Ciaccia anticipates bringing a plan to the Board by the first of the year, but this will require much internal work. There is money remaining in the NERA contract and Ms. Holt's firm will facilitate some of the philosophical and context issues. Executive Director Ciaccia stated that he is desirous of a meaningful program.

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Executive Director Ciaccia referred to the first table in Ms. Holt's presentation and he advised that he was surprised by the low availability of MBEs in a wide market. Executive Director Ciaccia was under the impression that there would be more availability and therefore it will be important to obtain context around some of these issues as we craft this program.

Executive Director Ciaccia requested the Board's patience and participation through the program development process. This program should be given every possible consideration and this will be a significant policy issue. Executive Director Ciaccia advised that the staff will begin this process immediately. This process may even require some Board sessions. We will ultimately develop a program that we can all be proud of.

### 2. Program Management Status Report and Update – July 2010.

Ms. Rotunno advised that the District held its pre-bid meeting this week for the Euclid Creek Tunnel (hereinafter "ECT") project. Many national tunneling contractors attended. According to Ms. Rotunno, some contractors indicated that they have never seen this much interest in a project at a pre-bid meeting. Local contractors as well as a few minority contractors attended. The ECT project is generating a lot of activity, and we look forward to seeing those bids at the end of September.

We are continuing with our process work groups to streamline and improve the handling of District design and construction projects in an effort to improve our performance. Capital Improvement Program (hereinafter "CIP") planning including task and project close out are in various stages of development. Some projects are in the implementation phase while others have just begun the analysis process.

Ms. Rotunno moved discussion to the Key Performance Indicators (hereinafter "KPIs") through July 2010. The delivery of the CIP continues to lag with respect to the number of projects being awarded and the contract value projected to be awarded. The latter has increased to 41% in July versus 20% in May. At the time the ECT project goes forward, we expect meeting our KPI on a dollar value basis by the end of 2010.

Ms. Rotunno explained that six projects caused the KPI to lag for design projects. We made changes to the RFP (Request for Proposal) template which extended the timeframe in which we are getting the RFPs out. We are having difficulty due to QA/QC reviews and new contracting terms and getting to contract execution and agreement on the scope and fee. We are taking our time to ensure that scopes and fees are developed and streamlined in an effort to avoid future contract conflicts. We anticipate awarding five professional services contracts in the fourth quarter.

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Ms. Rotunno referred to a graphic depicting timelines. The start indicates when the Board gave the authorization to issue the RFP and the end of the bar depicts when we requested authorization to award or project the authorization to award the contract. Ms. Rotunno stated that some of the bars are very long. The blue bars indicate projects already awarded. The green bars represent projects that are in the process of being awarded.

Ms. Rotunno referred to a halfway point on the long green bar which represented a project that the Board gave authorization to issue a RFP in 2008 and we have not yet awarded that particular contract. The RFP was issued but there was a waiting period since we were revising the RFP template. According to Ms. Rotunno, these bars will shorten as we become more efficient, get more projects out, and familiarize ourselves with the new contracting standards.

Ms. Rotunno advised that the revisions made to the general contracting provisions have impacted getting the construction bids out and the QA/QC reviews are taking more time and those have caused delays in the construction contract delivery. Ms. Rotunno explained that standardizing the general contracting provisions and design management will ultimately help with advertising and getting these projects out. Ms. Rotunno anticipates much Board activity in the fourth quarter when staff will bring eight contracts to the Board for consideration.

Ms. Rotunno referred to a graphic which depicted the timeline of the construction projects. The start of the bar indicates the Board's authorization to advertise for bid and the end of the bar represented the Board's authorization to award the contract. There were some protracted bars that were long. The blue bars represented finished projects; the green bars represented ongoing projects; and the red bars represented future construction projects. Ms. Rotunno stated that we are looking into process improvements in order to achieve our KPIs going forward.

Ms. Rotunno moved discussion to the KPI for the engineer's estimate of probable construction cost. We are performing extremely well and are almost exact or slightly 2.2% under the engineer's estimate as the average of our bidder population.

Ms. Rotunno moved discussion to construction management and she stated that 92% of District projects have closed within 105% of the base contract amount. Since March all of the District projects have closed out within our KPI and therefore change orders are being managed properly in the field.

There were no questions from the Board for Ms. Rotunno

VII. Open Session

No items for discussion.

VIII. Public Session (any subject matter)

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

IX. Executive Session

Mr. Sulik stated that there were matters for discussion in Executive Session.

**MOTION** – Mayor Bacci moved and Ms. Kelly seconded to enter into Executive Session to discuss the CSO LTCP and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 1:08 p.m. to 2:38 p.m.

X. Approval of Items from Executive Session

Authorization to Share Basic Elements of the CSO LTCP with the Public

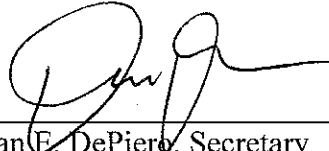
Resolution No. 248-10

Authorize the sharing of basic elements of the proposed CSO LTCP and draft Consent Decree with the public.

**MOTION** – Mayor DePiero moved and Mr. O’Malley seconded to adopt Resolution No. 248-10. Without objection, the motion carried unanimously.

XI. Adjournment

**MOTION** – Mr. Sulik stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. O'Malley seconded the motion to adjourn at 2:39 p.m. Without objection, the motion carried unanimously.



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



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Ronald Sulik, Vice President  
Board of Trustees  
Northeast Ohio Regional Sewer District