

# **BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**

**SEPTEMBER 20, 2000**

## **1. Call to Order and Roll Call:**

The regular monthly meeting of the Board of the Metropolitan Sewerage District was held in the Boardroom of MSD's Administration Building at 2:00 p.m., Wednesday, September 20, 2000. Chairman Blackburn presided with the following members present: Aceto, Bryson, Field, Gantt, Graham, Kelly, Pace, Sobol and Venable. Mr. Spell was absent.

Others present were: William Clarke, General Counsel, William H. Mull, General Manager, Gary Pennington, Attorney for Crown Atlantic Corporation, LLC, Wendy Smith of Crown Atlantic Corporation, LLC, Gary McGill and Danny Bridges of McGill Associates, Tom Hartye, Jim Fatland, Ann LeMieux, Stan Boyd, Charlene Hoskins and Sondra Honeycutt, MSD.

## **2. Approval of Minutes of August 16, 2000 Meeting:**

Ms. Graham moved that the minutes of the August 16, 2000 meeting be approved as presented. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

## **3. Public Comment:**

None

## **4. Discussion and Adjustment of Agenda:**

None

## **5. Report of General Manager:**

### **Consolidated Motion Agenda**

#### **a. Consideration of Developer Constructed Sewer Systems - Sweeten Creek Apartments and Owen District Pool:**

Mr. Mull reported that staff recommends acceptance of developer constructed sewer systems for Sweeten Creek Apartments and Owen District Pool. All MSD requirements have been met.

**b. Consideration of Change Order for Electrical Contract - Hayes & Lunsford - New Office Facility:**

Mr. Mull reported that the Construction Committee recommends approval of the modified request for Change Order #8, revision 2, with the modifications of time extension of 125 days and money in the amount of \$4,649.45. Also, with correspondence to Hayes & Lunsford that this is to be the final change order for this work, and that this motion would not be a waiver of Section 8.3.1 of the Modifications and Changes to the General Conditions.

**c. Consideration of Changes to Policy on Takeover and Rehabilitation of Private Collector Sewer Systems:**

Mr. Mull reported that the Planning Committee recommends approval of staff recommendations, with amendments & changes as shown in the minutes of the meeting. The Committee also requested an update of Unclaimed Sewer Project List and, an updated draft of the policy as attached to the minutes of the Planning Committee.

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**d. Consideration of Piggyback for Pipeline Video Camera System:**

Mr. Mull reported that staff recommends approval of the purchase of the Pipeline Video Camera System from Public Works at a cost of \$52,022.77.

**e. Consideration of Cell Tower Lease Agreement:**

Mr. Mull reported that staff recommends approval of the Cell Tower Lease Agreement with Crown Atlantic and authorize the General Manager to execute the contract.

**f. Excellence in Financial Reporting from the Government Finance Officers Association:**

Presented as information only.

**g. Consideration of Monthly Investment Report:**

Presented as information only.

Regarding item e. (Cell Tower Agreement) Mr. Mull reported that the contract includes the following:

- Leased area = 200 feet by 200 feet
- \$15,000.00 cash at signing
- \$14,400.00 per year to be paid at \$1,200.00 per month
- Initial lease term of 5 years with 4 renewable 5 year periods
- A 15% increase in rent every 5 years.

Mr. Venable asked who would decide rather to renew the lease or not. Mr. Clarke stated that either party can decide not to renew, but both parties must agree. Mr. Venable asked if the District could put an antenna on the tower. Mr. Clarke stated no. Initially the tower was going to be closer to the property line at a higher elevation, but the Town of Woodfin denied both the Conditional Use Permit and the Variance, which would have allowed the tower to be less than 500 feet from the property line. He further stated that a lawsuit in superior court challenging the Town of Woodfin's decision dealt only with the Conditional Use since the necessary findings had not been made for the variance. As a result the tower has to be 500 ft. from the property line and will be about 100 ft. lower than originally planned. Mr. Venable asked if the shorter tower would limit Crown Atlantic's use of the tower. Mr. Pennington stated that the construction costs on this particular site is in excess of \$180,000.00, which does not include the cost of materials or installation of radios. As a result, the economic viability of the site has become such that there is not any space on the tower except for wireless carriers they will be leasing to. He further stated that it's his understanding of the lease that it is the Lessee who has the right to renew the lease every five years. A discussion was held about the terms of the lease with regard to renewal. Mr. Gantt asked how many tenants would be on the tower. Mr. Pennington stated that it was designed for three carriers.

Regarding item g. (Investment Report), Mr. Mull presented additional information on the Cash Balances in the General Fund & Construction IV. Mr. Blackburn asked what the unencumbered funds were for last month. Mr. Fatland stated that it was approximately \$5million. He explained that each month a report is compiled showing the total cash on hand, for which future encumbrances are deducted for committed projects. He further stated that as far as the overall budget, the District started the year with \$26 million and will end the year with

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\$11 million. He explained there is not a cash flow problem, it just shows that during this next year the District has committed itself out beyond the 12-month period. Another bond financing is planned for next year.

Mr. Sobol questioned whether enough funds are available to pay for the last two sections of the North Swannanoa Interceptor Sewer Project. Mr. Hartye stated that these sections would come out of the next bond issue. He further stated that the District would be reimbursed for the last phase of this project out of the \$2million Federal Grant. Mr. Fatland stated the District has received \$600,000 to date of the \$3 million State Grant. Mr. Kelly moved that the Board approve the Consolidated Motion Agenda as presented. Mr. Venable seconded the motion.

Regarding item c. (Policy on Takeover and Rehabilitation of Private Collector Sewer Systems) Mr. Aceto stated that in the Consolidation Agreement, the District committed to \$200,000.00 a year to rehab what was then called "private systems." He presented a list of projects and gave a brief overview of the changes to the policy as discussed by the Planning Committee. He stated that the two major changes include, changing the fee structure and not changing the budget arrangement that applied to unclaimed systems. Mr. Gantt questioned the reasoning behind the idea of increasing the District's commitment of \$200,000 to \$300,000. Mr. Sobol stated that if the fund were increased by \$100,000, it would have to come out of CIP funds, which would mean shifting money to repair private unclaimed systems instead of going toward rehabilitating parts of systems that all the rate payers would be contributing to. He further stated that the Committee felt \$200,000 was sufficient to temporarily repair these systems until a time they can be rehabilitated. Mr. Aceto noted that another important change is that the District has formalized staffs' practice of commencing with repairs as needed on systems placed on the list. A discussion followed regarding Mr. Pace's motion at the Planning Committee meeting to roll any unexpended funds over to the following year, with no cap (cap is at discretion of staff/board).

Ms. Field stated that in her opinion \$200,000 is not a lot of money to allocate to fix serious health and environmental problems and that she does not like the reasons behind policy. Mr. Aceto stated that the Policy preserves the priority that the CIP represents. Mr. Pace stated that this policy would allow the District to address several environmental problems at the same time without expending a large amount of money on any one system. Ms. Field stated that the District shouldn't be thinking that it does not have some responsibility to fix something that is seriously wrong in

the system if it has the money to fix it. With no further discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

#### **5. Consideration of Purchasing Policy Revisions/Update:**

Mr. Clarke stated that the Policy covers purchases of materials and equipment, construction and repair, and some professional services (engineering, architectural and surveying services). He further stated that revisions to the Policy were made to ensure compliance with applicable law. Regarding Force account labor, Page 15, Section 3, Mr. Sobol asked if the Force account exceeds \$125,000 can the District use it's own engineers and force account some of the expenses out of the main O&M budget to the contract. Mr. Clarke stated that the reason for the Force account limitation is so contractors will be able to do public jobs and the limitations only deal with materials, equipment and labor. He further stated that there is no limit on how much the MSD can use it's own forces for design and inspections on projects, except for limitations on purchasing professional services.

Ms. Graham asked if leases are treated as purchases. Mr. Clarke stated that a lease is not a purchase, therefore is not defined in the policy. She further asked

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if it would be possible to acquire equipment through a lease, thereby circumventing approval of the Board. She suggested that this is an issue the Board may want to consider in the future. Mr. Clarke stated that the By-laws require approval of the Board to spend money.

Regarding Force account, Mr. Kelly asked if General Statute 143-135 talks about Force account or use of District forces. Mr. Clarke stated that it probably talks about the District's own forces. Mr. Kelly stated that in his opinion, Force account is something that comes about under a contract when a contractor says I don't have to do this, or do it at this pay and the engineer or owner says they do. When they can't agree, the contractor is obligated to pay on a force account basis. Mr. Clarke stated that this is a term used by municipalities and the Institute of Government, which may be used incorrectly and may need to be clarified. Mr. Kelly suggested that it should say "District forces" instead of "Force account labor".

Regarding Page 4, Section B, paragraph 2, Mr. Venable asked if it was against the rules for the District's Purchasing Coordinator to make a personal phone call to ask someone to bid on a particular contract in the event the advertisement is not seen in the paper. Mr. Clarke stated that it is not prohibited so long as one vendor is not given more information than another. Regarding Page 8, Section V, paragraph 1, Mr. Venable asked who decides what is a "Special Emergency". Mr. Clarke stated that this language comes out of the General Statutes and was included to allow for some flexibility involving a threat to the health and safety of the people or their property. Regarding Page 14, Section F, paragraph 3, Mr. Venable stated that when trying to decide whether to bid a project with a single-prime or multiple-prime, the District should look at more than the issue of money. Mr. Clarke stated that by law the District must bid certain building projects as both single and multiple-prime and accept the lowest responsible bidder. He further stated that this requirement is for projects over \$500,000 where separate specifications are prepared.

Mr. Gantt asked what the Policy does for minority or new businesses. Mr. Clarke stated that this issue is not addressed in this Policy, but the District has a Minority Purchasing Policy. Mr. Gantt stated that he would like to see these business have an equal access to bid on projects. Mr. Blackburn suggested that language be included in this policy with regard to minority businesses. With no further discussion, Mr. Kelly moved that the Board approve the Purchasing Policy with changes regarding Force Account and Minority Businesses. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

## 1. **Committee Reports:**

### **Planning Committee**

No further report

### **Construction Committee**

Mr. Venable reported that the Construction Committee met to consider Change Order #8 for the Electrical Contract with Hayes & Lunsford for the new consolidated office facility. He stated that the change order is for a time extension of 125 days due to a delay on the delivery of steel and the tile roof, and that they receive compensation in the amount of \$4,649.45 for additional expenses incurred. Also, that correspondence be sent to Hayes & Lunsford that this is to be

the final change order for this work. As a result, the Construction Committee recommends approval of Change Order #8, Section 2. He further stated that as a

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result of this action, other sub-contractors might request time extensions for their work on this project.

### **Partnership in the Community Committee**

Mr. McGill gave a brief history of how the Partnership in the Community Committee came about. He reported that the first meeting was held with the Town Managers on June 15, 2000 to discuss the process; what would be most beneficial to everyone; whether to involve the Buncombe County Sustainability Task Force; the effectiveness of Management level representation and where to meet. He stated that it was the consensus of the group that this concept was a good effort on the part of the MSD.

He further reported that the group met again September 14, 2000. It was decided that each representative would go through their planning process; decide what the "big picture" is; why it looks that way and how it coordinates with other entities. He stated that everyone felt that during the next few meetings each representative should be given an opportunity to be in the spotlight and tell the group what it needs to know. He further stated that at the September meeting, Cathy Ball, Asheville City Engineer and Western North Carolina Stakeholder on the Stormwater Regulations Committee in Raleigh addressed the group on the status of Stormwater Regulations in North Carolina. Also, Pam Snypes, Montreat Town Manager and Tom Fredrick of the Regional Water Authority went over their feelings about where they were and their thoughts on the "big picture", and Tom Hartye was present to discuss and update the group on the Master Plan process. Mr. McGill reported that the next meeting of the Committee is scheduled for December 7, 2000 in Black Mountain. He stated that Weaverville, Woodfin, Biltmore Forest and Black Mountain would address the group about the various issues. The MSD and Buncombe County will host subsequent meetings. Mr. McGill stated that in the future, a summary of the meetings will be provided.

Mr. Aceto asked what was being said about the scope of participation. Mr. McGill stated that the only group the Committee talked about bringing to the table was the Town of Woodfin. He further stated that it was the feeling of the Committee that they should get up to speed with each other first before involving other groups such as the school systems and the Department of Transportation (DOT). Ms. Field stated that if the Committee is looking at infrastructure and how it affects long-range planning, she's not sure the DOT needs to be involved.

However, the Committee needs to look at the CIP twenty-year plan as to where roads, water and sewer will be; the policies set by elected officials, and where long-term the MSD needs to focus. She suggested inviting Ron Fuller, Transportation Planner for Buncombe County, to come and talk to the Committee. She also suggested that a presentation by the City of Austin, Texas, which has developed a program of incentives and disincentives to get people to build where they want, might be useful. Mr. McGill stated that once the group is knowledgeable about each other, they would begin to invite others to come and make presentations.

**2. New Business:**

Mr. Aceto announced that HUD recently honored Mr. Sobol along with other representatives for a Volunteers in Government Program. Mr. Sobol gave a brief description of what the program is about.

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**3. Old Business:**

Mr. Blackburn reported that the Search Committee met to review applications for the position of General Manager. He stated that the process is going very well and the Committee is getting ready to enter into the second phase, which will be an evaluation of the candidates it wants to pursue. Mr. Kelly stated that there were approximately forty applicants, which the Committee narrowed down to five very qualified people.

**4. Other Business:**

Mr. Blackburn noted a letter addressed to Calvin Partin (MSD employee) commending him and others for work at the home of Mr. Woody. Mr. Aceto suggested that in the future, a letter of commendation from the Chairman be sent to those employees involved.

Ms. LeMieux stated that as a member of the Underground Utility Coordinating Committee, she would like to request that the Town



Managers and/or representative from the various entities, particularly Black Mountain, Woodfin and Weaverville, make an effort to attend the monthly meetings.

**10. Adjournment:**

At 3:22 p.m., Mr. Pace moved for adjournment. Ms. Field seconded the motion. Voice vote was unanimous in favor of the motion.

Jackie W. Bryson, Secretary/Treasurer