

**MINUTES OF A MEETING OF THE  
DuPAGE WATER COMMISSION  
HELD ON THURSDAY, SEPTEMBER 10, 2009  
600 E. BUTTERFIELD ROAD  
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman S. Louis Rathje at 7:30 P.M.

Commissioners in attendance: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay (as of 7:35 P.M.), D. Zeilenga, and L. Rathje

Commissioners Absent: W. Maio and W. Mueller

Also in attendance: Treasurer R. Thorn, R. Martin, M. Crowley, C. Johnson, J. Nesbitt, M. Weed, T. McGhee, R. C. Bostick, J. Schori, E. Kazmierczak, and F. Frelka

**PUBLIC COMMENTS**

Charlene Manusos of Manusos General Contracting, Inc., Fox Lake, IL., the second low bidder on the Commission's Contract MS-18/09 for the construction of DuPage County Meter/Pressure Adjusting Stations 9A and 9B, expressed her belief that all bid documents were properly submitted and asked the Board to reconsider staff's award recommendation.

Commissioner Zay arrived at 7:35 P.M.

**APPROVAL OF MINUTES**

Commissioner Elliott moved to approve the Minutes of the August 13, 2009 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Hartwig and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Minutes of the September 2, 2009 Special Meeting of the DuPage Water Commission. Seconded by Commissioner Zay and approved by a Voice Vote.

Majority voted aye with Commissioner Hartwig abstaining. Motion carried.

**TREASURER'S REPORT**

Treasurer Thorn presented the Treasurer's Report for the month of August 2009 which showed receipts of \$6,787,990.00, disbursements of \$6,276,693.00, and a cash and investment balance of \$62,751,316.00.

Commissioner Saverino moved to accept the August 2009 Treasurer's Report. Seconded by Commissioner Zay and unanimously approved by a Voice Vote.

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All voted aye. Motion carried.

### **COMMITTEE REPORTS**

#### **Administration Committee – Reported by Commissioner Murphy**

Commissioner Murphy reported that the Administration Committee reviewed all items listed on the Administration Committee agenda. Commissioner Murphy advised that the Administration Committee requested that representatives of the Brookfield-North Riverside Water Commission attend the October Administration Committee to provide more detail on their request for water service. Commissioner Murphy further advised that the Administration Committee requested that staff prepare a more comprehensive analysis of the issues that need to be evaluated and the policy decisions that need to be made before the Board determines whether to provide water outside of the Commission's territorial limits as recently requested by various entities.

Next, Commissioner Murphy reported that the Administration Committee reviewed the Updated FY 2009-2010 Project Schedule and requested that an executive summary be provided with each quarterly update.

Lastly, Commissioner Murphy reported that the Administration Committee agreed to defer to the recommendations of the Finance Committee regarding whether the Commission should join the National Institute of Government Purchasing or have the National Institute of Government Purchasing perform a management audit of the Commission's purchasing procedures.

#### **Engineering & Construction Committee – Reported by Commissioner Hartwig**

Commissioner Hartwig reported that even though there was no meeting due to lack of a quorum, the Engineering & Construction Committee members present discussed the items listed on the Engineering & Construction Committee agenda and would offer individual comments at the appropriate time in the meeting.

#### **Finance Committee – Reported by Commissioner Mathews**

Commissioner Mathews reported that the Finance Committee reviewed and recommended for approval all items listed on the Finance Committee Agenda. With regard to Financial Administrator Richter's memorandum regarding Timing of Water Rate Increases, Commissioner Mathews reported that it was the consensus of the Committee not to make any changes at this time. Commissioner Mathews concluded his report by noting that the Committee reviewed the National Institute of Government Purchasing Program and is recommending not moving forward with any further evaluations.

In referring back to the water rate increase discussion, Commissioner Zay stated that he did not understand staff's memorandum on the timing of water rate increases. General Manager Martin explained that the City of Chicago usually informs the Commission prior

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to January 1 whether or not there will be a water rate increase and should that happen, the Commission adjusts its water rates accordingly to cover the lost cost during the 3-month interim (January – April) until the Commission's own water rate increase goes into effect.

### **CHAIRMAN'S REPORT**

Chairman Rathje reminded the Board of two upcoming events: (1) the Water Conservation breakfast being held on Tuesday, November 17<sup>th</sup> at BoBak's Signature Room and; (2) the Commissioner's Holiday party being held on Friday, December 18<sup>th</sup> at the Club House and encouraged all Commissioners to attend both events.

### **MAJORITY OMNIBUS VOTE AGENDA**

None

### **SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA**

Commissioner Chaplin requested that Resolution No. R-52-09 be removed from the Super/Special Majority Omnibus Vote Agenda for separate consideration. Commissioner Zay requested that Resolution No. R-53-09 be removed from the Super/Special Majority Omnibus Vote Agenda for separate consideration. Commissioner Bennington requested that Resolution No. R-49-09 be removed from the Super/Special Majority Omnibus Vote Agenda for separate consideration.

In an effort to keep all items listed on the Super/Special Majority Omnibus Vote Agenda as a single group and not remove each Resolution for separate consideration, Commissioner Hartwig suggested that staff address the Board's concerns regarding the various resolutions for more clarification.

With respect to Resolution No. R-49-09, Commissioner Bennington advised that one of the vendors mentioned provides services to Commissioner Bennington's law firm and Commissioner Bennington asked whether that would constitute a conflict. Staff Attorney Crowley advised that unless Commissioner Bennington's law firm compensation or affiliation was somehow dependent upon whether the vendor obtained a contract with the Commission, there was no conflict. Commissioner Bennington then withdrew his request that Resolution No. R-49-09 be removed from the Super/Special Majority Omnibus Vote Agenda for separate consideration.

With regard to Resolution No. R-50-09, Commissioner Hartwig noted that members of the Engineering & Construction Committee were growing frustrated with the fact that sealed bids were received yet requests for additional expenses seems to be ongoing and asked staff to explain. Facilities Construction Supervisor Bostick explained these changes were due to the extended review by the City of Chicago's Department of Buildings (DOB), Office of Underground Coordination (OUC) and Department of Environment (DOE), and the additional work requested by DOE and the Chicago Transit Authority (CTA) in order to receive DOB permit approval. Facilities Construction

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Supervisor Bostick added that even though the Engineers contacted all of these agencies during design, and submitted, and revised and resubmitted, preliminary design drawings when requested by an agency, it was not until Contract PSC-4/08 had been bid, awarded, and the PSC-4 Contractor made application to DOB that these agencies performed an official review of the project. Facilities Construction Supervisor Bostick then highlighted the two most significant changes. Facilities Construction Supervisor Bostick noted that despite acceptable results from the engineering analysis of the possible impacts of the new buildings on the CTA's adjacent property and facilities, the CTA insisted that both building foundations be placed on caissons in order to resolve their concerns, which was a condition to receiving DOB permit approval. Similarly, in order to resolve DOE concerns, which was also a condition to receiving DOB permit approval, Facilities Construction Supervisor Bostick advised that the DOE insisted that the underground fuel storage tanks be relocated, causing other design changes, because a portion of one tank was above and in the same vertical plane as an existing 60" storm sewer even though the Commission agreed to line the sewer to prevent infiltration.

Commissioner Hartwig asked whether Resolution No. R-50-09 included the last of the changes required in connection with DOB permit approval and whether, by acceding to the CTA's request, the Commission would be relieved of liability. Facilities Construction Supervisor Bostick answered both questions in the negative. General Manager Martin added that staff had multiple discussions with the Chicago Transit Authority Permit Department and it wasn't until after the bid and award of the contract that they came forward with a list of additional requirements.

With regard to Resolution No. R-51-09, Facilities Construction Supervisor Bostick explained that the cost increase under the Engineers contract was needed to account for the significant, unanticipated excess engineering assistance required in the DOB permit application process, including satisfying the requests and preferences of various agencies and reviewing authorities, and to account for the additional technical observation and construction engineering services that will be required due to the associated delays in project completion and the extra work added during the permit review process. General Manager Martin added that the Engineers agreed to eliminate any profit from their requested increase.

With regard to Resolution R-52-09 and not awarding the contract to the low bidder due to incomplete documentation, Commissioner Chaplin noted that reconsideration of the low bidder should be revisited considering taxpayer money is being used to fund the project. Staff Attorney Crowley advised that because courts have found material bid bond deficiencies to be mandatory causes for rejection, staff recommended that the proposals of the two low dollar bidders be rejected as unresponsive.

After Commissioner Elliott confirmed with the Staff Attorney that in the bidding documents the Commission reserved the right to reject all bids received, Commissioner Elliott suggested that it might be in the best interests of the Commission, strictly from a cost standpoint, to reject all bids received and rebid the project. General Manager

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Martin stated that the Board certainly has the option to reject all bids and rebid the project, but noted that the County of DuPage, who is paying for the project, agreed with the award of the contract as recommended by staff and that if the Board directs staff to rebid the project, it will delay the project by several months and the County has previously expressed its desire that the project proceed as expeditiously as possible.

Commissioner Zay noted that fatal flaws happen in bids all the time and urged the Board to move forward with the lowest responsive bidder that submitted all necessary documentation. Commissioner Zay further noted that when you try to ignore incomplete documentation, it acts as a domino effect which would then open the Commission up to potential lawsuits from those that submitted all the necessary documentation correctly. Commissioner Mathews agreed with Commissioner Zay and urged the Board to move forward with staff's recommendation.

With regard to Resolution No. R-53-09, Commissioner Zay expressed concern that the Commission's engineering work was being concentrated in a single firm. General Manager Martin advised that the Commission has entered into agreements with several different engineering firms and that the work is fairly evenly allocated depending upon specialties and prior experience with related Commission projects. After Commissioner Zay requested that the original Master Contract (May 14, 2004) with AECOM USA, Inc., formerly known as Consoer Townsend Envirodyne Engineers, Inc., be updated, Commissioner Zay withdrew his request that Resolution No. R-53-09 be removed from the Super/Special Majority Omnibus Vote Agenda for separate consideration.

Commissioner Bennington asked Staff Attorney Crowley to explain why the various change order and amendment resolutions contain Board findings concerning the legitimacy of the changes involved. Staff Attorney Crowley advised that those written findings were required by Article 33E of the Illinois Criminal Code before changes are made to a public contract that increase or decrease the contract price by \$10,000 or more or the time of completion by 30 days or more.

There being no further discussion, Commissioner Hartwig moved to adopt the items listed on the revised Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

### **Super/Special Majority Omnibus Vote**

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: W. Maio and W. Mueller

Item 1: Resolution No. R-49-09: A Resolution Approving and Authorizing the Execution of a Second Amendment to the Contract for Document

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Management System Consulting Services—"Super/Special Majority Omnibus Vote"

Item 2: Resolution No. R-50-09: A Resolution Approving and Ratifying Certain Contract Change Orders at the September 10, 2009, DuPage Water Commission Meeting—"Super/Special Majority Omnibus Vote"

Item 3: Resolution No. R-51-09: A Resolution Approving a Third Amendment to Task Order No. 5 under the Master Contract with Greeley and Hansen LLC—"Super/Special Majority Omnibus Vote"

Item 4: Resolution No. R-53-09: A Resolution Approving and Ratifying Certain Task Orders under a Master Contract with AECOM USA, Inc. at the September 10, 2009, DuPage Water Commission—"Super/Special Majority Omnibus Vote"

Commissioner Hartwig moved to adopt Resolution No. R-52-09: A Resolution Awarding a Contract for the Construction of DuPage County Meter/Pressure Adjusting Stations 9A and 9B (Contract MS-18/09). Seconded by Commissioner Saverino and approved by a Roll Call Vote:

Ayes: T. Bennington, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: E. Chaplin and T. Elliott

Absent: W. Maio and W. Mueller

### **OLD BUSINESS**

Commissioner Hartwig thanked staff for providing the order of events relating to the relocation of the South Transmission Main at 75<sup>th</sup> and Washington Streets in the City of Naperville. Commissioner Hartwig suggested sharing the same order of events with the City of Naperville and County of DuPage to see if they are in agreement with the facts as stated, as well as asking for an answer to the often asked but unanswered questioned as to why the underpass ramp was not aligned to more closely tie up with the existing bike path to avoid a conflict with the Commission's watermain.

Commissioner Zay noted that he had asked staff members at the County of DuPage to update the County's costs relating to the joint 75<sup>th</sup> and Washington Street project which will then be forwarded to the Board for review.

### **NEW BUSINESS**

Commissioner Bennington moved to approve and accept the Commonwealth Edison Customer Work Agreement Memorandum dated August 12, 2009 and remit the

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requested construction deposit payment in the amount of \$477,000.00. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: W. Maio and W. Mueller

Commissioner Zay moved to authorize the General Manager to execute a Nicor Customer Work Agreement for W.O. 118858/318858 and remit a pre-construction payment in an amount not to exceed \$75,000.00. Seconded by Commissioner Bennington and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: W. Maio and W. Mueller

**ACCOUNTS PAYABLE**

Commissioner Elliott moved to approve the Accounts Payable in the amount of \$28,811.18 subject to submission of all contractually required documentation. Seconded by Commissioner Mathews and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: W. Maio and W. Mueller

**EXECUTIVE SESSION**

Commissioner Murphy moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2). Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: W. Maio and W. Mueller

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The Board went into Executive Session at 8:15 P.M.

Commissioner Saverino moved to come out of Executive Session at 8:22 P.M.  
Seconded by Commissioner Zay and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Saverino moved to adjourn the meeting at 8:26 P.M. Seconded by  
Commissioner Zay and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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