

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

September 18, 1996

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., on Wednesday, September 18, 1996. Chairman Post presided with the following members present: Bryson, Casper, Holcombe, Joyner, Kelly, Pace, Selby, Slosman, Sobol and Wallace.

Others present were: W. H. Mull, Engineer-Manager, John S. Stevens, General Counsel, Bill Morris of Hendon Engineering Associates, Inc., Patty Beaver of CIBO, Jim Fatland, Larry Turner, Tom Tarrant, and Sondra Honeycutt, MSD.

2. **Approval of the Minutes of the August 21 and September 4, 1996 meetings.**

Mr. Holcombe moved that the Board approve the minutes of the August 21 and September 4, 1996 meetings as presented. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

3. **Engineer-Manager's Report**

CONSOLIDATED MOTION AGENDA

Right of Way Committee Items:

Mr. Mull reported that the following item was brought before the Right of Way Committee, August 29, 1996.

e.II.a. North Swannanoa II - Consideration of Contract Amendment - Engineering Assistance during Easement Acquisition Services - Hendon Engineering.

The Committee recommended approval of the contract amendment, increasing the ceiling to \$147,800.00, (an increase of \$75,000.00).

Other Items:

Mr. Mull reported that the following items were reviewed by staff and MSD Attorney as follows:

h. Consideration of Bids for Holiday Inn Sanitary Sewer Rehabilitation:

Staff/Attorney recommends approval of award of bid to Precision Contracting, Inc. in the amount of \$247,115.00.

i. Consideration of Bids for East College Street Sanitary Sewer Rehabilitation - Black Mountain:

Staff/Attorney recommends award of bid to Wheeler Construction Company in the amount of \$102,012.00.

With regard to item e.II.a. (Contract Amendment - North Swannanoa II), Mr. Holcombe questioned why the engineering is not being done in-house. Mr. Mull reported that because of the size of the line, Hendon Engineering did the design on the project, and the additional cost of \$75,000.00 is the amount needed to perform easement related design revisions. Mr. Casper questioned why the contract was not originally estimated at \$147,800.00. Mr. Morris reported that the original number of parcels was only an estimate and can change during the course of a project. With no further discussion, Mr. Joyner moved that the Board approve the recommendations of the Right of Way Committee and those of staff and MSD Attorney. Ms. Wallace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays. Mr. Selby was absent during the vote.

REGULAR AGENDA ITEMS:

h. Consideration of Award of Bids for Project 800-ID (GBT Sludge Pumps) Received 9/17/96:

Mr. Mull reported that as authorized by the Board, staff proceeded with request for bids for the GBT Sludge Pumps Replacement Project. One bid was received and opened on September 17, 1996 from Komline-Sanderson in the amount of \$78,630.00, which is within the budgeted amount for the project. He further reported that only one bid is required on equipment purchases, therefore, staff recommends award of the contract to Komline-Sanderson, subject to review for compliance with the specifications by Hendon Engineering Associates, Inc., and legal counsel. Mr. Mull reported that although some flaws were found in the bid, (length of the warranty and request for a letter of credit) and that Walter Currie, Attorney for District, advised that while there was some risk with going forward with the bid award, it was a low risk. Mr. Slosman moved that the Board approve the recommendation of staff. Ms. Bryson seconded the motion. A discussion followed regarding the number of pumps involved; and why the project was budgeted for in the General Fund (Construction) WWTP Improvements and not the Equipment Replacement Fund budget. Mr. Fatland reported that when the CIP budget was established, the original amount budgeted was approximately \$60,000.00, resulting from the McGill & Associates report. He further reported that he will provide a quarterly update on the line item in the General Fund budget for the wastewater treatment plant. Mr. Tarrant reported that the bid is for two (2) pumps. With no further discussion, roll call vote was as follows: 11 Ayes; 0 Nays.

i. Report on Staff Retreat:

Mr. Mull reported that the District held it's first staff retreat at Pisgah View Ranch September 6 and 7, 1996. He brought to the Board's attention the schedule of upcoming events as a result of the retreat.

4. Report of Committees

d. Planning Committee - Mr. Slosman

Mr. Slosman reported that the Planning Committee discussed the City of Asheville's request for improvements in the West End/Clingman Avenue Neighborhood Plan, and the utilization of methane gas from the Buncombe County Landfill. In addition, the Committee discussed an article related to straight-piping in Madison County and the need for discussions between Buncombe County and Madison County with regard to regionalization and planning for sewage treatment facilities in growth areas. Also, the Committee discussed a recommendation for a Planning Retreat to develop the top ten (10) priorities for planning in the future, with input from other entities, Land of Sky Regional Council, etc.

e. Right-of-Way Committee - Mr. Selby

Mr. Selby reported that the Committee discussed Mr. Sobol's request to have the County and other municipalities draft an ordinance saying that MSD has an automatic easement of ten feet on either side of all existing public sewers, and that the District would not pay compensation for same.

5. Unfinished Business:

a. Report on Landfill Gas Contract:

Mr. Mull reported that several meetings have been held with Walt Currie, Attorney for the District, Larry Turner, Bill Morris of Hendon Engineering Associates, Inc. and Bill Brinker with Asheville Landfill Gas, LLC regarding additional problems that have occurred in the proposed contract. He further reported that when the contract was returned, the BTU values were lowered from 450 to 350, which is not sufficient to run MSD's generators. He stated that the District is proposing a different price structure for all the gas used over 16mmbtu's and negotiation of the ten other items in the contract. The group's final solution is to put together a contract the District will accept and forward back to Asheville Landfill Gas LLC for consideration. Mr. Mull further stated that Mr. Morris is currently running numbers on blended gas possibilities. A lengthy discussion followed regarding the time frame for completion of contract negotiations; cost to the County should the District decide not to negotiate a contract; whether the figures have changed enough for the Board to reconsider its former approval of the contract, and the annual cost to the District.

b. Report on Burlington Property Closing:

Mr. Mull reported that a meeting was held with the architects to discuss plans for proceeding to move the Biltmore facility to the Burlington site.

With regard to extending the District's boundaries, Mr. Mull reported that in a letter from Billy Clarke, Attorney for the District, he stated that before any area, not adjacent to an existing sanitary sewer district, can be brought into the District, a request of 51% of the freeholders is required. In addition, if the District takes in an area, it shall provide sewer service to that area according to the MSD Statutes. He further stated that a possible solution is to attempt to have the current statute amended, and requested authorization from the Board to proceed in this direction. Mr. Slosman moved that the Board authorize the District's Attorney, along with the County to look into the possibility of amending legislation with regard to this requirement. Mr. Sobol seconded the motion. Voice vote was unanimous in favor of the motion.

6. Old Business:

a. Consideration of Investment of Debt Service Reserve Fund.

Mr. Mull presented a Co-mingled Debt Service Reserve Allocation Schedule showing the amount of interest the District can earn at an amount equal to the revenue bond yield, in order to recapture negative arbitrage associated with the 1991A and 1992 A&B issues. Mr. Fatland reported that the following bids were received today on the proposed debt service reserve fund: Lehman Brothers, with a bid of 6.680%; Bear, Stearn & Co., with a bid of 6.560%; First Union, with a bid of 6.471%; National Westminster, with a bid of 6.370% and The Mutual Group, with a bid of 6.150%. He further reported that the bid of Lehman Brothers would generate an additional annual income of \$65,000.00, therefore, staff recommends that the Board authorize the Engineer-Manager to execute the Debt Service Reserve Fund Agreement with Lehman Brothers at a rate of 6.68%, contingent upon approval of Bond Counsel, District Counsel, Trustee, Finance Committee Chairman and Deputy General Manager/Administration.

A discussion followed regarding the length of the agreement with Lehman Brothers; how much the District must rebate to the IRS, and what the District must do to change Bond Counsel. Mr. Stevens reported that the District has used the firm of Brown & Wood for the last ten (10) years and this firm has decided

to de-emphasize municipal bond work, and have eliminated several positions including the District Bond Counsel effective October 1, 1996. As a result, the District will have the choice to asking someone else in the firm to continue with the work, or following Mr. Aperans, who has done this type of work over the years, or getting someone else, with approval of the Local Government Commission (LGC). A discussion followed regarding how the District would proceed to change Bond Counsel; reasons why the LGC is conservative in its selection of Bond Counsel, and whether the District's Bond Trustee work can be put out to bid. Mr. Stevens stated that he will explore the issue of Bond Counsel and report back to the Board in October. With regard to the District's Bond Trustee, Mr. Stevens reported that this issue has not been resolved. With no further discussion, Mr. Holcombe moved that the Board approve the recommendation of staff. Mr. Pace seconded the motion. Roll call vote was as follows: 11 Ayes; 0 Nays.

7. New Business:

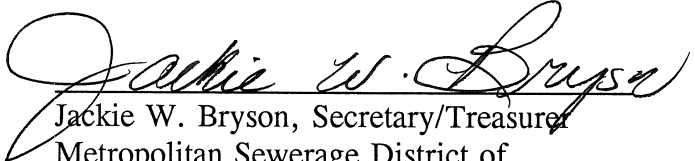
a. Consideration of Approval of Payment to Ferguson Enterprises.

Mr. Mull reported that it recently came to Mr. Fatland's attention by the Collection System Division that a former employee did not comply with the District's purchasing policy and North Carolina General Statutes and purchased \$19,692.51 in manholes and related materials without going through the bid requirements. He further reported that Mr. Fatland recommends approval of the purchase order to Ferguson Enterprises in an amount not to exceed \$20,850.00 for materials received. Mr. Kelly moved that the Board approve the recommendation of staff. Mr. Joyner seconded the motion. A discussion was held with regard to why the employee was dismissed; if the District should go back and look at other purchase orders and whether this material was actually put out for bid. With no further discussion, roll call vote was as follows: 11 Ayes; 0 Nays.

A brief discussion followed regarding the upcoming Planning Retreat.

8. Adjournment:

With no further business, Mr. Selby moved for adjournment at 2:58 p.m. Ms. Bryson seconded the motion. Voice vote was unanimous in favor of the motion.


Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

September 4, 1996

1. Call to Order and Roll Call:

A special meeting of the Board of the Metropolitan Sewerage District was held in the Boardroom of MSD's Administration Building at 2:00 P.M., on Wednesday, September 4, 1996. Chairman Post presided with the following members present: Bryson, Holcombe, Kelly, Pace, Selby, Slosman and Wallace. Those members absent were: Casper, Joyner and Sobol.

Others present were: W. H. Mull, Engineer-Manager, Walter Currie, Attorney for the District, Bill Morris of Hendon Engineering Associates, Inc., Sandra Trivett, an interested citizen, Jim Fatland, Larry Turner and Sondra Honeycutt, MSD.

2. Consideration of Utilization of Landfill Gas Contract:

Mr. Currie presented a Contract between Asheville Landfill Gas, LLC and the Metropolitan Sewerage District for the purpose of extracting gas at the Buncombe County Landfill. He reported that Asheville Landfill Gas, LLC has an exclusive contract with Buncombe County to extract the gas at a cost of \$6,000 per year for the life of the extracted gas, or twenty (20) years with a possible renewal of an additional ten (10) years. Mr. Currie reviewed some of the provisions of the contract for both the Buyer and Seller, which includes resale of the extracted gas; opinion of Bond Counsel on the part of the Buyer with regard to violation of the terms of its bond agreement; notice of final ruling by the North Carolina Utilities Commission, and approval of Seller's capital partner. Regarding Article II - Facilities, Mr. Currie recommended to the Engineer-Manager and the Consulting Engineers that the District try to get the flaring facility on its property for tax and liability reasons. A discussion followed regarding the quantity of gas loss and environmental considerations of the flaring process. He explained the cost difference between processed gas and option gas, and stated that the District might consider another generator to handle the additional option gas in the future.

Mr. Currie reported that during the first twelve months of the contract there will be a fixed price on the processed gas. After that, there will be a different price for two years and a price that floats after that, and that the option gas will remain fixed during the life of the contract, which is five years, with two (2) five year options to renew. Mr. Currie briefly discussed the points of delivery. He further reported that the District provides the Seller with an easement to put in their line on the Buyer's property for the duration of said easement. With regard to the term of the contract, Mr. Currie stated that the Seller wanted a ten (10) year contract, since they have the right to a twenty (20) year contract, however, because the Seller does not have a market for the product, the District is better off keeping the contract at five (5) year intervals. A lengthy discussion followed regarding the terms of the contract; the Seller's tax credits; when the District's contract with CP&L expires; the life of the gas, whether the District negotiated the cost of the gas, and an explanation from Mr. Currie and Mr. Kelly as to why the wording "Arbitration" was deleted from Article VI.

With regard to the quality of the gas, Mr. Currie stated that he agrees with Hendon Engineering that the District should hold the Seller to a definite quality specifications. Mr. Turner referenced page eight of the contract in that it does not specify how the District will check the quality of the gas. Mr. Slosman stated that the District should have some way to check the accuracy of metering. Mr. Currie stated that the District not only has the right to check the Sellers metering devices, but has the right to install its own metering equipment. Mr. Morris reported that as an alternative to buying expensive equipment, Hendon Engineering recommends that the District have an electronic lead to the meters, which can be incorporated into the Foxboro System to constantly monitor the value of BTU and CF. In addition, it is recommended that the District review the design of equipment, not only for metering and checking the BTU value, but for continual flow. A discussion followed regarding whether the contract covers continual delivery; what the minimum flow requirement is; if there is a way to test for quality once the gas reaches the District; ways to test the gas and the amount of gas that will be flared on a daily basis. Mr. Mull reported that the Seller will guarantee

approximately 24 deotherms per hour, (600 D/day at 5 PSI). He further reported that the Seller must sell 384 D/day at \$1.60/D in order not to lose their tax credits. He stated that the District can use 192 D/day on the existing generators and 42 D/day in the fluid bed furnace, which will leave 150 D/day for additional gas generation, (a portion of which could be used for heating and air conditioning at the Burlington facility). He further stated that the District's existing generators produce approximately 900 kw; the fluid bed furnace 600 kw, and the hydro 2,500 kw for a total of 4,000 kw existing capability. Currently the plant uses 2,000 kw, which leaves 2,000 kw that the District can sell. However, tax laws limit the District from selling more than 625 kw from the Hydro plant, (25% of the output) but if the District could combine part of the 900 kw and 600 kw it could possibly sell it to CP&L under the name plate of hydro power. A discussion was held regarding other uses of the excess kw hours. Ms. Wallace expressed her concern about the waste of this resource by flaring and the cost effectiveness, over time, of buying new equipment to alleviate the waste. Other questions were raised with regard to whether the District can extract the methane gas itself, and the feasibility of piping gas, not only to the plant, but to the District's new acquisition for future use.

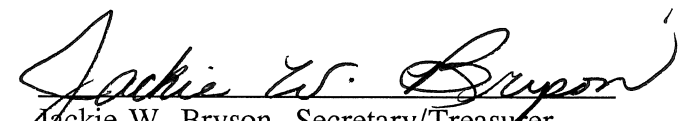
Mr. Mull presented a Power Sales Analysis showing how much leased generation the District can have without violating the 25% limit, and selling the 625 kw/per year to CP&L. He presented an alternative, (not using a leased generator) which shows the total net increase in savings to the District at \$130,476.00 on a one (1) year contract, with savings in the following years of \$23,855.00, resulting in loss of gas from flaring, which is the worst case scenario. In addition, he presented two (2) other scenarios using landfill gas and leased generators. A discussion followed regarding MSD's up front costs, (legal fees, engineering, operations and equipment) if any.

Mr. Currie reported that if the contract is signed as written, there is no way the District will lose money. Mr. Morris stated that the benefit to the District is the avoidance of down days. Mr. Slosman recommended that the District negotiate the \$1.15 costs for additional processed gas in excess of the 16MMBTU/HR for all hours per month. A discussion followed with regard to whether the District can make a profit by selling it's hydro power to CP&L; whether the District's 1985 bonds are paid off; and if the District can give the option gas away, possibly to another governmental agency, thereby alleviating waste from flaring. Mr. Turner stated that in looking at environmental concerns, this is the best solution to the landfill problem.

With no further discussion, Mr. Slosman moved that the Board approve the contract contingent on approval of the Engineer-Manager and District Attorney. Mr. Pace seconded the motion. Roll call vote was as follows: 7 Ayes; 0 Nays. Mr. Kelly was absent during the vote.

3. Adjournment

At 3:20 p.m., Mr. Pace moved for adjournment. Ms. Bryson seconded the motion. Voice vote was unanimous in favor of the motion.


Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina