

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
NOVEMBER 19, 2009

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown  
G. Starr  
D. DePiero  
S. Kelly  
T. Longo  
W. O'Malley

*Mr. Sulik was absent.*

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

II. Approval of Minutes

**MOTION** – Ms. Kelly moved and Mayor Starr seconded that the minutes of the November 5, 2009 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised that Dennis Meaney and Terry Burns registered to speak at Public Session regarding Resolution No. 266-09 for the Southerly Substation Replacement – Contract SSR-1, which was on the agenda for Board consideration. Mr. Brown requested that Mr. Meaney and Mr. Burns please come forward to address their comments to the Board.

Mr. Meaney stated that on November 18<sup>th</sup> he sent an email and attached correspondence to most of the Board members, and he proceeded to read aloud the letter addressed to the Board:

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“Dear Trustees, I would like to bring to your attention the possibility of the filing of fraudulent documents to the Sewer District by Bay Mechanical and Electrical Corporation (hereinafter “Bay Mechanical”). I would use as evidence of this by pointing out the District documents AIA and A-305 submitted by Bay Mechanical for the Southerly Substation Replacement Job, SSR-1. Under Item No. 3, Experience, Section 3.2.3 reads in full, has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last 5-years, see attached...”

Mr. Meaney advised that he attached a hard copy of said correspondence wherein Bay Mechanical responded “no” to the above-referenced question. According to Mr. Meaney, after a brief online search, he discovered a court document wherein Bay Mechanical apparently filed a lawsuit against R. J. Griffin Company (hereinafter “R. J. Griffin”) on January 8, 2007. Mr. Meaney stated that “R. J. Griffin is a construction company on its website.”

Mr. Meaney indicated that he read about other claims involving Bay Mechanical in the Avon Lake Municipal Utilities Department and Norwalk School Board in 2002. He made a public records request from the District for several of the same A-305 documents submitted by Bay Mechanical during that time period, and he discovered that Bay Mechanical responded “no” to the three questions under section 3.2.

Mr. Meaney advised that not all cases were available online, therefore, in the interest of full disclosure, it would be within the best interest of the Board to investigate the answers provided by Bay Mechanical before awarding the SSR-1 contract, which was on the agenda for Board consideration. Given that the contract amount is nearly \$17 million, it would be prudent to ensure that all documents submitted by Bay Mechanical were accurate.

Mayor Starr requested that Mr. Meaney identify himself and his affiliated organization. Mr. Meaney introduced himself and advised that he is Business Manager to the International Brotherhood of Electrical Workers.

Ms. Kelly inquired if a representative from Bay Mechanical was present at the meeting to respond to the allegations made by Mr. Meaney.

Mr. Burns reported to the podium and advised the Board that he is the President of Bay Mechanical. Mr. Burns stated that the AIA (American Institute of Architects) document

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was provided by Bay Mechanical voluntarily for disclosure and was not a District requirement.

The apparent lawsuit began as a mechanic's lien against R. J. Griffin for non-payment. R. J. Griffin went to court and posted bond, so the lien against the building was put on a bond. Bay Mechanical did receive payment for the work performed.

In response to the allegations made about the Norwalk School Board (hereinafter "Norwalk") project in 2002, Mr. Burns stated that non-performance of contract items by other contractors resulted in a one year project delay. Bay Mechanical did not file a lawsuit against Norwalk nor did they file for arbitration. Bay Mechanical negotiated a settlement with Norwalk for the damages incurred.

Mr. Burns stated that Bay Mechanical has successfully completed over \$20 million in District projects over the past 10 years without liens, arbitration or lawsuits. Mr. Burns appreciated those opportunities and will appreciate being awarded Contract SSR-1 to further serve the District.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP"). The District continues meeting with the United States Environmental Protection Agency (hereinafter "USEPA") Office of Research and Development regarding green infrastructure approaches for CSO mitigation. There are some green infrastructure opportunities that the District is attempting to incorporate into the CSO discussions held with the United States Department of Justice (hereinafter "USDOJ") and the Ohio Environmental Protection Agency (hereinafter "OEPA").

Executive Director Ciaccia advised that District staff participated in conference call with the USDOJ and OEPA this week, which was a technical discussion regarding some of the proposed CSO LTCP projects. A follow-up meeting is tentatively scheduled for December 14<sup>th</sup> or December 16<sup>th</sup> wherein the governments plan to provide their counterproposal to the District's proposed CSO LTCP.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). The SMP Code of Regulations (hereinafter "Code") was distributed to the member communities for their review. The District received mostly positive feedback thus far; however, some responses were negative.

Executive Director Ciaccia advised that the District's community meetings have not received much public participation. The District will hold a community meeting this

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evening in Richfield for the Summit County communities and in the City of Parma on November 23<sup>rd</sup>. Mayor DePiero and Parma City Council plan to attend that meeting.

Executive Director Ciaccia advised that the District has been providing information to the communities over several months and will continue addressing particular issues with some of the member communities.

Executive Director Ciaccia, Director of Watershed Programs, Frank Greenland, and Director of Engineering and Construction, Kellie Rotunno, attended the Village of Bratenahl Council Meeting. Mr. Greenland and Ms. Rotunno were applauded by the meeting attendees on their reports.

The District presented the SMP at the November 12<sup>th</sup> Cuyahoga County Mayors and Managers Association (hereinafter "Mayors and Managers") meeting, which was followed by the Suburban Council of Governments (hereinafter "SCOG") meeting. Since the District is moving toward SMP implementation much discussion was held at those meetings.

Executive Director Ciaccia moved to the next report item regarding the federal and state advocacy services. The District continues working with its state advocate, Tucker Ellis & West LLP (hereinafter "Tucker Ellis") on issues pertaining to Ohio Revised Code Chapter 6119. In regards to the federal advocacy efforts, the District is compiling a list of projects which will be submitted to the federal government for funding.

Senator George Voinovich and Senator Sherrod Brown wrote to the USEPA on behalf of the District urging them to be flexible with their CSO LTCP negotiations. The District appreciated the Senators' efforts. Executive Director Ciaccia was hopeful that the District's Congressional delegates would do the same since they indicated their support of the District in this process.

Executive Director Ciaccia moved to the next report item regarding the new billing system of the City of Cleveland Division of Water (hereinafter "CWD"). The District continues working through the summer sprinkling and accounting issues and CWD is willing to bill for the SMP. Commissioner Nielsen of CWD indicated their interest in extending their billing services to stormwater customers that are not currently receiving a water or sewer bill from CWD, and the District and CWD are exploring those opportunities. Director of Information Technology, Humberto Sanchez, will be attending a meeting with CWD to determine feasibility for this proposal.

Executive Director Ciaccia moved to the next report item regarding the District's finances wherein he indicated that revenues continue to fall short of projections. The District continues to be under budget, and expenses are below projections.

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Executive Director Ciaccia moved to the next report item regarding the slumping Westerly Low Level Interceptor (hereinafter "WLLI"), which is situated on the hillside on Riverbed Road in Cleveland. The District continues to monitor this situation and water infiltration continues to move the pipe. The District needs to identify alternative solutions in order to relocate the pipe. Discussions to address this situation have been ongoing, but this major piece of infrastructure is extremely vulnerable and it is incumbent upon the District to find a solution very soon. Executive Director Ciaccia advised that staff will make a presentation on the WLLI to the Board once they are prepared to do so.

Executive Director Ciaccia moved to the last report item and stated that over the last month, the District advertised bids for many District projects. On the agenda for consideration was \$146 million in projects. This is a level that the District has not seen, but this is going to become more familiar as we move forward with the CSO LTCP. Executive Director Ciaccia speculated that more bidders are interested in District projects due to the current economic situation. The District is receiving good bids and quotes, which is beneficial to our customers. Executive Director Ciaccia stated that the competition has increased with respect to pricing and the second lowest bidders are scrutinizing the bids. Challenges stemming from the District's new general conditions or peculiarities of the bids will be brought to the Board today.

Executive Director Ciaccia informed the Board that Resolution No. 268-09 for the Southerly Renewable Energy Facility (hereinafter "REF") will not be awarded today due to a Temporary Restraining Order issued by Judge Friedland in response to a claim made by the second-lowest bidder, Kokosing Construction Company, Inc. (hereinafter "Kokosing"). The District is preparing for a December 1<sup>st</sup> hearing on this issue and Executive Director Ciaccia requested Board consideration to adjourn into Executive Session at the appropriate time during the meeting in order to further discuss this matter.

Mr. Brown expressed his concerns as to the low public attendance at the District's SMP community meetings. This is a complex issue and in his capacity at the City of Cleveland, he has received many questions on the SMP. He has observed that the public has little understanding of the program mechanics and how stormwater impacts the residents. People want to know what benefits the SMP will provide them especially since new fees are associated with this type of program. Mr. Brown commented that it would be helpful for people to understand the differences between gray infrastructure and green infrastructure, and how the SMP will strongly impact the amount of dollars spent on stormwater as well as the CSO LTCP. Mr. Brown stated that there is a significant connection between the SMP and the CSO LTCP. He was concerned that the public is solely focusing on the dollars associated with the SMP rather than the social benefits, improved quality of life and long term lifestyle changes that stem from this type of approach.

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Executive Director Ciaccia commented that he was not surprised by the low attendance at the public meetings. During his tenure at the CWD, when rates were increased, they could not attract the public to attend their meetings. The District also routinely held public meetings when rates increased over the years, which did not attract public participation. *The Plain Dealer* has been a good media outlet for the District and the District has placed public announcements on the television and put forth much effort to reach the public directly. The District has done a tremendous job meeting the policy makers within our region; however, the SMP will probably receive more public attention after implementation of the program and fees.

Mr. Brown commented that the public should receive clarity on the SMP and the benefits associated with this program. Cleveland is downstream from all of the watersheds and improvements made in upstream watersheds will impact the downstream communities. Customers need to be informed of the regional SMP concept and the benefits this program will provide. We can change our rust belt community image to a region that embraces a green economy. Mr. Brown agreed with Executive Director Ciaccia's comments regarding the public's interest increasing after the SMP and associated fees are put into effect.

Mr. Brown suggested that we utilize other outreach measures in order to increase public awareness of the SMP since the community meetings are not attracting much attention. Although the attendance has been low at the SMP community meetings, Director of Administration and External Affairs, Constance Haqq, assured the Board that we have been unrelenting in making sure that the public understands stormwater. The level of understanding at this point may not be adequate, but we have a speaker's bureau, volumes of print material, and are prepared to speak to large or small groups. Furthermore, the District's website has information on the SMP. Public outreach will be an ongoing effort and will not cease once stormwater billing goes into effect. Ms. Haqq stated that the SMP is an ongoing public information campaign to inform everyone from school children to customers about the impacts of stormwater.

Mr. Greenland stated that we need to be diligent with communicating the SMP message, and he estimated that over the past 2 to 3 years, the District has participated in approximately 300 meetings with many different community groups, watershed groups, and at conferences. District staff has been invited to several council meetings and was invited to meet the residents in a public meeting held in Columbia Township. The District is also meeting with school groups, large and small parcel owners and churches. Mr. Greenland agreed that the low turnout at the public meetings is problematic and he suggested that we identify different means to relay this message to the public. Mr. Greenland stated that the inquiries he received from community officials, watershed

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groups and the general public about the SMP program elements have increased, but we need to continue with our outreach efforts.

Mr. Brown moved discussion to the comments made by Executive Director Ciaccia regarding the District spending on capital improvements. The District and other governmental agencies are the only entities “priming the pump” in the local economy. Mr. Brown commented that “it is heartening” to learn that the number of bids received on District contracts has increased and that the District is receiving bids significantly lower than the engineer’s estimates. Mr. Brown stated that the Board has the fiduciary responsibility to continue awarding projects to the lowest and best bidder.

Mr. Brown advised that he participated with a group of young contractors during a Small Business Enterprise (hereinafter “SBE”) development program. It is important to provide SBEs with the opportunity to learn about the District’s contracting process. Many of these SBEs employ local residents. Certifying SBEs is important, but providing contracting opportunities to SBEs is valuable. Mr. Brown suggested that staff begin tracking successful SBE contracting opportunities. Many prime contractors assisted SBEs during the SBE development program and are looking to partner with them. We need to put forth the message to prime contractors and certified SBEs that “this is how the District intends to do business” and that the District desires presenting opportunities for all contractors.

Executive Director Ciaccia advised that if the District is able to award the REF this year, then the District will have awarded over \$200 million in District contracts this year, which is a tremendous economic impact. The District’s core mission is taking care of the environment, but we are also providing a significant opportunity and local stimulus during an economic depression.

Executive Director Ciaccia stated that staff was hopeful that the Board will consider awarding a contract to Cleveland State University to conduct an economic impact analysis in order for the District to understand its impact on the local economy.

V. Action Items

Sewer Use Code Matters

**Resolution No. 257-09**

**Adopting Hearing Examiner Findings with Regard to the Sewer Account of Alan Forrest, Northeast Ohio Regional Sewer District Case No. 09-005.**

**MOTION** – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 257-09. Without objection, the motion carried unanimously.

Authorization to Re-bid

**Resolution No. 258-09**

**Two-Year Contract for Fencing Installation and Repair at all District Facilities and Remote Sites. Estimated Cost: \$790,000.00.**

**MOTION** – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 258-09. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

**Resolution No. 259-09**

**Professional Services for Design, Construction Administration and Resident Engineering (CA/RE) for Easterly Wastewater Treatment Plant Code and Safety Improvements (EFPI-2).**

**MOTION** – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 259-09. Without objection, the motion carried unanimously.

Authorization to Ratify Expenditure

**Resolution No. 260-09**

**Ratifying Expenditure and Authorizing Additional Expenditure to Nerone & Sons, Inc. for the East 55<sup>th</sup> & Bower Repairs. Cost: Ratifying \$21,420.00 and Authorizing and Additional \$15,000.00 Bringing the Total Contract Amount to \$36,420.00.**

**MOTION** – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 260-09. Without objection, the motion carried unanimously.



Authorization of Contract Modification

**Resolution No. 197-09a**

**Contract No. 09002002 with NEC Unified Solutions for Change in Scope of Work for Network Infrastructure Upgrade Project. Cost: Change in Scope of Work at No Additional Cost to the District.**

**Resolution No. 261-09**

**Contract No. 09000771 with St. Vincent Charity Hospital Occupational Medicine Centers for Occupational Health Services for District Employees for 2009. Cost: An Increase Not to Exceed \$5,000.00 Bringing the Total Contract Amount to \$50,000.00.**

**MOTION** – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 197-09a and 261-09. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

**Resolution No. 262-09**

**Contract with Oracle, Inc. for the 2010 Renewal of Annual Maintenance and Support for the Oracle Work and Asset Management (WAM) Application. Cost: \$68,691.16.**

**Resolution No. 263-09**

**Two Year Contract with Sarcom for Supplemental Desktop and Network Support Services. Cost: Not to Exceed \$521,920.00.**

**Resolution No. 264-09**

**Contract with Cleveland State University (CSU) Center for Economic Development for Performance of an Economic Impact Analysis. Cost: \$85,194.00.**

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**Resolution No. 265-09**

**Contract with Middough Inc. for Professional Services for the Easterly Aeration Blower Rehabilitation (ABR). Cost: \$836,539.49.**

**MOTION** – Mayor Longo moved and Mayor Starr seconded to adopt Resolution Nos. 262-09 through 265-09. Without objection, the motion carried with one abstention from Mayor DePiero on Resolution No. 265-09.

**Resolution No. 266-09**

**Contract with Bay Mechanical and Electrical Corp. for Southerly Wastewater Treatment Center Substation Replacement (SSR-1). Cost: \$16,703,200.00.**

**MOTION** – Mayor Longo moved and Mayor DePiero seconded to adopt Resolution No. 266-09. After discussion, the motion was withdrawn.

Mayor DePiero requested a response from staff as to the issues raised on Resolution No. 266-09, Contract SSR-1 during Public Session. Ms. Rotunno advised that Mr. Meaney made reference to a standard form of the American Institute of Architects (hereinafter “AIA”), which was provided to the District by Bay Mechanical as supplemental information. The District does not require this AIA form, nor does it verify the accuracy said document. The AIA document was simply supplemental information provided by Bay Mechanical. Ms. Rotunno stated that “everything Bay Mechanical provided with their bid that was related to the District’s bidding forms was up to our standards.”

Mayor Starr commented that he has not yet thoroughly examined the information that Mr. Meaney provided to the Board on November 18<sup>th</sup>. He inquired if there was any reason as to why the Board cannot postpone taking action on Resolution No. 266-09 for two weeks, and readdress this issue at the December 3<sup>rd</sup> Board meeting. This would provide the Board with ample opportunity to analyze said information. Ms. Rotunno stated that there is no reason preventing the District from postponing awarding the SSR-1 project.

Mayor Starr referenced previous comments made by Mr. Burns claiming that Bay Mechanical had not filed any lawsuits against the District; however, he recalled receiving a deposition from Seeley, Savidge and Aussem, Bay Mechanical’s legal counsel, at the time. Mayor Starr requested clarification on the factual information.

Deputy Director of Law, Lawrence English, reported to the podium, and informed the Board that although we did not ask for this information in our materials, they would not

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have included this information on the AIA form since the lawsuit referenced by Mayor Starr occurred more than 5 years ago.

Mayor Starr questioned whether Bay Mechanical brought the lawsuit against the District wherein Mr. English stated "yes."

**MOTION** – Mayor Starr moved and Mayor Longo seconded to hold Resolution No. 266-09 in abeyance until the December 3, 2009 Board meeting. Without objection the motion carried with one abstention from Mr. O'Malley.

Mr. Brown requested clarification from staff as to whether the issue raised was material to the District's bidding process and the documents the District requests. The Board needs to be clear on this while they review the information provided by Mr. Meaney. Director of Law, Marlene Sundheimer, stated that she will provide the Board with a memorandum and attach the information necessary to clarify the Board's questions.

**Resolution No. 267-09**

**Contract with Marous Brothers Construction, Inc. for the Mill Creek Interceptor Main Branch (MCI-MB). Cost: \$6,934,715.00.**

**Resolution No. 268-09**

**(WITHDRAWN)**

**Contract with Walsh Construction Company for Contract 28: Renewable Energy Facility Project at the Southerly Wastewater Treatment Center. Cost: \$92,329,000.00.**

**Resolution No. 269-09**

**Contract with Nerone & Sons, Inc. for Mill Creek Tunnel Phase 3 Completion (MCT-3C). Cost: \$13,484,140.00.**

**Resolution No. 270-09**

**Contract with Triad Engineering Construction, Inc. for the Lee Road Relief Sewer (LRRS) Project. Cost: \$16,879,059.**

**MOTION** – Mayor Longo moved and Mr. O'Malley seconded to adopt Resolution Nos. 267-09, 269-09 and 270-09. Resolution No. 268-09 was withdrawn. Without objection, the motion carried unanimously.

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VI. Information Items

1. Project Labor Agreements.

Executive Director Ciaccia advised that at the October 22<sup>nd</sup> Board meeting, Mr. O'Malley requested that the Board and staff engage in further discussion regarding Project Labor Agreements (hereinafter "PLAs"). Joyce Goldstein, attorney for the Cleveland Building Construction Trades Council (hereinafter "CBCTC"), attended the meeting to present the Board with an overview of PLAs. The Board also received background information on PLAs from Ms. Sundheimer and Craig White of Hahn Loeser. Executive Director Ciaccia turned discussion over to Ms. Goldstein.

Ms. Goldstein thanked the Board for the opportunity to present the PLA information. She met with the District's legal staff as well as the Board's outside counsel, and had good discussions. She was under the impression that the District was considering the possibility of passing a resolution or implementing some type of PLA policy.

Ms. Goldstein indicated that she wanted to provide the Board with background information on PLAs as well as advocate in favor of them. As counsel to the CBCTC, she has been involved with negotiating and litigating PLAs over the past 20 years, and the experience throughout the community has been quite positive.

Ms. Goldstein defined PLA as a contract between a public or private owner and typically a Building Construction Trades Council or other group of unions. In Cleveland, the PLA would be between the public or private owner and the CBCTC and its affiliates including electricians, plumbers, pipefitters and roofers.

Ms. Goldstein stated that PLAs are similar to collective bargaining agreements (hereinafter "CBAs"), however, they do not govern the terms and conditions for employees working for the District. A PLA governs the terms and conditions for the employees working on the District's construction project, and the District would be entering into the PLA as an owner rather than a public employer.

Since the 1930's throughout the United States, there have been many PLAs on construction projects of all sizes including the Grand Coulee Dam, Cape Kennedy Space Center, the Nuclear Research Facility in Oakridge, Tennessee, Walt Disney World, and the Trans Alaska Pipeline.

In Cleveland, PLA projects in the private sector include Tower City, The Cleveland Clinic and University Hospitals. PLA projects in the public sector include the Cleveland Browns Stadium, all of the Gateway projects, and the Federal Reserve building. There have also been quite a few PLAs between the CBCTC and the City of Parma.

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A PLA promises owners that all unions involved with that particular project will not engage in any strikes, picketing, hand billing, or any type of work disruption; therefore, the owner is assured that their job will not be affected by any disputes. Ms. Goldstein explained that this is beneficial since some of the underlying CBAs may expire during the course of a bigger project, and that jobs not bid under a PLA risk being shut down should the unions go on strike. Ms. Goldstein advised that PLAs guarantee the owners that their jobs will not be disrupted for any reason. PLAs are contracts; therefore, the terms are negotiable. Conversely, unions receive the assurance that all of the construction work on a particular project will be under the terms of the PLA and completed by contractors that are signatory to CBAs with one of the CBCTC affiliates, or are willing to become signatory to do the work on that project.

PLA terms can vary and the CBCTC recommends that public owners enter into PLAs limited to particular or "site-specific" projects. Under this model, non-unionized contractors will not be discriminated against, are allowed to bid and the contract will be awarded to them should they be the lowest and best bidder. However, the non-unionized contractor would be bound by the terms of that CBA for that project only.

Ms. Goldstein moved discussion to the various benefits an owner receives while entering into PLAs. There will be no work disruptions during the course of a job, and under ORC §4115, public owners are already required to pay prevailing wages. Under Ohio law, prevailing wage is defined as "the collectively bargained rate of that particular craft." Ms. Goldstein stated that since the public owners are required to pay union scale, then they should also receive the benefit of having the most highly skilled and trained workers.

PLAs provide a partnership between the owner and the CBCTC. At times owners may experience difficulty in receiving bids on their projects, and the CBCTC will try to solicit and generate more bids to make the process more competitive, which helps keep the costs down.

If issues arise, the CBCTC will hold tripartite meetings between the unions, the owner and construction manager in order to keep the process moving, making sure that the project is on budget and on time. Ms. Goldstein stated that the PLAs provide public owners a partner through the construction process.

Ms. Goldstein advised that it does not cost more to have a PLA since the principle labor costs involved is to pay prevailing wage, which under Ohio law, the District is already required to pay. Ms. Goldstein advised that PLAs most likely bring project costs down. PLA projects are of better quality since the lowest bidders will have the most highly skilled workers.

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PLAs increase the probability that local workers will be working on the projects, and specific residency provisions can be negotiated into the PLA. The contractors have CBAs with local unions and those unions have exclusive hiring halls; therefore, non-local based contractors will utilize contractors from the local community.

Ms. Goldstein advised that some non-union studies have been commissioned by the Associated Building Contractors Association (hereinafter "ABCA"), or the Associated General Contractors of America (hereinafter "AGC") to demonstrate that PLAs drive up project costs. Conversely, studies commissioned by the Construction Building Trades demonstrate the opposite. Ms. Goldstein urged the Board to consider discussing this issue with their colleagues rather than having competition amongst the studies. She pointed out Mayor DePiero's involvement with PLAs as well as President Brown, who was employed by the City of Cleveland during Mayor White's tenure while the PLA for the Cleveland Browns Stadium was negotiated. Researching communities that negotiated PLAs will show that the experience has not driven up project costs. Ms. Goldstein added that Mayor White entered into a PLA for the construction of the Cleveland Browns Stadium for the reason that there was a rigid deadline that the stadium would open on time.

Ms. Goldstein moved discussion to the legality of PLAs. The United State Supreme Court upheld the legality of PLAs in the *Building & Construction Trades Council v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993) (hereinafter "*Boston Harbor*" case), and the Building and Construction Trades Council received favorable decisions throughout the federal courts and in the Ohio 6<sup>th</sup> Circuit Court of Appeals. Ms. Goldstein stated that she "litigated the case in the Ohio Supreme Court which upheld the lawfulness of the PLAs in opposition to a state law passed prohibiting them;" therefore, PLAs are lawful in Ohio.

President Barack Obama signed an Executive Order expressing a preference for PLAs on federal projects exceeding \$25 million. Ms. Goldstein provided the staff and Board with the feedback of the National Building Construction Trades Council (hereinafter "NBCTC") regarding the implementation of President Obama's Executive Order.

Ms. Kelly referred to comments made regarding the increased competition on District projects, and she inquired as to what circumstances changed to warrant the District to engage in PLAs. Ms. Goldstein advised that there was a time period when many PLAs were successfully completed within the community up until Ohio House Bill 101 passed by the state legislature, which prohibited all public sector PLAs. This law was later held to be unconstitutional by the United States Supreme Court.

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In the marketplace, more out-of-state contractors are bidding on projects which jeopardizes the possibility of using the taxpayers' money to benefit the local residents. If an out-of-state contractor is awarded a project, it may bring non-local workers to these jobs, which reduces the benefits to the local communities. Ms. Goldstein stated that out-of-state bidders have increased due to the decline in the economy.

Ms. Kelly referred to the large projects identified by Ms. Goldstein, and she inquired how PLAs impacted minority business enterprise (hereinafter "MBE"), women's business enterprise (hereinafter "WBE") and SBE firms. Ms. Goldstein indicated that it is difficult to respond quantitatively to Ms. Kelly's question. She advised that the CBCTC are unions that have CBAs with many MBE, WBE and SBE employers. There are many different types of owners willing to sign CBAs with the CBCTC. Many owners are MBE, WBE or SBE firms, but "those are issues that we cannot control."

Ms. Goldstein stated that if the District were to engage in a PLA on a particular project, any contractor can bid on that work and the PLA does not restrict MBEs, WBEs or SBEs from bidding on that project. The MBE, WBE and SBE requirements are the owner's issues. The CBCTC will work with any employer willing to work under the PLA terms and respective CBAs.

Ms. Kelly inquired whether PLAs have positively impacted MBE, WBE and SBE firms or provided increased or decreased contracting opportunities. Ms. Goldstein indicated that she was unsure as to how a PLA would affect MBE, WBE and SBE firms, and if an employer is willing to work under a PLA's terms and conditions, the nature of the employer is irrelevant for the reason that the CBCTC is concerned with the employees and not the employers. Ms. Goldstein explained that she cannot specify how the owner is impacted by a PLA. If a MBE, WBE or SBE firm is awarded the project on any PLA or non-PLA job and sign a CBA, then we happily continue to work. Ms. Goldstein advised that no provision within the legal document of the PLA either encourages or discourages benefits to MBEs, WBEs and SBEs. It is independent and any impacts would not have a causal relationship. Ms. Kelly commented that Ms. Goldstein's response did not fully answer her question.

Mayor Starr inquired as to how many years PLAs have existed in northeast Ohio. Ms. Goldstein replied more than 20 years with the first big PLA in Cleveland for the Tower City project, and shortly thereafter, the CBCTC had multiple PLAs with Jacobs [The Richard E. Jacobs Group LLC] for projects such as the Key Center and South Park Mall in Strongsville. The CBCTC also entered into PLAs for Gateway and the Federal Reserve Bank.

Mayor Starr inquired if the PLAs are for federal, state and local entities wherein Ms. Goldstein affirmed.

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Mayor Starr inquired if the CBCTC entered into PLAs with bigger agencies such as the Greater Cleveland Regional Transit Authority (hereinafter "GCRTA") or Cleveland State University (hereinafter "CSU"). Ms. Goldstein was unsure and stated that CBCTC has entered into PLAs with government agencies at every level.

Mayor Starr inquired whether the District had entered into PLAs in the past. Executive Director Ciaccia stated "no." Mayor Starr inquired as to the reasoning behind the District choosing not to engage in PLAs. Executive Director Ciaccia speculated that the opportunity never presented itself; and therefore, this issue was never brought to the Board for consideration. PLAs are generally used for large construction projects that utilize multiple trades. The District's projects are primarily underground, or plant work which are largely "heavy highway union work."

According to Ms. Goldstein, the amount of \$25 million specified in President Obama's Executive Order for PLAs seemed really high, and PLAs are appropriate for jobs much smaller; however, PLAs are not suitable on really small jobs. The project threshold is a policy at the owner's discretion.

Ms. Goldstein advised that PLAs work well on complex jobs involving multiple trades working together on a project at the same time over a period of time, and to Executive Director Ciaccia's point, heavy highway work only involves one or two crafts and the need for a PLA is diminished.

Mayor Starr inquired whether the issues raised by Ms. Kelly can be addressed in the PLAs. Ms. Goldstein stated that she did not fully understand Ms. Kelly's question, and she explained that at a public owner's discretion, preference can be given to MBE, WBE and SBE firms. As a partner in the PLA, the CBCTC would be happy to work with owners to accomplish those goals; however, it is the owner's responsibility to select the contractors. The CBCTC will not impede any of those goals.

Mayor Starr inquired if an agreement can be set whereby local tradesman of northeast Ohio shall be employed. Ms. Goldstein stated that CBCTC has done that, more specifically, goals were set for the Cleveland Browns Stadium project for minority employment as well as city residents. Ms. Goldstein advised that so long as the predicate studies are completed and the owner has complied with whatever rules and procedures are necessary in determining the basis for project goals, then the CBCTC will be happy to work with you.

Mayor DePiero thanked Ms. Goldstein for her presentation, and he informed the Board that the City of Parma successfully completed a couple of fire station projects that were combined under a PLA in the amount of \$7 million, which were completed on time and



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on budget. Mayor DePiero commented that he was aware of “apprenticeship programs that are supported and encouraged by the CBCTC that act as the feeder systems for minority and female employees into the different companies that are signatories,” and he requested Ms. Goldstein to provide the Board with further information on those programs.

Ms. Goldstein explained that Mayor DePiero’s question was specific to employees or the workers whereas Ms. Kelly’s inquiry was geared towards employers or the business owner. The CBCTC is involved with the workers and encourages participation throughout the community through various apprenticeship programs, each separately run by individual industries. The feeder program operates through UCIP-ASAP which is a pre-apprenticeship program that provides opportunities or pathways to facilitate entry into some of those apprenticeship programs.

Ms. Goldstein stated that as counsel to many of the individual apprenticeship programs, one of the many frustrations she experienced is that young talented high school students who are bright and living within the community are typically encouraged by their guidance counselors to pursue college instead of entering into the trades. The CBCTC is willing to working with the District on any new suggested programs.

Mayor Longo commented that he needed clarification on the question raised by Ms. Kelly. He inquired if the District bid a project, and there was a group of SBEs capable of doing some of the work, would those SBEs be required to sign the PLA, or would they be exempt. Ms. Goldstein stated that those SBE firms would not be exempt, and it is mandatory under a PLA that every contractor working on that particular job would have to be a signatory. Mayor Longo inquired if those contractors would decide whether they would make the payments to receive fringe benefits. Ms. Goldstein affirmed that contractors not signatory to a CBA working on a PLA project would be required to make payments to whatever fringe benefit funds exist including pension, healthcare and welfare. Ms. Goldstein explained that those equivalent payments would be made by the owner since it is part of the prevailing wage package.

Mayor Longo inquired if the District’s employees were to go on strike and there is a project under a PLA, would the employees working under the PLA continue working or honor the picket line. Ms. Goldstein advised that the construction workers are required to cross the picket line under a PLA.

Mr. Brown thanked Ms. Goldstein for her presentation and he advised that there is no action to be taken at this time on the PLA issue. Ms. Goldstein’s presentation provided the Board with insight on PLAs, and the Board should contemplate any further questions as it pursues whether or not to adopt a PLA policy or resolution. Mr. Brown inquired whether the District has the authority to enter into a PLA on a project-by-project basis,

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and he commented that the adoption of a formal policy may not be necessary. Ms. Sundheimer affirmed.

Mr. Brown suggested that the Board hold future discussion about the PLA benefits and when it might be applicable to the District. Mr. Brown commented that his guiding principal is that "whatever we do has to be to the benefit of the ratepayer and whatever that outcome becomes as long as it rises to that level then I am willing to entertain that issue." Mr. Brown understood the importance of meeting deadlines, but the bottom line is that the Board's fiduciary responsibility is to develop a process that allows the District to obtain the lowest and best bid, and future discussions will be held on the PLA issue to determine the appropriateness of this process and bring closure to this issue.

Ms. Goldstein advised that the City of Parma passed an ordinance which essentially created the presumption of a PLA and specifically identified the criteria that would be evaluated on a particular project to determine whether to enter into a PLA. Parma City Council passed this ordinance, which gives the Mayor the authority to make this determination on a project-by-project basis.

2. Program Management Status Report and Update – September 2009.

Ms. Rotunno advised that the Executive Summary Report was a pullout incorporated into the Board packets. She referred to the screen, which showed some of the Board actions taken since September on design contracts as well as the authorization to enter into contracts. The District anticipates coming to the Board for authorization of one more professional services contract and two more construction projects, IR-13 and EISAC projects by the end of 2009. The District will come back to the Board in December for authorization to reject and retake bids on the EISAC project since the bids exceeded the engineer's estimate by more than 10%. Ms. Rotunno stated that shown in yellow were the construction contract authorizations of which some were awarded at today's meeting and some were deferred until December.

Ms. Rotunno moved discussion to the Key Performance Indicators (hereinafter "KPIs"). The delivery of the Capital Improvement Program (hereinafter "CIP") is lagging at 65% compared to 70% in August. In August, the District was at 81% of the dollar value awarded and slipped to 65% in September. Mr. Brown inquired if there is a recovery plan to get the District back on track wherein Ms. Rotunno replied that this will be presented in the next slide.

Ms. Rotunno stated that the engineer's estimates are at plus or minus 10% within the tolerance as of the end of September, and that will be changing by the end of 2009.

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District projects are closing within 105% of the base contract amount and 90% of those projects closed within 5% of the base award amount.

Ms. Rotunno moved discussion to the Notices to Proceed (hereinafter "NTP"). The District is lagging on the authorization for design NTPs, which is largely attributable to the lag in the development of the detailed design sometimes needed for the Requests for Proposal (hereinafter "RFP"). The construction project NTPs are expected to be close to what was anticipated by the end of the year. The combined project NTPs are expected to total 36, which is 7 behind the goal of 43 for 2009.

The projected 2009 total award amount is \$266 million which is \$12 million ahead of the \$254 million goal for this year. Ms. Rotunno advised that the District will not need a recovery plan on the award amount. The NTPs will roll into next year; therefore, staff will address those in 2010. Ms. Rotunno advised that \$161 million needs to be awarded in order to exceed the KPI for the contract award amount for 2009.

Cash flow is lagging by \$29 million, and Ms. Rotunno attributed this to "the way our projects are forecasted in a straight line cash flow as our contractors and consultants are not yet providing us accurate cash flow." This will improve with the new invoicing and cash flow provisions in 2010 after implementation of the Oracle financial system upgrade.

The District is at 100% on its engineer's estimates, which averaged under 7% of the actual contract award.

The District is closing 9 out of 10 projects within tolerance. The volatility of the market conditions have made it difficult for the engineers to nail down the estimates. The trend is for the low bid to be more than 10% lower than the engineer's opinion of probable construction costs, which has been demonstrated by most of the recent bids. Ms. Rotunno advised that a better metric is to compare the engineer's opinion of probable construction costs to the average of the bids rather than the lowest bid.

General allowances continue to be used judiciously and specific allowances are authorized when necessary.

Ms. Rotunno acknowledged Construction Managers, Marc Kritzer and Tom Vasel, for their management of tracking change orders and project close outs. Mr. Kritzer and Mr. Vasel have been doing a fantastic job keeping the contractors on mark and projects on budget. Ms. Rotunno advised that 9 out of 10 projects are closed within 5% of the base contract amount with less than 5% change orders, and Ms. Rotunno wanted to make the Board aware as to who was behind this impressive metric.

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Ms. Rotunno advised that a MBE, WBE and SBE tracking table was incorporated into the Executive Report, which provided the Board with a contract summary of each project and the amounts. Ms. Rotunno advised that two of the contract awards brought to the Board for consideration today had more than 98% SBE participation. The Board awarded a contract to Triad, which will be a SBE prime contractor. The award to Bay Mechanical was deferred to the December 3<sup>rd</sup> Board meeting, but that contract will have 98% SBE participation.

Mr. Brown suggested that the table be enlarged since he was having difficulty reading it, and Ms. Rotunno advised that it was intended to be an 11" x 17" pullout and that the font will be modified for the future.

Ms. Rotunno stated that SBEs are successfully bidding as prime contractors on District projects, which speaks volumes to the District's SBE program. Those companies are most likely located in the four-county area; therefore, the District is doing business with local contractors.

Mr. Brown appreciated Ms. Rotunno's presentation and he found the use of KPIs to be informative since they provide the Board with an overview of the District's status as well as the challenges we are facing.

VII. Open Session

No items for discussion.

VIII. Public Session (any subject matter)

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

IX. Executive Session

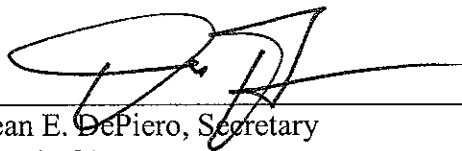
Mr. Brown stated that there were no matters for discussion in Executive Session.

**MOTION** – Mayor Longo moved and Mayor Starr seconded to enter into Executive Session to discuss the Renewable Energy Facility – Contract 28 litigation and the Southerly Substation Replacement – Contract SSR-1 bid issues and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 2:05 p.m. to 2:25 p.m.

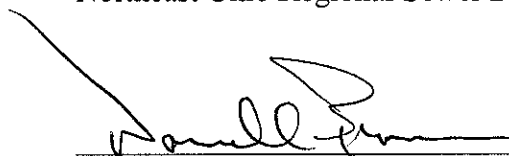
X. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 2:26 p.m. Without objection, the motion carried unanimously.



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



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