

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
SEPTEMBER 1, 2011

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

I. Roll Call

PRESENT: D. Brown
R. Sulik
D. DePiero
J. Bacci
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 August 18, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak at Public Session.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the stormwater mediation discussions held in the offices of Cuyahoga County Executive, Edward FitzGerald. As indicated in a positive editorial in today's *Plain Dealer*, the mediation sessions concluded on Monday, August 29th. County Executive FitzGerald convened a meeting in which he first addressed the parties collectively and then he separately met with District representatives and the communities in opposition to the Stormwater Management Program (hereinafter "SMP"). County Executive FitzGerald indicated that the mediations would go no further. Executive Director Ciaccia thanked County

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Executive Fitzgerald and Geoffrey Mearns from Cleveland State University. This was a daunting task and Executive Director Ciaccia especially appreciated Mr. Mearns' efforts to get the parties together. Mr. Mearns remained very upbeat and positive through this process and he was very direct with both sides. The mediation produced an environment for open communication which resulted in the exchange of ideas between the two sides. Although, the desired conclusion was not reached, Executive Director Ciaccia indicated that he will remain focused on the positive outcomes that resulted from this experience. The District will continue concentrating on the litigation and the trial scheduled for October 31st. Executive Director Ciaccia noted that issues related to the stormwater litigation will be discussed more thoroughly during today's Executive Session.

Executive Director Ciaccia moved to the next report item regarding the *KMM&K* litigation involving the MCT-3 project. Said litigation was brought against the District on October 8, 2007 and no trial date has been scheduled yet. This week, the District participated in a hearing in Judge O'Donnell's chambers. *KMM&K* requested that Judge O'Donnell reconvene the mediation before mediator, Ken Gibbs. Executive Director Ciaccia advised that the initial mediation did not result in a settlement and from the District's perspective *KMM&K*'s request for additional mediation appeared to be a delay tactic. The District is awaiting Judge O'Donnell's ruling on *KMM&K*'s mediation request. A status conference is scheduled for September 28th at 2:30 p.m. The District is hopeful that a trial date will be scheduled at that time. Executive Director Ciaccia thanked Mayor DePiero for attending the August 25th meeting.

Executive Director Ciaccia moved to the next report item regarding the *3320 Woodland* litigation. The trial scheduled for September 26th will be moved to a new date, which is yet to be determined. At a final pretrial held on August 26th, the judge determined that as a result of recent rulings the trial schedule will be changed. Executive Director Ciaccia noted that District employee, Bob Ericsson, as well as the Thompsons, as individuals, were dismissed from the case. Executive Director Ciaccia advised that additional settlement discussions regarding the *3320 Woodland* litigation matter will be held during Executive Session.

Executive Director Ciaccia moved to the next report item regarding the City of Cleveland Division of Water (hereinafter "CWD") billing system. Executive Director Ciaccia indicated that he had attended a meeting with officials and consultants from the CWD last week. Topics of discussion included the assurance that the District's rates will be programmed into the new billing system in a timely fashion wherein CWD officials indicated they would. A team was created, and Director of Information Technology, Humberto Sanchez, is the lead on the District's behalf. The team will ensure that the rates will be programmed into the billing system by the end of the year and that all proper testing is completed.

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Discussions also included that the upcoming stormwater fees will need to be programmed into the new billing system. Mutual customer services representatives must be educated on the upcoming changes which includes the fixed cost recovery charge and affordability programs. This task must be accomplished by January 1st.

The District and the CWD must enter into a new master billing agreement. The current operating agreement became effective in 1988 and said agreement established the interaction between the two agencies and the fees associated with those services provided by the CWD. However, this agreement was negotiated under the former billing system and therefore the District and the CWD are desirous of establishing a new master billing agreement which is expected to be completed within a six month timeframe. The first two months will concentrate on the costs associated with the billing system, which include the costs relative to the District and the annual fee calculation. The intent is to utilize the CWD's rate consultant to determine those costs or select another rate consultant if they cannot negotiate with their current rate consultant. After the two month period, the District will engage the CWD on a functional basis which will involve customer services representatives and finance staff to ensure that the CWD will be providing the District with the appropriate financial reports. The final two months will be to finalize the legal terms and conditions of the agreement.

This concluded Executive Director Ciaccia's report to the Board. There were no questions from the Board.

V. Action Items

Authorization to Advertise

Resolution No. 198-11

Advertise for print and mail services (brochure with letter). Anticipated expenditure: \$45,000.00 (does not include postage).

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 198-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 199-11

RFPs for audio/visual equipment support and maintenance services contract.

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Resolution No. 200-11

RFPs for investment advisory services on a non-discretionary basis for a one (1) year term, commencing February 1, 2012, with annual options to renew for the next four (4) years.

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 199-11 and 200-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 201-11

Easterly Tunnel Dewatering Pump Station Water Pollution Control Loan Fund (WPCLF) Agreement. Anticipated program year 2011 loan amount: \$35,000,000.00 awarded at the effective WPCLF below market interest rate over a 20-year period beginning after project completion.

Resolution No. 202-11

Three (3) year agreement with the U.S. Geological Survey for Flow Gauges along the Cuyahoga River and Mill Creek. Cost: \$61,250.00.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 201-11 and 202-11. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested discussion on Resolution No. 201-11 regarding the interest rates on loans compared to the interest rates within the bond market.

Director of Finance, Jennifer Demmerle, stated that the current interest rate for loans is 3.08%, which is lower than the current bond rate. As stipulated in Resolution No. 201-11, the District anticipates using some of the funds from the 2010 Build America Bonds and the remaining \$35 million will be funded through loans.

Mr. Brown questioned instead of paying interest the District can use that money towards projects.

Ms. Demmerle clarified that Mr. Brown was referring to the Water Resource Restoration Sponsorship Program (WRRSP) and she stated that the \$35 million through the WPCLF program allows the District to continue the WRRSP.

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Ms. Kelly referred to the list of investment advisers some of which are registered with the SEC (U.S. Securities Exchange Commission) and some are not. Ms. Kelly questioned if the RFP had been sent to those companies wherein Ms. Demmerle advised that the RFP has not been sent and that the District anticipates sending the RFP to the list of investment advisers. There is a stipulation within the RFP indicating that all proposers must be registered with the SEC.

Authorization to Enter Into Contract(s)

Resolution No. 203-11

One (1) year requirement contract with Motornostix (USA) Limited for the lease of predictive maintenance equipment and services at the Southerly Wastewater Treatment Plant. Cost: \$96,000.00.

Resolution No. 204-11

One (1) year requirement contract with Polydyne, Inc. for final clarifier polymer for use at the Southerly Wastewater Treatment Plant. Cost: \$122,625.00.

MOTION – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 203-11 and 204-11. After discussion and without objection, the motion carried unanimously.

Ms. Kelly referred to Resolution No. 203-11 and inquired about the “nature of the service” which impacted the MBE/WBE requirements from this particular contract. Ms. Kelly questioned, “What is the nature of the service which makes it difficult to get participation?”

Deputy Director of Operations and Maintenance, Raymond Weeden, replied that a very limited number of vendors actually supply this type of service. Predictive maintenance is vibration monitoring on District equipment and that there are no companies certified with the District that performs this type of service. Mr. Weeden further explained that the contract was publicly noticed and therefore any MBE/WBE companies that may not have been registered with the District that performs those types of services could have responded to the bid.

Ms. Kelly commented that we should be engaging in outreach to identify qualified companies and encouraging those companies to become certified with the District so that we would have a more effective MBE/WBE program.

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Ms. Rotunno stated that the excavations of other tunnel shafts are ongoing as the District retains permits. She referred to a photographic image of the Shaft 1 excavation site near Bratenahl and the dewatering pump systems that have been placed in the various shaft sites.

Ms. Rotunno advised that the Easterly Tunnel Dewatering Pump Station (ETDPS) project was advertised on July 29th and that the District conducted a well attended pre-bid meeting. Thirty-nine companies and 89 representatives from those companies attended. Twelve companies are potential prime contractors and the District expects good competitive bids with opportunities for teaming. Additionally, 23 representatives from the District's Business Opportunity Program were in attendance.

Ms. Rotunno advised that the ETDPS bid opening is scheduled for September 23rd. The District received several phone calls from contractors inquiring about the complexity of said project. Many firms are interested in joint venturing given the complex components of the ETDPS project. The District offered a three week extension and moved the bid date to October 13th.

Ms. Rotunno referred to a rendering of the tunnel dewatering structure which will be constructed at the Nine Mile Creek site in Bratenahl. The rendering gave an indication of the facility's size, the infrastructure above-grade that will remain and the restoration of the site after construction.

Ms. Rotunno referred to a three-dimensional rendering of the ETDPS project below-grade which was completed by design consultant, Montgomery Watson. The image depicted two vertical shafts and a cavern between those shafts, which is where the pump station mechanical components will be located. Ms. Rotunno explained that there is an underground construction component that is not tunneling but rather horizontal rock excavating into a cavern requiring different equipment making this construction project unique. The mechanical component to this project includes electrical, instrumentation and controls. With respect to joint ventures on the ETDPS project, the District is requesting that teams be qualified in both of those areas. Ms. Rotunno advised that there is a substantial amount of teaming within the contractor community and that she anticipates receiving multiple bidders on the project.

Mr. Brown inquired about the estimated depth of the tunnel wherein Ms. Rotunno replied that it will be approximately 250 feet below grade.

Mayor Starr requested an explanation of the dewatering process. Ms. Rotunno explained that during wet weather events the ECT and the future Dugway Storage Tunnel (DST) will receive flows when the Easterly plant is at capacity. Those tunnels will store the

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combined sewage until such time that the plant has sufficient capacity to treat those flows. The ETDPS will convey those flows to Easterly where it will receive full treatment prior to discharge into Lake Erie.

Mayor Starr questioned if it will be located in Bratenahl wherein Ms. Rotunno clarified that the pump station will be located in Bratenahl.

Mayor Starr questioned if the District had to submit architectural design plans to the planning commission for review. Ms. Rotunno advised that the District is working diligently with both the Village of Bratenahl and the City of Cleveland.

Ms. Rotunno moved discussion to the Green Infrastructure Feasibility Study (GIFS) and she advised that the District will present its proposed Green Infrastructure Program to the Board at its September 15th meeting. The District continues searching for 44 million gallons of remaining CSO volume throughout the Northeast Ohio area predominately in the Cleveland and the inner-ring suburbs. The District is proceeding with the GIFS, conducting hydraulic modeling and preparing the consent decree deliverable which must be provided to the government on or about December 31st.

The combined sewer area is 52,000 acres and the District is attempting to control 44 million gallons of CSO out of roughly 1,000 acres. Potential sites have been identified and Ms. Rotunno explained that the District is determining which sites will “give us the biggest bang for our buck in terms of CSO control and contributing and fitting in with the neighborhood development plans that are going on in Cleveland.”

Ms. Rotunno explained that the District’s green infrastructure project will move from the screening level to the final design and then to construction. Next week’s green infrastructure presentation will focus on the screened sites, concepts being developed and how the District plans identifying the best candidate sites.

Ms. Rotunno moved discussion to the Renewable Energy Facility (REF) wherein she advised that construction is 43% complete and on schedule. More than 60% of the equipment is on site and the contractors are working diligently to ensure that the structure is enclosed before the snow falls.

Ms. Rotunno moved discussion to the Key Performance Indicators (KPIs). The District is meeting its revised plan of projects delivered. Thirteen projects have been awarded; however, the dollar value is slightly behind the projected \$69 million goal. Ms. Rotunno indicated that it is a good market to bid construction projects and she explained that the bid amounts will be less than anticipated.

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Ms. Rotunno moved discussion to the engineers' estimates of probable construction cost wherein she advised that the District continues to be about 16.5% under the average of the bidders. Ms. Rotunno advised that Executive Director Ciaccia would like for the engineers to "sharpen their pencils" and therefore the District proposes incorporating KPIs into the consultants' contracts with hopes of motivating them to "tighten up" their estimates. If the engineers' estimates are within the range of plus or minus 10%, then they will receive the full incentive fee associated with that work element. However, if the amount is not within the plus or minus 10% range, then their incentive fee diminishes.

Ms. Rotunno moved discussion to the KPI for District performance on construction projects and she advised that the District did not close out any additional projects in August. To date two of the three projects (66.7%) closed within the KPI.

Ms. Rotunno referred to a graphic depicting the typical construction contract wherein the base contract amount was shown in blue. Specific allowances were depicted in yellow and those cover the unforeseen issues or known items that cannot be quantified at the time of the bid. General allowances are 10% of the base contract amount and is the contingency built into the total contract value. At the time the construction contract is awarded, the total contract amount authorized by the Board includes the base contract amount, specific allowances and general allowances.

Ms. Rotunno advised that about six months ago the District revised its general conditions whereby any authorizations given against general allowances and specific allowances within the boundary of the total contract value are termed "work orders." When an authorization exceeds the total contract value it is considered a "contract modification" and requires Board authorization before being executed. Ms. Rotunno noted that the term "change order" is not used in District contacts.

Executive Director Ciaccia clarified that there have been neither contract modifications nor change orders issued that increased the base contract amounts. At contract closeouts, the Board has authorized deduct orders, which are technically considered contract modifications or change orders. Executive Director Ciaccia explained that staff wanted to clarify the terminology that will be used during discussions.

Ms. Rotunno noted that Executive Director Ciaccia treats general allowances as change orders and they are tracked accordingly. Ms. Rotunno further noted that when she references percentages of change at 105%, it is below the bar.

Ms. Rotunno provided an explanation of work flow during construction projects. When extra work is identified beyond the base contract it goes through the "filter" and the following questions are applied: Was the extra work covered by a specific allowance? Did we have something included in the contract anticipating that this was going to be an

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extra cost? Did we have a number to pay for that? Ms. Rotunno stated that if the answer to those questions is "yes," then a specific allowance is authorized. Specific allowances are approved by Executive Director Ciaccia or his designee which in most instances is Ms. Rotunno. If that extra work is not covered by a specific allowance and is less than 10% of the base contract amount, then it is considered a general allowance which is executed by Executive Director Ciaccia. If work orders exceed 10% of the base contract amount, then it is brought to the Board as a contract modification and requires Board authorization.

Ms. Rotunno stated that the District has \$462 million in base scope contract costs of which \$32.2 million are allowances. Of those allowances, only \$5.8 million have been authorized and we are under the bar of contract modification. Ms. Rotunno stated that the District continues to maintain savings on the initial project cost during the time of bid versus project close out.

Ms. Rotunno referred to a graphic and stated that this is the summation on the contract deducts brought to the Board for approval when we close out District construction contracts, which is \$8.5 million since January 2009.

Ms. Rotunno concluded her presentation by stating that no additional projects have been closed out under the MBE/WBE or SBE programs.

Mr. Sulik inquired about the estimated construction cost of the ETDPS wherein Ms. Rotunno stated, \$88 million.

Mr. Brown referred to the upcoming Board tour of District facilities and he inquired how this relates to some of the ongoing projects.

Ms. Haqq advised that the tour is scheduled for September 27th from 9:00 a.m. to 12:00 p.m. The Board will tour the REF at Southerly, the Nine Mile Creek site and the ECT site at Easterly. Ms. Rotunno will conduct the tour and the Board members will be provided with hard hats, safety vests and safety goggles.

Mayor DePiero inquired whether there will be a Sunshine Law issue since more than four members of the Board will be meeting. Furthermore, he questioned if a member of the media will be invited to attend the tour.

Executive Director Ciaccia advised that the tour will be publicly noticed and open to any members of the media.

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Director of Law, Marlene Sundheimer noted that as long as the Board is not conducting any "official business of the Board" nor considering any resolutions, then the tour is not necessarily considered a "public meeting."

Executive Director Ciaccia advised that regardless of the content of the tour, the District will issue a public notice and the media will be invited.

Mayor DePiero noted that he wanted to prevent a potential situation where the Board could be criticized for not following the "letter of the law" even though no official business will be conducted; the Board will still be discussing various District projects.

VII. Public Session (any subject matter)

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

VIII. Open Session

There were no items for discussion.

IX. Executive Session

Mr. Brown stated that there were matters for discussion in Executive Session.

MOTION – Mayor Bacci moved to enter into Executive Session to consult with legal counsel and District administration regarding three litigation matters including Stevens Painton Incorporated v. N.E.O.R.S.D., stormwater litigation and proposed changes to Title V "Stormwater Management Code" of the *Northeast Ohio Regional Sewer District Code of Regulations*, and 3320 Woodland Avenue Ltd. v. N.E.O.R.S.D. Mayor Bacci stated that discussion of these matters in Executive Session are permitted as specific exceptions to the Public Meetings Act pursuant to Ohio Revised Code §121.22(G)(3) and he specifically designated all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g) and attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

The Board met in Executive Session from 1:07 p.m. to 1:59 p.m.

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X. Approval of Item from Executive Session

Resolution No. 207-11

Modify Contract No. 11002277 with GeoSystems, L.P. to continue engagement as litigation consultant in the case of Stevens Painton, Inc. v. N.E.O.R.S.D. through the conclusion of this litigation matter. A cost increase of in the amount of \$50,000.00 bringing the total contract price not-to-exceed amount to \$75,000.00.


Resolution No. 208-11

Authorize release of revised Stormwater Fee Credit Policy Manual and additional proposed changes to Title V - Stormwater Management Code for member community review and comment (to be provided).


MOTION – Mayor DePiero moved and Mr. O’Malley seconded to add and adopt Resolution Nos. 207-11 and 208-11. Without objection, the motion carried unanimously.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mayor Bacci seconded the motion to adjourn at 2:01 p.m. Without objection, the motion carried unanimously.



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



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