OAK LODGE SANITARY DISTRICT
BOARD OF DIRECTORS
MINUTES OF THE SPECIAL MEETING
January 29, 2009

CALL TO ORDER

President Paul Savas called the Special Meeting of the Board of Directors of Oak Lodge Sanitary District in Clackamas County, Oregon to order at 4:34 p.m. in the District office, 14611 SE River Road, Milwaukie, Oregon.

PERSONS PRESENT

Declaration of a Quorum: Directors present were Paul Savas, President; William Wild, Vice President; David Seigneur, Jim Martin and Doug Woods.

Staff present were J. Michael Read, General Manager and Secretary of the District; Brett Arvidson, Manager of Planning and Engineering; and Faith Paddock, Administrative Services Manager.

OTHERS PRESENT

Consultants attending were John Lang, Jerry Foy, and Leah Robbins.

Members of the Public attending were Tom Foeller, Leonard Waldemar, and Kay Deines.

Alternative Delivery Workshop: J. Michael Read

General Manager J. Michael Read, explained that the workshop was to inform the Board of Directors of the State of Oregon requirements for a Board of Directors of a public agency to choose a project delivery method other than Design-Bid-Build; to inform them of the various alternative project delivery mechanisms; and the possible benefits and/or complications inherent in each method. Michael reminded the Board that John Lang has presented similar information to the MPCAC; and Joe Glicker of CH2M Hill presented similar information to the Board at its last regular meeting. Michael introduced the consultants/panelists present for the workshop. John Lang, the consult who has worked with the MPCAC and the Board in value engineering discussions; Leah Robbins, a member of the MPCAC and project manager for Tri-Met's Milwaukie light rail project; and Jerry Foy, member of the MPCAC and a developer experienced in the private sector. He noted that Manager of Planning Engineering Brett Arvidson has managed many public construction projects in the wastewater field both as a public employee and as a consultant; and that he (Michael) has managed many public projects, usually using the Design-Bid-Build delivery mechanism. Also present was Michelle Burkhart of CH2M Hill. Michelle was not attending as part of the consultant team; she was present to observe the discussions and answer any questions that the Board might have for the Design Engineer.

Michael stated that the process is about balance – the balance between control, opportunity, and risk to the public agency. The Design-Bid-Build (DBB) method has the least unknowns, with the District holding most of the risk but has some limitations. The currently planned distribution of

economic stimulus funds by the Federal government to the states, and from the states to individual projects, requires that a project be "shovel-ready" within 90 days after a bill is signed. The current projection is that a bill should be ready to be signed on February 13. To be considered as a recipient of stimulus funds, a project must be shovel-ready 90 days after that day. In the case of Construction Manager/General Contractor and Design-Build, shovel ready would be defined as having a contract prepared to proceed. For Design-Bid-Build, final design drawings would be needed with all bid documents prepared and ready to advertise.

There is no way that the District's wastewater treatment plant project can be shovel-ready should we choose the DBB delivery mechanism. The other side of the coin is that the advantage of DBB is that once all is designed, costs are known, and the project is clearly delineated, should the Board decide that based on the economic climate at the time they want to only build a portion of the project and push part of it out to a later date, they can put out for bid only that portion of the project that they want to build at that time.

Brett Arvidson and Michael Read described their experience in managing construction projects in the public sector of various sizes and using both the DBB and Construction Manager/General Contractor (CMGC) methods of project delivery.

John Lang presented information on the various methods of project delivery, and noted that in order to select any method other than DBB, the contract review committee (in the case of Oak Lodge Sanitary District, the Board of Directors) must meet two tests. Using an alternative method 1) must not encourage favoritism and must not diminish competition as compared to DBB and 2) must demonstrate substantial cost savings over DBB. There is a spectrum of project delivery methods ranging from DBB to Design Build (DB) at the opposite ends of the scale.

In the DBB method a design engineer is selected and drawings and specifications for a project are completed. The project is then put out for competitive bid and a contractor is selected using the lowest responsible bid as the main criteria. There would be a construction manager, not the contractor, and cost risk would be borne primarily by the District. This process works best when the customer has a thorough understanding of the design, scope, and purpose of all parts of the project, and wants to maintain a high level of control over the project. This is a sequential process. Multiple steps cannot be combined together, and it is not a quick process. The process can serve to minimize change orders and the expense they cause.

The next method John described is the CMGC process. The public entity hires a Construction Manager/General Contractor based on qualifications, not on price. Those firms then participate in the balance of the design; suggesting ways to save money, improve the ability to do things and at 50-

70% design completion establish a maximum allowable construction cost for which they would agree to do the job. Construction work and equipment purchase can begin early, once the site plan, including structure placement and elevations, is established. The actual work is competitively bid and either the owner or the CMGC can award the contracts. Cost risks are reduced because the CMGC is involved and has guaranteed a cost. The design-engineering firm is not associated with the CMGC; they work under a separate contract with the owner. The owner has two contracting arms – one with the design firm and one with the CMGC. This process works best when there is an advantage in accelerating design and construction, if there are different or complex processes, complex scheduling issues (i.e. keeping a wastewater treatment plant in operation during the construction) because the contractor is involved early and can make suggestions that will reduce his cost and problems during construction.

A process halfway between CMGC and DB is Progressive Design Build (PDB). This involves one team consisting of the design team and the contractor. They would also negotiate a maximum allowable cost, but there is only one contract arm – the design engineer and the contractor function as a team. This delivery method also allows for early start to construction. Construction can begin on the early phases of the project as final design is still being done. John stated that there are pros and cons to the design engineer and the contractor being on the same team, and is the major difference between CMGC and PDB. It takes the owner out of the middle of disagreements between the designer and the contractor, but it also means that the owner has less influence on the decisions. The other advantages in CMGC are present in PDB – accelerated construction and cost saving suggestions from the contractor can be incorporated in the design. The cost risk is shared by the design firm and the contractor.

John reviewed the goals set by the MPCAC for the wastewater treatment plant project, and how the different delivery mechanisms will meet those goals. The Local Contract Review Board must decide which of the delivery methods will best meet those goals.

Points discussed during the balance of the meeting are:

- In response to questions from the Board, Michael explained that some firms have separate engineering and construction arms that can work together during PDB. However, there is no guarantee that the two arms will be from the same company.
- Control over equipment. In DB and PDB the customer does not have control over equipment selected unless it has been stipulated in the contract. If only performance standards are stipulated, then any equipment the design engineer would like to use that can meet those performance standards should be allowed. Should the customer reject a piece of equipment that does meet the requirements simply because it

wants to use another manufacturer's equipment, then they are open to being sued by the rejected equipment's manufacturer. Michael noted that in Joe Glicker's presentation to the Board, Joe stated that in both CMGC and PDB it is possible to have a high level of transparency in the process so the District will know exactly what is happening, to see the expenses incurred by the design engineer and the contractor, and all other aspects of the project – it would be an open book process.

- John stated that DB is best for customers who do not thoroughly understand the complexities of a project, but do know what the situation is and what the desired results are. Responsibility for how the results are achieved lies with the designer and the contractor. The customer loses a measure of project control. However, it does not allow a project currently at 30% design completion to begin construction early. CMGC or PDB allow for start of construction much earlier in the design process
- Leah Robbins noted that she has experience with CMGC in her work with Tri-Met, and has found that using it can help greatly when there are complicated scheduling issues to be resolved. Shut downs can be minimized, and surrounding infrastructure can be more easily preserved. Schedule adjustments are built into the price that is negotiated with the contractor.
- Obligation to CH2M Hill – The District is not obligated to use any particular entity in the balance of the project. The decision whether to continue using CH2M Hill in later phases depends on the delivery approach selected and whether the Board wishes to bid final design even though the current contract allows awarding that phase to CH2M Hill without further bidding.
- Maximum Allowable Cost determination – this is not decided at the start of CGMC at 30% design; it is set farther along in the process closer to final design.
- Construction Manager. Jerry Foy stated his desire that the combined experience in wastewater treatment plant construction projects shared by Michael and Brett can be utilized in the project. He wants to be sure that the delivery method selected, if it is not DBB, show documented costs savings. He feels it is good to bring in a contractor early on to reduce costs, but at the same time to make good use of the in-house project management experience present in Oak Lodge Sanitary District. Discussion among those present showed a desire to use Brett's experience as the overall manager of the project, and having a District presence on-site during construction. The presence could be a contracted employee or a member of the staff. The recent purchase of the neighboring residence allows space for a District presence at the construction office.
- Financing and Rate Impacts. Brett explained that the District has submitted a request for $35 million in stimulus funds. He expects that if we do receive any of those funds, it will not be more than $7 to $10

million. To receive those funds the District must have flexibility built into the construction process. DBB does not provide that flexibility. CMGC, PDB, and DB do. Michael explained that within 180 days using CMGC the project could be at a point where construction work on the site will be ready to begin.

- Meeting the ORS test of cost savings for using other than DBB. Staff will gather information to be used to determine if the project will meet the two tests noted earlier. There are various ways to show this – actual costs can be compared, savings based on construction costs can be shown, savings based on less expensive operation of new facilities versus existing facilities can be shown, etc. The Board asked staff to provide this information for their consideration. The Board wants to have concrete examples of how the test will be met, and to be able to show the cost savings to the citizens of the District. They desire rate impacts to be as small as is possible while meeting the goal of constructing a durable and effective wastewater treatment plant.

  John Lang suggested that first staff and the Board look for ways to save money. Then after potential savings are determined, then look at which and how much of those savings apply to each project delivery method.

- Meeting the competition requirement. This test will be met by competitive bid. Michelle Burkhart stated that CH2M would put out competitive bids for a contractor and the lowest responsive bid would be selected. The selected contractor will be required to show that they are qualified to complete the project.

- Teamwork. Reservations were expressed about the loyalty of firms in DB. If the design engineer and the contractor are both from the same company, then both firms might tend to make decisions that benefit the company, their first loyalty might not be to Oak Lodge Sanitary District. If two separate entities are involved as with a design engineer working with a Construction Manager/General Contractor, then

- Recommendations from staff and panel members:
  J. Michael Read – CMGC is his preference. Michael also emphasized that it would not reasonable to expect Brett to bear the entire burden of construction inspection and management under DBB. The District would hire a program manager. That cost is built into the budget for the project and there will be a District representative on site whichever delivery method is chosen. He noted that there would be cost savings in paperwork and engineering drawings between DBB and CMGC because there is a lot of teamwork between the contractor and the engineer. The District would not have to pay for nearly as many drawing in as much detail with CMGC as with DBB.

  Brett Arvidson – CMGC is preferred based on the fact that the District has a fair amount of experience and sophistication in this area and the ability to save money by having a strong construction management team

in place. He feels that control over the process is important because of the experience of staff. CMGC has the benefit of flexibility and potential cost savings. Design work done by CH2M Hill gives us the benefit of having a design engineer that designs projects based on buildability, and they have the experience to do so. He expressed his preference for a design/contractor team – he prefers that the public entity has teamwork both with the design engineer and with the contractor individually. He feels CMGC will provide savings to the District and will match expectations with process and cash flow.

Jerry Foy – CMGC would be his choice based on his experience. He does not recommend the DB process.

Leah Robbins – CMGC based on her experience with Tri-Met projects.

President of the Board Paul Savas and the balance of the Board expressed their appreciation to Jerry Foy and Leah Robbins for volunteering to take part in this process, and to consultant John Lang for his presentation.

BREAK:

7:05 p.m. 7:11 p.m.

FY 2007 – 2008 Audit Presentation: J. Michael Read/Rob Moody TKW, LLP

Manager Read introduced Rob Moody ,CPA, and Senior Partner with Talbot, Korvola & Warwick. Mr. Moody reviewed with the Board the audit report and the Comprehensive Annual Financial Report (CAFR) for fiscal years ended June 30, 3008 and June 30, 2007. In his presentation to the Board, Mr. Moody stated that GASB has issued several statements not yet implemented by the District and the District has not yet determined the effect these Statements will have on the District's financial statements. Specifically; 1)GASB Statement No. 45, Accounting and Financial Reporting by Employers for Post Employment Benefits Other Than Pensions; 2)GASB Statement No. 49, Accounting and Financial Reporting for Pollution Remediation Obligations; and 3)GASB Statement No. 51 Accounting and Financial Report for Intangible Assets. These statements were not required for this audit but will be required in subsequent audit years.

In addition, Mr. Moody stated that the audit determined significant lack of appropriate segregation of duties within the District as it related to several business process, including payroll, accounts payable and cash disbursements, and general ledger maintenance. Best practices indicate that the initiation and authorization of these kinds of transactions should be adequately segregated. Mr. Moody stated that these matters have been discussed with management to address the issues as presented.

There was a brief question and answer session among the Board, Mr. Moody, and Mr. Arvidson regarding the new requirements under GASB Statements 49 and 51.

There was no further discussion regarding the financial audit report.

Public Comment Period: There was no public comment.

President Savas adjourned the work session at 8:25 p.m.

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Paul W. Savas, President of the Board

Attest:

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J. Michael Read, Secretary