

## **BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**

**AUGUST 20, 2003**

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

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration Building at 2:00 p.m., Wednesday, August 20, 2003. Chairman Blackburn presided with the following members present: Aceto, Ball, Bryson, Field, Graham, Pace and Sobol. Mr. Gantt, Mr. Kelly and Mr. Venable were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill of McGill Associates, Bill Hobson of Hobson Construction Company, Martha Zeigler, Stan Boyd, Ann LeMieux, Ed Bradford, Mike Schraven, Monty Payne, Ken Stines, Mike Butler, Roger Watson, Peter Weed and Sondra Honeycutt, MSD.

**2. Approval of the Minutes of the July 16, 2003 Meeting:**

Ms. Field moved that the minutes of the July 16, 2003 Meeting be approved as presented. Ms. Bryson seconded the motion. Voice vote in favor of the motion was unanimous.

**3. Discussion and Adjustment of Agenda:**

Mr. Aceto asked that Item f. (Cash Commitment/Invest Report) be pulled from the Consolidated Motion Agenda for discussion. Mr. Sobol asked that Item b. (Bids for purchase of trucks) be pulled from the Consolidated Motion Agenda.

**4. Informal Discussion and Public Comment:**

Mr. Blackburn welcomed Leah Karpen with the League of Women Voters and Mr. Bill Hobson with Hobson Construction Company.

**5. Report of General Manager:**

Mr. Hartye presented information regarding Reading, Industry Notification, Carrier Bridge Pump Station, MSDBG.ORG, Chamber of Commerce Information, New Grease Efforts, Board/Committee Meetings, GFOA Award and Company Picnic.

Mr. Hartye reported on two items that were not included in his report. First, the District received a Certificate of Achievement, for the eighth consecutive year, from the Government Finance Officers Association for the FY 2002 CAFR. Mr. Hartye congratulated Martha Zeigler and Teresa Gilbert and Finance Staff for their efforts. Secondly, the Company Picnic will be held September 3<sup>rd</sup> at 11:30 a.m. behind the Maintenance Facility.

Mr. Hartye presented a letter notifying industry of the District's rate increase, along with a profile of their wastewater with current year costs and the projected cost for next fiscal year. Mr. Blackburn asked if there were any comments from industry regarding the letter. Mr. Hartye stated that no comments had been received.

Mr. Hartye reported that on Monday August 4<sup>th</sup> there was a downburst which put the areas around the Carrier Bridge Pump Station out of power for approximately 12 hours. He stated that all back-up equipment worked very well with no power loss. Of major significance is the fact that all of the equipment was constructed/installed by in-house staff led by Tony Franklin and Neil Hall and

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preventative maintenance on all back-up power was maintained by in-house Fleet personnel led by Adrian Ellis.

With regard to the District's internet site, Mr. Hartye stated he would give a presentation later in the meeting.

Mr. Hartye presented information from the Asheville-Buncombe Chamber of Commerce regarding home building activity and the Asheville economy.

Mr. Hartye reported that the District's Industrial Waste Section has expanded its focus regarding the reduction of fats, oils and greases from restaurants to multi-family projects. He stated that Jon van Hoff and Monty Payne recently gave two "can the grease" presentations reaching approximately 100 tenants of Hillcrest Apartments. Staff will follow-up with "can the grease" plastic lids for all new tenants, which will hopefully develop new disposal habits and keep sewers flowing. Ms. Karpen asked if places like Deerfield Retirement Community would fall under the same category as restaurants. Mr. Boyd stated it would meet the definition of a food preparation facility.

Regarding Board/Committee Meetings, Mr. Hartye reported that the Right of Way Committee meeting for August is cancelled. The next Board Meeting will be September 17<sup>th</sup> at 2PM.

**5. Report of Committee Chairs:**

**Personnel Committee**

In the absence of Mr. Venable, Mr. Blackburn called on Ms. Ball to make the Personnel Committee report. Ms. Ball reported that the Personnel Committee met July 22, 2003 to consider the General Manager's evaluation and possible changes in compensation. She stated that evaluation forms were reviewed in closed session and the Committee recommends the General Manager receive a 3.0% merit increase and a 1.25% cost of living increase retroactive to July 1, 2003. She further stated that the goal was to have the General Manager on the same evaluation schedule as the rest of staff in conjunction with the budget. Ms. Ball further reported that the reason for the 1.25% cost of living increase was that Mr. Hartye received a cost of living increase of 2.5% in January to carry him through until July of next year. Mr. Aceto seconded the Personnel Committee recommendation. Ms. Bryson expressed her appreciation to Marsha Kiser for providing information on the number of employees who received a 5% merit increase and a breakdown by pay grade of the average merit within that pay grade. Mr. Blackburn stated that the District is fortunate to have Ms. Kiser in Human Resources. With no further discussion, roll call vote was as follows: 8 Ayes; 0 Nays.

## **Right of Way Committee**

Mr. Pace reported that the Right of Way Committee met July 23, 2003 to consider condemnations on several projects and to approve the Compensation Budget for the Tomahawk Basin Rehabilitation Phase III. With regard to the two (2) condemnations along Merrimon Avenue, Mr. Pace reported that the owner on the first condemnation would only sign if the line was moved from the front of the building, but the alignment could not be changed. He further reported that the other owner would not sign unless the alignment was moved from their parking

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lot into the landscape buffer fronting Merrimon Avenue, or to the back of the building. Mr. Pace stated that City Planning and Development indicated they would not waive the street tree requirement, meaning trees would be planted on top of the MSD line if moved to the buffer area, nor could the line be moved to the back of the building.

### **6. Consolidated Motion Agenda:**

Mr. Hartye reviewed the following Consolidated Motion Agenda items:

#### **a. Consideration of Compensation Budget - Tomahawk Basin Phase III Rehabilitation:**

Mr. Hartye reported the Right of Way Committee recommends approval of the Compensation Budget for Tomahawk Basin Phase III Rehabilitation.

**b. Consideration of Bids for Replacement Trucks:**

The following bids were received and opened August 5, 2003 for the purchase of four (4) three-quarter (3/4) ton four wheel drive trucks and one (1) (1) ton four wheel cab and chassis truck: Green Gifford Fleet with a total bid of \$141,946.00; Buchanan & Young with a total bid of \$157,804.00; Ilderton Dodge with a total bid of \$142,822.00 and Volvo & GMC Truck with a total bid of \$156,199.00. The Equipment Review Committee recommends award of the purchase to Green Grifford Fleet contingent on attorney review.

This Item was pulled for further consideration.

**c. Consideration of Acceptance of Developer Constructed Sewer Systems - Target-River Hills Shopping Center and Asheville Christian Academy:**

Staff recommends acceptance of the Developer Constructed Sewer Systems (Target-River Hills Shopping Center and Asheville Christian Academy). All MSD requirements have been met.

**d. Consideration of Cost Participation in Sewer Relocation/Upgrade - Tunnel Road Business Park:**

Staff recommends MSD participate in 50% of the construction costs for the sewerline relocation/upgrade of the Tunnel Road Business Park in an amount not to exceed \$1,139.00 and distribution of \$1,870.00 for the additional work MSD requested.

**e. Consideration of Advertising Formal Construction Contracts on the District's Public Website.**

Staff recommends that the District begin formally advertising its regular construction contracts on the District's website, while retaining a short notice in the paper directing interested parties to the site.

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**f. Cash Commitment/Investment Report - Month Ended June 30, 2003:**

Mr. Aceto asked Ms. Zeigler to go through the cash balances, particularly the unencumbered balance. Ms. Zeigler stated the unencumbered balance represents the portion of cash in the General Fund that is used for pay-as-you-go projects. Mr. Aceto asked if it represents projects that are budgeted or in progress and that would be completed within the year. Mr. Hartye explained that as of 6/30/03 the District has \$14,722,878 in unencumbered funds and \$6,128,381 in obligated Construction Funds going forward for construction. Mr. Hartye stated that most of these construction funds will be expended on the CIP and that a portion of this money is from past bond proceeds.

Mr. Pace moved that the Board approve Items a. c. d. e. and f. of the Consolidated Motion Agenda. Ms. Graham seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

With regard to Item b. (purchase of replacement trucks) Mr. Sobol encouraged the Equipment Review Committee to consider smaller vehicles for inspectors. He stated that this would send a statement to the community that MSD is thinking about the environment, expense and fuel mileage. Mr. Bradford stated the reason for purchasing the bigger trucks is that they are cycled through the District. Mr. Weed stated the trucks change service routines three times during a life cycle in order to get optimum use of the mileage (7 to 8 years per truck) and that diesel fuel is less expensive and more environmentally friendly. Ms. Ball stated that it's important to keep fleet up to date, but also important for employees, many of whom spend many hours a day in their truck to be comfortable. With no further discussion, Mr. Pace moved that the Board approve the recommendation to purchase the trucks from Green Grifford Fleet. Ms. Graham seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

Ms. Field suggested that staff evaluate fleet to determine what it cost to run the trucks, how long they last, how many miles they get and how many times they are recycled. Mr. Hartye

indicated that staff currently does this and that he will provide this information at a future meeting.

**8. Hearing: Consideration of Withdrawal of Bid - Heywood Road Project:**

Mr. Hartye reported that the following bids for the Heywood Road Project were received August 7, 2003: Buckeye Construction Company, Inc. with a total bid of \$391,570.15; Buncombe Construction Company with a total bid of \$344,910.00 and Hobson Construction Company with a total bid of \$259,636.00. He further reported that within 72 hours of the bid opening, the low bidder, Hobson Construction Company, submitted a written request to withdraw its bid, alleging that a mistake was made in the bid. Mr. Hartye stated that the law requires the Board to hold a hearing to determine whether or not the withdrawal should be allowed. Hobson Construction is no longer the "low bidder" and cannot perform this contract because it has asked to withdraw its bid or submit a bid if it is readvertised.

At 2:38 p.m., Mr. Blackburn opened a Hearing of the District Board on the matter of Hobson Construction Company's withdrawal of his bid.

Mr. Clarke stated that North Carolina law allows a bidder to withdraw a bid under certain circumstances, but requires that MSD, upon timely receipt of a

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written request to withdraw a bid, hold a hearing. He further stated that a public agency may allow a bidder to withdraw his bid if "the price bid was based upon a mistake, which constitutes a substantial error, provided the error was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, apparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn." He explained that this hearing is being held to determine whether to allow Mr. Hobson to withdraw

his bid or not. If the Board does not allow withdrawal of the bid, Mr. Hobson has the right to appeal that decision to the Superior Court of Buncombe County. If it's eventually determined by the Courts that the bid should not be withdrawn, Mr. Hobson would forfeit his bid bond which is 5% of the amount of the bid.

Mr. Bradford presented additional information provided by Mr. Hobson. Mr. Hobson stated that he made a mistake in using a labor figure of 35 days instead of 55 days. He stated that in his 41 years of business he has withdrawn a bid three (3) times. Mr. Aceto asked where the error occurred. Mr. Hobson stated that the error occurred under Direct Labor, which should have been 55 days @ \$700.00 per day instead of 35 days @ 700.00 per day. Mr. Hobson stated that when labor cost changes so does the equipment cost. When equipment cost changes so does the indirect cost. When totaled up, the overhead cost changes as well as the profit. Mr. Hobson noted that the first Summary Sheet shows Direct Labor at 55 days. He stated when he filled out the second Summary Sheet he wrote in 35 days. Ms. Ball asked what the value of the bid bond is. Mr. Hobson stated \$12,500.00. Mr. Hobson stated that in talking to the MSD engineer, the estimate for this project is \$300,000, which his bid would have been close to if he had used the correct number of days. He pointed out that MSD made a mistake when they advertised the job when they sent out an addendum changing the quantity from 900 feet of 12" pipe to 1,981 feet and that he didn't get a second opportunity to change his bid. He further stated that there was another addendum changing the valve boxes to "American Made Only." He said he didn't know where this came from, since the valve boxes they put in for MSD cost \$17.00 and with the addendum; the cost (\$48.00) is three times the cost of Foreign Made.

Mr. Aceto asked Mr. Hobson to clarify the 35 days versus the 55 days and where the 55 days came from. Also, who compiled the work sheet? Mr. Hobson stated that he compiled the work sheet, which he has done since 1962 but, got in a hurry that morning and put down 35 days instead of 55 days. Mr. Aceto asked if the work sheet was the original. Mr. Hobson stated that the work sheet showing 35 days is the original and the work sheet showing 55 days is the revised one. Ms. Ball asked whether the letter requesting withdrawal of the bid must state the reason. Mr. Clarke said no. He explained that Mr. Hobson had 72 hours from the bid opening to submit a request that he be allowed to withdraw the bid, but he is not required to provide documentation or other information until the hearing. Ms. Ball stated that in her mind she's not sure whether this is a mathematical error, as stated in Mr. Hobson's letter of August 8<sup>th</sup>, or an error of omission. Mr. Hobson stated it was an error of omission. Mr. Clarke referenced the standard which states "an unintentional omission of a substantial quantity of work, labor, etc." as the reason. Ms. Ball questioned whether 55 days is more reasonable than 35 days. Mr. Bradford said he wasn't sure what the 55 or 35 days represent, since the allowed contract time is 120 days. Ms. Ball asked if this is calendar days. Mr. Bradford stated the contract time is 120 consecutive calendar days. Mr. Hobson

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said his estimate is working days. Mr. Bradford stated that the estimate was based on a revision of the schedule during the last phase of the design, since an additional segment was identified on the same property. He further stated that the revised estimate for this project is \$291,601.00 not \$300,000.00. Mr. Hobson stated that when Mike brought him the letter to sign, the estimated cost was right at \$300,000.00. Ms. Ball asked if Mr. Hobson can rebid the project if the District agrees to refund his bond. Mr. Clarke said no. Mr. Clarke questioned Mr. Hobson as to when he submitted the Summary Sheet showing Direct Labor at 55 days. Mr. Hobson stated that it was submitted the following Tuesday. Mr. Clarke clarified that it was submitted after Mr. Hobson submitted the bid. Mr. Hobson said yes. Mr. Clarke questioned when the Summary Sheet showing Direct Labor at 35 days was prepared. Mr. Hobson stated it was prepared prior to the bid. Mr. Clarke questioned who did the figures on the right hand side of the sheet. Mr. Hobson said he did not know who did it, that it must have been done in-house by MSD.

Following review of the bid sheets, Ms. Graham moved that the Board allow Mr. Hobson to withdraw his bid and refund his bid bond. Ms. Graham then withdrew her motion and consented to Mr. Aceto making the following motion: "that Mr. Hobson has presented credible evidence of unintentional omission of a substantial quantity of labor in the form of original work papers used in the preparation of the bid sought being withdrawn and that 35 days should have read 55 days." Mr. Pace seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

Ms. Field suggested that since the other bids are substantially over budget, MSD should re-advertise the project. Mr. Hartye stated that staff is currently negotiating with the second low bidder for this project. If staff is successful, they will bring it back to the next meeting.

**9. Non-paying Sewer Customers:**

Mr. Hartye reported that since water billing information is now available from the City of Asheville, staff has investigated customers receiving sewer service and not paying. He further reported that utilizing the Geographic Information System (GIS), staff has developed a list of 1,875 water customers not paying sewer charges that are located within 300 feet of an existing MSD sewer. He stated these addresses were smoke tested to determine if they were connected to the sewer. To date, 1,200 have been tested and it was found that 98 are connected. Staff would like input from the Board on how to proceed with those that have been positively identified. Mr. Hartye stated that previously MSD started an amnesty program and that the recommendation of staff will be in line with the way the program was handled in 1998. Staff recommends the following:

- Send a notification letter to each property owner advising them of the positive result of the smoke testing. Allow the property owner 30 days to contest the results before they are added to the billing.
- Verify all results contested by customers.
- Add to sewer billing

Mr. Sobol asked how the MSD will address the issue of amnesty for those who knowingly connect to the system and will not have to pay a facility or connection fee. Mr. Hartye stated it would be difficult to determine how they were connected or when, and to prove that would be very costly. Mr. Sobol stated that the burden should be put on them. Ms. Graham agreed with Mr. Sobol, but

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stated that when someone buys a house there is no way to check, since ownership can change several times and it would be costly to track down the original builder. Mr. Pace gave an example of when a business changed hands they did not know they were connected and didn't pay. Mr. Sobol questioned whether a customer located within 300 feet of an existing MSD sewer must to be connected. Mr. Clarke stated that a customer can be required to be connected. Mr. Sobol asked how this reflects in the policy that you cannot connect to the sewer if you are beyond 75 feet of the line. Mr. Butler explained the 75 foot rule is a limit on the length of building sewers. Mr. Hartye stated that the MSD is only ascertaining that a person is connected, not where they are connected. Following a brief discussion, Ms. Graham moved that the Board approve the recommendation of staff. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous.

**10. Old Business:**

None

**11. New Business:**

None

**12. Presentation on the District's Public Website:**

Mr. Hartye stated that the purpose of the presentation is to make the Board aware of what is on the District's public website. He further stated that one of the issues in today's agenda is the advertisement of bids, which are normally run for one day in expensive newspaper ads. Normally contractors don't learn about bids from the newspaper, they go to AGC or F.W.Dodge, but staff would like to reference the website in those ads. Mr. Hartye went through the variety of information that is provided on the website including a tour of the facility showing the treatment process; information about MSD, construction projects, employment opportunities with application, contacts, questions about billing and sewer problems, Board meeting minutes, budget, information about grease & oil, sewer rates, sewer connections and permit applications and web mapping services. He demonstrated how an address can be located using the GIS mapping system. Ms. Field stated that the maps provide a lot of information and they are very helpful in doing any planning design work and are easy to access.

**13. Adjournment:**

With no further business, Ms. Graham moved for adjournment at 3:17 p.m. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous.

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Jackie W. Bryson, Secretary/Treasurer