

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
DECEMBER 5, 2013

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:35 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
J. Bacci
T. DeGeeter
S. Kelly
W. O'Malley
G. Starr

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

II. Approval of Minutes

MOTION – Mr. O'Malley moved and Mayor Bacci seconded that the minutes of the November 21, 2013 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Dorothy and Irv Hazel from the West Creek Preservation Committee registered to speak during Public Session on a non-agenda related topic.

Mr. Brown inquired if Mr. & Mrs. Hazel's presentation was related to the District's Stormwater Management Program (hereinafter "SMP") wherein Executive Director Ciaccia affirmed. Mr. Brown requested that Mr. & Mrs. Hazel report to the podium to address their comments to the Board.

Mr. Hazel stated that he and his wife were present on behalf of the West Creek Conservancy (hereinafter "Conservancy") Board Chair Jeff Lennartz and Executive Director Derek Schafer to convey this organization's appreciation to the District's Board and staff on its crucial role in the creation of the West Creek Watershed Stewardship

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Center (hereinafter "Center") at the Cleveland Metroparks reservation in Parma. Mr. Hazel stated that a very enthusiastic response has been generated at the Center since it opened several months ago.

The Center and its surroundings have become a living classroom and laboratory to review, study and resolve flooding, erosion and pollution impacts resulting from inadequate stormwater management in this region.

Mr. Hazel stated that the Conservancy felt it appropriate to present to the District a Resolution of Appreciation. Mr. Hazel read from the Conservancy's Resolution of Appreciation, a copy of which has been attached hereto and incorporated herein as Exhibit "A".

Discussion was turned over to Mrs. Hazel. She thanked the District for its partnership with the Conservancy, Cleveland Metroparks and City of Parma and for its significant involvement in the creation of the Center which brings awareness to one of today's most pressing issues; water.

Mrs. Hazel stated that the Center is a valuable asset to educate citizens and teach them of methods and practices to protect the health of our communities. This understanding can encourage local governments and businesses to engage in any of the 30 featured stormwater management solutions to enhance the quality of life within our region and protect our water resources.

Mrs. Hazel stated that knowing the Conservancy's efforts in promoting land and water conservation in the community, residents have approached her at churches, libraries, stores and the Center to express their gratitude for the remarkable facility at the West Creek Reservation.

Mrs. Hazel concluded by stating, "From all of us, present and future, children and adults, who become inspired to learn about the importance of fresh water in our lives, we thank you."

On behalf of the Board, Mr. Brown expressed his appreciation to the Conservancy for its Resolution of Appreciation and for the partnership. He stated that we understand the value of protecting our most important resources. This type of support will be necessary to ensure that the District can continue its good work. Mr. Brown stated that we look forward to our continued engagement and he thanked the Conservancy for their support.

Executive Director Ciaccia advised that Nick DiGioia registered to speak during public session regarding Resolution No. 298-13 for the Euclid Creek Pump Station/Lakeshore Boulevard Relief Sewer project (hereinafter "ECPS-LBRS") project.

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Executive Director Ciaccia explained the ECPS-LBRS is a very important project relative to the District's Combined Sewer Overflow (hereinafter "CSO") program. The District accepted bids on this project. The engineer's estimate at that time was \$12.5 million. Three bids were received of which DiGioia Suburban Excavating (hereinafter "DiGioia") was the lowest bid at \$10.35 million. Triad Engineering and Contracting Company (hereinafter "Triad") was the second lowest bidder at \$11.5 million.

Executive Director Ciaccia stated the District received a letter from the second lowest bidder alleging that DiGioia, the lowest bidder, had not completed an acknowledgement that they had reviewed and included Addendum No. 3 as part of their bid package. The staff looked into this issue as well as some other areas of concern, more specifically, how a subcontractor, JMD Transport LLC (hereinafter "JMD"), will be utilized. It was listed that JMD would be used for "trucking/materials." There was some debate amongst staff surrounding that particular issue since JMD is certified with the District through its Business Opportunity Program (hereinafter "BOP") for trucking but not for supplies.

Furthermore, there were issues surrounding how the materials will be delivered to the site, specifically, LSM, which is the flowable fill and is traditionally delivered in mixers, not dump trucks. There were some ambiguities that came out during the review process. At that point, the District decided that given the initial fact that DiGioia did not complete the acknowledgement of Addendum No. 3; the District would reject all bids and rebid the project to be able to quickly reach an uncontested contract for this time sensitive project.

Executive Director Ciaccia explained that the agenda for today's Board meeting, which was posted on our web site on the prior Friday, was distributed with Resolution No. 298-13 listed as a reject and rebid. Mr. DiGioia contacted the District to inquire about its decision to reject and rebid the project. He then at that time clarified some of the gray areas.

Executive Director Ciaccia stated that the District recognized that Addendum No. 3, which was not acknowledged, is a very insignificant addendum. Mr. DiGioia provided the Board with copies of his position with respect to that issue, assuring that the factors contained in that addendum were a part of his bid. The District is of the position that this defect can be waived considering the fact that the addendum amounts to an approximate \$3,000.00 change in the original specifications.

As it relates to the JMD trucking and materials issue, it was discovered that there was some ambiguity in the District's BOP policy that needs clarification. The trucking company will be picking up the materials and delivering it to the site. They will not be storing or stockpiling and therefore the materials are not necessarily considered a "supply". Executive Director Ciaccia advised that the District could have leaned either

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way in reference to its determination as to whether these materials are considered a supply. Furthermore, the District's current BOP policy is vague and needs clarification.

The third issue relates to the delivery of the materials to the job site, which is not necessarily a bid issue but rather a contracting issue. Should this contract be approved, the District and the contractor will iron out the delivery of the materials via dump truck or mixer issue.

Executive Director Ciaccia indicated that he wanted to put this matter in context for the Board since the initial recommendation to reject and rebid was substituted with an authorization to award the contract to DiGioia. Executive Director Ciaccia noted the substantial difference in the bid amounts between the lowest and second lowest bidders and he stated that by awarding this contract today would keep the District on schedule as it relates to the paving of Lakeshore Boulevard.

The contractor met the District's BOP Minority Business Enterprise (hereinafter "MBE") and Women's Business Enterprise (hereinafter "WBE") project goals. Executive Director Ciaccia noted that as we get further into the means and methods of delivery of the materials there may be some substitution with respect to MBE/WBE subcontracting.

Executive Director Ciaccia concluded by stating that the District was comfortable with making its recommendation to award the contract to DiGioia. He then turned discussion over to Mr. DiGioia.

Mr. DiGioia stated that Executive Director Ciaccia and his staff put a lot of work into rectifying this situation and that much time was devoted to resolving the miscommunications.

Mr. DiGioia stated that over the least five years his company has worked on many District projects and has built quite a partnership in that time. Mr. DiGioia explained that his company identified cost saving opportunities in the bid specifications, which was reflective by the \$1.1 million difference between DiGioia's bid and the second lowest bidder. Mr. DiGioia concluded by stating that those savings are beneficial to the District and that a resolution has been reached.

There were no questions for Mr. DiGioia.

Mr. Brown suggested that if the Board had any further questions or concerns involving Resolution No. 298-13, then they should be discussed at this time.

Mr. Brown began discussion by stating that there were three areas of concern that he would like addressed. The first being that any time ambiguity surrounds an issue and a

determination is then made, the questions remains as to whether that decision will be defensible?

The second issue is whether the MBE/WBE participation goals will be met? Mr. Brown noted that he would expect the contractor to meet the MBE/WBE goal commitments made at the time of bid.

The third area of concern pertains to the schedule. This project will impact the timeliness of the paving of Lakeshore Boulevard. This area remains in various states of repair and therefore the ability to get the work completed quickly is a critical element for the community.

Executive Director Ciaccia stated that the District finds its decision to be defensible as it relates to waiving Addendum No. 3. As it relates to the utilization of JMD, the District finds that the contractor at the time of bid met the intent of the District's subcontracting program although the District does need to clarify this particular program component as it pertains to what constitutes a supplier.

Mr. Brown questioned if the credit will be given in this instance wherein Executive Director Ciaccia affirmed.

Executive Director Ciaccia referred to Mr. DiGioia's previous comments regarding ways in which to cost-effectively complete certain specifications. Executive Director Ciaccia stated that, respectively, it is the District's intent to ensure that the desired finished product is achieved and further discussions will be held with the contractor regarding the transport of materials via dump truck versus mixer and whether this will impact the subcontractor goals.

Mr. Brown inquired if the means and methods issue relates to the ultimate quality of the work and its predictability to perform as per the District's specifications. Executive Director Ciaccia affirmed as it relates to the flowable fill.

Executive Director Ciaccia explained that the schedule is the compelling reason as to why the District wants to reward this contract. He then turned discussion over to Director of Engineering and Construction, Kellie Rotunno.

Ms. Rotunno advised that DiGioia is performing as a subcontractor on the ECT along Lakeshore Boulevard at the interface of the ECPS-LBRS project. The timeliness of awarding this project will prevent delays in the other contract since there is tie-in with the ECT.

It is additionally advantageous to award the ECPS-LBRS project in a timely manner since it will expedite the repaving of Lakeshore Boulevard. Delaying award of this contract could potentially push the resurfacing of Lakeshore Boulevard from the fall to the following spring. The schedule is a critical component in the interface with the ECT and the paving of restoration of Lakeshore Boulevard.

There were no further questions from the Board.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item wherein he advised that a court date in reference to the class action lawsuit involving the funds being held in an interest bearing escrow account from the fees collected for the Stormwater Management Program (hereinafter "SMP") has been scheduled for December 18th and may possibly extend through December 20th. The District filed a brief in opposition to the class being certified since the District's position, should it not prevail in the SMP appeal, would be to return the money to its customers.

Executive Director Ciaccia moved to the next report item wherein he advised that the Audit Committee (hereinafter "Committee") had a good meeting today. Ms. Rotunno provided the Committee with an overview of the process and controls within the Engineering and Construction Department. Discussion was held about the District's financial key metrics and performance as well as the audit plan for 2014. Executive Director Ciaccia noted that on today's agenda the District has made recommendation to the Board to award contracts to external auditors that will assist with carrying out the District's audit plan.

Executive Director Ciaccia moved to the final report item wherein he advised that the District received the NACWA (National Association of Clean Water Agencies) National Environment Achievement Award for its "Clean Water Works" publication which was issued by Communications and Community Relations.

The International Tunnel Association awarded the District's ECT project a high commendation. Executive Director Ciaccia noted that London's power grid tunnel project surpassed the District's project.

Mr. Brown inquired if Mayor Starr had any additional comments he would like to share in reference to today's Committee meeting.

Mayor Starr thanked Executive Director Ciaccia and the administrative staff for the meeting. He acknowledged Committee members Michael Oleksa and Kenneth Koncilja for attending today's meeting.

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Mayor Starr referred to the District's capital projects over the next five years and he advised that the documents which were presented to the Committee were professional and easy to understand. The District's CSO program is expected to dominate 76% of the capital program followed by maintenance and projects at the wastewater treatment plants at 19%, the collection system at 4%, and District-wide projects at 1%.

Mayor Starr explained that many of these processes were not in place until the new administration, staff members and process controls, which encompass 16 staff employees monitoring the overall expenditure of money, took over. Mayor Starr thanked Executive Director Ciaccia, Ms. Rotunno and staff.

Mayor Starr concluded by stating that audit committees serve as an extra set of eyes and ears for an organization. The question then becomes, "Why are other people needed for critiquing and criticizing?" This attitude of this administration, however, is remarkable and they recognize that they may not have all of the answers and are open to ways of improving. Mayor Starr complimented the staff on its attitude and willingness to make changes when necessary. Mayor Starr indicated that he was confident that this system is functioning well.

Mr. Brown thanked Mayor Starr for his comments and he advised that the Board appreciates the Committee's insights.

Mr. Brown referred to Mayor Starr's comments regarding the level of funding for the CSO capital projects going forward specifically the volume of projects, contract amounts and benefits those projects bring to the communities. Mr. Brown was hopeful that the District is documenting the impacts these projects have on the environment including the amount of wastewater and stormwater being treated by this organization prior to being discharged. Mr. Brown stressed that the District's charge and responsibility is not limited to the treatment of wastewater but also includes stormwater and the processes conducted by this organization ultimately benefits the environment.

Mr. Brown found public education to be an important issue since public opinion will be a considerable important factor in stormwater process. To the extent that we continue to inform the public about how stormwater and wastewater are not inextricably separate, the District will gain credibility as well as allies as it continues down its path.

Executive Director Ciaccia noted that when he appeared on Tom Berris' program "Between the Lines" this past Sunday, he explained that that last year the District treated 85 billion gallons of water at its WWTPs. Of which 60% of that is stormwater. That is 51 billion gallons of the 85 billion gallons not including the 4 billion that overflowed into the

environment. Only 40% of the water treated by the District goes through the customers' meters.

Mr. Brown stated that it would be impossible for the District to treat only wastewater. Executive Director Ciaccia affirmed.

V. Action Items

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 290-13 RFPs for professional services for the General Engineering Services project.

MOTION – Mr. Sulik moved and Mayor DeGeeter seconded to adopt Resolution No. 290-13. After discussion and without objection, the motion carried unanimously.

Mr. Brown inquired if these services were for more than one project wherein Ms. Rotunno clarified that one consultant will provide general engineering services over a three year period.

Mr. Brown inquired if the consultant will be providing engineering services for more than one project. Ms. Rotunno affirmed.

There were no further questions from the Board.

Authorization to Purchase

Resolution No. 291-13 Purchase Microsoft Office Professional desktop software licenses through the State of Ohio Cooperative Purchasing Program from Dell, Inc. Cost: \$160,577.82.

MOTION – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 291-13. Without objection, the motion carried unanimously.

Authorization to Enter Into Contracts

Resolution No. 292-13 Contracts for 2013-2016 Internal Audit professional services. Cost not-to-exceed \$570,500.00.

Resolution No. 293-13 Contract for professional design services with Brown & Caldwell for the Collection System Asset Renewal-1 project. Contract amount: \$1,239,559.00.

Resolution No. 294-13 Two (2) year contract through the Ohio State Term Schedule for desktop and network technical support contractual services with PCM Sales, Inc. Cost not-to-exceed \$470,080.00.

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 292-13 through 294-13. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 160a-13 Modify Contract No. 12003092 with The Fedeli Group, CNA Insurance Group, and Wichert Insurance to Extend builder’s risk insurance coverage to March 29, 2014. A cost increase in the amount of \$10,871.00, bringing the total contract price to \$865,809.00 with an allowance of \$25,000.00.

Resolution No. 116a-13 Modify Contract Numbers 13002509 and 13002615 with MWH & CH2M Hill for the Stream Restoration and Bank Stabilization General Engineering Services project. The scopes of services must be modified to remove stormwater-related work.

Resolution No. 172a-13 Final adjustment of Contract No. 13002803 with Mark Haynes Construction, Inc. for the East Branch Euclid Creek Stream Restoration Repairs project. A cost decrease in the amount of \$693,663.03, bringing the total contract price to \$30,597.97.

Resolution No. 295-13

Modify multiple professional services contracts in support of the Renewable Energy Facility.

MOTION – Mr. Sulik moved and Mayor DeGeeter seconded to adopt Resolution Nos. 160a-13, 116a-13, 172a-13 and 295-13. After discussion and without objection, the motion carried unanimously.

Mr. Sulik referred to Resolution No. 172a-13 and he inquired about the drastic decrease in the contract amount.

Ms. Rotunno explained that this project was slated to be funded through the stormwater revenues from the regional SMP. The contract was canceled since the SMP was halted. The District paid the contractor \$30,000.00 out-of-pocket for the mobilization.

Mr. Sulik stated that the stoppage of the SMP is hurting everyone including the environment and is forcing the District to cancel stormwater projects. Ms. Rotunno affirmed.

Executive Director Ciaccia added that it impacts the workers as well.

Mr. Sulik wanted this information to be documented on the record.

Mr. Brown referred to Resolution No. 295-13 for the Renewable Energy Facility (hereinafter “REF”) contract increases and he assumed that those resulted from the District’s inability to get its REF project online. He questioned whether the vendor rather than the customers will be responsible for the costs associated with the project’s delay.

Ms. Rotunno affirmed that the four professional services modifications are in support of the extended REF startup activity. The District is currently using the services for these four contracts and anticipating the continued extended need for their services as we continue to troubleshoot startup. These contracts are for the District’s continued support services. All the costs associated with the longer protracted startup activities including those associated with these services providers are being tracked and will be discussed as to what is considered fair and equitable to the customers as it relates to compensation and the sharing of the costs by the vendor responsible for the issues the District is experiencing.

Mayor Bacci requested clarification in Ms. Rotunno’s comments made with respect to the customers “sharing” in the costs associated with the delayed startup.

Ms. Rotunno explained that her use of the word "sharing" was in the most global sense since the determination as to which entity is fully responsible has not been resolved. There are issues on the side of the equipment provider. The District is stuck between a contract being awarded to one vendor for the procurement of a piece of equipment and another vendor for the installation of the equipment. The legal responsibilities have not been resolved at this point. Ms. Rotunno explained that she conservatively used the word "sharing" but the District fully intends to take a hard stance and push these costs onto one of the contractors in order to minimize the District's obligations.

Mayor Bacci questioned, "If globally is 100%, what percent would the District run the risk of being responsible for?" Executive Director Ciaccia answered, "Zero."

There were no further questions from the Board.

Authorization to Pay Dues

Resolution No. 296-13 2013 dues to the Water Environment
Research Foundation. Cost: \$89,482.30.

MOTION – Mayor Starr moved and Mayor DeGeeter seconded to adopt Resolution No. 296-13. Without objection, the motion carried unanimously.

Property Related Transaction

Resolution No. 297-13 Acquire One (1) permanent easement in
the City of Cleveland necessary for
construction of the Euclid Creek Tunnel –
Lakeshore Boulevard Relief Sewer
project. Consideration: \$3,000.00.

MOTION – Mr. O'Malley moved and Ms. Kelly seconded to adopt Resolution No. 297-13. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

Resolution No. 298-13 Contract with Digioia-Suburban
Excavating, LLC for the Euclid Creek
Pump Station/Lakeshore Boulevard Relief
Sewer project. Contract amount:
\$10,350,634.60.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 298-13. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreements

Resolution No. 299-13	Agreements with the Cleveland Foundation for a \$200,000.00 grant and the Burning River Foundation for a \$10,000.00 grant for the 2013 Small Scale Stormwater Demonstration Projects.
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MOTION – Mayor Bacci moved and Ms. Kelly seconded to adopt Resolution No. 299-13. Without objection, the motion carried unanimously.

VI. Information Items

There were no information items.

VII. Public Session

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

VIII. Open Session


There were no items for discussion.

IX. Executive Session


There were no matters for discussion.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Ms. Kelly seconded the motion to adjourn at 1:19 p.m. Without objection, the motion carried unanimously.



Sheila Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



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

WEST CREEK CONSERVANCY

Resolution of Appreciation

HONORING THE NORTHEAST OHIO REGIONAL SEWER DISTRICT UPON THE
GRAND OPENING OF THE WATERSHED STEWARDSHIP CENTER AT
CLEVELAND METROPARKS WEST CREEK RESERVATION

December 5, 2013

WHEREAS West Creek Conservancy and the Northeast Ohio Regional Sewer District together embrace a mission to enhance the lives of the people of Northeast Ohio by restoring and preserving a healthy environment; and

WHEREAS freshwater flowing from the West Creek Watershed, through the Cuyahoga River, and into Lake Erie represents a crucial strand in the web of life which continues to unite and sustain all people; and

WHEREAS each new generation must experience formal and informal opportunities to realize that their health is dependent upon a steady stream of clean freshwater resulting from responsible stormwater management throughout the watersheds of Northeast Ohio; and

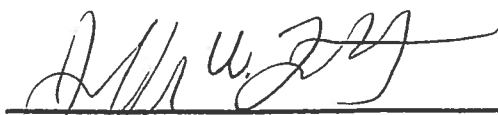
WHEREAS that need is now greatly fulfilled by the unique natural environment, the educational displays, facilities, and programs, and the enthusiastic and knowledgeable staff at the Watershed Stewardship Center at West Creek Reservation; and

WHEREAS citizen support for freshwater management rests upon the foundation of ecosystem education and interpretation, urban watershed restoration and management, and demonstration of successful practices now provided by the Northeast Ohio Regional Sewer District at the Watershed Stewardship Center; and

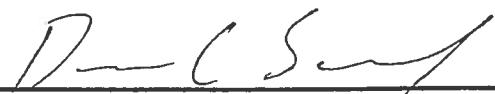
WHEREAS watershed organizations have benefited greatly from operational support from the Northeast Ohio Regional Sewer District, including a significant financial and technical contribution toward the Watershed Stewardship Center, West Creek Conservancy looks forward to an enduring partnership as future opportunities for productive collaboration are initiated and fulfilled.

THEREFORE, BE IT RESOLVED BY THE BOARD AND STAFF OF WEST CREEK CONSERVANCY:

That the energies and resources which the Northeast Ohio Regional Sewer District, its Board of Trustees, and all its Staff Members have devoted to the creation and support of the Watershed Stewardship Center at West Creek Reservation are greatly appreciated. On behalf of the many people who welcome this unique opportunity to understand and undertake the responsible management of stormwater throughout the watersheds of Northeast Ohio, we are privileged to offer our sincere gratitude.


Jeffrey Lennartz, Board Chair
West Creek Conservancy




Derek Schafer, Executive Director
West Creek Conservancy