

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES
OCTOBER 4, 2007

The meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 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 10:14 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 October 4, 2007 Board of Trustees Special Work Session (Attachment "1"). The Special Board Work Session adjourned at 11:58 P.M.

C. Working Session

The Secretary reported that the Board met in Working Session on this date beginning at 12:31 P.M. See the Working Session Summary for the October 4, 2007 Board of Trustees meeting (Attachment "2"). The Working Session adjourned at 1:19 P.M.

D. Executive Session

Moved by Mr. Sulik and seconded by Ms. Kelly that the Board meet in Executive Session to discuss one (1) personnel matter and one (1) litigation matter. Without objection CARRIED UNANIMOUSLY. Thereafter the Board met in Executive Session from 1:20 P.M. until 2:16 P.M.

E. Approval of Minutes

Item 1 – September 20, 2007

Moved by Mr. Liberatore and seconded by Mayor Longo that the Minutes of September 20, 2007, be approved as circulated. Without objection CARRIED UNANIMOUSLY.

F. Major Projects

1. Southerly Improvement Program

Item a – Authorizing the Executive Director to modify Northeast Ohio Regional Sewer District Contract No. 3127, as previously modified, with MWH Americas, Inc., to design the Southerly Wastewater Treatment Plant Substation Replacement. Cost: Not to exceed \$1,399,483.39.

Executive Director Odeal indicated it is necessary to include the design of the Southerly Wastewater Treatment Plant Substation Replacement in the scope of the consulting engineering contract.

MOTION - Moved by Mr. Sulik and seconded by Mr. Liberatore that the resolution be adopted. Without objection CARRIED UNANIMOUSLY. Resolution No. 224-07.

2. Westerly District Interceptors

Item a - Authorizing the Executive Director to enter into a contract with Brown and Caldwell Ohio, LLC, 7550 Lucerne Drive, Suite 310, Middleburg Heights, Ohio 44130, to provide construction administration, resident project representation and operations and maintenance services during construction of the Westerly Interceptor Box Culvert Repair/Replacement Contract (WIBCR). Cost: Not to exceed \$522,256.78.

Executive Director Odeal explained it is necessary to provide construction administration, resident project representation and operations and maintenance services during construction of the Westerly Interceptor Box Culvert Repair/Replacement Contract (WIBCR). Upon receipt of bids for the construction project, a recommendation will be made to the Board for award to the lowest, responsive, responsible bidder.

MOTION – Moved by Mayor Longo and seconded by Ms. Kelly that the resolution be adopted. Without objection CARRIED UNANIMOUSLY. Resolution No. 225-07.

3. Easterly District Interceptors

Item a – Authorizing and approving Easterly District Interceptors Relining and Replacement Contract EDIRARC Change Order No. 6, Northeast Ohio Regional Sewer District Contract No. 3238. Cost: None. Time Extension.

Executive Director Odeal noted it is necessary to extend the contract completion date by 56 consecutive calendar days from October 5, 2007 to November 30, 2007. Approval of this change order has been recommended by the District's staff and by Brown and Caldwell Ohio, LLC, the consulting engineer.

MOTION – Moved by Ms. Kelly and seconded by Mr. Sulik that the resolution be adopted. Without objection CARRIED UNANIMOUSLY. Resolution No. 226-07.

G. Operations

Executive Director Odeal suggested the next four (4) resolutions be considered together. Without objection SO ORDERED.

Item 1 – Emergency resolution ratifying and approving emergency construction services to the Southerly Interceptor – Broadway Branch in conjunction with the Southerly Interceptors Hydraulic Improvement Contract (SWDIHIC) and authorizing payment for services expended in said emergency to Kenmore Construction Company, Inc., 700 Home Avenue, Akron, Ohio 44310. Cost: Not to exceed \$178,511.04.

Executive Director Odeal stated an emergency existed in that it was necessary to immediately provide for emergency construction services to the Southerly Interceptor – Broadway Branch in conjunction with the Southerly Interceptors Hydraulic Improvement Contract (SWDIHIC). Kenmore Construction Company, Inc., has performed the necessary repairs at a total cost of \$178,511.04.

Item 2 – Authorizing the direct purchase without competitive bidding of one (1) Quantitative Polymerase Chain Reaction (QPCR) Instrument and ancillary equipment for use by the District's Analytical Services Department from Applied Biosystems, 850 Lincoln Centre Drive, Foster City, California 94404. Cost: Not to exceed \$53,161.28.

Executive Director Odeal indicated it is necessary to purchase one (1) Quantitative Polymerase Chain Reaction (QPCR) Instrument and ancillary equipment for use by the

BOARD OF TRUSTEES

Regular Meeting

October 4, 2007

Page 5

Analytical Services Department from Applied Biosystems, the sole supplier, in compliance with the terms of an agreement with the Department of Justice and the United States Environmental Protection Agency.

Item 3 – Authorizing the taking of bids for a two (2) year requirement contract to provide maintenance services at the District's ten (10) combined sewer overflow (CSO) floatables control sites. Estimated cost: \$325,000.00.

Executive Director Odeal stated adoption of this resolution would authorize the taking of bids for a two (2) year requirement contract to provide maintenance services at the District's ten (10) combined sewer overflow floatables control sites. Upon receipt of bids, a recommendation will be made to the Board for award to the lowest, responsive, responsible bidder.

Item 4 – Amending Resolution No. 374-06, adopted December 7, 2006, which authorized the purchase of door maintenance and replacement services on the open market in order to meet the District's requirement for a one (1) year period by increasing the appropriation therefor. Cost: Not to exceed \$1,481.61.

Executive Director Odeal noted it is necessary to increase the appropriation for said resolution in order to provide for additional door maintenance and replacement services to meet the District's requirement for a one year period.

MOTION - Moved by Mr. Liberatore and seconded by Mr. Sulik that the foregoing four (4) resolutions be adopted. Without objection CARRIED UNANIMOUSLY. Resolution Nos. 227-07 through 230-07, respectively.

H. Administration

Executive Director Odeal suggested the next seven (7) resolutions be considered together.

Without objection SO ORDERED.

Item 1 – Rescinding Resolution No. 312-85, adopted on August 22, 1985, as the former Ameritrust Building (now owned by Cuyahoga County Commissioners), Account Numbers 01-373-555-000 and 03-372-085-009, is no longer eligible for a Sewer Service Charge Based on Usage of the System.

Executive Director Odeal indicated the former Ameritrust Building account has fallen below the minimum requirements of Chapter 8 of the Sewer Use Code and is no longer eligible for a Sewer Service Charge Based on Usage of the System.

Item 2 – Adopting the recommendation of the Executive Director regarding the application for a Sewer Service Charge Based on Usage of the System for John Carroll University, 20700 North Park Boulevard, University Heights, Ohio 44118, Account Numbers 73-443-295-008, 73-486-401-000, 73-375-635-007 and 73-375-637-003.

Item 3 – Adopting the recommendation of the Executive Director regarding the application for a Sewer Service Charge Based on Usage of the System for Dylon Industries, 7700 Clinton Road, Brooklyn, Ohio 44144, Account Number 53-447-169-003.

Executive Director Odeal stated he has reviewed said applications, has determined they meet the requirements of the Sewer Use Code and recommends their acceptance.

Item 4 – Ratifying and authorizing the provision of temporary payroll services for the District during calendar year 2007 from Skoda, Minotti Financial Staffing, 6685 Beta Drive,

BOARD OF TRUSTEES

Regular Meeting

October 4, 2007

Page 7

Mayfield Village, Ohio 44143. Cost: Not to exceed \$54,734.53.

Executive Director Odeal explained adoption of this resolution would ratify the provision of temporary payroll services for the District during calendar year 2007 from Skoda, Minotti Financial Staffing.

Item 5 – Authorizing the taking of bids for the replacement of the paging systems at the Easterly, Southerly and Westerly Wastewater Treatment Plants. Estimated cost: \$400,000.00.

Executive Director Odeal noted adoption of this resolution would authorize the taking of bids for the replacement of the paging systems at the Easterly, Southerly and Westerly Wastewater Treatment Plants. Upon receipt of bids, a recommendation will be made to the Board for award to the lowest, responsive, responsible bidder.

Item 6 – Authorizing the Northeast Ohio Regional Sewer District to renew its membership with the National Association of Clean Water Agencies (NACWA) and authorizing payment of annual dues therefor. Cost: \$60,242.00.

Executive Director Odeal indicated it would be beneficial for the District to renew its membership with NACWA thereby making use of the diversified opportunities, expertise and common information available for its members.

Item 7 – Authorizing the Northeast Ohio Regional Sewer District to renew its membership with the Water Environment Research Foundation (WERF) and authorizing payment of annual dues therefore. Cost: \$104,160.00.

Executive Director Odeal stated it would be beneficial for the District to renew its membership with the Water Environment Research Foundation thereby making use of the

BOARD OF TRUSTEES

Regular Meeting

October 4, 2007

Page 8

diversified opportunities, expertise and common information available for its members.

MOTION – Moved by Mr. Liberatore and seconded by Mr. Sulik that the foregoing seven (7) resolutions be adopted. Without objection CARRIED UNANIMOUSLY. Resolution Nos. 231-07 through 237-07, respectively.

Item 8 – Amending Resolution No. 137-07, adopted by the Board of Trustees on May 23, 2007, which authorized the engagement of Calfee, Halter & Griswold LLP to provide legal and professional services to the Northeast Ohio Regional Sewer District. Cost: \$79,450.00.

Executive Director Odeal explained it is necessary to increase the appropriation for said resolution to cover services of a specialized vendor, JurInnov, included in the change of the scope of work.

MOTION - Moved by Mr. Liberatore and seconded by Mr. Sulik that the resolution be adopted. President Brown requested a roll call vote. Roll Call Vote: YEAS: Brown, DePiero, Kelly, Liberatore, Longo, Sulik. NAYS: Starr. ABSTENTIONS: None. RESOLUTION PASSED. Resolution No. 238-07.

Mayor Starr stated the Board was to have received an itemized monthly billing of duties and tasks, including who performed them and at what hourly rate. Mayor Starr continued that the Board, as an oversight Board, has not received any billing information and questioned if the Board will receive that information. Virginia D. Benjamin, Interim General Counsel, stated that the billing information could certainly be provided. Mayor Starr asked for the billing information on a monthly basis from this point on. Ms. Benjamin stated that the information could be given on a monthly basis to date.

Mayor Starr further questioned how long would Calfee's work continue and how long would the contract go on for. Ms. Benjamin replied that her engagement, as Interim General Counsel, concludes at the end of October. Mayor Starr asked when would Calfee's, the law firm, work end. F. Michael Bucci, Deputy Executive Director, stated there were three phases. Mr. Bucci stated that there was the audit phase, which was basically finished and the third part was the work that Virginia Hearey is doing in relation to the FBI investigation and that work was continuing. Mayor Starr asked what Ms. Hearey was doing. Ms. Benjamin replied that Ms. Hearey was responding to the FBI subpoena. Mayor Starr asked what that included. Ms. Benjamin stated that it included collection and review of documents and interview of District employees. Ms. Benjamin continued that any further information would need to be directed to Ms. Hearey. Mayor Starr expressed thanks.

I. Other Matters as May Properly Come Before the Board of Trustees

Item 1 – Authorizing the District to accept one (1) permanent easement (VBGS-5P) and one (1) temporary easement (VBGS-5T) from Caplan Westcreek Company, Ltd., necessary for construction of the Valley Belt Gravity Sewer. Consideration: \$1.00.

Item 2 – Authorizing the District to accept one (1) permanent easement (VBGS-6P) and one (1) temporary easement (VBGS-6T) from Caplan Westcreek Company, Ltd., necessary for construction of the Valley Belt Gravity Sewer. Consideration: \$1.00.

Executive Director Odeal explained in order to implement the construction of the Valley Belt Gravity Sewer it is necessary to obtain two permanent and two temporary easements from Caplan Westcreek Company, Ltd.

BOARD OF TRUSTEES

Regular Meeting

October 4, 2007

Page 10

Item 3 – Resolution of acknowledgement and appreciation to Erwin J. Odeal in recognition of his thirty three (33) years of outstanding service and noteworthy contributions to the Northeast Ohio Regional Sewer District and his exceptional leadership as Executive Director of the Northeast Ohio Regional Sewer District.

MOTION – Moved by Mayor Longo and seconded by Mr. Sulik that the foregoing three (3) resolutions be added and adopted. Without objection CARRIED UNANIMOUSLY. Resolution Nos. 239-07 through 241-07, respectively.

Mayor Longo requested Deputy Executive Director Bucci to read the third add-on resolution. Mr. Bucci then proceeded to read the resolution aloud.

President Brown, on behalf of the Board, thanked Mr. Odeal and expressed the District's desire to recognize his 24 years of service, taking an organization in its infancy, guiding it through uncharted waters to a position where, not just locally but nationally, the reputation of this organization, as it relates to clean water and environmental stewardship, are probably unparalleled. Mr. Brown thanked Mr. Odeal and wished him and his family all the best in the future. Mr. Brown stated he somehow suspected that the District would still see Mr. Odeal looking over its shoulder as the District took this child that he had helped raise and continue to go forward as any proud father would do, always wanting to see and make sure that something you had a role in helping institutionalize continues to go forward in the right direction. Mr. Brown expressed, on behalf of the Board and Staff, the District's sincere gratitude and appreciation for his outstanding service to our community and to this industry.

Executive Director Odeal addressed President Brown and the members of the Board in

BOARD OF TRUSTEES

Regular Meeting

October 4, 2007

Page 11

appreciation of the recognition and the opportunity to have served the District. Mr. Odeal continued that sometimes it seemed like it was yesterday and at other times it seemed like it was 100 years ago, but that is part of the process. Mr. Odeal stated that retirement is a time for reflection and a time to balance out some of the things that people say about you that are not so good and all the exaggerated things they say about you when you leave. Mr. Odeal stated hopefully the process is somewhere in the middle and believed the Board could feel comfortable that there are some really good people at the District, hard working and dedicated, and like any organization, this was not a perfect world. Mr. Odeal stated the examination the Board has started was a good one, and the finding that there really is no evidence of fraud or dishonesty, but shows there are certainly things that always can be improved on in terms of the management. Mr. Odeal stated he believed all organizations need to go through periodic examinations.

Mr. Odeal stated that the Board made a wise selection in bringing in a nationally recognized leader who can bring in new systems, new ideas and build up the existing staff here at the District. Mr. Odeal continued that the District is well served and he was excited about the Board's willingness to take on the stormwater challenge. Mr. Odeal stated that it was one of the things that he had long seen a need for and would hope that eventually the EPA and federal statutes would allow true watershed planning to be done to enable the wisest investment for watershed to move forward. Mr. Odeal stated that the District is an example of a successful regional organization long serving in Cleveland, and again no organization is perfect and every organization needs to bring in external people to periodically reflect on itself, and this has been a good process and the District is well served to move into the future. Mr. Odeal stated that he was

BOARD OF TRUSTEES

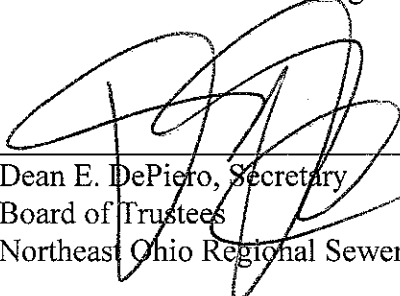
Regular Meeting

October 4, 2007


Page 12

a native and he and his family planned on staying in the Cleveland area and he would continue to contribute, in some small way, to clean water in Greater Cleveland. Mr. Odeal again thanked the Board.

Stated business having been concluded, President Brown adjourned the Business Meeting at 2:32 P.M. The October 18, 2007 Regular Meeting has been canceled. The Board will meet for a Special Board Session beginning at 9:00 A.M. on October 18, 2007, for the purpose of discussing applicants for Law Director. It is expected that the Board will move to Executive Session. The next Regular Meeting is scheduled for November 1, 2007, with a Special Board Work Session commencing at 11:00 A.M. The Business Session will begin at 12:30 P.M.



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



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

ATTACHMENT "1"

**NEORS Board of Trustees Special Meeting Summary
October 4, 2007**

Mr. Brown introduced the purpose of the meeting was to review the work of District staff in response to the independent audit by Calfee Halter. Mr. Bucci outlined the course of the meeting to cover the 13 findings and recommendations of the audit as well as five general conditions. He proposed to outline the District's action plan, due date, and responsible party. Mr. Bucci mentioned that a policy and procedure manual will be developed for the contracting area. Engineering will continue to provide oversight and management of all construction and engineering related contracts, but review and evaluation functions of contractors, consultants, and District engineering staff will be added. Mr. Bucci proposed an external review after two years and then every five years thereafter. He also proposed the addition of an internal audit under the auspices of the Deputy Executive Director. He also proposed the development of a monthly status report for the Board on the 13 findings and the general conditions of the Calfee audit in order to illustrate to the Board the extent to which the District is meeting its goals.

The first finding deals with the finality of change orders. The recommendation was to insert language into change order forms stating that the contractor will not be entitled to any impact or additional cost. The District's response is that it needs to evaluate the pros and cons of risk sharing. The District needs direction from the Board as to how much risk is appropriate for the District. Mr. Brown questioned the risk sharing philosophy as it was not beneficial to the District. Mr. Bucci stated that the current risk sharing model had the District assuming most of the risk. The proposal is to evaluate the pros and cons of true risk sharing to see if it was a practice that would benefit the District. Mayor Longo asked if different standards would be developed for different types of contracts. Mr. Vasulka expressed that it was not yet clear how these standards would be formalized. Mr. Brown stated that he believes the area with most risk is in tunnel operations due to extreme depths, different soil conditions, and other unforeseen conditions. Based upon this observation Mr. Brown believes that risk sharing has an application but not in every type of contract.

Mr. Comodeca interceded with the observation that risk sharing has no application to the finding regarding the finality of change orders. This is because change orders are for a finite scope of work and addresses three things: the work to be done, the price for that work, and the time to accomplish that work. The finality language does nothing to affect the contractor's ability to submit an additional change order later for an additional event. The finality allows the District to shut off that issue, price it, and move on.

Mayor Longo asked whether the policies from the 1970's should be merely updated or overhauled. Mr. Comodeca stated that contracts define risk sharing. Risk sharing involves the detail of design put in the field and the complexity of the task. Tools are put into the contract to resolve risk. Mr. Comodeca stated that the risk sharing response appears to be a reluctance by the responsible entity to really address the issues in the

report. Risk sharing is by definition included in a contract. Mr. Comodeca asked whether the District would provide a finality of a change order in order to move on to the next potential event or to leave the change order hanging as a probably cost issue. The costs that occur after a change order is executed are the inefficiency of labor costs, lack of productivity costs, delay issues, and components of damages. Mr. Comodeca stated further that change orders should address scope, time and money. He explained that the burden of documentation should be shared equally among the parties to a change order. A contractor should give estimates in documentation of all the costs associated with the change in order to be able to negotiate knowingly; then, if agreement cannot be reached on the change order, a construction change directive from the contract can be used whereby price is discussed later.

Mr. Comodeca stated that the risk sharing policy as it exists is fine. However, he sees it being used as a default position to not bring to finality cost issues or to not document all costs on a project in a timely manner.

Mr. Bucci stated that the District proposes going forward with an audit function, based upon criteria, to ensure that the directives of the Board, the policies and procedures, are being followed. The audit function will track District compliance. Mr. Comodeca stated that if the policies are updated and adhered to, then there will not be a problem with risk sharing.

Mr. Bucci continued with the idea that the District establish a committee comprised of representatives from engineering and legal to develop recommendations to the Board with an estimated date of completion of January 31, 2008 and findings to be presented at the first meeting in February 2008.

Mr. Vasulka responded to a question from Mayor Starr with the information that in contract specifications the standard markups on change orders is 15% on contractor's direct labor and materials and 5% on subcontracted work. This is not a policy but rather a practice from contract to contract, which has been uniformly applied. There is no fixed rule and it varies from agency to agency. The District is unaware of the contractors' profit margins built within a contract. Mr. Comodeca stated that it may be a good idea to study by requiring a submission of an overhead rate and cost components for an overhead rate, so that it is known what is being paid as actual overhead as opposed to 15% profit in some situations, because there will be change orders where overhead is very relevant and where profit is very relevant. Considering the risk sharing philosophy it will be important to know if a change order is due to an engineering error or contractor error, thereby allowing the profit margin to be decreased to allow for that sharing.

Mr. Vasulka explained the approval process for change orders as follows: the consulting engineer recommends the change and will sign off on it. They prepare an independent estimate of cost. The District's construction supervisor signs off on the recommendation to process the change order. Thus there are two recommendations at the field level. It then goes to Mr. Vasulka. After he signs off, the change order goes to Mr. Odeal, to accounting and to legal. The Board only sees the recommendation to do a resolution that

was signed by Mr. Vasulka. Mr. Brown stated that the process should be formalized so that the Board understands the entire process. The reasoning behind each signature should be understood as well. Mr. Vasulka confirmed for Ms. Kelly that a change order is evaluated internally to ensure that the consultant's recommendation is in line with what the District believes to be the value of that change order, and that, in fact, there is a negotiation document attached to the change orders that validates the agreement.

Mr. Bucci continued with the second item which dealt with the use of consulting engineers during construction. The recommendations presented were: development of a policy requiring documentation of when consulting engineers are given an assignment and when an assignment is completed; a policy making a construction supervisor more responsible; develop a policy for District project engineers to be principal engineering support; and considered including consulting engineer and district project engineer costs in the internal reports of total project costs.

The District's first recommendation is the construction supervisor as project manager for the construction phase will have the lead role in negotiating activities with the consulting engineer. This will become effective immediately.

The second recommendation is that construction protocols will be prepared for construction projects and distributed to the construction supervisors and consulting engineers. The effective date is November 15, 2007. This will give construction engineers a greater involvement in the invoice review process. In the past the project engineer in office has reviewed all the invoices for contract administration and resident engineering at the office level. Field engineers have not reviewed the invoices of the resident engineering or other activities of the consultants. Mr. Vasulka has written a memo directing the resident engineers to review invoices and to sign off on the resident engineering portion. The office engineer will sign off on the contract administration portion. This is effective immediately.

Mr. Bucci stated that the internal audit manager will audit the invoices. So not only will engineering do its review, but there will be an audit to guarantee that the service is provided.

Mr. Brown raised the issue of evaluating the performance of consulting engineers with regard to how they bring projects in terms of design or contract management that is on time and within budget. Mr. Comodeca described the role of the consulting engineers as comprised of the design function which is in conjunction with District engineering personnel and that of resident engineer support. With regard to the first aspect, according to the invoices for contract administration functions, those are administrative paper processing functions for which the District pays a great deal of money every year and should consider engaging in-house support to reduce costs. With regard to the second issue, resident engineering support is only essential if a design issue occurs in the field that must be resolved, if there is an error or omission discovered or if there is a complex task that requires specific expertise not found in-house. Theoretically, if the design is

suitable, the in-house engineer should be able to handle it without outsourcing the support. Mr. Comodeca stated that this is not the practice at the District.

Mr. Bucci continued with an additional plan of action to develop procedures that will clarify the primary support role of in-house design engineers. Mr. Comodeca stated that the District needs to have a clear format for using consulting engineers and identifying and justifying that need. He further stated that the District has abdicated much of its engineering and project management responsibility to third parties. Mr. Comodeca explained that if the District's project engineer has been working closely with the consulting design team, which is the accepted process, then that engineer should have the familiarity to supervise the project until a crisis or incident occurs requiring the special expertise of the designer. It is a matter of managing the projects. Mr. Vasulka stated that the District is currently not staffed sufficiently to handle the contract administration work. Once a project is out of the design phase and goes into the field, the District project engineer is given other projects to work on. The project engineer follows the original project but, due to time limitations, does not do the review discussed or offer the desired engineering expertise.

Mr. Ciaccia stated that it appears that the critical point of this audit finding is the management of the consulting engineers. Further, it is unclear as to whether consulting engineers should be eliminated from contract administration work as there is some value in having them involved in the construction process.

Mr. Bucci continued to the third item: the payment of the consulting engineers. The finding was that the payment is on percentage of completion with the recommendation that the District should consider developing separate consulting engineer payment processes for both the contract administration and resident engineering functions. The District's response is that all engineered contracts will be time charged. There will be no percentage of completion payment unless the Board approves another method on a specific contract. This will be effective immediately. The reasoning behind this is to get away from paying on percentage of completion to being paid based upon actual time spent. Theoretically it would give a better reflection of the value received. Mr. Comodeca interjected that if paid upon percent completion basis, it does not necessarily reflect the level of effort exerted by the consulting engineer to that point in time. If paid on this basis there may be no money left in their contract at the end when a problem may occur. Mr. Vasulka stated that all engineering contracts are paid on a time and material basis. There are other contracts within the District that are paid on a percentage. Mr. Comodeca stated that although he did not see any engineering contracts tied to a percent completion, there are periodic pay applications for contract administration and for certain resident engineer duties which are broken into pieces that are easily tied to percent completion. Contracts are limited by a guaranteed maximum price, thereby preventing a consulting engineer from running up the bill when the time and material payment method is used.

Mr. Bucci moved on to the fourth item: final payment. The recommendation is that when there is a dispute, the District should retain the dollar value of the dispute. The District will develop guidelines in a procedure for retaining payment amounts in dispute. There

will be an audit function to make sure that the procedure is complied with. This will be prepared by legal and engineering by January 15, 2008. Currently, when there is a dispute, the only thing that has been held is the retainage. The amount that was in dispute is not held back. Anything approved and final is paid. The disputed item is held and often is settled at the end of a job. The risk has been that at the end of the job there could be more items in dispute, meaning more dollars, than have been retained. The amount to be retained is set by statutory formula.

Mr. Comodeca explained that there are three issues: retainage which is defined by statute; offsets; and, the need for the District to have in its contracts, a policy to retain the monies to do any rework or remedial work in the event that either the contractor cannot or will not do it – essentially so that there is money on hand in addition to retainage to finish the job. The District has adopted a sound policy of paying the undisputed component of a claim thereby narrowing the amount in dispute to negotiate.

The fifth item is the failure to properly memorialize project closeout. The recommendation is for the District to require the execution of final lien waivers and releases of all claims as a precondition to the release of final contract payment consistent with its general conditions. The District will develop a project closeout checklist for the construction supervisor. Legal and engineering will develop that list by January 31, 2008. It was stated that the District remain flexible regarding the need to modify contracts to meet conditions required to acquire certain grants, but that a checklist be completed prior to final payment distribution. Mr. Vasulka informed Mayor Starr that engineering is responsible for obtaining final liens and waivers and releases as required within District contracts and that the legal department signs off on it. Further that legal should be monitoring engineering to ensure that it is done. Additionally, by contract there is typically a one year guarantee in order to determine if there are any deficiencies to the work on the project.

Mr. Comodeca stated that there are two situations where a bond could be used at the District: when a prime contractor warrants a subcontractor with a bond in the District's favor in the event that a failure occur then there would be money available to fix it and where a subcontractor or vendor is in a pay dispute with a prime contractor – the District avoids the encumbrance of a lien by requiring the prime to bond under the Ohio statute.

The sixth finding is the improper use of settlements by the District with the recommendation that settlements equate to change orders and should be reflected as such. The District proposes the discontinuation of the use of settlements in favor of change orders. This will be effective immediately.

The seventh item is the incomplete emergency contracting policy. The recommendation is that the policy should be updated to more definitely define when an emergency justifies a contract award without competition. Also, the roster of qualified emergency contractors should be reviewed and updated more frequently. The District proposes the following: that the policy on emergency contracting must include when an emergency condition has ceased and when a transition to public procurement can be made; that what

constitutes an emergency be defined as well as when it is appropriate to use an emergency contractor; and, that all contractors will be reviewed and when will the emergency contractor roster be updated. These proposals will be complete by April 15, 2008 by representatives of operations, legal, engineering, and purchasing.

In response to a query by Mr. Brown, Mr. Comodeca stated that one possible best practice would be to at the front end of an emergency to have someone in the District identify the scope of work and demand a schedule of completion from the contractor. This would occur prior to the awarding of the contract. This will provide a tool to manage the emergency contractor.

Mr. Vasulka commented that currently there is an informal procedure as to who will manage an emergency based upon its size, complexity and the expertise available. There is an emergency contractor list. Mr. Bucci stated that there is a formal procedure that includes the Executive Director and the Board on how to proceed in the event of an emergency. Mr. Odeal stated that there are approximately ten emergency contracts per year that exceed \$25,000.00. He continued that what is not clear is the point of transition when a project is not an emergency any longer, when it is stabilized, and when it should be moved to a bid-type situation.

Mr. Brown stated that a determination needs to be made as to when does an emergency project that has escalated in size come back to the Board for further definition as an emergency or to be put out for competitive bid. Mr. Ciaccia stated that the due date for this endeavor should be shortened from the recommended April 15, 2008. He would prefer by January 1, 2008.

Finding number eight is the lack of written conflict of interest policy for District engineers. The recommendation is that a written policy prohibiting District engineers from participating in the evaluation and selection of their former employers and consultants. The current practice, which is a verbal one, is not to permit former employees and their spouses from participating in such a selection. Legal will review the issue and assist engineering in drafting a written policy to be completed by November 1, 2007. This issue has been controlled by Mr. Vasulka personally who stated that he believes that his restrictions go beyond those of the formal requirements. Mayor Starr commented that it is possible that the District hires spouses of present consulting engineers that the District is paying for work. Mr. Vasulka replied that he ensures that they do not have any influence on selecting the firm where the spouse works, but that this should be formalized. Mr. Comodeca commented that it is approximately 17% of former contractor employees that are now employed by engineering.

The ninth item is the payment discretion of construction supervisors. The recommendation is the District may consider exercising increased oversight over its payment processes so that unilateral decisions of this type are supported by documentation and reviewed and approved in writing by the supervisor. The District proposes developing standard operating procedures for the approval of invoices and their required documentation to articulate that the authority to pay invoices is derived from the

Board and that there will be no deviation from that policy and from that authority. An internal audit will develop an audit plan for periodic reviews of construction invoices. The policy and audit function will be developed by finance, legal, and engineering by April 15, 2008.

Mr. Comodeca confirmed that there were no reviewed instances of any payments over the Board-approved dollar amount. Mr. Brown stated that in the event that the Board authorizes something through resolution and the facts or situation requiring that authorization change, that there ought to be a report back to the Board in order to keep the records and authorization consistent.

The tenth finding concerns excess funds from contracted consulting engineers that are redirected. The recommendation is that such redirection of funds is improper and should be immediately curtailed. Mr. Bucci stated that this practice has stopped except in cases where authorized by the Board. General engineering contracts will handle projects previously expedited by excess funds. Contract closeout procedures will be developed, distributed, and reviewed for compliance with the Ohio Revised Code. This will be effective immediately and will be the responsibility of legal and engineering. This finding arose from one specific instance and potential other instances where an engineering contract had funds available after the project to which it was dedicated was closed out. The remaining money was used to pay that same engineering firm for other work that did not necessarily go through the District's bidding process. It is unclear if there is a legal duty to disclose this.

The eleventh item is that the District is not utilizing its Oracle software. The recommendation is that the policy should be updated and enforced to ensure such information is included in the accounting system for the benefit of District managers, senior staff, and the Board. The District proposes to form a work group to develop a sample report for Board review to include items such as total project cost, contractor information, bid amount, change orders, amount paid to date, etc. A detailed project accounting system will be developed to issue a monthly report to the Board. This will be available by November 15, 2007. The District will also develop an implementation plan to integrate the engineering construction project and contract management process under Oracle. This will be done by February 14, 2008. Once implemented, District staff will be required to use Oracle for project accounting. The Board will receive a monthly project cost update report which will be completed by May 2008. The District already owns the Oracle system; it just needs to be developed which can be done in-house.

The District just completed a pilot program where Oracle was used in the normal budgeting areas for operating expenses. Reports were developed in finance, and then four or five departments were trained to use the system. It will now be extended to the rest of the District. This same type of plan will be used to implement the engineering portion. Additionally, there will be ongoing training and support.

Humberto Sanchez reported that Oracle is not a project management system. Mayor Longo expressed concern that the functions of cost information and project management

cannot be combined within the same system. Mr. Bucci stated that Oracle was needed for the cost information it provided. Mayor Longo stated that a single system that handled all the information appeared to be more effective. Mr. Brown stated that he thought that it would be best to move on with the recommendation as it is currently construed. Mr. Comodeca offered the advice that the report generated must capture the total cost of the outside engineering cost changes driven by any change orders or extensions of time. This information has never been given to the Board in a way for the Board to appreciate the totality of cost increases to outside vendors. Also it is key to making the system meaningful to have a very aggressive input requirement – meaning the next day or soon thereafter the data is finalized.

Finding number twelve is project documentation. The recommendation is that the District should develop a uniform construction project management system incorporating documentation requirements and scheduling concepts. The District proposes the development of a uniform management system with standard operating procedures. The system will include requirements for standardized project documentation including filing systems, records retention, daily logs, meeting notes, and transmittal logs. This will be completed by engineering by April 15, 2008.

Mr. Odeal noted that this is not a big automated system and that the first step is to implement the manual system. Mr. Comodeca stated that the project management guide is out-of-date and not followed and, further, that the completion date of April 15, 2008 is unacceptable to anyone in the construction industry. He stated that the system can be in place in thirty days or at minimum by the end of 2007. He stated that it can be as simple as preprinting checklists of daily log forms including basic information. The date for compliance was set at January 1, 2008.

The thirteenth item is District communication. The recommendation is that the District should explore methods of insuring that District policy initiatives are disseminated to those employees that would be affected. The new policies pursued by the District rely upon the foundation of adherence and implementation of current policies, and care should be taken to ensure that current policies are upgraded, implemented, and in force before costs of such new policies are incurred. The District proposes that a communication plan be written for each major District initiative that will include methods and timetables for regularly updating the staff. This will be in place by November 1, 2007. The District will also evaluate and revise its policies and procedures relating to contracting and project management to be effective April 15, 2008. And, effective immediately, the District is committed to moving forward by committing to use its information systems to the fullest, upgrading and relating policies and procedures and preparing a solid foundation for future initiatives. Mr. Bucci stated that the District needs to carry on with its initiatives of the asset management plan and leadership training program, but that they need a solid foundation.

Mr. Bucci continued with the District's general conditions: materials and substitutions, field verification, contingency change orders and final payment. There will be a review of the District's front-end documents, including provisions and a process audit

memorandum, to be completed by January 31, 2008 by legal and engineering. This will be presented to the Board for discussion and with a recommendation. Mr. Bucci, in response to a request by Mayor DePiero, stated that there will be a monthly report on the entire list of findings and a status report on the compliance phase of each recommendation.

Mr. Comodeca cautioned the District in that there is no empirical data that risk sharing has resulted in any cost savings. He stated that in the ten years of records that he reviewed there were no claims by any contractor or consulting engineer in a mediation, arbitration or litigation against the District. He concluded that means the contractors and consulting engineers are satisfied with the risk sharing. He believes that the various policy deviations and cost tracking discrepancies need to be tightened up so that risk sharing occurs naturally by way of a contract as it is meant to. He stated that the District's real mission is to tighten up contracts to protect the rate payer dollars and to implement systems that are fully transparent to the contractor so they know what to do in order to get paid.

The Special Meeting of the Board of Trustees concluded at 11:58 A.M. on October 4, 2007.

ATTACHMENT "2"

**NEORSD Board of Trustees Working Session Summary
October 4, 2007**

Item 1- Public Participation

Mr. Brown asked if anyone had signed up for public participation. Executive Director Odeal stated that no one had signed the participation list.

Item 2 – Report on Aquabots

Executive Director Odeal stated that Communications and Community Relations Director Constance Haqq would present the report. Ms. Haqq stated that the Aquabots Program was a collaboration between the District and the Cleveland Municipal School District and a local education consulting firm, Paragon TEC. Students designed robots to perform tasks that the District would perform on a day-to-day basis. Ms. Haqq stated that through the program the students received a better understanding of business, available job opportunities at the District, and a general knowledge as a future rate-payer of where their dollars are going.

Ms. Haqq stated that students compete against each other regardless of whether or not their robot performs its task. For both the 2006 and 2007 final competition Councilwoman Phyllis Cleveland gave the students some words of encouragement. Ms. Haqq stated that the school principal, Donna Baynes, was unable to be present, but had felt that the students' interest in math and science has increased because of the Aquabot program.

Ms. Haqq introduced Jondarr Bradshaw from Paragon TEC and invited him to say a few words to the Board. Mr. Bradshaw thanked the Board for their involvement and foresight in STEM education. The experience provides students with wonderful opportunities, including the chance to discover the involvement of the District with the community. Mr. Bradshaw stated that several students were present. Mr. Bradshaw stated that the school was an underperforming school and the project had inspired students to achieve.

Mr. Brown asked if the students could be introduced. Ms. Haqq stated that the work would not have been possible without the volunteers from the District staff. Ms. Haqq introduced Lita Laven, Scott Horvath, Joe Kunzler, Laura Mastrucci, and Tana Powell. Volunteers acted as coaches, project leaders, and referees.

Ms. Haqq introduced Career Education Teacher Mrs. Terry Mwonyonyi, and invited the students from Carl and Louis Stokes Central Academy to speak to the Board. The students introduced themselves and gave a brief description of the information and skills learned during the program. An increased knowledge base of the District's role in the community as well as skills associated with technology and math were described. Mr. Brown thanked the students for speaking to the Board. Mrs. Mwonyonyi thanked the

Board for their participation in the program and related how the students were already preparing for next years robotics' program.

Ms. Haqq briefly outlined some new additions to the program, including the involvement of the East Tech robotics team for 2008 and the opportunity for the students to get involved with NASA's summer robotics' program.

Mr. Brown expressed gratitude to Paragon TEC, to the District staff, and to the students from Carl & Louis Central Academy for participating in the program. Mr. Brown also thanked Ms. Haqq for her leadership and guidance.

Item 3 - Proposed amendment of Contract #3127 for professional services associated with the Electrical Infrastructure Study at the Southerly Wastewater Treatment Plant

Executive Director Odeal stated that a proposed amendment to the contract for professional services regarding electrical infrastructure study at the Southerly Wastewater Treatment plant. The Southerly electrical system has 20-plus substations and two main substations. Most of the system was installed in the mid 1970s and Executive Director Odeal stated it is nearing, or has exceeded, its useful life. The design contract would include new substations at Southerly. Executive Director Odeal invited representatives from MWH to introduce themselves. Mr. Norman Gadzinski introduced himself as well as their subcontractor representatives.

Executive Director Odeal stated that questions could be directed to Director of Engineering Charles Vasulka. There were no questions from the Board.

Item 4 – Proposed award of a contract with Brown & Caldwell for professional services required during the construction of the Westerly Interceptor Box Culvert Repair/Replacement Project

Executive Director Odeal stated that the staff is requesting the Board to authorize the use of Brown & Caldwell for resident engineer and contract administration services. The contract would not exceed \$522,256.78. Executive Director Odeal invited representatives from Brown & Caldwell to introduce themselves as well as their subcontractors.

Mr. Brown asked for clarification regarding the District's decision to replace only a 500-foot long culvert of a 90 year old pipe. Mr. Vasulka stated that he was not aware of any other parts and the 500-foot culvert was being addressed due to the Shoreway flooding problem. Mr. Brown asked whether the project would require major traffic control challenges in the city. Mr. Vasulka replied that it would. Mr. Brown asked whether the staff was working through those issues. Mr. Vasulka stated that the District has two plans for maintaining traffic at a reduced rate.

Item 5 – Change Orders

Executive Director Odeal stated that the change order was for a time extension. Mr. Brown confirmed the change order was for a time extension and not a cost-related item. Executive Director Odeal stated that questions from the Board may be directed to Mr. Vasulka. There were no questions from the Board.

Item 6 – Proposed final payment to Kenmore Construction for emergency repair services relative to the Southerly District Interceptors Hydraulic Improvement Contract Broadway Branch Emergency Repairs

Executive Director Odeal stated that the item addressed the proposed final payment to Kenmore Construction Company for emergency repair services with regard to the Southerly Interceptor Improvement Broadway Branch. The sewer was being rehabilitated by C&K Industrial Services; however, Kenmore was utilized under emergency contract to perform major repairs. The final payment request was \$178,511.04.

Mayor DePiero asked whether there was an initial estimated cost on the emergency work, and, if so, was the final cost over or under the estimate. Mr. Vasulka directed the question to Rick Switalski. Mr. Switalski stated that the initial repair work was estimated at \$170,000 for five repairs. There were nine repairs performed for \$178,000 in addition to the minor repairs that were done simultaneously to the major repairs.

Item 7 – Proposed direct purchase of one (1) Quantitative Polymerase Chain Reaction Instrument from Applied Biosystems as well as additional ancillary equipment

Executive Director Odeal stated that the proposed direct purchase of one Quantitative Polymerase Chain Reaction Instrument from Applied BioSystems is part of a settlement between the District and the U.S. Environmental Protection Service. The purchase of the equipment at \$50,000 for a supplemental environmental project was mandated in lieu of a fine. Executive Director Odeal stated that since the equipment is the same that the U.S. Geological Survey uses, District staff has been working with the USGS to familiarize themselves with the equipment. Executive Director Odeal stated that questions regarding the function of the equipment may be directed to Mark Citrigilia.

Mr. Citrigilia explained that the equipment uses DNA markers. The District looks for DNA markers for *e. coli* in order to amplify them. It then determines from the amplification time the intensity of *e. coli* concentrations. Mr. Brown asked where this application would be used. Mr. Citrigilia stated that the equipment would be used to measure *e. coli* at area beaches. The equipment would measure the *e. coli* concentrations in two hours versus the current process which takes 24 hours. Mr. Brown stated that the equipment is aiding the District in the goal of informing the public of the relative safety of area beaches in a time effective manner. Mr. Citrigilia concurred.

Mayor Starr asked when the District found out that the purchase of the equipment was necessary. Executive Director Odeal stated that the staff advised the Board earlier in the

year as to the impending purchase. Mayor Starr asked for clarification whether the staff was requesting the Board to approve a direct purchase in order to avoid public bidding. Executive Director Odeal stated the piece of equipment was required by the U.S. EPA in the settlement, and alternative equipment is not available. Mayor Starr asked if this meant only one manufacturer in the whole world made the equipment. Director of Operations Timothy Tigue stated that the USGS has developed how to use the equipment and the District works closely to replicate their processes and understand the procedures. Mayor Starr asked whether there is a manufacturer other than Applied BioSystems. Mr. Tigue directed the question to Mr. Citriglia. Mr. Citriglia stated that there are other manufacturers, however the processes with that equipment vary. Both the EPA and the USGS have processes developed around the equipment produced by Applied BioSystems. Working with reliable processes for a quality outcome is high on the District's priority list.

Mayor Starr stated that the legal question is that if the equipment is over \$25,000 then does the purchase need to be competitively bid. Interim General Counsel Virginia Benjamin stated that the purchase was approved as a supplemental environmental project the EPA required. Ms. Benjamin asked First Assistant General Counsel Lisa Hollander to clarify. Ms. Hollander stated that there were two reasons for the District to work with the equipment produced by Applied BioSystems. The first issue concerned the desired ability for the District to replicate the procedures used by the USGS and come up with consistent results as to the bacteria count. Ms. Hollander stated the other reason related to the equipment being directly accepted by the EPA in the mid-August settlement as being the equipment and processes to be used in the supplemental environmental project.

Item 8 - Sewer Use Code Matters

Executive Director Odeal stated that Ameritrust is no longer eligible for SSCBOUTS since the property is no longer occupied. John Carroll and Dylon Industries do qualify for a sewer usage charge based on usage of the system. Executive Director Odeal stated that if the Board had questions they could direct them to Mr. Tigue. There were no questions from the Board.

Item 9 – Proposed advertising for bids to replace the paging systems at all three (3) Wastewater Treatment Plants

Executive Director Odeal stated that the District's paging system would be competitively bid with a focus on a particular technology to ensure consistency throughout the District. The current paging system is between 25 and 30 years old. Executive Director Odeal stated that IT and Engineering were collaborating to develop specifications for the system. Due to the narrow scope of the project Executive Director Odeal requested the Board to waive the WBE and MBE goals.

Mr. Brown asked whether the new system would be replacing an existing system or systems. Executive Director Odeal stated that it would be replacing the old systems.

Item 10 – Proposed payment to the National Association of Clean Water Agencies for membership dues for the year 2008

Executive Director Odeal requested the Board to authorize payment of the District's 2008 NACWA membership dues.

Mr. Brown asked if someone could elaborate on the District's targeted action fund projects. Executive Director Odeal referred the question to Ms. Hollander. Ms. Hollander explained that targeted action projects run through NACWA, through a gamut of technical processes and other organizations, to assist in technical and scientific evaluations. Ms. Hollander stated that the staff could supply the Board with a list of projects that have been utilizing the funds over the last five to ten years.

Mr. Brown asked for clarification regarding the Board's ability to have input into the appropriations for potential research and investigation. Executive Director Odeal stated that in the past the District has had representation on the NACWA Board as well as committees where those issues are decided upon. Incoming Executive Director Julius Ciaccia will have the opportunity to sit on the NACWA Board.

Item 11 – Proposed payment to Water Environment Research Foundation for 2007 subscription dues

Executive Director Odeal stated that the District was one of the founding members of the Water Environment Research Foundation. WERF is funded through wastewater, municipal utilities, and the industry. The focus of WERF is primarily on CSOs, SSOs, emerging contaminants, and pharmaceuticals. Executive Director Odeal stated that Keith Lynn, from the District's WQIS staff, is a member of the research counsel at WERF. Executive Director Odeal asked the Board if they had any questions. There were no questions from the Board.

Item 12 – Report on Stormwater Management Program Implementation Project

Executive Director Odeal stated that at the previous meeting the Board authorized a short list of consulting services for the next phase of the stormwater management project. Any questions regarding the scope of work the consultants would engage in should be directed to Frank Greenland.

Mr. Brown stated that the staff had presented the information regarding the scope of work and methodology well. Mr. Brown requested that the Board be kept informed as to the progress with the project.

Mayor Longo stated that he had met with the new director of the Ohio EPA. One of the Director's goals is to address the issue of stormwater management in the communities in Northeast Ohio. Mayor Longo stated that the District should touch base with the Director of Ohio EPA.

Mayor Starr asked when the Board would be informed as to the cost of the project. Mr. Greenland stated that the District is currently in discussion with the communities and the consultants would be compiling a schedule of project activities. A financial breakdown of the rate-structure and potential credits should be available by late 2008. Mayor Starr asked whether the staff had any knowledge of whether the rate increase would be one, two, or twelve percent increase. Mr. Greenland stated that currently the staff did not have any information regarding the potential rise in rates. Mr. Brown stated that a primary goal is to ensure the system is equitable. Credits for those consumers who utilize best practices should also be considered in the rate structure. Mr. Greenland stated that the rate analysis would be taking into account credits and incentives.

Mr. Brown stated that the final selection of consultant will occur after consultant responses to the evaluation of data have been submitted. Mr. Greenland stated that there are specifications under each category approach, and consultants are being asked to provide alternatives to a defined scope of work.

Item 13 – Open Session

Executive Director Odeal stated that the last item is open session.

Mayor Starr stated that the add-ons for open session were given to the Board just minutes prior to the meeting, and there had not been adequate time for reviewing them. Mayor Starr requested delaying the add-ons to the next Board meeting or retiring to Executive Session to discuss the issues. Executive Director Odeal stated that two add-ons dealt with property at essentially no cost to the District. The property items deal with an upcoming ownership transfer, which could complicate the process if the District does not act upon them.

Mr. Brown asked if there was any reason for the Board to not take action on the items. Mayor Starr stated he would agree on the property matters, but wished to discuss the final add-on in Executive Session. Mr. Brown stated that in general practice when a Board member requests for an Executive Session the request has been honored. It was stated that the final item was an acknowledgement of appreciation and that a need to discuss the item in Executive Session was not seen as necessary. Mr. Brown stated that the request should be honored. Mr. Ronald Sulik asked if there was a motion to adjourn to Executive Session. Mr. Brown stated that since there is one legal matter to discuss a motion would be necessary to adjourn. Mr. Sulik motioned to adjourn to Executive Session. Ms. Sheila J. Kelly seconded the motion.

The Working Session of the Board of Trustees was concluded at 1:19 P.M.