

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES
SEPTEMBER 20, 2007

The meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:45 P.M. on the above date by President Brown.

A. Roll Call

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

The Secretary informed the President a quorum was in attendance.

B. Special Board Work Session

The Secretary reported that the Board met in a Special Board Work Session on this date beginning at 11:25 A.M. The Board discussed in detail the items on the Special Board Work Session agenda. See the Special Board Work Session Summary for the September 20, 2007 Board of Trustees Special Work Session (Attachment "1"). The Special Board Work Session adjourned at 12:35 P.M.

C. Working Session

The Secretary reported that the Board met in Working Session on this date beginning at 12:45 P.M. See the Working Session Summary for the September 20, 2007 Board of Trustees meeting (Attachment "2"). The Working Session adjourned at 1:28 P.M., and the Business Session began at 1:30 P.M.

D. Approval of Minutes

Item 1 – September 6, 2007

Moved by Mr. Liberatore and seconded by Mayor Longo that the Minutes of September 6, 2007, be approved as circulated. Without objection CARRIED UNANIMOUSLY.

E. Major Projects

1. Combined Sewer Overflow Improvement Program

Item a – Authorizing the Executive Director to enter into a contract with Arcadis U.S., Inc., 1100 Superior Avenue, Suite 1250, Cleveland, Ohio 44114, for design of modifications to the Spring/Jennings control structure. Cost: Not to exceed \$100,700.00.

Executive Director Odeal indicated that it is necessary to provide professional services for design of modifications to the Spring/Jennings control structure.

MOTION - Moved by Mr. Sulik and seconded by Mr. Liberatore that the resolution be adopted. Without objection CARRIED UNANIMOUSLY. Resolution No. 216-07.

2. Interceptor Sewers

Item a – Awarding a contract to National Power Rodding Corporation, 2500 W. Arthington, Chicago, Illinois 60612, for rehabilitation of District manholes located throughout the service areas – Contract MR-10. Cost: \$1,349,701.25.

Executive Director Odeal explained that bids were received and opened on August 21, 2007. Twenty-three (23) invitations to bid were distributed and six (6) bid packages were returned. Upon evaluation by the Engineering Department it was determined that the bid submitted by National Power Rodding Corporation was the lowest, responsive, responsible bid to meet specifications. The Legal Department has determined the bid meets all legal requirements and the District's Equal Employment Opportunity Policy, Guidelines and Procedures.

MOTION – Moved by Mr. Liberatore and seconded by Mr. Sulik that the resolution be adopted. Without objection CARRIED UNANIMOUSLY. Resolution No. 217-07.

F. Operations

Executive Director Odeal suggested that the next three (3) resolutions be considered together. Without objection SO ORDERED.

Item 1 – Authorizing the taking of bids for the cleaning and disposal of ash from one (1) ash lagoon at the Southerly Wastewater Treatment Plant. Estimated Cost: \$1,500,000.00.

Executive Director Odeal stated adoption of this resolution would authorize the taking of bids for the cleaning and disposal of ash from one ash lagoon at the Southerly Wastewater Treatment Plant. Upon receipt of bids, a recommendation will be made to the Board for award to the lowest, responsive, responsible bidder.

Item 2 – Authorizing and approving payment to the Treasurer of the State of Ohio for the Ohio Environmental Protection Agency's Annual Discharge Fees for the Easterly, Southerly and Westerly Wastewater Treatment Plants. Cost: \$129,400.00.

Executive Director Odeal noted that Annual Discharge Fees to support the Ohio Environmental Protection Agency and its Surface Water Protection Fund are authorized pursuant to the Ohio Revised Code and are required for the Easterly, Southerly and Westerly Wastewater Treatment Plants.

Item 3 - Awarding a contract to Marous Brother Construction, Inc., 1702 Joseph Lloyd Parkway, Willoughby, Ohio 44094, for the removal of existing cabinets and the purchase and installation of new cabinets at the Environmental and Maintenance Services Center. Cost:

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\$37,740.78.

Executive Director Odeal indicated that bids were received and opened on August 24, 2007. Sixteen (16) invitations to bid were distributed and two (2) bid packages were returned. Upon evaluation by the Operations Department it was determined that the bid submitted by Marous Brothers Construction was the lowest, responsive, responsible bid to meet specifications. The Legal Department has determined the bid meets all legal requirements and the District's Equal Employment Opportunity Policy, Guidelines and Procedures.

MOTION - Moved by Ms. Kelly and seconded by Mr. Liberatore that the foregoing three (3) resolutions be adopted. Without objection CARRIED UNANIMOUSLY. Resolution Nos. 218-07 through 220-07, respectively.

G. Administration

Executive Director Odeal suggested that the next three (3) resolutions be considered together. Without objection SO ORDERED.

Item 1 – Authorizing an increase in the appropriation for Northeast Ohio Regional Sewer District Contract No. 3044 with LABlynx, Inc., for development of new functionality within the Laboratory and Pretreatment Information Management System (LIMS/PIMS). Cost: Not to exceed \$55,000.00.

Executive Director Odeal explained that adoption of this resolution would provide for the development of new functionality within the Laboratory and Pretreatment Information Management System (LIMS/PIMS).

Item 2 – Authorizing the purchase of a one (1) year service and maintenance agreement

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for thirty-seven (37) copiers located throughout the District under the State of Ohio Cooperative Purchasing Program. Cost: Not to exceed \$115,000.00.

Executive Director Odeal stated that adoption of this resolution would authorize the purchase of a one (1) year service and maintenance agreement for thirty-seven (37) copiers located throughout the District under the State of Ohio Cooperative Purchasing Program.

Item 3 – Authorizing the Executive Director to enter into a Cooperative Agreement among the Northeast Ohio Regional Sewer District, the City of Cleveland, the Cleveland-Cuyahoga County Port Authority, and Flats East Development LLC for financial participation in sewer infrastructure improvements for the Flats East Bank Neighborhood project in lieu of CSO control and reduction improvements for that area. Cost: Not to exceed \$8,000,000.00.

Executive Director Odeal noted that it is in the best interest of the District to cooperate with the City of Cleveland, the Cleveland-Cuyahoga County Port Authority and Flats East Development LLC to assist in financing sewer infrastructure improvements for the Flats East Bank Neighborhood project.

MOTION – Moved by Mr. Sulik and seconded by Mr. Liberatore that the foregoing three (3) resolutions be adopted. Without objection CARRIED UNANIMOUSLY. Resolution Nos. 221-07 through 223-07, respectively.

Stated business having been concluded, President Brown adjourned the Business Meeting at 1:50 P.M. The next Regular Meeting is scheduled for October 4, 2007, with a Special Work

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Session commencing at 10:00 A.M. The Business Session will begin at 12:30 P.M.

Signature on File

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

Signature on File

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

ATTACHMENT "1"

**NEORSD Board of Trustees Special Meeting Summary
September 20, 2007**

Mr. Brown introduced the purpose of the special meeting. He stated that the firm of Calfee, Halter & Griswold LLP was engaged to look at the District's projects, how its contracting work is conducted, and to review its contracts, change orders, and some of its processes. The firm was charged with determining whether issues with the District's processes reach a level which should concern its staff. Calfee would also present recommendations, processes and procedures which could be improved in order to optimize the District's budget as well as to ensure that its consultants and contractors are fully providing contracted services.

Ms. Benjamin introduced her partner at Calfee, Pete Comodeca. Mr. Comodeca is the head of the firm's construction practice group and the government contract group. He reviewed his qualifications and experience in the area of government construction contracting.

Mr. Comodeca described the process he employed which resulted in the report that was distributed to the Board. He reviewed all contracts awarded at \$100,000 or more from 1998 to the present. These were divided into four categories: construction contracts, engineering consultant contracts, emergency contracts, and "other". Approximately 500 contracts were analyzed with a focus primarily on general conditions that the District has adopted. This initial focus was chosen as the technical aspects of each contract vary. He then looked at the standardized terms and conditions that the District uses on all the previously-referenced contracts to determine if they were uniform and if they gave the District the maximum rights and discretion under Ohio statutory and case law. Mr. Comodeca followed this analysis with approximately 30 in-depth interviews, sometimes multiple interviews with the same individual, in order to determine what needed to be updated, what does not exist, what can be categorized as the oral history of the District regarding policy, and oversight issues as to how the departments interact, communicate, and track each other's performance. This audit process was limited to a review of general conditions and policies.

Mr. Comodeca found everyone in the District that he spoke with or requested information from to be fully cooperative and responsive. He concluded that there is no risk to the rate payers' dollars based upon his review of contract documents, policies, and individual interview notes. He had two benchmarks to verify this: the requirement exists for the District to perform independent, outside engineer studies and the contract population was consistent with those studies with no serious deviations. Secondly, in reviewing the population of change orders as compared to the dollar award population, Mr. Comodeca found that the change orders and the dollar values resulting from change orders were within the reasonably accepted percentage range for projects of this magnitude. He determined that for contracts greater than \$100,000 the change order dollar value spent, even under multiple methods of calculation, were consistent in all methods of testing. He

found the range to be between four and eleven percent which is within standard, acceptable change order rates. This was also to be expected considering the District's philosophy of risk sharing which Mr. Comodeca described as the reluctance to pay exponential costs for design up-front knowing that change orders will be encountered later on the project when the gaps in design are found. Mr. Comodeca stated that such change orders reflect money that would have been paid anyway, because if there is a change order, then it should have been in the original scope of work or constitutes different site conditions which nobody contemplated.

Mayor Starr asked to why the report was not made available to the Board prior to the meeting. Mayor Starr asked for the source of Mr. Comodeca's percentage range. Mr. Comodeca responded that the 4% began with an analysis of a memo by Mr. Vasulka, the District Director of Engineering and Construction, comparing closed-out project costs to the award values for contracts back to 1978 and indicated a value of 4%. Mr. Comodeca verified this by looking at the projects in a different way. He took the award amounts, the dollars paid out, and compared them, showing the figure of approximately 4%. Mr. Comodeca recognized that for many of those contracts there was an unpaid contract balance however, so he added that to the numerator, assuming no deducts or change orders, but that there was money that the District was obligated to pay. When this was added back in, it yielded the figure of 11%.

Mayor Starr commented that Mr. Comodeca blended all the contracts together rather than focusing on contracts with a benchmark of over a certain amount which would find acceptable terms of overage. Mr. Comodeca replied that his limitations were to review only construction contracts because engineering contracts do not have change orders *per se*. Engineering contracts are amended and reviewed subject to Board approval. Mr. Comodeca confirmed for Mayor Starr that he did not have anything to do with cost overruns.

Mayor Starr asked if Mr. Comodeca reviewed the documents submitted by Mr. Vasulka on March 8, 2007, which was a summary of all the projects from 1999 to 2006 showing cost overruns ranging from 52% to 285%. Mayor Starr questioned whether that fell within the four to eleven percent range. Mr. Comodeca stated that it does fall within the range based upon the data he analyzed provided by the Engineering Department, the Accounting Department, and from Internal Audit. Mayor Starr asserted that Mr. Comodeca's information was not correct. Mr. Comodeca explained that he and Mr. Vasulka used different methods to calculate change orders. Mr. Comodeca explained that he tried to represent a more complete method by recognizing downstream payments that were not yet in the District's accounting, but should be. He stated that he was not surprised by the numbers and percent differentials. Mr. Comodeca explained that he uses the term cost overrun interchangeably with change orders because there cannot be a cost overrun unless it becomes a change order or "construction change directive."

Mayor Starr confirmed with Mr. Odeal that the information supplied to the Board on cost overruns on March 8, 2007 was accurate. Mr. Comodeca stated that he leaves it up to the District to determine which of the multiple best practices and recommendations it wants

to adopt to address specific issues. His interviews showed that there are many committees within the District already working on many of the issues that he addressed. Mr. Brown summarized that Mr. Comodeca's report provided a series of recommendations as to what are best practices within the industry and that these should be evaluated within the context of the District's current processes. The District may then choose to either adopt or amend current practices, either in whole or in part, or to continue the District's current practice. The report lists recommendations on processes that in the industry are standard.

Mr. Comodeca indicated that a contract clause provision creating a contingency clause would require consideration by the Board. He stated that such a clause would constitute a possible delegation of the Board's authority to review all change orders. He suggested a cap on contingency at either a dollar value for each contract awarded or at a percent value for each awarded contract, and to define the line items within the scope of the contractor's work that would be subject to the contingency. He raised this issue because in the history of a contract, certain issues recur as being the subject of a change order, such as sink conditions that involve soil conditions, etc.

Mr. Comodeca believed that it may be prudent to have the Board consider whether it wants to delegate this because it would serve two purposes: it would take a lot of change order work - especially low dollar items - away from its consideration while maintaining some reporting obligations or oversight. It would also curtail the District practice of having the change order work done in the field before the District's change order is actually approved. He stated that this practice leaves the contractors at risk while keeping a project on time and on budget while the District's process tries to keep pace.

Mr. Comodeca discussed the policy findings in his report. He stated that the District needs to incorporate into its change order process a notion that the change order is final. If this is not done, then the door remains open for contractors to later return with claims about labor inefficiency because the District added new work, rescheduled their work or for timeliness to do the additional tasks. The District should require its contractors before a change order is executed to quantify it so that when it goes to the Board and is approved with a dollar value, the change order is final and does not come again under another change order or in the guise of an inefficiency claim. In making this policy recommendation, Mr. Comodeca was not making any judgment as to the legitimacy of any specific claims.

Mr. Comodeca next directed his comments to the District's use of consulting engineers. It has been the practice of the District to have outside engineers bid on a two-fold task: the design of the project, in which District project engineers are intimately involved, and then, after the project is awarded, consulting engineers engage in contract administration.

There is no policy at the District that reflects a requirement to memorialize when the outside engineers begin and end a project. The District's construction supervisor is supposed to direct the work of the outside engineer, but there is no policy as to how to memorialize that effort. Mr. Comodeca suggested that the District project engineer

should be the principal engineer who would determine when the services of an outside engineer were needed based upon the recommendations of the construction supervisor. Outside engineering services may be needed when the District's own project engineers are not able to direct the needed attention to a project, due to time constraints imposed by the project engineer's management of multiple projects. Outside engineering services would also be used where the outside engineer has a level of expertise in a specialty that is not available at the District.

In response to a question posed by Mayor Longo, Mr. Comodeca confirmed that by investing more at the front end of project design it may be possible to avoid problems at the later stages.

The next issue raised by Mr. Comodeca was the payment of consulting engineers. He stated that the District tracks the payment of consultants by percent completion on a project. He mentioned that Mr. Vasulka is already aware of the problem in that when internal milestones for line items are established, it creates a shifting opportunity when one task is exceeded but there is still money left in the contract overall. Mr. Comodeca proposed awarding engineered contracts in the same dollar value for the services based upon a lump sum for the item.

Mr. Comodeca responded to a question posed by Ms. Kelly regarding differing site conditions. A differing site condition that is legitimate would result from 3 things: the contractor will incur additional costs to resolve that issue by either being held idle while a design fix is issued or by working around it; the engineer will also incur additional costs to help solve the problem because a differing site condition is not contemplated in a design package; and, more money will be paid to both entities.

Mr. Comodeca commented that the District's final payment requirements are generally reflected in the General Conditions of its contracts, but they need to be updated to lay out the list of items that the District requires before it releases the final payment of funds. Examples of what should be included are: waivers, warranties, releases of any potential claims, and final drawings. Mr. Comodeca has observed a failure within District departments to adhere to the General Conditions regarding final payment. He commented on a question posed by Mayor DePiero by stating that the District retains funds on every construction payment, but the retainage is released with the final payment. He stated that retainage is statutory, but that it is not uniformly applied to each project.

The next issue addressed by Mr. Comodeca is the recommendation that the District needs to generate a project documentation policy. The requirements need to be updated and to be enforced. He stated that the lack of documentation is an example of process over substance. Documentation gives management a tool to evaluate subordinates for promotion, for retention, and other issues. On a question from Mayor Longo, Mr. Comodeca responded that the update in terms and conditions should be done every time Ohio law changes to give the District more rights. It does not necessarily enhance performance but solidifies the management process. He stated that the District needs to better utilize the Oracle software system which offers project management documentation

options. A discussion ensued regarding the need for periodic process reviews and to look at best practices. Executive Director Odeal indicated that Mr. Comodeca's was the first comprehensive review in 35 years.

Mr. Comodeca next launched a discussion of the District's use of legal settlements to resolve negotiated disputes with contractors. He stated that the settlements are not captured uniformly in project cost totals delivered to senior management and the Board. He stated that there are three ways for a settlement to be memorialized: by change order, as settlements are merely negotiated contract issues that are in dispute; by construction change directive option, which gives the District the authority to direct the contractor to do the work and reserve the price negotiation until later; and, production of a settlement document. Such a document is transparent but does not serve as a project cost that becomes part of an accurate view of what was spent on a project. Mr. Comodeca suggested that it be converted into the District's change order form.

Mayor Starr introduced a discussion of who was in charge of legal settlements for the District. He was informed that it was the prior General Counsel. Mr. Comodeca commented that settlement documentation from the Legal Department was fine, but that he was unable to glean from the record whether the ultimate settlement value was right or wrong. Mr. Comodeca stated that he found approximately twenty settlements. Mayor Starr asked whether Mr. Schatz provided thorough detail regarding those settlements. Mr. Comodeca responded that the nature of settlements is such that such documentation may not exist. Mr. Comodeca explained that his process was to look at the following issues: to first look at settlements to see if they were consistent with contract terms and conditions – they were not, but could be if converted into change orders; and, secondly, determine whether the settlements were presented in any reporting systems that would give the Board an accurate picture of dollars spent on a project. In some instances, they were not.

Mr. Comodeca next discussed the District's contracting policy for emergency contracts, which prequalifies contractors and puts the contractors on a rotating basis for awards, he found to be well-defined. He stated that the shortcomings of such a system was that there is no procedure for reviewing ongoing emergency contracts, to shut them off and go back to competitive bidding. He also stated that the acceptable emergency contractor list needs to be updated.

Another issue addressed was the conflict of interest policy for District engineers. There is no written policy that keeps former employees of consulting companies from evaluating outside engineering proposals by those same companies. Mr. Vasulka told Mr. Comodeca that such a policy is enforced verbally. It is suggested that a written policy be enforced.

Next discussed was the payment discretion of construction supervisors. Mr. Comodeca stated that the construction supervisor was the District's point person on every project in the field. There should be policies in place to provide support to that person when they want to make payment for discretionary decisions. Oversight policies should exist so the

construction supervisor should have to go up at least one level to make sure that his or her decision is proper and justified.

Mr. Comodeca also discussed excess funds from engineer contracts. In one instance, Mr. Comodeca discovered a situation where when the funding on an engineer consulting contract was not consumed by the original scope of work, the balance of the funds with the same engineering contractor was used on a subsequent scope of work. This practice cannot continue. He stated that it was done to expedite work – not in bad faith.

Mr. Comodeca next stated that the District does not utilize the Oracle software for all its data. It appears that all the information could be put into the system and easily disseminated once a meaningful request is made. However, this is not being done.

Mr. Comodeca found the District's project documentation to be inadequate. It deprives the District of its ability to defend itself when negotiating change orders or in responding to claims. No uniform document numbering system exists. There is no requirement to have a transmittal log to track when things come into the District for review and activity and when they go back out completed. Such a tracking system is easily established. Also, project meeting minutes are delayed, which deprives the District of a tool for managing a job. This is probably due to inadequate clerical support for the District's construction supervisors.

Mr. Comodeca's last finding on policies dealt with District communication. Examples addressed included awareness of the leadership initiative; the asset management plan. It would be fairly expensive to erect such a plan on the foundation of the current policies and procedures because it is only as good as the data reporting, which, in the case of the District, needs to be improved.

Mr. Comodeca stated that the District's General Conditions need to be totally upgraded in order to take advantage of the rights and discretionary rights granted by Ohio statutory and case law. His primary concern with general conditions is a need to create uniformity of definitions and language.

Mr. Comodeca stated that the District needs to control substitutions. A field verification should be included in every contract. Contingency clauses with regard to general conditions were previously discussed. Multiple change orders that involve add-ons and deductions should be merged into one change order as frequently as possible. If it is anticipated that there is going to be a deduct when a contractor asks for a change, do not approve the change for more money until the contractor establishes the cost of the deduct. This minimizes claims at the back end of a job if the dollar pool that will be fought over is minimized.

Finally, the final payment clause must be listed and adhered to. This is mostly an adherence issue caused by the many hands that the final payment must pass through prior to disbursement. Mr. Comodeca described that the contract terms and conditions as the playbook that shows the District how to properly manage its contracts. If another

playbook is generated, then confusion is created in the contractor's mind as to what the contractor is supposed to do and who is supposed to issue clarification. The District should tighten as well as write its processes instead.

Thus ended the core findings of Mr. Comodeca's audit and lead to the following discussion.

Mayor Longo commented that it appeared that there are things the District can do, including the keeping of minutes and documentation, that would improve its project management. Mr. Comodeca stated that the keeping of regular project meeting minutes would create a record of what actually occurred as well as to inform about potential problems. Also, the daily report is another key document which needs to be completed and could actually be put in template form.

Mayor Starr stated that he was ultimately pleased by what was said in Mr. Comodeca's presentation. Mr. Comodeca verified that this report under discussion was the report that he was asked to generate. He has also been asked to be available for District training sessions for its project management staff. Mr. Comodeca verified for Mayor Starr that no Board members were interviewed for the report. Mayor Starr felt that Board member interviews should have been part of Mr. Comodeca's process. Mr. Comodeca stated that he was looking at the implementation of policies and processes from the people who administer the District's construction projects and making sure that the District received its final contracted product.

Mayor Starr agreed with Mr. Comodeca's finding that many problems start at design, at the identification of the purpose of the project, and at dealing with change orders at the end which alter the actual design plans. Mr. Comodeca did not necessarily agree with Mayor Starr's characterization. It is a policy decision at the District to recognize that a design is never perfect. This decreases the cost at the front end, but with design imperfections, that cost is made up at the back end of a project.

Mayor Starr referred to a memo from Mr. Vasulka of October 30, 2006, and wanted to be sure that Mr. Comodeca looked at the suggestions made by Mr. Vasulka and Mr. Odeal in that memo. Mayor Starr stated that Mr. Comodeca had looked at contract forms, best practices, scope, and contract negotiations and the involvement of multiple departments in the scope of development and better communications. Mr. Comodeca replied that there is a continuum of when the risk-sharing process works. If you go too far, then you are not going to get a suitable population of bidders because you have been too aggressive. If you are too easy, then you are not risk-sharing but risk-buying. Mr. Comodeca did not find any quantification as to whether the risk-sharing philosophy pays off at the District.

Mayor Starr asked for Mr. Comodeca's recommendation as to what information should the Board be receiving on a monthly or even quarterly basis to judge whether contracts are being properly implemented. Mr. Comodeca answered that a one-place, one-page cost status on a job is needed. Mayor Starr concurred on that measure. Mr. Comodeca

stated that it should contain the contract award number, contract change order value approval, resident engineer costs on that same column, amendments to the resident engineer on the contract on that column, internal project, project engineer time sheets that are allocated to that project so the costs are known. Mr. Comodeca did state that the design portion of the outside engineer function should not be included. That is, where additional design work results from a design flaw, the consultant should fix the error without cost to the District. What should be tracked are the construction costs of outside consultants and changes resulting in more scope of work or more time.

Mayor Starr asked if the District should have a performance assessment report for contract consultants. Mr. Comodeca responded that this requirement is already established by Ohio statute and by the District's contract. Consulting contracts must be awarded by reviewing prior performance. It is part of the evaluation criteria. The issue might be that the District does not monitor and annotate deficiencies. These could go into a performance file available the next contract award to consider. Mayor Starr asked for confirmation from Mr. Comodeca that such a report would be valuable to the Board. Mr. Comodeca responded that if the Board thought it to be valuable then it would be.

Mayor Starr made reference to a report of March 30, 2007, which he had requested. The report failed to list the contractors or consultants, but which report he believes should be received on a monthly basis. Mayor Starr stated that there is a good system in place, but that some of the suggestions recommended by Mr. Comodeca, the administration, himself, and other Trustees should be implemented. Mr. Brown summarized Mr. Comodeca's findings that, materially, there is not apparent wrong-doing, but that the District's practices do not give the level of protection of accountability or reporting that would be beneficial in making better business decisions. Mr. Brown stated that he believes the goal of the meeting is to take what was learned at this meeting and to implement those things that make sense to the Board. He believes that the staff with some support should create some representations of how these ideas could be implemented in policy and practice.

Mayor DePiero inquired as to Mr. Comodeca's recommendation of how frequently the Board should review a one-page report of contracts. Mr. Comodeca responded on a monthly basis, but that the report should be available to Senior Staff at all times.

Mr. Brown concluded that it now must be determined how to go about achieving the desired outcome of implementation of change, either with a formal committee of District staff, or by subcommittee, or by a meeting of the Board.

The Special Meeting of the Board of Trustees concluded at 12:35 P.M. on September 20, 2007.

ATTACHMENT "2"

**NEORSD Board of Trustees Working Session Summary
September 20, 2007**

Item 1 – Public Participation

The item was introduced by the Executive Director, Erwin Odeal. No one in the audience addressed the Board.

Item 2 – Report on Stormwater Management Program Implementation Project

Executive Director Odeal stated that Item 2, a stormwater management program implementation project, was a follow-up on the Board's previously adopted resolution of intent to move forward with the stormwater management program. Frank Greenland, Director of Capital Programs, gave an overview of the next phase of the program.

Mr. Greenland stated that at the June 21, 2007 meeting, the Board indicated that the District should proceed towards the development and implementation of a regional stormwater management agency. Mr. Greenland made reference to a Board report to which was attached a summary of the Phase I effort to date. The major task in the next phase of the stormwater implementation effort is community outreach, specifically discussing program options with the District's member communities and other regional service providers with the goal to be better able to frame the core and optional program roles based upon the feedback from these discussions.

The District needs to determine what will be the levels of service, the types of services to be provided, the resources necessary to carry out the initiative, including staff and equipment, and a revenue stream rate structure to support the stormwater management effort as well as a billing mechanism to collect the fee. The District has already entered into discussions with the City of Cleveland regarding the last initiative. Mr. Greenland stated the desire of the District to work cooperatively with regional watershed groups and other providers of stormwater-related services in order to define their roles in relation to those of the District in stormwater management.

Mr. Greenland indicated that at the completion of this next phase the District will be in a position to initiate the stormwater program. The estimated cost of the effort is approximately \$2,500,000.00 over a period of 1.5 years, resulting in the anticipated initiation of the District's stormwater management program in 2009.

Mr. Greenland stated that eight consulting firms have been selected to submit proposals for this next phase. These proposals will be evaluated by a District Consultant Selection Committee based upon technical criteria. The three highest ranked firms will be invited for an interview. After negotiating with the chosen firm, Board authorization will be sought to proceed with the contract. The contract will require a 15% MBE and 5% WBE

participation. It is recommended that the 60% local requirement be waived due to the desire to attract national expertise on stormwater utility development to the project.

After the discussion was opened for questions, Mayor DePiero asked whether advertising for proposals could be opened to allow for a more local presence rather than focusing on national firms. Mr. Greenland stated that although the eight firms listed are considered national firms they do have local experience and it is expected that those firms would include local subcontractors. The detailed scope for the proposals is not yet finalized.

Mr. Brown asked that the Board be provided with the criteria to be used for ranking the proposals. Mr. Greenland agreed to provide it. Mr. Brown commented that this is a very important initiative and that the firm chosen will be working on it with the District for an extensive period, therefore it is important for the Board to fully understand how the process will work. Mr. Greenland indicated that standard scoring criteria include: the experience of the firm in this type of job, the experience of its personnel on stormwater management, the quality of the proposal and of the interview, the firm's ability to handle the effort, the firm's proposed scope, and the firm's method of accomplishing the work. Mr. Brown stated that he wants to gain a full understanding of what these criteria entail.

Ms. Kelly expressed concern too at the limited size of the list and the attention to national rather than local firms. Mr. Greenland indicated that the list could easily be expanded but that would impact the length of time spent on the process; he also reiterated that the firms listed, though national, had a local presence. Mr. Brown explained further that since the work involved a specific discipline it behooves the District to look to a national firm with local offices who will involve local subcontractors. He stated that what will be important will be the individuals that make up the team who are subject matter experts, have done this type of project on a large scale in a large urban area, and have done it successfully. Mr. Vasulka, Director of Engineering and Construction, suggested that the District inform local firms that it is requesting proposals from the national firms so that the local firms could contact the national firms in an effort to be included as subcontractors rather than expanding the list of firms from which proposals are sought.

Mayor Longo stated that as the District gets into stormwater management other options will become available as other agencies become interested. He stated that this will be a healthy reaction as it will give a distinctive regional approach to solving the issues of flooding, urban sprawl, runoff, and erosion. Mr. Brown responded by referring to the role of the District as that of "watershed integrator."

Mr. Liberatore received clarification that the MBE and WBE requirements were not being waived – only the 60% local participation was to be waived. Mayor DePiero confirmed that the incoming Executive Director was to be included in the selection process.

Mayor Starr made reference to a \$5 charge per property. Mr. Greenland stated that the charge had not yet been established, but that the typical fee for a residential property was \$4 per month. Mayor Starr questioned whether that was a flat fee. Mr. Greenland

indicated that there are different structures and the \$4 fee was just one example. He stated that based upon previous work conducted by the District to identify the potential capital requirement and the operation and maintenance needs, a \$5 per month fee appears to be within the range of the projected fee. Mr. Greenland stated that once the program is fully defined then capital and operational and maintenance needs will be identified and the fee ultimately established, but this is not yet done.

Mayor Starr asked about increases in staffing. Mr. Greenland indicated that staff will increase, but it is unknown at this time as to what extent, since the program has not yet been finalized. He stated that staffing would increase in Maintenance, Design and Construction, and Customer Service. Mayor Starr inquired as to the extent of projected District maintenance of local storm sewers. Mr. Greenland replied that it had not yet been defined and that it was a matter for discussion with the communities. He expected the stormwater management system to reflect that of the District's wastewater services, which is a regional network of interceptors. He believes that the stormwater system will include larger pipes and streams which have not yet been defined. He does not believe that extension of wastewater service to the local level is the District's core role.

Mayor Starr asked how this could be communicated to the typical taxpayer and would an improvement to that taxpayer's quality of life be apparent. Mr. Greenland replied that the District is broadening its responsibility to more effectively manage its watersheds and work with the communities to solve the related problems. The District knows from the RIDE (Regional Intercommunity Drainage Evaluation) study that over a ten-year period problems have doubled and tripled. The District is trying to mitigate stormwater related flooding problems at the community level and to work with communities to help them solve their local issues.

Mayor Starr asked whether the District will deal with issues of infiltration of stormwater into sanitary. Mr. Greenland stated that this will not be dealt with in a stormwater-related program, but that the District has long dealt with infiltration on the wastewater side at the local level. Mr. Brown asked about already established standards. Mr. Greenland indicated that the District has peak flow limitations that have been imposed on communities to limit the amount of wastewater that can be sent to the District interceptors, some of which were predicated on removing infiltration and inflow from community systems. Mayor Starr asked if the amount of infiltration from laterals totaled 60-70%, an amount recently reported, which would have to be treated as it is stormwater leaking into sanitary. Mr. Greenland estimated the amount to be at least 50%, and confirmed it is an issue that community mayors struggle with. Mayor Starr asked if this is a role that should be taken over by the District. Mr. Greenland indicated that was a discussion for another day.

Item 3 – Proposed Award of Contract with Arcadis U.S., Inc. for professional services required for design of modifications to the Spring/Jennings control structure

Executive Director Odeal stated that for those living in the area of Spring Road there is a combination of local sewer issues and the issue of the CSO outlet structure. Presently,

two large sewers deliver more flow to the structure than can be accommodated. Although the study is ongoing, it is clear that the large box manhole must be inspected and must increase its capacity to pass additional water.

Arcadis is in the middle of the study and, since the District would like to fast-track this, it is recommended that Arcadis be solicited to complete the additional work for approximately \$100,000.00. The current MBE and WBE requirements would be fulfilled by DLZ for surveying and subsurface investigations, and the WBE requirements by Arcadis for drafting and CADD. Sayed Abdul Abdulla of Arcadis and Mark Jaeger of KS Associates, a subcontractor, were in attendance.

Mr. Brown inquired as to when the design would be ready for bid. Mr. Vasulka estimated six months. Mr. Brown expressed concern that even though the solution to be offered is a couple years off, at least a plan of action be offered to the local community. Mr. Vasulka stated that it is known that the structure is inadequate as currently constructed and that a new structure can be designed that will pass whatever flow is going to come into it, but that the attachment issues and the outlet issue are still unknowns.

Item 4 – Proposed Award of Contract with National Power Rodding Corporation for the construction of Manhole Rehabilitation Contract 10

Executive Director Odeal stated that this project was bid under Board authorization and includes approximately 270 manholes for major rehabilitation. Construction duration is 18 months. Of the bids received, National Power Rodding Corporation was the low bidder at \$1,349,701.25. The original estimate was \$1.7 million. The MBE is Pro Construction Company at \$360,000.00 at 26.7%. The WBE is Hanna Zabriskie at \$67,000.00 at 5%. Bill Ryder from National Power Rodding, Kathy Todd from Hanna Zabriskie, and a representative from Pro Construction were present.

Mr. Liberatore inquired as to the amount of local or minority workers. He was informed that local participation would be 65%. Mr. Sulik asked to when the specifications for the job were prepared. Mr. Vasulka told him six months ago. Richard Switalski informed the Board that the project had been rebid, so the specifications were developed over the course of the year. Mr. Sulik expressed concern over the potential for a change in conditions. Mr. Switalski indicated that changes could always be found, but that MR-10 is the tenth manhole rehabilitation project.

Mayor Starr asked for more information regarding the need to rebid the project. Mr. Switalski informed him that the project was rebid in early July. The prior low bid was \$1.399 million, made by Mechanical Jobbers Marketing, Inc., as opposed to the current low bid of \$1.34 million by National Power Rodding. National Power Rodding reduced their price by \$334,000.00 on this project. Another firm, Inland Waters, reduced its bid by \$825,000. The prior low bidder did not reduce its price significantly. Mayor Starr asked what variables changed that affected the bid. Mr. Vasulka believed it was just the desire for the work by the competition.

Item 5 – Request to Advertise for Bids for the cleaning of one ash lagoon at the Southerly Wastewater Treatment Plant

Executive Director Odeal stated that there is a major budget implication on the cleaning of the ash lagoons because of the size of the new requirements. Ed Haller, Assistant Superintendent from Operations and Maintenance, gave an overview of the project. Mr. Haller explained that the biosolids from Southerly are incinerated, and the ash is slurried with water to the three lagoons at the southeast corner of the Southerly Plant property. When one of the lagoons is full, it is drained and the remaining ash is removed from the basin. In the past the ash was then removed to another area of Southerly; however, that fill area has reached its capacity. The ash now must be removed to a solid waste landfill at a considerable cost increase.

The “C” lagoon has approximately 30,000 cubic yards of ash that must be removed to an EPA-approved landfill. In recent years, the cost to clean a lagoon was \$120,000.00; the current cost estimate is \$1.5 million. The estimate is broken down as follows: \$120,000 for excavation; \$600,000 each for transportation and landfill fees; plus site work to enable larger trucks to gain access to the lagoon area. It is anticipated that due to the reclassification of ash as a beneficial reusable product by the Ohio EPA, that the costs for the cleaning of lagoons in the future will decrease.

Item 6 – Proposed Execution and Delivery of a Cooperative Agreement among the Northeast Ohio Regional Sewer District, the City of Cleveland, the Cleveland-Cuyahoga Port Authority and Flats East Bank Development LLC

Mr. Odeal stated that the Board had previously given verbal concurrence to negotiate an agreement with the entities involved. As the Flats has combined sewers, the agreement involves an investment of approximately \$8 million to meet the District’s CSO requirements. The entire area will be reconfigured with respect to the streets, and the combined sewers will be replaced with separate sewers. The Board had agreed that the investment that the District would have made in the CSO facilities would be made instead in modifying the local sewers, but only up to the amount of the District’s anticipated CSO investment. The District is now seeking authority to enter into the agreement at an amount of \$8 million.

Mayor Longo inquired as to whether this project was part of another overall project. Mr. Odeal responded that this project of separating the sewers actually relieves the District of long-term operating expenses in running and maintaining a pump station. This would thereby reduce operating and capital costs, and have a larger pollution prevention benefit due to the elimination of combined sewers in the area. Mr. Sulik inquired as to the specific details of the \$8 million payment. Ms. Benjamin informed the Board that the \$8 million would be paid on a reimbursement basis.

Item 7 – Report on Change Order Statistics

Mr. Odeal referenced a report on change order statistics and opened questioning for Mr. Vasulka. Mr. Brown commended Mr. Vasulka and his staff for the work put into the report. Mayor Starr commented that he believed that the meeting held earlier this date was productive in the discussion of areas of future improvement. The production of clear, succinct, easy-to-read reports to the Board members to facilitate their ability to gauge whether monies are being spent wisely, projects are being managed correctly, and consultants are abiding by their agreements. Mayor Starr expressed his optimism for the future. Mr. Brown acknowledged Mayor Starr's comments and added his appreciation for the work of the District's outside counsel. He also stated that the Board has organized a number of committees to look into the issues raised by outside counsel, including revising the District's policies and procedures.

Item 8 – Open Session

Mr. Odeal introduced a memo from Mr. Vasulka regarding a potential sewer and manhole problem. Mr. Switalski explained that a sink hole has developed in the lowest level of the Huntington Garage located next to the Old Courthouse. After a contractor began working on the hole, it was discovered that it was a stormwater outlet from regulators E20 and 21. It was found that the invert at the bottom of the 48-inch reinforced concrete pipe was totally corroded by an unknown material for a course of approximately 12 inches. Based upon a video taken by the County, it was discovered that a length of approximately 500 feet shows evidence of corrosion. Rebar is missing, and pipes have become disjointed in certain areas. Mr. Switalski requested permission of the Board to bring Montgomery Watson to do an assessment of the entire area, including the downstream portion that runs under and around Browns Stadium and continues to the outfall. An assessment also must be made of the portion in the garage and the superstructure of the garage, as the pipe is strung between concrete beams. Mr. Switalski estimated the assessment cost at \$60,000.00.

Mr. Brown inquired as to whether there is potential damage to tributaries of this outlet and whether the source of the corrosion has been found. Mr. Switalski stated that a complete assessment would be made upon completion of a video of the entire length of the stormwater outlet, that forensics will be employed to determine the source of the problem and potential remedies. Mr. Switalski stated that Industrial Surveillance has already checked the site.

Mr. Brown confirmed that this Item was a request for the Board to take action. Mr. Odeal responded that this was an example of what the District's outside counsel had reported earlier: that the District's process for dealing with emergencies is fairly loose. Under the District's By-laws, the District would proceed as an emergency with the Board's concurrence, but never with a contract per se. Once the work is complete, payment would be made upon Board ratification. This situation has the potential to grow into a much larger problem. The issue then becomes when has the problem grown so much that it needs to go a different route.

Mayor Starr requested that all resumes submitted for the position of Law Director be forwarded to him as well as to the other Board members. Mr. Odeal repeated his understanding of the request. Mayor Starr inquired as to the amount being paid to the consultant, HR On Call. Mr. Odeal responded that the most that can be paid is \$22,000.00, which is being done with the remainder of the purchase order. Mr. Brown stated that he believed that this service was not an additional expense and that a contract already existed with the consultant. Mr. Odeal confirmed that a contract with the consultant exists.

The Working Session of the Board of Trustees was concluded at 1:28 P.M.