

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
SEPTEMBER 17, 2015

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
R. Sulik
W. O'Malley
J. Bacci
T. DeGeeter
S. Dumas
R. Stefanik

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

II. Approval of Minutes

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to approve the minutes of the September 3, 2015, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

Chief Executive Officer (CEO) Ciaccia advised that no one signed up to speak about a specific agenda topic.

IV. Chief Executive Officer's Report

CEO Ciaccia reported that on Monday the Supreme Court of Ohio ruled in favor of the District regarding the Stormwater Management Program (SMP) litigation on all accounts. He thanked the District's attorneys, Chief Legal Officer & General Counsel, Marlene Sundheimer, who framed the issues, lead attorney Mark Wallach with Thacker Martinsek, LPA, Matthew Kucharson with Calfee, Halter & Griswold LLP, and Molly Drake, formerly with Calfee, now with Swagelok Company. Former Board member, Dean DePiero, of counsel with McDonald Hopkins, also assisted with the class action lawsuit that arose subsequently.

CEO Ciaccia also recognized former Ohio Supreme Court Justice Yvette McGee Brown, now with Jones Day, who represented the supporting suburban communities with the amicus briefs in the Supreme Court case, and Evelyn Stratton, also a former Ohio Supreme Court Justice, now with Vorys Advisors, who helped the District on a consulting basis and assisted putting together a strong case at the Supreme Court level.

At that time, CEO Ciaccia asked Mr. Wallach to elaborate on the Supreme Court decision.

Mr. Wallach advised that the decision reversed the Eighth District Court of Appeals across the board, finding that the SMP is authorized by both Ohio statutes and the District's charter documents. The Court also found that the fee the District previously collected to finance the program is authorized by Ohio statutes and the District's charter.

The opinion was issued on Tuesday [September 15] and there is a 10-day period during which the loser has an opportunity to ask the Court for reconsideration of its decision. The Court's decision becomes final after 10 days, and the mandate will be issued from the Supreme Court to the lower courts if there is no motion for reconsideration.

Mr. Wallach stated that the decision and opinion appears to be a clean reversal with no remand for further proceedings, and ought to end the litigation. However, the legal team will be prepared to respond if there is a motion for reconsideration. Motions for reconsideration in the Ohio Supreme Court are denied fairly quickly and rarely granted.

One of the class action cases is pending; the Court put it on hold after the District paid the fees that had been collected into an escrow account. The Trial Court denied class certification, and once the Supreme Court decision becomes final, the District will move to dismiss the class action litigation and to have the money released from escrow. The release from escrow does not require court action, and the funds held in the escrow account will then be available for use by the District for the SMP.

CEO Ciaccia explained that District staff is planning to move forward with the SMP once the Supreme Court's decision becomes final. It will take several months for the fee to be reinstated on bills and staff will work with the Cleveland Water Department (CWD) on that. He anticipates the fee returning on bills during the fourth quarter of 2016.

Much has happened in the two years the SMP has been on hold, and CEO Ciaccia advised that staff now has to revisit the GIS data and recalibrate the customer data base and all other program areas. However, there is \$20 million in escrow and once that money is released staff can begin maintenance and other projects that we were planned.

CEO Ciaccia explained that it is incumbent upon the District to take early action so the public can see the true benefits of this program. The communities are interested in the 25% cost share,

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which is \$5 million at the moment, which communities will be able to access for stormwater projects on the local system.

CEO Ciaccia advised that when the SMP was suspended he did not want to lose the personnel that were working on the SMP. During the interim, staff picked up work in other areas. Now with the reinstatement of the SMP, we will have to reprioritize the programs, resources and the work, accordingly. There was an awesome amount of work that was done in the interim, so everyone was kept extremely busy. The community infrastructure grant program is a prime example of a worthy program that was developed and we want to carry forward.

CEO Ciaccia stated that the District will not bill customers retroactively when the SMP fee resumes.

Mr. Brown indicated that the Board agreed, and he looked forward to prioritizing the District's efforts with communicating the resumption of the SMP and its strategy to lead a regional effort to address stormwater concerns and prioritize the work that needs to get done. He stated that the District must frame its message and the path forward, because if we don't, someone will frame it for us.

Mr. Brown stated that the District must be thoughtful and strategic in terms of being clear to the community what the next steps will be. He also advised that the Board will have an interest in terms of the staffing implications of the SMP; it appears some of that work that transpired while the program was suspended will need to be continued.

Ms. Dumas inquired whether there was any ability to recover the District's legal costs from the losers. Mr. Wallach advised that the mandate will specify payment of court costs; there is no statutory basis to recover attorneys' fees in this litigation.

CEO Ciaccia explained that Humberto Sanchez, formerly the Director of Information Technology (IT) has left the District and Chief Operating Officer (COO) Kellie Rotunno has assumed the role of Acting Director of IT as the process of filling that position transpires.

Ms. Dumas stated that she held the dual roles for a stint with the City of Cleveland and she was concerned that the organizational restructuring under the COO as presented to the Board did not have the COO in charge of IT. She expressed concern about expanding COO Rotunno's duties because she has a lot already with operations. She suggested a short time frame of perhaps four weeks, and asked if there may be someone internal that can pick up the responsibility. CEO Ciaccia stated that the goal is to make it as short-term as possible.

Mr. Brown agreed with Ms. Dumas and advised that he was a little concerned about expanding COO Rotunno's area of responsibility when she has ample responsibility already. He inquired whether there was someone internal in a secondary role that could assume some of the

responsibility. CEO Ciaccia advised that there is a great IT staff and there are some internal candidates but and he thinks it can made as short as possible.

V. Action Items

Authorization to Adopt Policy

Resolution No. 225-15

Adopt Northeast Ohio Regional Sewer District
Green Infrastructure Policy.

This resolution was **held**.

CEO Ciaccia explained that since green infrastructure has been a part of the Combined Sewer Overflow (CSO) Long-Term Control Plan and consent order staff has been working towards a logical approach to incorporating green infrastructure into the overall portfolio.

Green infrastructure is within the consent order in Appendix 3, which was a mandated project above the level of control to be reached and Appendix 4, which was the green for gray infrastructure trade-off.

The District is building a number of Appendix 3 green infrastructure projects, which have not turned out as cost-effective as hoped and the District is moving to a more distributive approach to green infrastructure.

CEO Ciaccia advised that staff is contemplating green infrastructure not only in terms of CSO control but the additional resiliency it could provide for the sewer system. The co-benefits associated with it are compelling. The District has been working with a steering committee of stakeholders throughout the region and has developed this particular policy.

Kyle Dreyfuss-Wells, Deputy Director of Watershed Programs, advised that the draft green infrastructure policy is the result of an interdepartmental working group. She emphasized the thoughtfulness and insight the group brought to the green infrastructure policy in addition to the internal review from District staff.

The District's definition of green infrastructure focuses on green infrastructure for CSO control. That will continue to guide Appendix 3 projects and other work under the consent decree. The green infrastructure policy expands the definition to green infrastructure for source control, which is the purpose of green infrastructure for stormwater management and source control.

Ms. Dreyfuss-Wells stated that the District has six program areas. The first of which is green infrastructure in the capital improvement and operations and maintenance programs. The East 140th Street Relief and Consolidation Sewer Project is a great example of a green infrastructure

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approach. The project went out with a base design that identified remaining CSO volume, areas of separated sewers and culverted streams that were potential off-load points for stormwater, which are the triggers for potential green infrastructure.

The East 140th Relief and Consolidation Sewer Project has a significant green infrastructure component that takes advantage of existing pockets of separated sewers and the two off-load points of Nine Mile Creek and Shaw Brook. The policy will move towards finding similar opportunities.

The Green Infrastructure Grants Program includes pervious paver sections in the parking lot and entry features such as a bioretention area.

The proposed Community Infrastructure Program is a potential option to help communities address local water quality issues from sanitary sewer overflows to illicit discharges. Much of that will be gray infrastructure, but there is a potential component to promote green infrastructure with the Green Infrastructure Policy -- highlighting opportunities to disconnect and distribute stormwater on site and pull it out of local systems.

Ms. Dreyfuss-Wells advised that the Water Resource Restoration Sponsor Program since 2005 has facilitated over \$40 million for protection and restoration of flood plains, wetlands and open spaces. The commitment for these projects will be supported by the Green Infrastructure Policy.

The Community Discharge Permit Program is the program under the District's Code of Regulations Title III – the separate sewer code -- and Title IV, the combined sewer code. Under Title IV the District has the opportunity to review and require stormwater management within the combined sewer area.

The District has a partnership with the City of Cleveland's Planning Commission to get ahead of the private sector redevelopment that will be spurred by the Opportunity Corridor to promote green infrastructure as a component of that redevelopment.

Ms. Dreyfuss-Wells explained that the SMP is the cornerstone of green infrastructure from stormwater master plans through inspection maintenance, construction projects and encouraging good practices through credits and the community cost share program. The green infrastructure policy would be distributed across the District departments.

Mr. Brown stated that it appears modifications to the policy would be necessary because there are statements that suggest some things may not be applicable pending the outcome of the SMP litigation. Ms. Sundheimer noted that the policy is in draft form and can be modified.

After conversation, the Board decided to hold the resolution and have staff revise the policy and bring it back to for consideration at the next Board meeting.

Authorization to Issue Request for Proposals

Resolution No. 226-15	RFPs to Implement a 2016 Green Infrastructure Grants Program for the Combined Sewer Area. Cost: Not-to-Exceed \$2,000,000.00.
Resolution No. 227-15	RFPs to Implement a 2016 Watershed Organization Service Agreement Program. Cost: Not-to-Exceed \$280,000.00.
Resolution No. 228-15	RFPs for Design, Construction Administration/Resident Project Representation Services, Programming and Integration for Phase I of the Automation Program Management Project.

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 226-15 through 228-15. After discussion and without objection, the motion carried unanimously.

Mr. Sulik requested an explanation of Resolution No. 228-15.

James Bunsey, Director of Engineering & Construction, stated that this is the first phase of a larger, longer duration project and is our way of planning for a holistic approach to replacing the programmable logic controllers (PLCs) at all three treatment plants.

The PLCs are networked throughout the organization and are hardened for industrial use; they are the brains behind the control systems at the three plants. They control all process parameters, take in all the data and provide the information for reporting.

Mr. Bunsey explained that staff is looking to begin a program of systematic replacement and optimization of PLCs because the manufacturer no longer supports the platform. More than half of the PLCs are over ten years old. They need to be replaced due to reliability and overall processing speed.

Staff plans this as a 5-to-8-year consultant-led program, which includes overview, design, replacement and programming services for the PLCs. Other services will include the human machine interface graphic and reporting improvements.

Mr. Bunsey advised that the integration of automation of the PLCs into the control system is also a component of the program manager. They need to migrate to the Wonderware software platform at Easterly and Westerly.

Phase I of the automation program management program will be from 2016 to 2021 and is

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estimated at \$12.5 million. The outcome would be multiple construction jobs, specifically at replacing all the PLCs at Westerly. The program is considered a pilot, with the lessons learned at Westerly applied in Phase II. The total for the Phase I would be about \$18 million.

Mr. Bunsey advised that Phase II would either utilize the consultant if it is successful or issue a Request for Proposal. He expects Phase II to focus on Southerly, Easterly and potentially the collection system PLC replacements and the total would be a little over \$60 million.

Mr. Sulik inquired whether the professional fee estimate was \$25 million. Mr. Bunsey stated that the professional fee would be the total of \$12 million and \$22 million. A significant part of the professional fee is implementation because they provide programming and design services for all instrumentation PLCs. The program will bring conformity to all projects and coordinate with the design consultants implementing the instrument under their current project.

Mr. Sulik inquired regarding the cost of the materials or controls. Mr. Bunsey indicated that most of the hardware resides in the PLC upgrade, which is the construction piece following this. Westerly would be about \$4 million and that would be brought to the Board before construction.

Mr. Brown stated that it is an unconventional capital project because the design costs significantly more than the hardware. Mr. Bunsey advised that because they would put these programming services under the program manager, bringing consistency throughout implementation there is a net reduction on design consultants and the contractor -- the contractor no longer performs the programming.

Mr. Brown stated that it is to be determined whether their work continues based on the result. He asked when there is understanding of whether things are proceeding as expected. Mr. Bunsey explained that the performance of the consultant will be monitored like all design consultants.

CEO Ciaccia stated that a project of this magnitude will be included in the monthly Engineering report, so the Board will get regular updates regarding performance. Mr. Brown suggested that something should be written contractually that gives protections in terms of performance. Mr. Bunsey recommended putting performance milestone guarantees throughout the duration of the contract.

Ms. Dumas questioned the cost of maintenance, staffing and its capacity to handle the improved service.

Mr. Brown stated that there must be an implementation strategy. He was trying to make sure the approach was holistic in terms of the total cost and resource requirements. Mr. Bunsey advised that you're absolutely correct. Operations will bring an assessment to the Board of current staffing levels, and their ability to support the new infrastructure.

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Mayor Bacci questioned whether there will be money beyond these phases. Mr. Bunsey explained that this is a comprehensive approach to automation for the program logic controller replacement, the software and programming. CEO Ciaccia advised that there could be additional operations and maintenance costs. The goal is to not add much of a financial burden.

Mr. Brown suggested that should be part of the work-product so staff knows going into implementation that these are additional resource requirements and ongoing maintenance costs it will take to operate the new systems. CEO Ciaccia noted that the Operational Readiness Study is designed to examine those issues. A number of new assets will come online and the readiness to operate these new assets will be very important to the rate study over the next year.

Mr. Brown stated that the path forward seems to be a convergence of this work and other work. He expects those issues would be covered as part of the discussion. CEO Ciaccia advised that staff is very comfortable it can deliver the project.

Mr. Brown stated that there should be a connection between training and handing off to staff so managing the new technology is better understood to reduce the reliance on consultants. He stated that the District must understand the ultimate objective in an efficient manner that minimizes the cost to ratepayers.

Ms. Dumas stated that operational readiness should not always result in large professional service contracts because the current staff cannot operate these new technologies. She suggested considering the total effect and to give consideration to training employees, even those who may be 20 years into their careers.

CEO Ciaccia stated that Ms. Dumas made fair points and previously the District hired a consultant to program manage the capital program. Over time they were able to bring staff on board that eliminated the need for the consultant and it was more cost-efficient. He advised that they hope to not need large consulting contracts in the future to manage and maintain the automation system.

Authorization to Advertise

Resolution No. 229-15

Advertise for Construction for the Chevrolet Blvd. Detention Basin Project. Engineer's Opinion of Probable Construction Cost: \$2,190,000.00.

Resolution No. 230-15

Advertise for Construction for the Westerly Wastewater Treatment Plant Ferric Chloride Tanks Project. Engineer's Opinion of Probable Construction Cost: \$8,496,400.00.

Resolution No. 231-15
Advertise for Two-Year Requirement Contract for Sodium Hypochlorite Solution for Use at All Wastewater Treatment Plants. Anticipated Expenditure: \$983,850.00.

MOTION – Mayor Stefanik moved and Mr. Sulik seconded to adopt Resolution Nos. 229-15 through 231-15. After discussion and without objection, the motion carried unanimously.

Authorization to Rescind and Advertise

Resolution No. 232-15
Rescind Resolution No. 217-15 which Extended the Current Ferric Chloride Solution Contract with PVS Technologies, Inc. and Advertise for a One-Year Requirement Contract for Ferric Chloride Solution for All Wastewater Treatment Plants. Anticipated Expenditure: \$360,000.00.

MOTION – Mayor DeGeeter moved and Ms. Dumas seconded to adopt Resolution No. 232-15. After discussion and without objection, the motion carried unanimously.

Authorization to Rescind, Extend and Advertise

Resolution No. 233-15
Rescind EnterNoc Reverse Auction Management Service Contract, Extend the Current Wholesale Natural Gas Contract with Dominion Retail, Inc. and Advertise for a Two-Year Requirement Contract for the Purchase of Wholesale Natural Gas for Use at All Wastewater Treatment Plants, the George J. McMonagle Building and the Environmental and Maintenance Services Center. Cost: A Six Month Time Extension to Our Current Dominion Retail, Inc. Contract with No Change in the Contract Price, and the Expected Expenditure for the Two-Year Requirement Contract is \$5,000,000.00.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 233-15. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation. CEO Ciaccia explained that the District could not come to terms with the company and decided to go with a conventional approach.

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Jacqueline Williams, Manager of Procurement Services, advised that during negotiations EnterNoc communicated that they could not get the competition the District expected because the District asked for too many requirements and guarantees. At that time staff decided to end negotiations with EnterNoc and go with a conventional approach to procuring natural gas. In the meantime, Dominion is willing to provide the District an extension at a lower rate for three or six-month periods.

Authorization to Assign Agreement

Resolution No. 234-15

Assign Agreement Between the District and Vorys, Sater, Seymour and Pease, LLP for State Advocacy Services to Vorys Advisors, LLC. All Current Terms and Conditions of the Agreement will Remain Unchanged Under the Assignment.

MOTION – Mayor Stefanik moved and Ms. Dumas seconded to adopt Resolution No. 234-15. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 235-15

Construction Contract with Mark Haynes Construction Co. for the Bunker Rd. Stream Bank Stabilization Project. Contract Amount: \$124,569.50.

Resolution No. 236-15

Contract with Polydyne, Inc. to Provide Centrifuge Polymer for Use at the Westerly Wastewater Treatment Plant. Cost: \$229,992.00.

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution Nos. 235-15 through 236-15. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Design-Build Contract

Resolution No. 237-15

Design-Build Contract with Herbst Electric Company for the District Wide LED Lighting Upgrade Project. Contract Amount: \$2,000,000.00.

MOTION – Mayor Stefanik moved and Mr. Sulik seconded to adopt Resolution No. 237-15. After discussion and without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 238-15 Final Adjustment Modification of Contract No. 11000123 with McNally/Kiewit ECT JV for the Euclid Creek Storage Tunnel Project. Cost: A Decrease in the Amount of \$3,602,367.77 Bringing the Total Contract Price to \$195,040,632.23.

Resolution No. 239-15 Final Adjustment Modification of Contract No. 12000729 with Mark Haynes Construction for the West Creek Confluence Site Restoration and Stormwater Improvement Project. Cost: A Decrease in the Amount of \$114,985.65 Bringing the Total Contract Price to \$2,293,246.67.

MOTION – Mayor Stefanik moved and Ms. Dumas seconded to adopt Resolution Nos. 238-15 through 239-15. After discussion and without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 240-15 Authorization to Grant a Credit for an Underground Leak. Cost: \$72,560.66.

Resolution No. 241-15 Adopting the Findings of the Hearing Examiner with Regard to the Sewer Account of Buckeye Intermodal, Sewer District Case No. 15-004.

MOTION – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 240-15 through 241-15. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Program Management Status Report and Update – August 2015

James Bunsey, Director of Engineering & Construction, stated that the District is at 92% of cash flow.

The District has completed six of the seven milestones mandated this year in terms of addressing reports to the U.S. Environmental Protection Agency (EPA). The revised green infrastructure post-construction monitoring indicates to the EPA the District’s plan for the monitoring to demonstrate compliance with the green infrastructure component of the consent decree.

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The Doan Valley Storage Tunnel team realized \$10 million in value engineering savings by eliminating the need to upsize a pipe at the Brook Culvert. That total savings for the year is \$15 million, against the goal of \$23.5 million.

Mr. Bunsey advised that the Westerly Wet Weather Improvements and Easterly High-Rate Treatment projects received awards for design services and the Southerly Optimized Parallel Treatment project was authorized by the Board for the RFP. Two of the three projects are large projects.

The Southerly Main Substation Replacement design was completed a few days late but met its Key Performance Indicator (KPI), as was the Westerly Ferric Chloride Tank project, which was 40 days late but met the KPI of 90 days.

The Easterly Primary Settling Tanks number nine through ten did not meet KPI on the engineer's estimate but the bids came in lower by 20%. The project was awarded 14 days early.

One bid was received for the Collection Asset Renewal project and it was within 10% of the engineer's estimate and awarded 64 days late, which was within the 90-day window of 90 days.

Moving to construction, Mr. Bunsey advised that the tunnel dewatering pump station is above grade and moving vertical of the pump station. This opens up opportunity for multiple trades and disciplines. However, there is concern about the project finishing on time. The contract completion date is approximately a year from now. Ample pump testing and commissioning is required prior to substantial completion. District staff met with the senior staff of the joint venture and they are convinced they will complete on time. District staff requested additions to their scheduling and a change in cash flow to provide a comfort level staff could review.

Mr. Bunsey advised that the first mercury absorption unit for the Southerly Maximum Achievable Control Technology was delivered slightly ahead of schedule and the second and third units are on site. The equipment contract was assigned to the contractor and everything is going well for delivery of that unit by the March 21 EPA-mandated compliance date.

The Edgewater Park Gate project closed out at 87% of the contract value, meeting KPI. Unfortunately, the variance between the close out and the contract value itself was a good portion of the Business Opportunity Program sub-consultant. The unit price items that were part of the bid were not utilized in total and that was the reduction of cost and it affected the Business Opportunity Program participation of 16.8% compared to the goal of 20%. The work orders as a function of construction were 2.2% overall, which is less than half what is considered an industry standard.

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Mr. Bunsey announced that the Euclid Creek Tunnel project closed and is one of the most successful projects he has worked on in thirty years. He asked Ryan Sullivan, Senior Construction Supervisor, to elaborate.

Mr. Sullivan advised that the project closed under contract at \$195 million. The tunnel is over 18,000 feet, 3.5 miles long and has a 24-foot diameter. The tunnel will hold 61 million gallons of overflow during events, reducing the CSO by 368 million gallons. To date, this is the largest tunnel the District has constructed and is the first of the seven tunnels under the consent decree.

Mr. Sullivan advised that \$3.6 million was returned because the general allowance at the time of bid was 5% as opposed to the typical 10%. This KPI was not met. 98.2% of the original contract amount was used, including an additional \$5.7 million added for difficult underground work associated.

The project was awarded prior to the establishment of the current Business Opportunity Program, which were SBE goals. The goal of 14% was exceeded and ended at 19.6%. The project closed 179 days past the original completion date, meeting the old KPI of 180 days.

Mr. Sullivan stated that the project had a one-pass tunnel utilized in hard rock, utilized precast steel reinforced segments and an open-face TBM and a two-part faceting grill to lock those segments in place – the first time that has been done in the world. This is the largest construction contract the District has undertaken.

2. Public Purpose Policy

CEO Ciaccia advised that recently, the Ohio Auditor of State began to expand its audits into areas outside the typical audit scope. The District is aware of the experience that Louisville, Kentucky's wastewater utility went through with their state audit. Staff therefore felt it was important to look at everything the District does from a public purpose lens. Core functions the organization is mandated to do are for a public purpose, but some programs and activities that support those core functions may be in question. CEO Ciaccia stressed that this was not driven by recent media attention. The District started this initiative some time ago as part of its internal audit process. Today's presentation will provide an overview of the proposed Public Purpose Expenditures Policy which covers expenditures from the perspective of what is allowable under state law, a summary of the District's legal mandates and core functions, and how the Policy will be implemented.

CEO began by saying that this policy is much like the District's Ethics Policy the Board adopted. The reason for the policy is to provide consistency with the District's core values: ethics, honesty and transparency, balanced with informed decision-making and accountability. The purpose is to provide clear reporting and accountability for District expenditures, to clarify

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activities for employees and customers, and to establish a formal decision-making process around these types of expenditures.

The discussion was turned over to Marlene Sundheimer, Chief Legal Officer (CLO) and General Counsel, to cover public purpose expenditure requirements under Ohio law. Ms. Sundheimer stated that under the Public Purpose Doctrine, public funds must be spent only for valid public purposes. The determination of what constitutes a valid public purpose rests with the judgment of the governing body of the governmental entity, unless it is arbitrary or unreasonable. The law states that even if the determination is reasonable, that determination must be memorialized by a duly enacted ordinance or resolution and must be approved before the expenditure is made.

CLO Sundheimer advised that the Ohio Auditor of State, Dave Yost, recommends that public boards adopt a public purpose policy such as this. The Auditor says the policy may permit the adoption, by resolution, of individual expenditures, or of a category or categories of expenditures. The policy must state the justification for the public purpose for each expenditure category and must be adopted by resolution prior to the expenditures. The District's proposed policy covers many categories' expenditures.

Ms. Sundheimer explained that the Auditor of State wants to make sure the policy requires sufficient documentation for such expenditures so that an auditor may verify the public purpose of the expenditure, and there should be sufficient management controls around these expenditures to ensure that the public purpose is carried out.

The Auditor of State says expenditures will not be questioned unless there is a clear indication that the Board's determination of the public purpose is arbitrary and incorrect. If they find abuse, the Auditor is charged with bringing those findings before a court so the court may determine the matter.

A proper public purpose under the law is something required for the general good of all inhabitants -- the promotion of public health, safety, morals, general welfare, security, prosperity and contentment of all inhabitants. If the primary objective of the expenditure is to further a public purpose, it is a valid expenditure, even if an incidental private end is advanced. An example of this is where the District engages with a private partner to assist the District in carrying out a governmental function.

As to the District's legal mandates and core governmental functions, Ms. Sundheimer advised that the Board must determine the expenditure is necessary to perform a core governmental function or exercise a power expressly conferred upon it by law or other legal mandate. The District's primary legal mandates are found in Chapter 6119 of the Ohio Revised Code. The District was created to carry out the mandates of the Clean Water Act and other environmental rules, regulations and policies.

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Another source of the District's legal mandates is in the Court Order that created the District. It states that the District's purpose is to be a total wastewater control system for the collection, treatment and disposal of wastewater within and without the District; serving the Metropolitan Cleveland area with uniform rates; with control, administration and financing by the Board of Trustees; capable of being expanded; and with regulatory authority over all wastewater collection facilities and systems within the District.

The presentation moved on to a discussion of the District's core functions. CEO Ciaccia stated that the highest mandate for the District is to collect, treat and dispose of wastewater; however, these cannot be the limiting core functions or services the District provides. These core functions cannot be provided without the core operational functions to support it, such as operations and maintenance activities, and the exercise of regulatory authority over local wastewater systems, through the District's Code of Regulations.

CEO Ciaccia explained that the District's core operational functions support the primary functions. These operational programs are necessary to maintain sustainable financial practices; to assure organizational capacity in engineering, planning, design, construction, and technology; to provide member community support to meet regional needs; to ensure long-term institutional capacity; and to provide effective customer service and outreach programs for educational purposes.

CEO Ciaccia stated that staff wanted to establish that there are high-level mandated functions required to carry out our mission. Some people might question the programs and activities that support these core functions; therefore, we listed the key programs and expenditure categories in the Policy, with public purpose justification for each area. The policy has a provision to make amendments from time to time as new programs are developed.

CEO Ciaccia moved on to the purpose of some of the programs covered by the Policy. The Business Opportunity Program helps ensure that local contractors are able to participate in our very large construction projects, including minority- and female-owned businesses.

The Good Neighbor Ambassador program is an inclusion program that focuses on community outreach within the communities challenged by long-term construction projects.

Community outreach and sponsorships are geared toward educating the public regarding what the District does and what they can do to help the environment.

CEO Ciaccia advised that the District is involved with federal and state advocacy to affect regulations, as they did by arguing in favor of integrated planning, or funding issues to carry out our mandates, as in the receipt of state revolving loan funds and stimulus money. We also received \$400,000 in grant funds for brownfields remediation related to Consent Decree green infrastructure projects.

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Travel goes along with the state and federal advocacy program, as well as, carrying out other core functions, and it is limited to advocacy or educational purposes. There are no junkets, or pure golf outings and things of that nature. We travel for business purposes necessary for carrying out the things we have to do as a governmental agency.

Employee programs include the Tuition Reimbursement Program and the Employee Wellness Programs, which impacts health care costs and our interest in driving those costs down. The Employee Recognition Program is geared toward attracting and keeping the best employees that we need to carry out our large programs. In addition, we are proud of our Diversity & Inclusion Program so that we attract the top people and makes sure that our workforce reflects that of the society around us.

CEO Ciaccia stated that green infrastructure grants and the community infrastructure program are also two examples of programs that are clearly necessary, serve public purposes, and align with the District's core functions. CEO Ciaccia cited a few of these examples to put them on the record and explain why the District believes they are important and meet a public purpose.

Ms. Sundheimer summarized the next steps. The District is asking the Board to consider adopting the Policy which is in draft form. A legal memo distributed with the draft Policy provides the legal basis and foundation for the public purposes stated in the Policy for each category of expenditures.

The Policy will be on the action agenda at the October 1st Board Meeting for consideration. Should the Board adopt the policy, it will be implemented during the 2016 budget process. Briefly, the process is as follows: First, the District's Executive Review Committee will review the budgets submitted for the programs and expenditures covered in the Policy. Next, the Chief Financial Officer will present the recommended budgets for these expenditures to the Board's Finance Committee for review and approval with the District's annual budget. Finally, the expenditures will be included in the recommendations of the Finance Committee to the whole Board for approval with the District's annual budget. The programs and expenditures will be subject to any limitations established by the Board.

Ms. Dumas inquired whether there will be some internal predetermination before bringing such items to the Board, to which Ms. Sundheimer confirmed. She stated that as the Chief Legal Officer, she has reviewed the stated determination of the public purpose of each program or expenditure category. During the annual budget review, staff will look at individual line items and determine whether those individual expenditures will meet the public purpose policy.

VII. Open Session

Mayor Bacci stated that the District's open house would be held on Saturday, September 19 from 9 a.m. to 4 p.m. at the EMSC facility in Cuyahoga Heights.

VIII. Public Session (any subject matter)

No members of the public registered to speak during Public Session.

IX. Executive Session

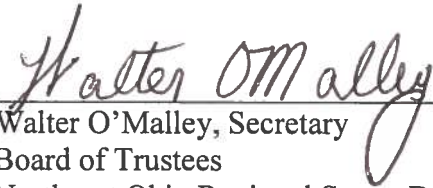
There were no items.

X. Approval of Items from Executive Session

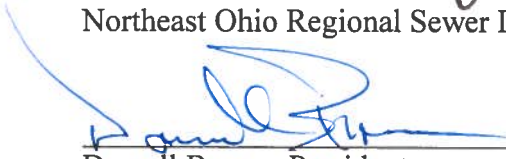
There were no items.

IX. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Mayor Stefanik seconded the motion to adjourn at 2:07 p.m. Without objection, the motion carried unanimously.



Walter O'Malley, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



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