

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
AUGUST 20, 2009

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

I. Roll Call

PRESENT: D. Brown
G. Starr
D. DePiero
T. Longo
W. O'Malley
R. Sulik

Ms. Kelly was absent.

Mayor Starr left the Board meeting at 1:00 p.m.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Mayor Starr moved and Mr. Sulik seconded that the minutes of the August 6, 2009 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised that Mr. Alex Granger, from West Chester, Ohio, registered to speak at Public Session regarding Resolution No. 189-09. Mr. Brown requested that Mr. Granger come forward and address his comments to the Board.

Mr. Granger, District Manager of Skyline Steel, LLC (hereinafter "Skyline"), requested that the Board hold their decision to reconsider Resolution No. 189-09, which was to rebid the procurement of steel H-piles – Contract 28-G, at the Southerly Wastewater Treatment Plant (hereinafter "WWTP") Renewable Energy Facility (hereinafter "REF").

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According to Mr. Granger, the intent to rebid Resolution No. 189-09 resulted from Skyline offering a different solution which he indicated was consistent with industry standards as it pertains to the offloading and stockpiling of the material that was bid. Mr. Granger stated that "Skyline Steel asked for and was given approval by the District to quote such an alternative, and at the direction of the District, documentation of this alternative was provided as part of our bid package." Mr. Granger indicated that the solution offered by Skyline is safe and in compliance with industry standards, it is consistent with best practices and would ultimately save the District time, storage space and money.

According to Mr. Granger, Skyline is the industry leader in the steel foundation business because they understand customer requirements and offer resolutions to owners and customers that best utilize their resources. Mr. Granger was hopeful that by offering a more competitive cost solution, consistent with industry standards, would not result in the District's need to rebid Resolution No. 189-09, Contract 28G.

Mr. Granger stated that "in the interest of fairness, I ask you to consider voting against this resolution."

President Brown asked the Executive Director to respond. Executive Director Ciaccia indicated that this particular bid was for the steel H-piles at the Southerly WWTP for the REF, and is the pre-purchase of those particular items. The bid specifically indicated that the materials had to be stacked in a certain way when delivered to the site. The reasoning behind this specification was to accommodate the contractor awarded the next bid, which is for the erection of the REF, making the steel H-piles more accessible and keeping District's costs lower for the REF bid.

The bids were opened on August 5th at 2:00 p.m. Prior to that date the District received a phone call from Skyline regarding whether the H-piles could be stacked differently from what was specified in the bid. Consequently, Skyline believed it had an agreement from the District and submitted a letter with its bid proposal indicating that their bid would include this alternate stacking method. Furthermore, Skyline indicated that per the conversation held with a District engineer, approval was given to Skyline to use this particular stockpiling method, which was specified in their letter, and that Skyline's "quoted price as predicated on the pilings being stored as outlined above."

After the bids for the steel H-piles were publicly opened, the District received correspondence from the second lowest bidder, Stevens Painton Incorporation (hereinafter "Stevens") stating their issue with the lowest bidder's proposal to use an alternative stacking method which was not consistent with the District's bid specifications to accommodate the upcoming REF project.

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Executive Director Ciaccia advised that the District contemplated whether Skyline submitted a conforming or non-conforming bid. If the District awarded the contract to Skyline, the lowest bidder, it would risk being challenged by Stevens, the second lowest bidder, since Skyline's proposal was nonconforming with the District's bid specifications. Skyline indicated that they received approval from a District engineer to submit a bid proposal incorporating an alternative stacking method, and according to Executive Director Ciaccia, senior staff was unaware of such conversation. The District also considered awarding the contract to the second lowest bidder, Stevens, which was \$181,000 or 10% higher than Skyline's bid. Given the circumstances, the District chose to reject all bids and rebid the project.

Mr. Brown stated that a primary concern of the District is maintaining the integrity of its procurement process. He was unsure whether the District established a protocol which provided certain staff members the authority to entertain questions from bidders. Mr. Brown requested clarification on that issue.

In response to Mr. Brown's inquiry, Kellie Rotunno, Director of Engineering and Construction, stated that "it has been the historical practice to name the construction supervisor in the bid document as to who will be in charge of this project during construction." In a typical arrangement, the bidder would formulate and formally pose questions through the pre-bid process under a different set of purchasing specifications. This particular project was purchased under different front-end procurement specifications, since this was a material-only procurement. According to Ms. Rotunno, those front-end documents were not as strong and failed to provide the contractor with much direction as to where they can address their questions. Since this was technical inquiry, the contractor chose to contact the construction supervisor identified in the technical specifications within the bid documents.

Mr. Brown inquired if the manager of the contract would have been authorized to engage and discuss certain aspects of the project being proposed outside of the procurement process. Ms. Rotunno stated "absolutely not." On engineering and construction projects, "the questions are funneled through a single point of contact and are shared with all bidders." Ms. Rotunno stated that this "slipped between the cracks" since it was strictly a procurement of materials, and that she is still familiarizing herself with those types of procurements. Ms. Rotunno advised that the naming of construction supervisors will no longer be identified in bid documents.

Mr. Brown suggested that the bid documents specify a single point of contact to handle any inquiries from contractors and that those responses be provided to all bid proposers. By proposing an alternate method not consistent with the scope or bid specifications provides a contractor with an unfair advantage over the other proposers since the remaining proposals were consistent with the District's bid specifications. Mr. Brown

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indicated that someone in the rank in file gave the appearance that there was opportunity provide an alternate method.

Ms. Rotunno clarified that the bid documents identified the purchasing agent to be the point of contact. The engineer became involved since this was a technical question which could not be addressed by the purchasing agent. Furthermore, the bid documents clearly state that any deviation from the bid documents can only be provided to the bidders through written discretion of the District, and that verbal conversations do not supersede the requirements of the bid documents.

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"). The District met with the government on July 21st, and the government presented the District with its version of the CSO LTCP, which staff is in the process of reviewing. A telephone conference was held prior to today's Board meeting to receive clarification on numerous issues. The District will provide the government with an official response to their version of the CSO LTCP at the September 10th meeting in Cleveland.

Executive Director Ciaccia advised that District staff will provide the Board with a presentation at the September 3rd Board meeting which will cover the status of the CSO LTCP. This will be a very important meeting for the District given the financial obligations and issues at stake resulting from the CSO LTCP, which he described as a very important endeavor. Staff intends to start the September 3rd meeting in Public Session to provide the Board with an overview of the developments involving the CSO LTCP, and then to immediately adjourn into Executive Session in order to discuss the government's proposed plan and the District's responses and strategies. Executive Director Ciaccia explained that since this matter could potentially result in litigation and the District is currently involved with heavy negotiations, the need to adjourn into Executive Session is essential in order to brief the Board as well as obtain their input on the District's strategy going forward.

In the next report item, Executive Director Ciaccia stated that according to Mayor Longo, Region 5 and the United States Environmental Protection Agency (hereinafter "USEPA") sent correspondence to 14 of the 28 communities served by the Cuyahoga County Sanitary Engineer's Office (hereinafter "CCSE") advising them that the CCSE conducted an assessment of their sewer systems which was submitted on January 17, 2007 as part of the Sanitary Sewer Overflow (hereinafter "SSO") Capacity, Management, Operation and Maintenance (hereinafter "CMOM") survey. It was determined that those 14 communities had unpermitted discharges to navigable waters of the United States that may have occurred between 2001 and 2006, and the correspondence cited various acts,

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codes and sections. According to the correspondence, those codes “provide for issuance of administrative penalty and compliance orders and/or the initiation of federal judicial actions. USEPA is extending an opportunity for these cities to enter into an Agreed Order on Consent (hereinafter “AOC”) to implement a CMOM program such that the City eliminates all sanitary sewer overflows.” The USEPA will hold a meeting with the CCSE on August 26th at 11:00 a.m., and the communities will have an “opportunity” to cooperate with USEPA in order to finalize and enter into an AOC administrative order for 30 days following the meeting.

Executive Director Ciaccia wanted to inform the Board of the EPA’s correspondence since it will affect some of the District’s member communities. Both Executive Director Ciaccia and Frank Greenland, Director of Watershed Programs, were copied on the EPA’s correspondence and plan to attend the August 26th meeting. Further discussion will be held in Executive Session on this issue as it relates to the CSO LTCP, but, at this point, Executive Director Ciaccia was unsure how this will impact the CSO LTCP.

Mayor Starr advised that, a few years ago, Region 5 and USEPA audited other communities including Middleburgh Heights. According to Mayor Starr, the letter his city received was similar to an audit letter from the IRS only the federal government was desirous of auditing their sewer system. Mayor Starr inquired how this applies to today’s discussion.

Mr. Greenland stated that the CMOM program was introduced in June of 2005. Voluntary audits were conducted, and at that time, a few communities operating their own wastewater treatment plants were exempted from that audit. Some communities submitted the CMOM survey and some did not. The EPA reviewed the responses of the communities and audited communities that did not submit the CMOM survey. According to Mr. Greenland, there were 13 or 14 communities that had no sanitary sewers overflows (hereinafter “SSOs”) or basement flooding from 2001 through 2006, and they received a letter of good health and were exempt from the audit.

Mr. Greenland stated that the County submitted 28 community responses and have identified 14 communities that have experienced basement flooding or SSOs at least one time between 2001 and 2006. In response to Mayor Starr’s inquiry, Mr. Greenland described this effort by USEPA as the next step in the process. There were communities that did not receive the initial EPA letter, or were exempted from the audit because they operate their own WWTP. There were also other communities that the CCSE does not serve and did not submit survey information. We will just have to see what happens.

Executive Director Ciaccia moved discussion back to the CSO LTCP and stated that the District will continue negotiating with the government, and that the District will

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undoubtedly be under a Consent Decree. Local communities will also have commitments and the District intends working with them.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). Marlene Sundheimer, Director of Law, issued a legal opinion to the law directors of the member communities, and the District has not received much feedback on this issue. Ms. Sundheimer and other District representatives will attend the upcoming Cuyahoga County Law Directors Association meeting which will be held in September.

The District is developing its SMP Code of Regulations (hereinafter "Code"). The draft Code will be distributed to the Governance Committee at its October meeting and to the full Board on November 5th, for their review and input as well as the member communities. Executive Director Ciaccia was hopeful that the finalized Code will be presented to the Board for its consideration in January 2010 in order to fully implement the SMP in July 2010.

The District completed its third round of meetings on the SMP with its member communities. Round one was to provide the communities with a conceptual plan and regional approach. The second round of meetings was to verify and gather information and details on the various projects. Executive Director Ciaccia commented that the District conducted its due diligence by obtaining critical information and receiving good responses and that the SMP is developing into a "well thought out program."

Executive Director Ciaccia summarized that the District is developing its Code and identifying early action capital projects that will be completed throughout the region. The District continues finalizing its billing system with the City of Cleveland Division of Water (hereinafter "CWD") for the accommodation of the SMP. The cities of Cleveland Heights and Berea also bill for the District, and the District is researching alternate options in the event those cities cannot accommodate the SMP within their billing systems.

Mayor Longo inquired as to when the District will understand the USEPA's "game plan." Mr. Greenland requested clarification as to which game plan Mayor Longo was referring to because there are two. Mayor Longo stated both. Mr. Greenland stated that the District will attend a meeting on August 26th to obtain a greater understanding of the SSO CMOM initiative. The USEPA clearly indicated that they would like to resolve the CSO issues in a timely fashion, and now an SSO initiative has been launched. The member communities have a 30 day timeline to sign up for the administrative order. Mr. Greenland indicated that the District will obtain clarification on those issues at the August 26th meeting.

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Mayor Longo stated "that there are many little nuances." For example, half of his community is connected to combined storm and sanitary and sewers while the other half is connected to a separate storm and sanitary system. He stated that "one time you get away with something on this side, but then on the other side are they still coming down on the back side with what has to be done on that side."

Mayor Longo advised that any changes in regulations must be brought back to the Suburban Council of Governments (hereinafter "SCOG") in order to plan the next phase of stormwater management, and he commented that it would be beneficial if all the groups reached a consensus on the stormwater issues.

Mr. Brown commented that during Phase 1 and Phase 2 of stormwater development the District acted as a facilitator which brought some clarity to the communities as to the government's expectations. He speculated that the District's role during the SSO discussions will be similar and that the District will be required to participate in the SSO process and assist member communities with understanding their roles and responsibilities within the process.

Mr. Greenland stated that the District needs to play a role since the SSOs impact the District's interceptors and WWTPs. Mr. Greenland referred to business discussions that were held in years prior wherein the District addressed CSOs, SSOs, stormwater management and potentially operating additional WWTPs. The District is moving towards this point again but needs to clarify the USEPA's intentions regarding SSOs.

Mayor Longo commented that when communities receive a clean bill of health on the sanitary side, this does not mean they will receive a clean bill of health for stormwater. The government should work with the state and District in developing a systematic approach so we can be realistic when dealing with the member communities. Mr. Greenland referred to this as a watershed base permit.

Mr. Brown stated that the District identified many of the issues early on in order to prepare for the government's strategy since someone will ultimately be responsible for sorting this out. He questioned whether the District will have an advisory role or be more involved with the business aspects.

Mayor Longo commented that communities are interested in obtaining direction or help but the District is still not in a position to help.

Executive Director Ciaccia moved to the next report item, which dovetailed into the previous discussion. Sewer ownership and responsibility needs to be addressed. Executive Director Ciaccia referred to the District's Strategic Business Plan and stated that the District's primary goal is to understand, inform and meet its customer's water

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quality expectations. One of the District's strategic strategies is to improve regional water quality through effective conveyance and treatment of wastewater with a metric of developing a strategy to assist communities with the elimination of SSOs.

Based on the internal discussions held since Executive Director Ciaccia joined the District, he observed that the District does not have a good handle on its exposures to SSOs, and like the SMP, SSOs need to be handled by a proper agency such as the District. Although this can be a double-edged sword, the District is considering SSO management.

The District's second goal is to expand its services and service area based on economic drivers as well as the opportunity to enhance water quality and watershed protection, which includes the stormwater strategic initiative. It also identifies, prioritizes and incorporates the District's wastewater treatment system and collection facilities in order to improve watershed protection. Executive Director Ciaccia explained if the District is the primary authority, this will alleviate some of the political fragmentation within this region, and we need to keep this issue on our radar while moving forward to a logical outcome.

Mayor Longo paraphrased a conversation he had with Paul Alsenas, Director of the Cuyahoga County Planning Commission (hereinafter "CCPC"), and he indicated that the structure of the planning in Cuyahoga County was by region, and that his city, Garfield Heights, is a member of the eastern Chagrin region.

Mayor Longo commented that it seems like the USEPA is moving towards a "watershed type of solution to solving these overflows, backups, et cetera," and it would benefit this region if the government agrees to a watershed approach for management of the water resources in northeast Ohio. The communities can then be reorganized by watershed. Communities situated in two different watersheds encounter the responsibilities and problems of both of those watersheds.

Mayor Longo advised that he is encouraging Mr. Alsenas to organize the CCPC by watershed rather than by region. This proposal makes sense since every community is different and some are more stable than others. Mayor Longo encouraged restructuring our organization on a watershed approach given our region's vast water resources.

Executive Director Ciaccia agreed and stated that the District's proposed SMP is structured based on three separate watersheds. Mr. Greenland added that the District is heading towards a watershed approach and that the SSO initiative will provide the District with an opportunity for tracking and understanding where investments may be needed. The District is investing in its SMP, CSOs and now potentially SSOs projects, and it may be determined that those were not wise investments or the money could have

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been better spent elsewhere. But until the USEPA develops a watershed base permit and incorporates flexibility into the approach, the District is stuck with silo approaches. Aside from the Phase 2 Stormwater Permit, the District also has separate CSO and SSO CMOM initiatives. The District continues working towards improving water quality throughout the region but is in need of a federal and state permit strategy that allows for a flexible approach and wiser investment strategies.

Executive Director Ciaccia moved to the next report item and advised that Kellie Rotunno, Kyle Dreyfuss-Wells and Frank Greenland participated in Mayor Frank Jackson's Sustainability Summit. The District's SMP is consistent with initiatives presented at the Sustainability Summit. Executive Director Ciaccia turned discussion over to Ms. Rotunno.

Ms. Rotunno stated that the summit was "full immersion for three days" and she found it very illuminating. Linda Mayer-Mack also represented the District at the Sustainability Summit.

The summit included Mayor Jackson's vision of a more sustainable Cleveland by 2019. According to Ms. Rotunno, the summit's primary focus included empowering an economic engine that would ultimately sustain a green city on a blue lake. The 400 to 500 attendees came from multi-sectors, were different ages, and from all walks of life. A professor from Case Western Reserve University facilitated a group by using an appreciative inquiry process, which according to Ms. Rotunno, was interesting. This engagement revealed the meeting attendees' perception on how the City Cleveland should look in 10 years.

Ms. Rotunno stated that true sustainability is closed loop and results in zero waste as it pertains to education, social resources, environmental resources and economic resources. The District plays a critical role in achieving Mayor Jackson's 10-year sustainability vision. Projects such as the Southerly REF will be powered with 25% renewable energy by 2013 and in 10 years the District is estimating the elimination of approximately one and half million gallons of CSOs. Ms. Rotunno speculated that in 10 years, the District will be several years into its SMP and have invested millions of dollars into regional stormwater projects. Many of the attendees indicated that preserving the region's water resources was a primary issue in which the District also plays a significant role in fulfilling that vision.

Ms. Rotunno indicated that the experience was very illuminating and she appreciated the opportunity to participate in the event.

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Executive Director Ciaccia added that some District programs are already underway, which are “the low hanging fruit at this point” but can be accomplished in an effort to achieve the goal for 2019.

Executive Director Ciaccia moved to the next report item and advised that the District continues working with CWD on implementation of their new billing system. The go-live date was moved to September 28th which impacts the District by tightening the billing schedule for stormwater, but the District can still fulfill the time requirements for the SMP.

Executive Director Ciaccia moved to the next report item regarding the Small Business Enterprise (hereinafter “SBE”) program. There are 302 SBEs certified with the District, which is greater than the number of companies certified under the District’s former MBE/WBE program. The District continues to hold outreach events, and there was a meeting held in Lorain County which attracted 86 firms in Lorain County and showcased the District’s SBE program.

Executive Director Ciaccia moved to the next report item and advised that the District continues to finalize its agreements with the Village of Orange and the City of Pepper Pike.

Executive Director Ciaccia moved to the next report item regarding the ongoing labor negotiations. The District and American Federation of State, County and Municipal Employees (hereinafter “AFSCME”) will mediate its fact-finding. The District is opening negotiations with the smaller unions, Local 860 (Security Officers) and Local 18S (Stationary Engineers).

Executive Director Ciaccia moved to the next report item and advised the Board that NPDES excursions occurred at the Easterly and Westerly WWTPs resulting in permit violations. The District is supposed to eliminate chlorine with sodium bisulfate to at least .038 milligrams per liter, prior to discharge, but .044 milligrams per liter were discharged at the Easterly WWTP.

At the Westerly WWTP, oil and grease, not visible to the naked eye, went through the sanitary system. This was discovered during various sampling and testing. Executive Director Ciaccia was satisfied with the debriefing he received from staff on this issue. The Operations and Maintenance staff did a credible job on its investigation of those excursions and have taken the appropriate corrective action.

Executive Director Ciaccia indicated that the District’s strategic initiative is to understand, inform and meet its customers’ water quality expectations, and one the metrics assigned to that goal is to achieve the Platinum Peak Performance Award status at

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the WWTPs. The platinum award is given by the National Association of Clean Water Agencies (hereinafter "NACWA"). In order to qualify for the platinum award, agencies cannot have any violations over a 5-year period. Executive Director Ciaccia indicated that the bar was set high in order to meet this goal and metric.

In order to qualify for NACWA's gold award, there can be no violations over a one year period, so the Easterly and Westerly WWTPs are eliminated but the Southerly WWTP still qualifies. The Southerly WWTP also remains as a contender for NACWA's platinum award. Easterly and Westerly WWTPs still qualify for the NACWA's silver award, which means that there can be no more than five excursions in one year. Executive Director Ciaccia stated that these are great standards for performance which have been adopted by the District as metrics within the Strategic Plan; however, this initiative will not be met this year.

Mr. Brown appreciated Executive Director Ciaccia's comments. With regards to the discharge issues, Mr. Brown indicated that taking corrective action and addressing the incident is critical. These incidents should be viewed as learning experiences in order to fully understand the circumstances and protection measures should be implemented in order to prevent these types of situations from reoccurring.

Mr. Brown commented on the SBE program. He appreciated the efforts made by staff in order to certify SBEs, but he was concerned about the big fish in a small pond dynamic. Smaller companies will be "stuck in the middle" because there is no incentive for prime contractors to work with certain contractors. The prime contractors arbitrarily select the subcontractors to work on projects while other qualified companies endure the challenges of trying to work as a prime contractor or be selected as a subcontractor on projects. SBEs working as prime contractors encounter challenges on large projects and may not have the capacity for this type of work.

Mr. Brown suggested that the District needs to identify projects for local SBEs since they are a viable component within our economy. The District needs to ensure that "we do not leave them out in our zeal to get through the SBE process."

Constance Haqq, Director of Administration and External Affairs, referred to information that was included in the Board packets pertaining to the Small Business Development (hereinafter "SBD") program. The SBD is geared toward developing SBEs by providing them an opportunity to work alongside larger companies. Companies such as Kokosing Construction, Independence Excavating, Ozanne Construction and Davey Tree Service in conjunction with the District engineering staff will work with 30 companies at a time over a 7-week period. Ms. Haqq indicated that the SBD will strengthen the SBEs and she provided the Board with a list of topics that will be covered with the SBEs in order to facilitate relationships between SBEs and larger firms.

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Mr. Brown indicated that he was concerned that there was not enough job opportunities for companies too large to qualify as an SBE, but not big enough to be a prime contractor. He suggested that the District create work that can be handled by those types of firms. Mr. Brown mentioned that past discussions included the potential unbundling of certain District contracts in order to create opportunities for some of those companies.

Executive Director Ciaccia agreed that unbundling certain District projects is a great way to create more work for smaller contractors, and he referred to the Southerly REF, which was unbundled and carried out in a phased approach. The District will examine other District projects for potential unbundling opportunities as it moves forward with its Capital Improvement Program (hereinafter "CIP"), which benefits both local business and SBE firms.

V. Action Items

Authorization to Advertise

No discussion ensued on Resolution Nos. 186-09 through 188-09.

Resolution No. 186-09

Snow plowing services at Environmental Maintenance and Services Center (EMSC), George J. McMonagle Building (GJM), and outlying facilities, anticipated expenditure: \$31,500.00.

Resolution No. 187-09

Mill Creek Tunnel Phase 3 Completion (MCT-3C). Engineer's estimate: \$12,800,000.00.

Resolution No. 188-09

Purchase of four (4) QLogic fiber channel switches for the District's business network.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution Nos. 186-09 through 188-09. Without objection, the motion carried unanimously.

Authorization to Rebid

No discussion ensued on Resolution No. 189-09.

Resolution No. 189-09

**Southerly Wastewater Treatment Center
Renewable Energy Facility (REF)
procurement of steel H-piles, Contract
28G, engineer's estimate \$2,500,000.00.**

MOTION – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution No. 189-09. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

No discussion ensued on Resolution No. 190-09.

Resolution No. 190-09

**RFPs for Beneficial Reuse of Ash Pilot
Project at the Southerly Wastewater
Treatment Center.**

MOTION – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution No. 190-09. Without objection, the motion carried unanimously.

Authorization to Purchase

No discussion ensued on Resolution No. 191-09.

Resolution No. 191-09

**Purchase from Hewlett-Packard
Company, under the State of Ohio
Contract, four (4) Proliant DL380 G6
services at a cost of \$57,075.20.**

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 191-09. Without objection, the motion carried unanimously.

Authorization to Enter into Agreement

No discussion ensued on Resolution Nos. 192-09 and 193-09.

Resolution No. 192-09

**Project and Financing Agreement with
the City of Pepper Pike.**

Resolution No. 193-09

Agreement for operation and maintenance of two (2) stream flow gages on West Creek with the Cleveland Metroparks, at a cost of \$30,000.00.

MOTION – Mayor Longo moved and Mr. O’Malley seconded to adopt Resolution Nos. 192-09 and 193-09. Without objection, the motion carried unanimously.

Authorization to Enter into Agreements and Authorization to Amend Resolution

No discussion ensued on Resolution No. 140-09a.

Resolution No. 140-09a

Authorization to enter into agreements for the 2009 Watershed Grants Program and authorization to amend Resolution No. 140-09 for additional monies for small-scale stormwater demonstration projects, at a cost increase of \$15,000.00, bringing the total amount of the Watershed Grants Program to \$215,000.00.

MOTION – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution No. 140-09a. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

No discussion ensued on Resolution Nos. 194-09 through 198-09.

Resolution No. 194-09

Contract with Benesch, Friedlander, Coplan & Arnoff, LLP for legal services to assist with the revision of the District’s professional engineering services construction contracts, at a cost not to exceed \$100,000.00.

Resolution No. 195-09

One-year contract with Charles P. Braman & Co, Inc., Smith & Nejedlik, Inc. and Sherman-Andrezejczyk Group, Inc. for appraisal and appraisal review services, at a cost not to exceed \$150,000.00.

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Resolution No. 196-09

Contract with Crain, Langner & Co. for risk management services from August 2009 to December 2010, at a cost not to exceed \$100,000.00.

Resolution No. 197-09

Contract with NEC Unified Solutions, Inc. for the purchase of Cisco hardware and implementation services, at a cost not to exceed \$669,839.32.

Resolution No. 198-09

Contract with Precision Multimedia, Inc. for audio/visual maintenance from August 21, 2009 to August 20, 2010, at a cost not to exceed \$49,500.00.

Mayor DePiero requested clarification on Resolution No. 194-09. Ms. Sundheimer replied that the contract with Benesch, Friedlander, Coplan & Arnoff, LLP (hereinafter "Benesch") is to assist the District with its revision of general conditions and standardize its contract documents including professional engineering and other professional services contracts, and the front-end and bidding documents.

Mr. Brown inquired if the District was trying to create boiler plate language for those types of projects. Ms. Sundheimer replied that the District intends to standardize its general conditions and update its contract documents to industry standards and to resolve any glitches in the bidding documents such as were mentioned earlier in the meeting.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 194-09 through 198-09. Without objection, the motion carried unanimously.

Authorization of Contract Modification

No discussion ensued on Resolution Nos. 117-09a and 199-09 through 201-09.

Resolution No. 199-09

Contract No. 3489, Small Business Enterprise Outreach Consultant, Room 210 Associates, LLC, a cost increase in the amount of \$14,400.00, bringing the total contract price to \$139,200.00.

Resolution No. 117-09a

Contract 09001308 with the U.S. Geological Survey for research efforts, a cost increase of \$13,000.00, bringing the total research efforts to \$16,708.00.

Resolution No. 200-09

Final adjusting deduct order, Contract No. 3388, Manhole Rehabilitation Contract 10, National Power Rodding Corp., a cost decrease in the amount of \$427,930.96, bringing the total contract price to \$921,770.29.

Resolution No. 201-09

Contract No. 3053 and 3053A, professional services for the Mill Creek Tunnel Phase 3 Completion (MCT-3C) project with MWH Americas, Inc., a cost increase in the amount of \$1,005,170.00, bringing the total contract price to \$7,349,673.00.

Mayor DePiero inquired about the increased amount of the contract for Resolution No. 201-09. Ms. Rotunno stated that the contract modification in Resolution No. 201-09 pertains to the Mill Creek Tunnel Phase 3 Completion (hereinafter "MCT-3C") project. This is the design contract that resulted from the MCT-3 contractor defaulting, and this particular modification is for additional professional services during the construction of the completion of the Mill Creek Tunnel.

Mr. Brown inquired whether modification was for any additional design work and construction management on the project. Ms. Rotunno clarified that this related to the construction management associated with the completion of the MCT-3C.

Mayor DePiero inquired if the additional costs associated with the MCT-3C project will be included in the litigation. Executive Director Ciaccia replied that all rebidding costs associated with this particular job in order for completion will be incorporated into the District's claim. Mr. Brown inquired if that pertains to Resolution No. 187-09 as well in which Executive Director Ciaccia affirmed.

MOTION – Mayor Longo moved and Mr. O'Malley seconded to adopt Resolution Nos. 199-09 through 201-09. Without objection, the motion carried unanimously.

Authorization to Certify Delinquent Sewer Accounts

No discussion ensued on Resolution No. 202-09.

Resolution No. 202-09

Certification of delinquent sewer accounts to the Cuyahoga County Auditor for 2009.

MOTION – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution No. 202-09. Without objection, the motion carried unanimously.

Sewer Use Code Matters

No discussion ensued on Resolution No. 203-09.

Resolution No. 203-09

Adopting Hearing Examiner findings with regard to the sewer account of Gail Horton, Northeast Ohio Regional Sewer District Case No. 09-004.

MOTION – Mayor Longo moved and Mr. O'Malley seconded to adopt Resolution No. 203-09. Without objection, the motion carried unanimously.

Add-On

No discussion ensued on Resolution No. 204-09.

Resolution No. 204-09

Authorizing the additional payment of \$113,500.00 to Harvard Refuse, Inc. and Sable Realty, Inc. in settlement of Cuyahoga County Probate Court Case No. 2009 ADV 0146089 for the appropriation of four (4) permanent takings (MCI-MB-1P, 2P, 3P, and 4P) and four (4) temporary construction easements (MCI-MB-1T, 2T, 3T, and 4T) and a permanent access easement across the property known as Cuyahoga County Auditor's Permanent Parcel Nos. 522-27-015, 522-26-009, 522-26-008, and 522-27-014, which are necessary for construction of the Mill Creek Interceptor – Main Branch (MCI-MB) project.

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MOTION -- Mayor Longo moved and Mr. Sulik seconded to add and adopt Resolution No. 203-09. Without objection, the motion carried unanimously.

VI. Information Items

1. Capital Improvement Program Status Update.

Executive Director Ciaccia turned discussion over to Ms. Rotunno to provide the Board with a monthly update on the CIP. Ms. Rotunno advised the Board that the executive summary of the CIP was included in their packets, and that she would provide the Board with an overview of the key issues completed in June.

The District completed 90% of the design review for the REF, which will be advertised this week. Design and bid advertisement for the ash line replacement was completed. Several projects were awarded in June.

Permitting issues were resolved with the City of Cleveland in order to proceed with the Huntington Garage Sewer Rehabilitation Project. An easement issue was resolved on Lee Road to allow for the advertisement of bids in order to proceed. Three projects were closed out within 105% of the base contract amount.

The District is measuring the metrics of three Key Performance Indicators (hereinafter "KPIs") including the delivery of the CIP and whether projects are being delivered on time and within budget (KPI #1), the accuracy of our engineers' estimates with respect to the lowest and best bidder (KPI #2), and that project delivery is within 5% of the base contract or less than 5% change (KPI #3).

KPI #1: The District's goal on the number of projects awarded was 21, and the District only awarded 14 of those projects. The District is behind on the dollar value of projects awarded by awarding \$92 million of the \$117.6 million, which would be the goal to date.

KPI #2: The District is ahead on the second KPI and is averaging on the aggregate of 6% below the engineers' estimates.

KPI #3: Ms. Rotunno advised that 87.5% of the District's projects closed out with less than 5% or less than 105% of the base contract amount. The District is delivering on closing projects less than the base contract amount by half of a percentage point.

Ms. Rotunno referred to a graphic depicting design projects and Notices to Proceed (hereinafter "NTP"). The light blue line indicated what was planned, and the dark blue line shows the actual amount. The graphic indicated that the District was lagging behind on its design projects and construction projects. The District is in the process of updating

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its Request for Proposal (hereinafter "RFP") and professional services procurement processes which has delayed some of the design NTPs. Ms. Rotunno was confident that the District will be closer to meeting its goal since the District anticipates issuing 18 additional RFPs in 2009.

Ms. Rotunno advised that the construction NTPs were delayed due to securing easements and permits. In June, the District resolved easement issues involving the Lee Road Relief Sewer and the Big Creek Interceptor projects. With the earlier passage of the add-on Resolution No. 204-09, the MCT-3C project is no longer restrained by easement issues. Ms. Rotunno thanked Julie Blair, Assistant Director of Law, for her efforts in resolving this issue.

Ms. Rotunno moved discussion and she advised that the District is approximately \$20 million behind on its cash flow. Ms. Rotunno attributed the slight incline in the actual performance curve to the increase of processing invoices through accounts payable.

Ms. Rotunno moved discussion to the CIP awards and she indicated that six projects represent \$200 million that could potentially be awarded for 2009. Ms. Rotunno noted that the incinerator procurement, which was originally supposed to be awarded in 2008, was awarded in 2009 which has impacted the numbers.

Ms. Rotunno referred to a table which showed the engineers' estimates. No projects were awarded in June; therefore, the table has not been modified from last month. The District continues to be 6% under.

Ms. Rotunno advised that per Mayor Starr's suggestion, the percentage change graphic was modified from last month. The general allowances were depicted in light blue. General allowances require approval from Executive Director Ciaccia, and the District authorized \$433,000 of \$6.9 million general allowances available to date.

The specific allowances are authorized by the Director of Engineering and Construction. Ms. Rotunno advised that she authorized \$535,000 and that is \$4 million available. Executive Director Ciaccia clarified that the specific allowances include items in the contract that are known but the quantity is unknown. He was unsure whether the total amount of the authorized specific allowances provided by Ms. Rotunno was overstated. There have been internal discussions regarding the definition of those allowances, and whether those numbers have been changed based on those discussions. Executive Director Ciaccia wanted to clarify this issue for the Board since that number may change in next month's CIP report. Ms. Rotunno stated that this does not change the amount authorized by her.

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Ms. Rotunno stated that 85% of District projects are within 105% of the base contract amount and 87.5% were closed with less than a 5% change from the base contract amount. One project exceeded the 5% of the base contract amount and was 7% over the base contract amount. Ms. Rotunno commended the construction staff on the management of those allowances. Furthermore, the change order percentages are a half percent below the base contract amount.

Ms. Rotunno referred to a graphic depicting the Minority Business Enterprise (hereinafter "MBE") and Women Business Enterprise (hereinafter "WBE") participation goals. The District's MBE goals were greater than the contractor's commitment. The contractors have been utilizing more WBE firms than what was proposed by the District.

Ms. Rotunno stated that the District will most likely meet its dollar value for awarded projects for 2009 which is \$254 million, if those six projects are awarded by the end of the year. Ms. Rotunno speculated that the District may lag behind on the project design but should meet its construction goals.

Mr. Brown thanked Ms. Rotunno for her detailed CIP presentation and he stated that these are minimum goals, and he desired greater commitment by the contractors to exceed the District's minimum goals. With respect to the 21 versus 14 project delivery KPI, Mr. Brown expected that there would be delays early on since the procurement processes are being revised and streamlined in order to provide more flexibility, but there should be a recovery strategy in place.

VII. Open Session

There were no items for discussion.

VIII. Public Session (any subject matter)

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

IX. Executive Session

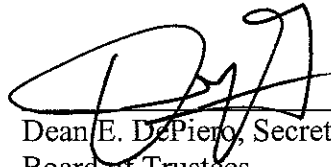
Mr. Brown stated that there were matters for discussion in Executive Session.

MOTION – Mayor Longo moved to enter into Executive Session to discuss the McCullough litigation settlement, 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 1:41 p.m. to 1:45 p.m.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Longo moved and Mr. Sulik seconded the motion to adjourn at 1:45 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