

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
NOVEMBER 20, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Mr. Brown.

I. Roll Call

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

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

**MOTION** – Ms. Kelly moved and Mr. Liberatore seconded that the minutes of the November 6, 2008 Board meeting be approved. Without objection, the motion carried unanimously.

Mr. Brown presented District employee, Dora Jane Smith, with a resolution of recognition and appreciation for her more than thirty (30) years of distinguished service with the Northeast Ohio Regional Sewer District. Ms. Smith is retiring from the District. Ms. Smith began with the District as a Customer Service Representative and has held other positions with the District. She was always a dependable and loyal employee. Ms. Smith's work has been recognized by the public and she was heavily involved with ward meetings and community meetings. Ms. Smith always paid special attention to senior citizens and their needs. On behalf of the District, Mr. Brown presented Ms. Smith with the resolution honoring her dedication and hard work for the District. Mr. Brown wished Ms. Smith the best in her future endeavors.

Ms. Smith thanked the Board and staff and expressed her love for the District. Ms. Smith stated that she truly enjoyed her thirty (30) years with the District and requested that the District continue to help the seniors.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 2 of 21

### III. Public Session

Executive Director Ciaccia informed the Board that Mr. Norman K. Edwards registered to speak at public session regarding Resolution No. 281-08, methane gas, the Mill Creek project, diversity, and finances. Executive Director Ciaccia advised that Resolution No. 281-08 is on the agenda for Board consideration, however, the remaining issues do not pertain to the agenda. Mr. Brown requested Mr. Edwards come forward to address his comments to the Board on the agenda item. All other comments will be held for the appropriate public session.

Mr. Edwards began his discussion regarding the District's desire to move forward with awarding a contract to Nerone & Sons (hereinafter "Nerone") in the amount of \$853,000. Mr. Edwards stated that Nerone is under investigation for "an overabundance of emergency work." Mr. Edwards stated that, "as a contractor and taxpayer, until Nerone's situation is clarified, and the other contractors that were listed for excessive billings or excessive work given by the District," he does not see "any sense" in dealing with contractors that "could be indicted." Mr. Edwards stated that "he could not understand" why the District would award a contract to a contractor who received "multi-millions of dollars in no bid work" and is now under investigation. Mr. Edwards questioned, "where is the trust factor?" According to Mr. Edwards, "there is none."

Mr. Edwards stated that the Board needs to "step up" and be held "accountable for its actions," and he declared that Nerone should "not be allowed to deal or do work with the Sewer District until his name is cleared." Mr. Edwards alleged that Nerone "could owe the District money" because "he was given contracts that he should not have gotten," and that it is "totally unfair and unacceptable" that the District wants to award Nerone a contract with his and other hard working residents' tax dollars. He asked the Board to "step up" and say "no" and not award this contract to Nerone. He suggested the Board "go over these items and contractors" and that we "need to change and to go in another direction because money is tight."

Mr. Brown responded that numerous items are being investigated, but it seemed that Mr. Edwards has already "tried, convicted and pronounced the sentence" upon someone, when in America, you are "innocent until proven guilty." The District is required to publicly bid its projects and award the contract to the lowest and best bidder, and Nerone's bid was at least \$100,000 less than the next lowest bidder. He questioned if Mr. Edwards was suggesting that the District spend \$100,000 more of taxpayers' money in order to award its contract to a contractor other than Nerone. Mr. Brown questioned the logic in the District spending more just to make a point.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 3 of 21

Mr. Edwards replied that Nerone “was given millions of dollars worth of no bid work over the years.” Nerone could give his services to the District “as a gift” because of the profits he received from the District’s projects.

Mr. Edwards alleged that there was another instance, which he will address later, where a contractor was fired and his supporting information proves that the “Board approved him unanimously in 2007 to keep the contractor on the project.” Mr. Edwards stated that, “in fairness to everybody, these are our dollars.” Mr. Edwards advised that the “Board be made aware that if there was emergency work given to one specific contractor on a regular basis...blatantly unfair and there are huge problems with that. Let it be \$100,000 because he could wind up owing the District \$20 million, we don’t know.” Mr. Edwards reiterated that “in fairness, until this matter is cleared up and clarified” he request that Nerone “be shelved.”

Mr. Brown stated that the Board appreciated Mr. Edwards’ comments.

#### IV. Executive Director’s Report

Executive Director Ciaccia began his report and advised the Board that on November 5<sup>th</sup>, the District had an incident involving a break-in on the GJM Building’s second floor. The second floor window was smashed on the west side of the building. The perpetrator entered the building and stole two (2) laptop computers and a carrying case which held two (2) glock nine millimeter handguns. The break-in occurred in the Chief of Security’s office. This incident is under investigation with the Cleveland Police Department (hereinafter “CPD”). Executive Director Ciaccia stated it may sound suspicious because of the involvement of the Chief of Security’s office, but there were more than twenty (20) break-ins in the Midtown area each involving break-ins on the second floor. At this point, Executive Director Ciaccia advised that there is no evidence supporting that this incident was from the inside. There is clearly a problem in this area which is now being investigated by the CPD, Cleveland State’s police department and the Regional Transit Authority (hereinafter “RTA”). The District will continue working with the aforementioned authorities involved with this investigation.

Executive Director Ciaccia moved to his next report item regarding the Small Business Enterprise (hereinafter “SBE”) program. The District is planning an SBE presentation as an information item for the next Board meeting. Executive Director Ciaccia advised that six (6) consulting firms submitted proposals for the disparity study, and that a disparity study is required in order to incorporate and support the District’s Minority Business Enterprise (hereinafter “MBE”) and Women’s Business Enterprise (hereinafter “WBE”) components into its SBE program model. Staff anticipates that it will make a recommendation to the Board as to the engagement of a consultant for the completion of the disparity study at the December 4<sup>th</sup> Board meeting.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 4 of 21

In an effort to tailor the District's proposed SBE program to include greater subcontracting opportunities, interviews continue to be conducted with prime and sub contractors. Executive Director Ciaccia advised that it is not appropriate for the District to tailor its SBE program after entities such as the Ohio Department of Transportation (hereinafter "ODOT") for the reason that the District's projects are different from typical ODOT projects. The interviews have been very productive and enlightening.

Executive Director Ciaccia advised that the program management consultant is assisting with program elements associated with the Capital Improvement Program (hereinafter "CIP") for its construction projects and economic criteria being considered.

The District met with The Urban League, Commission for Economic Inclusion and the Hispanic Business Association to discuss various outreach initiatives to be applied as the District continues to craft its SBE program. Executive Director Ciaccia stated that as the SBE program develops, it has been determined that the District's current MBE/WBE certification list needs to expand to provide more subcontracting opportunities. In the interim, Executive Director Ciaccia explained that the District continues using its existing MBE/WBE program. The District recently hired and is training two (2) Contract Compliance Officers who will conduct field inspections.

Mr. Brown inquired as to what the District is now doing differently with regard to its subcontracting program. Executive Director Ciaccia stated that staff is internally tracking and challenging prime contractors. Field inspections will be conducted and the staff will work with contractors to ensure that subcontracting goals are being reached.

Mr. Brown suggested that staff provide the Board with a reporting mechanism to include compliance and potential consequences of contractors not in compliance with the District's program. Mr. Brown recommended that status updates include any sanctions or remedies needed in order to ensure that the contractors remain in compliance.

Executive Director Ciaccia advised that the SBE program will be implemented early 2009, and his goal is to include timelines in the December 4<sup>th</sup> Board presentation.

Executive Director Ciaccia advised that most subcontracting programs focus mainly on construction projects whereas he is desirous of including goods and services procurements into the District's SBE program because of the tremendous subcontracting opportunities.

Mayor Starr questioned if the District had approximately 25 or 26 pending construction contracts in which Executive Director Ciaccia affirmed. Mayor Starr inquired if these pending contracts are being monitored. Executive Director Ciaccia replied that all

BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 5 of 21

contracts are monitored administratively, more specifically, as the pay estimates are received staff monitors the contributions by the subcontractors. In addition, field investigations will now be conducted to ensure compliance.

Mayor Starr asked if the Contract Compliance Officers “make surprise visits?” Executive Director Ciaccia responded that similar to auditors and inspectors, the Contract Compliance Officers will make unannounced site visits.

Mayor Starr inquired if MBEs and WBEs will be used as primary contractors for goods and services. Executive Director Ciaccia affirmed and informed the Board that the District has and will continue to contract with MBEs and WBEs for its goods and services procurement. He commended Purchasing Manager, Jacqueline Williams, on her efforts and involvement with this process. Executive Director Ciaccia informed that the District requires at least three (3) bid proposals on contracts under \$25,000. There is much opportunity for MBE/WBE and local business inclusion on the District’s goods and services procurements.

Mr. Brown suggested that in addition to certified payroll contract compliance should also require that an affidavit be submitted attesting to the types of products, materials or supplies being procured by the subcontractors. This can be used as supporting documentation to ensure that subcontractors are actually working on a particular job. Executive Director Ciaccia appreciated Mr. Brown’s suggestion and he stated that there is much to take into consideration as the District’s moves forward with SBE program implementation; therefore, staff is not rushing the program’s development.

Ms. Kelly questioned how often the Contract Compliance Officers will conduct site visits for monitoring. Executive Director Ciaccia advised that the Contract Compliance Officers were just hired and are getting acclimated to the District. He is unsure as to how often staff will be conducting its site visits at this point. Director of Finance, Jennifer Demmerle, added that the Contract Compliance Officers will be monitoring the District’s upcoming projects. Staff is finalizing its policies and procedures, and the frequency of the Compliance Officers’ site visits has yet to be determined. Ms. Kelly expressed that the frequency of these site visits is crucial and will ensure that the District is receiving appropriate information on a consistent basis. Ms. Demmerle agreed and stated that staff continues to monitor invoices as they are submitted, and that contractors will be required to submit certified payroll. Ms. Demmerle indicated that the frequency of the site visits will be established in the SBE policies and procedures.

Mr. Liberatore asked Ms. Demmerle how often the prevailing wage reports are submitted. Ms. Demmerle advised that contractors are required to submit payroll records with their invoices on a monthly basis.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 6 of 21

Mr. Sulik inquired as to why the District did not receive disparity study proposals from local companies, and expressed his desire to engage Cleveland-area or state of Ohio businesses due to the economy crisis. Director of Law, Marlene Sundheimer, advised that when the District issued its requests for proposals (hereinafter "RFP") and qualifications, it was intended to solicit the top disparity study firms, which are located throughout the country. Teams that conduct the disparity study include an attorney, a lead project advisor, statisticians, economists and consultants. Incorporated in the RFP, was a request for the team to include local presence, and a number of teams integrated local consultants as well as MBE participation.

Mr. Brown commented that due to the level of questioning, it is apparent that this issue is of major significance to the Board. He recognized that although patience is necessary to allow for the implementation of a "good program," the Board expects staff to undergo due diligence as it develops its processes, policies, procedures and timelines. Executive Director Ciaccia appreciated Mr. Brown's comments and indicated that this topic was brought to the Board's attention in order to seek a better understanding as to what questions the Board may have pertaining to this issue. Consequently, this information can be incorporated into the December 4<sup>th</sup> presentation and discussion. Executive Director Ciaccia assured that staff will provide the Board with additional information as it moves forward with implementation of the SBE program. Furthermore, staff will seek Board approval for the adoption its SBE program policies and procedures.

Executive Director Ciaccia moved discussion to the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP"). As the District continues its negotiations with the federal government, a key factor is the Financial Capability Assessment which sets forth the District's affordability over the next 15, 20 or 30 years. According to the government's guidance document, the formula must incorporate the percentage of median household income. If the results are 2% or more, then the District is classified as a high burdened community or district. Being declared a high burdened district will affect the schedule and provide for a different negotiating posture as it pertains to the Environmental Protection Agency (hereinafter "EPA") and its desired projects. It is difficult to determine residential usage and whether the District is at 2% median household income on residential. Executive Director Ciaccia advised that the Cleveland Water Department (hereinafter "CWD") does not distinguish commercial from residential usage on its accounts, rather it is based on meter size. It has been assumed that the one and one half inch (1-1/2") or above meter is commercial and the five/eighths (5/8) and one inch (1") meter is residential. The government does not accept this assumption and requires the District to differentiate between commercial and residential establishments. The District conducted a survey to determine the annual residential usage. The Department of Engineering and Construction provided inflow and infiltration data which had to be incorporated into the equation because the District treats more than is actually recorded by the water meters.

BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 7 of 21

Information will be submitted to the government on December 3<sup>rd</sup>, and a meeting will be held on December 12<sup>th</sup> between the District and the government. Executive Director Ciaccia speculated that based on the magnitude of the District's CSO LTCP, residential usage, and household median income, the District will be classified as a high burdened community.

Executive Director Ciaccia advised that staff is developing a detailed strategic financial plan to coincide with program management including the District's capital needs, cash flow projections associated with CIP, and rate increases through 2011 and beyond. If the government cannot accept the calculations based upon its guidance document, then the strategic financial plan will be used as a tool to help exemplify the District's financial outlook.

Mayor Longo stated that "in industry, 13% of the clients generate 88% of the revenue," and he questioned if the District had a breakdown or percentage of usage distinguishing residential from commercial or industrial usage. Ms. Demmerle advised that she did not have this information readily available; however, those numbers are easily attained. Executive Director Ciaccia added that according to meter size, residential and commercial each account for 50% of usage. Mayor Longo found it unfathomable for the residential and commercial to be divided equally, and believed that commercial usage had to be more than residential usage. Deputy Executive Director, Michael Bucci, replied that this may have been the case in the past, however, of the 350,000 accounts, the majority is residential. Mr. Bucci added that it may be difficult to break down all the industrial accounts.

Mayor Longo stated that as the District moves forward with stormwater management, it is important to identify "who is placing the strain on the systems." Mr. Bucci replied that the GIS program will facilitate in determining the burden on the District's storm and sanitary systems. Ms. Demmerle added that CWD is updating its billing system and moving away from classifying accounts based on meter size. The goal is to differentiate between residential, commercial and industrial accounts. In the future, this information will be readily available.

Mayor Starr questioned if the "more bad news" provided to the government, the longer the timetable for the CSO LTCP will be, whether it be 20, 25 or 30 years. Mr. Brown responded that is the case for affordability. Mayor Starr inquired if foreclosure, poverty rates, sub-prime loans, and unemployment rates are factors taken into consideration. Executive Director Ciaccia stated, at this point, these factors do not figure into the government's guidance because affordability is based strictly on median household income of residential accounts. In response to Mayor Starr's comments, Mr. Bucci

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 8 of 21

informed that when the District completed its affordability analysis years ago, these factors were taken into consideration.

Mayor Starr inquired if the government divided the 60 communities being served by the District when looking at affordability. Mr. Bucci stated that the District showed the burden of the City of Cleveland and each community of the District, but the government indicated that it considers the District as a whole. Mr. Bucci stated that the District is trying many alternatives to build its affordability case in order to extend the CSO LTCP. Executive Director Ciaccia assured the District's confidence in making this case, but it still has to undergo the bureaucratic process with the government.

Executive Director Ciaccia advised that the government submitted letters of approval for the Euclid Creek Tunnel (hereinafter "ECT") project. The project design began, however, the project halted under the previous administration due to stalemate in negotiations. Executive Director Ciaccia stressed the importance of moving forward with the ECT project because costs increase with time. He expressed the District's intent of moving forward with the design work for this project.

The government indicated that it may also approve the Dugway Creek Tunnel (hereinafter "DCT") project. These two storage tunnels feed into the Easterly plant which would be crucial in eliminating the high volumes of CSOs from this plant. Furthermore, the District anticipates approval for the construction of the dewatering pump station at Easterly. Executive Director Ciaccia advised that these projects result in over a billion dollars. The District is desirous of beginning these projects prior to finalizing negotiations with the government. Executive Director Ciaccia reiterated that delaying these projects will result in increased costs and said projects must be completed in order to mitigate CSOs coming out of the Easterly plant. Furthermore, the District plans to move forward with the multi-million dollar non-CSO fluidized bed incineration project at the Southerly plant. Executive Director Ciaccia advised that these upcoming commitments will financially strain the District, and that the rate increases previously approved by the Board were lower due to the stalled negotiations. Now that these projects are moving forward, the District will be challenged to accomplish these vitally important projects without having to come back to modify the rates.

Through the efforts and coordination of Program Management (hereinafter "PM") for CIP's CSO and non-CSO projects, the District anticipates spending over \$4 billion over the next thirty (30) years, the CSO being \$2.5 billion and another \$1.5 billion or so for non-CSO projects. There are heavy short-term and long-term commitments expected of the District with these three projects.

Executive Director Ciaccia advised that there were nine (9) minimum controls which needed to be met by the Operations and Maintenance Department. With the Euclid Creek



## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 9 of 21

and Dugway storage tunnels being tentatively approved, we assume the storage tunnel approach is the approved method of control. We were proposing no more than four overflows per year per CSO. Currently, in negotiations we are taking a varied approach by focusing on zero to three overflows per year for each CSO in some places and zero in others.

A proposal was submitted to the government regarding no feasible alternatives for bypasses at the plants. The District proposed a stepped approach which included chemical additions, disinfectants, and screening the bypasses at Easterly and Southerly, while holding off of some other things that the government wanted us to do until demonstration studies are conducted. The government rejected this plan and expressed its desire for the District to undergo high rate treatment at these facilities for containing bypasses, which is not included in the \$4 billion dollars mentioned earlier. The construction of these facilities would cost the District over \$100 million each. Executive Director Ciaccia stressed the importance of the financial capability assessment to be able to back off some of the demands the government is making.

Mr. Brown reinforced the District's need to obtain a good lobbyist. The Board cannot in good conscious put the financial burden on the customers when the government's expectations in obtaining outcomes seem unreasonable and are irrespective of the costs incurred for the proposed projects. Executive Director Ciaccia agreed that the District's strategy must be further developed including additional efforts similar to when Board members Ms. Kelly and Mayor Starr traveled to Washington D.C. on behalf of the District. The District would benefit greatly from a lobbyist especially with the government's recent economic stimulus packages.

According to the preliminary review of the strategic financial plan, Executive Director Ciaccia speculates that rate increases for 2012 through 2016 are estimated to be 15% and 18% annually, with the first year spiking higher than that in order to achieve an average of 15%-18%. So, getting some federal assistance would be something the District would be seeking.

Mayor Longo suggested that if there is no reasonableness to this expectation, then the District would need to seek court action. Mr. Brown recommended that it would be strategically important for staff to engage President-elect Obama's new administration on the District's ability and affordability to accomplish said projects. Executive Director Ciaccia agreed that District's strategy must be developed and court action was considered as an option, however, regardless of the strategy, 5 million gallons of CSOs annually need to be mitigated.

Mayor Longo stated that the U.S. Conference of Mayors is a national organization involved with the new federal administration and a significant part of their program

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 10 of 21

pertains to infrastructure. Conversations have been held amongst this organization regarding infrastructure including stormwater and sanitary sewers and roads. Mayor Longo indicated that he wanted to make the Board and staff aware of this option. Executive Director Ciaccia added that the District is "not alone," and the Midwest is rife with entities facing similar financial challenges particularly the cities of Akron, Lakewood, Cincinnati, Columbus and Indianapolis. Executive Director Ciaccia stated that he will continue updating the Board on the developments of the CSO LTCP and described it as a "train coming down the track" that the District must face.

Ms. Kelly recommended the District follow-up with the contacts made in Washington D.C. Executive Director Ciaccia agreed with Ms. Kelly and reminded the Board that, in March 2009, NACWA will hold its forum in Washington D.C. in which staff will participate.

Executive Director Ciaccia moved discussion to the Stormwater Management Program (hereinafter "SMP"). The District continues to meet with communities regarding SMP. Ongoing discussions are held with communities located in Summit County (hereinafter "Summit"), which is a charter county, because Summit intends to develop its own SMP.

Executive Director Ciaccia moved discussion to the Flats East Bank (hereinafter "FEB") development project and advised the Board that the FEB project is no longer at a standstill. In an effort to complete the FEB sewer project, meetings are being held between Director of Engineering and Construction, Kellie Rotunno, Independence Excavating and the Flats East Bank Developers (hereinafter "Developers") to complete value engineering and the re-scope of the FEB project.

Executive Director Ciaccia moved discussion to the next report item regarding the District's finances. He informed the Board that the District is ahead of its projected revenues. Operations and maintenance are less than projected. At the 83% benchmark, the District is below its budget at 73.74%. The District has more cash balances than projected, and Executive Director Ciaccia pointed out that these figures are significant as they pertain to short-term challenges involving funding CSO projects and will be beneficial in carrying out said projects. The line items entitled "Equipment Replacement Reserve" and "Insurance Reserve" could potentially be used to help mitigate the District's challenges in meeting the CIP. The \$17 million reserve in the "Operating Account" represents two and one half months of operations and maintenance, and Executive Director Ciaccia indicated that he would like for this account to be higher, at this point, with at least six (6) months of operating costs in this line item.

V. Consent Agenda

Mr. Brown advised that there were no Consent Agenda items.

VI. Action Items

Sewer Use Code Matters

No discussion ensued on Resolution No. 272-08.

**Resolution No. 272-08**

**Acceptance of Hearing Examiner findings regarding Kathy Jo Gutsell, NEORS Case No. 08-009.**

**MOTION** – Mayor Longo moved and Mr. Liberatore seconded to adopt Resolution No. 272-08. Without objection, the motion carried unanimously.

Authorization to Advertise

No discussion ensued on Resolution Nos. 273-08 through 275-08.

**Resolution No. 273-08**

**One (1) year requirement contract for the purchase of 80,000 pounds of liquid polymer for use at the Westerly WWTP. Expected expenditure is \$195,000.00.**

**Resolution No. 274-08**

**One (1) year requirement contract for 170,000 gallons of liquid sodium bisulfate for use at the Easterly, Southerly and Westerly WWTPs. Expected expenditure is \$220,000.00.**

**Resolution No. 275-08**

**Cuyahoga Valley Interceptor Lift Station Improvements Contract (LS-3). Engineer's estimate is \$5,932,900.00.**

**MOTION** – Mr. Liberatore moved and Mr. Sulik seconded to adopt Resolution Nos. 273-08 through 275-08. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals

No discussion ensued on Resolution Nos. 276-08 and 277-08.

**Resolution No. 276-08**

**Three (3) year renewal of Cisco SMARTnet Maintenance Contract on all business network and control network Cisco hardware. Estimated cost is \$316,000.00.**

**Resolution No. 277-08**

**For testing and repair of the Southerly fiber optic backbone used for data and voice communications for both the control and business networks. Estimated cost is \$80,000.00.**

**MOTION** – Mayor Starr moved and Mayor Longo seconded to adopt Resolution Nos. 276-08 and 277-08. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

No discussion ensued on Resolution No. 278-08.

**Resolution No. 278-08**

**Agreement with the U.S. Geological Survey for flow gauging services for the Cuyahoga River and Mill Creek. Cost is \$58,250.00 over a three (3) year period.**

**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded to adopt Resolution No. 278-08. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

No discussion ensued on Resolution Nos. 279-08 and 280-08.

**Resolution No. 279-08**

**Contract with Shook, Inc. for odor control facility media replacement and maintenance inside the Southerly WWTP. Cost is \$107,800.00.**

**Resolution No. 280-08**

**Contract LS-3 with Burgess & Niple for professional services during construction on the Cuyahoga Valley Interceptor Lift Station improvements. Cost not to exceed \$485,967.00.**

**Resolution No. 281-08**

**Contract 28A with Nerone & Sons for Digester "A" Decommissioning at the Southerly WWTP. Cost not to exceed \$853,200.00.**

**Resolution No. 282-08**

**Contract 28B with Infilco Degremont, Inc. for fluidized bed incinerator equipment procurement at the Southerly WWTP. Cost not to exceed \$50,600,000.00.**

Mayor DePiero commented that twelve (12) bid packages were distributed and inquired as to why the District only received one (1) bidder on the fluidized bed incinerator project. Executive Director Ciaccia advised that this procurement is for the manufacturing and purchase of the incinerators. The District was hoping to receive more bids, but state law requires 100% bonding which limited bidders. The other companies claimed they were not able to obtain the bonding requirements.

Mayor DePiero questioned if this bid was consistent with the engineer's estimate. Executive Director Ciaccia advised that the engineer's estimate was \$48 million; therefore the bid was within range.

Mayor DePiero inquired if the District ever contracted with Infilco Degremont, Inc. (hereinafter "IDI") in the past. Ms. Rotunno advised that the District has not contracted directly with IDI for equipment; however, it is a subsidiary of the company, Suez, which enabled them to obtain the bonding for this project. Executive Director Ciaccia added that IDI is well established in the water and wastewater industry.

Mayor Starr inquired if companies in the United States manufacture fluidized bed incinerators. Ms. Rotunno advised that there are definitely two (2) and possibly three (3) U.S. companies considered competent manufacturers of this equipment.

Mayor Starr inquired if the District could receive bids for specialized equipment of this type outside of Canada, Mexico and Europe. Ms. Rotunno advised that IDI is technically a company outside of the U.S. and stated that these companies specialize in manufacturing this equipment. There are not many U.S. manufacturing companies specializing in this equipment, however, they do have U.S. based manufacturing locations.

Mayor Starr questioned if sewer districts equal or greater to the size of the District are having similar issues when awarding a contract to a single bidder for this type of project.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 14 of 21

Ms. Rotunno advised that St. Paul did a design build, but she is unsure as to the amount of bids it received. Ms. Rotunno added that Cincinnati awarded a contract for its fluidized bed incineration project, and they received only one (1) bid.

Mayor Starr inquired if there is an option to rebid this project. Ms. Rotunno advised that the District received a competitive bid within range of the engineer's estimate; therefore, she did not see the need to rebid this project. Although the District could rebid the project, Executive Director Ciaccia advised against doing so because of its effect on the project schedule. The state of Ohio's 100% bid bond requirement is a limiting factor for bidders. The bidders must fulfill the bonding requirements; therefore, the District would receive the same bid results. If the lack of bids was a result of a specification, then Executive Director Ciaccia would support rebidding this project notwithstanding the timeline because the District's intent is to obtain a competitive bid.

Mr. Bucci added that the fluidized bed incineration procurement is funded with the WPCLF loan which is approved for 2008, and this loan versus the bond market will save the District \$3 million in financing costs.

Mayor Starr moved discussion to Resolution No. 281-08 which awarded the Digester "A" Decommissioning – Contract 28A – at Southerly to Nerone. He requested that the issues raised publicly at Public Session be addressed by Executive Director Ciaccia or Law Director, Marlene Sundheimer.

Executive Director Ciaccia corroborated with Mr. Brown's earlier comment in which Nerone was the lowest bidder and awarding the contract to the next bidder would cost the District an additional \$100,000. Nerone's submitted a good bid, and this is the "right thing to do" for the customers.

With regard to the emergency contracts, Executive Director Ciaccia advised that, at this time, there is no evidence supporting impropriety in awarding Nerone or any other company such emergency contracts. Nerone was awarded other contracts and their work has been good. Executive Director Ciaccia advised that there is no reason to negate Nerone at this point.

Mayor Starr requested Ms. Sundheimer to explain the ramifications if the District did not award a contract to a low bidder based upon public allegations and newspaper reports. Ms. Sundheimer stated that newspaper reports and allegations cannot be the basis for not awarding a contract to the lowest bidder. The District must be in compliance with state law, and the District is required to bid public improvement contracts. These contracts must be awarded to the lowest and best bidder, and that is what the Board was asked to consider. The bid results were compiled and staff recommends the contract be awarded to Nerone, as the lowest and best bidder.

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 15 of 21

Mayor Starr questioned if Nerone traditionally followed the District's MBE/WBE requirements. Ms. Sundheimer indicated that her understanding is that Nerone followed the MBE/WBE goals or provided the District with the appropriate documentation implying that a good faith effort was made to comply with these goals.

Mayor Starr questioned if Nerone kept its change orders within the range of 10% to 15%. Executive Director Ciaccia replied that aside from the pending litigation, Nerone has submitted only one (1) legal claim in the many years it has contracted with the District. In response to Mayor Starr's question pertaining to change orders, Executive Director Ciaccia could not provide a concrete answer because change orders were handled differently in the past.

Ms. Kelly moved discussion regarding the single bid received on the fluidized bed incinerator and inquired if the District could facilitate contractors in obtaining the 100% bonding requirement. Executive Director Ciaccia advised that by doing this, the District would be required to put up more money by self-bonding the job which could potentially expose the District to risk if the job fails. Executive Director Ciaccia indicated that he does not recommend this method and suggested that changing the state law would be more effective. Staff, in conjunction with the Governance Committee, is reviewing Ohio Revised Code Section (hereinafter "ORC") §6119 which pertains to the District's authority. This issue may be broader than as set forth in ORC §6119, and due to the magnitude of the upcoming projects, the District may want to consider assisting with these issues. Ms. Kelly stated that the District should "take a hard look at this" because if it is cost prohibitive for contractors to obtain proper bonding, then competition is eliminated. Without competitive bids, the District pays higher contract amounts. Executive Director Ciaccia advised that Ms. Sundheimer, Ms. Rotunno and he are looking into the legal analysis associated with this issue. Ms. Kelly requested this issue take precedence.

Mr. Liberatore requested the MBE, WBE and SBE goals be addressed as it pertains to the fluidized bed incineration procurement. Executive Director Ciaccia indicated that this procurement is for the manufacturing of the incinerators, and no MBEs or WBEs were certified with the District that specialize in this type of work, therefore, MBE/WBE requirements were listed as "zero." It was discovered with the first part of the project that the District's initial MBE/WBE goals of 15% and 5% were unrealistic. On that job, the MBE/WBE goals were readjusted to be 8% and 2%. Executive Director Ciaccia informed the Board that goals for two upcoming parts of the project, the installation of the manufactured incinerators, estimated at \$82 million, and the demolition of this site has yet to be determined. Mr. Liberatore inquired if these MBE/WBE goals will be determined as the project develops. Executive Director Ciaccia affirmed. Mr. Brown expressed his desire of trying to obtain MBE/WBE goals for the manufacturing of the

BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 16 of 21

fluidized bed incinerators as well. Executive Director Ciaccia advised that once the disparity study is complete, it is the District's intent to integrate MBE and WBE goals into its SBE program. Each project will be viewed individually and MBE/WBE goals will be adjusted accordingly.

**MOTION** – Mr. Liberatore moved and Mr. Sulik seconded to adopt Resolution Nos. 279-08 through 282-08. Without objection, the motion carried unanimously.

Authorization for Contract Modification

No discussion ensued on Resolution Nos. 128-08a and 283-08.

**Resolution No 128-08a**

**Easterly Interceptor Lakeside Avenue Improvement Contract at East 53<sup>rd</sup> Street (EILIC-53) with Triad Engineering & Contracting Co., Contract Modification No. 1. Cost decrease in the total contract price in the amount of \$483,266.21.**

**Resolution No. 283-08**

**To reduce the IT Outsourcing two (2) year contract renewal (2008-2009) with Sarcom. Cost decrease in the total contract price in the amount of \$38,859.00.**

**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded to adopt Resolution Nos. 128-08a and 283-08. Without objection, the motion carried unanimously.

Add-On

**Resolution No. 284-08**

**Acknowledgement and appreciation to Dora Jane Smith in recognition of her more than thirty (30) years of outstanding service and noteworthy contributions to the Northeast Ohio Regional Sewer District.**

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 284-08. Without objection, the motion carried unanimously.



VII. Information Items

There were no information items.

VIII. Open Session

Mayor Starr moved discussion to Executive Director Ciaccia's one-year performance goals and stated that it is "quite impressive in a short period of time." Mayor Starr referred to Executive Director Ciaccia's report regarding the development of change order standards, in which Executive Director Ciaccia indicated that:

"The changes have been completed and incorporated into the District's policy and Board bylaws on change orders, should be noted that over the past year there have been no contract amendments brought to the Board that would raise the contract pricing resulting from change orders."

Mayor Starr requested clarification from Executive Director Ciaccia as it pertains to his comments in the correspondence.

Executive Director Ciaccia stated that during his transition, he noticed the Board struggling with the number of contract modifications requiring Board approval attributable to change orders or legal settlements. In 2008, this has not been the case. Change orders are inevitable and the Board changed its Bylaws giving staff a 10% allowance for purposes of dealing with change orders. Furthermore, Executive Director Ciaccia accredits the recent lack of change orders to controlling the "scope creep" or "scope rampage" by staying within the project scope and not allowing for additions. Contractors understand the District's policy and requirements as it relates to the 10% allowance.

Executive Director Ciaccia commended Ms. Rotunno and her staff for their management of each change order. The process begins with the contractor who first submits the proposal which is then reviewed by Ms. Rotunno's staff. Ms. Rotunno either accepts or rejects the proposal. Executive Director Ciaccia then reviews, accepts or rejects the proposal. This allows for staff to scrutinize the proposal.

Mayor Starr questioned whether of the 25 or more pending contracts, there have been any change orders. Executive Director Ciaccia advised that there are change orders, but none resulting in contract modification. Mayor Starr requested clarification. Executive Director Ciaccia clarified that contract modification is an increase in the contract amount. There will always be change orders, however, some may or may not increase the contract amount. Staff eliminated change orders resulting in contract modifications. The initial

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 18 of 21

goal for change orders resulting in no contract modification was set at 85%. Thus far, in 2008, there have been none.

Mayor Starr questioned if contractors continue to request change orders, or is staff rejecting the change orders. He was interested in knowing the protocol. Executive Director Ciaccia stated that contractors do request change orders, and if the proposal is reasonable and falls within the 10% allowance, they are approved. Executive Director Ciaccia assured that change orders are sometimes rejected or negotiated to obtain a fair price based upon the contractor's proposal and the engineer's estimate.

Mayor Starr referred to correspondence dated March 15, 2007 wherein 30 pending contracts were listed ranging from 285%, 107% and 66.68% in cost overruns and change orders. He inquired as to how Executive Director Ciaccia's protocol differs from the past 36 years of practice. Executive Director Ciaccia replied that not straying from the project scope is an attributing factor.

Mayor Starr questioned if there were any additional practices because for 36 years "we've been approving astronomical numbers." Executive Director Ciaccia replied that a "different philosophy of managing construction projects" was established. Mayor Starr requested Executive Director Ciaccia elaborate on this. Executive Director Ciaccia stated that he committed to stay within the 10% allowance at a minimum of 85% of the contracts.

Mayor Starr referred to Executive Director Ciaccia's report wherein he indicated that this goal has been accomplished by staying within "strict scope control and management of reasonable contingencies." Executive Director Ciaccia reiterated that he is not allowing "scope creep" or "scope rampage," and projects are to move forward as initially designed. Any additions will be rolled into a separate project to be competitively bid.

Mayor Starr requested Executive Director Ciaccia elaborate on the differences between past practices versus the present process regarding change order allowances. Executive Director Ciaccia stated that the Board authorized a general allowance of 10% for its change orders. Staff keeps tight control over limited allowances including utility relocation, as an example. Utility relocation is inevitable, but it is difficult to identify the associated costs, and Executive Director Ciaccia assured that he closely watches limited allowances.

Mayor Starr stated that, in the past, allowances were "co-mixed and comingled" with the change orders and there was a "fuzzy, hazy area of confusion," whether deliberate or not.

Executive Director Ciaccia stated that when he joined the District, he had direct construction experience from his position at the CWD. His philosophy and project

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 19 of 21

management style differed from the previous staff. Limits placed by the Board had to be factored into the equation as well.

### IX. Public Session (any subject matter)

Mr. Norman K. Edwards stated that his "buddy," Victor Thompson of Thompson and Thompson Insurance Company, is "one of the few black bonding guys." Mr. Edwards referred to a letter and alleged that "you tried to pull the bond for the Mill Creek project." Mr. Edwards indicated that in his discussions with Mr. Thompson, the bonding company "denied the request from the sewer district." Mr. Edwards stated that he was "standing in front of you to honor the bond, so, therefore, the job that's been at a standstill at Mill Creek that I asked about the methane gas the different stories that are continually received from this Board are totally, totally terrible."

Mr. Edwards stated that he had an "article from last year" which indicated that "the audit was completed. The District agreed to wait until the contractor, KM&M [sic KMM&K] finished their labor of the Mill Creek project before challenging how much KM&M [sic KMM&K] was to be paid. District trustees, Mayor Thomas Longo, unanimously voted to wait until the project is done before negotiating any differences in payment sought. Longo said District stall will negotiate with the contractor and recommend a settlement price." Mr. Edwards questioned if the Board voted to change something. He stated that "you have a bond that cannot be...there's money thrown away." He questioned as to how much is "spent in legal fees on Mill Creek?"

Mr. Edwards stated that he inquired about the methane gas and was told that "there was no methane gas there." Mr. Edwards stated that he "passes by on McCracken in black neighborhoods and there are engineers over there" collecting samples. Mr. Edwards advised that he received a call from a member of council from Garfield Heights.

Mr. Edwards demanded to know what was going on and that he wanted "the circus and the show to stop." Mr. Edwards alleged that "you make it look like everything is biscuits and gravy here, but it's not." Mr. Edwards stated that "these are our tax dollars" and that he will do what it takes to ensure that "no federal dollars come here until these problems are corrected, including the diversity."

Mr. Edwards indicated that he was at site on Lee and Miles where Terrace Construction received a contract and there were "no black or minority employees on that sewer district project," and he does not see any changes. Mr. Edwards stated "thank God Obama was elected president," and he questioned "what happened to all black leaders in this city and the people? We have to do it for ourselves."

## BOARD OF TRUSTEES

Regular Meeting

November 20, 2008

Page 20 of 21

Mr. Edwards asked the Board if “they vote on anything? Do you guys sit down?” He stated that he wanted “to know this for me, President Brown. Do you know what’s going on? Does anybody have a clue as to what’s going on? I really would like to know. You know, you guys are paid a salary, a yearly salary, from my tax dollars...and I came here and asked questions...it’s not a joke to me. I put in a lot of time. I put in a lot of effort. I put in a lot of work. I do my homework. I do my research. I’ve gone back on many years.”

Mr. Edwards stated that he became involved because his “guys have been burned from not being allowed to work on these projects here.” Mr. Edwards advised that he attended Board meetings for the past five (5) years and that this “just didn’t start” with him. He alleged that “somebody is not being truthful.”

Mr. Edwards stated that “if a bonding company, Travellers Insurance, is saying that they deny the request of the sewer district...and you had this conversation before...it is a rarity...It doesn’t happen in this business. I have 38 years in the construction business. If you call my bonding company right now, and you lien my job, that bond is good. That’s money in the bank. I mean, that’s the Bible in construction.”

Mr. Edwards stated that “if someone from your Board can contact the State of Ohio they have the bond program that several of our members have gotten bonds from Philip Shotwell with the Department of...he’s from Cleveland, Glenville neighborhood. He works for the governor’s office. They have a bond availability program...If you move into the right direction...You’re telling me they don’t know. Your diversity department doesn’t know about bonds for minorities...I do...and I offered to help this Board to get to the next level.”

Mr. Edwards explained that his main concern is safety and methane gas. He stated that there are engineers out there, but he “doesn’t know if the public is being told the truth as to what’s going on.”

Mr. Edwards stated that “you don’t understand how I feel. I’m tired of the lies. I’m tired of non-diversity. I’m tired of black people getting kicked to the curb. It’s sad, Mr. President. It’s a very sad day.”

### X. Executive Session

Mr. Brown stated that there was a matter for discussion in Executive Session.

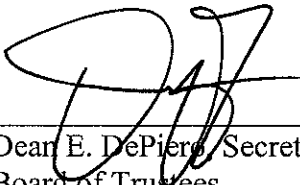
**MOTION** – Mayor Longo moved and Mr. Liberatore seconded the motion to enter into Executive Session pursuant to ORC §121.22(g)(1) of the Ohio Sunshine Laws to discuss the Executive Director’s contract and specifically designate discussion in Executive

Session to be kept confidential pursuant to ORC §102.03(b). A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 2:10 p.m. to 2:44 p.m.

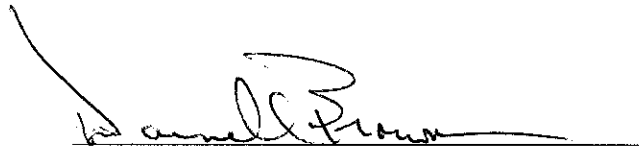
XI. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. Sulik seconded the motion to adjourn at 2:44 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