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RESOLUTION AMENDING ARTICLE XXIV OF THE RULES AND REGULATIONS OF
THE METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI
ADDING SECTION 2403

WHEREAS, Section 6117.01 of the Revised Code of Ohio and Section IV of the 1968 Management Agreement between Hamilton County and the City of Cincinnati for the Metropolitan Sewer District ("1968 Agreement") vests the Board of County Commissioners of Hamilton County, Ohio ("Board"), with the authority to adopt Rules and Regulations for the Metropolitan Sewer District of Greater Cincinnati ("MSD"); and

WHEREAS, the Board did, pursuant to and consistent with Section V, Paragraph 2(b) of the 1968 Agreement, after public notice and hearing, adopt revised Rules and Regulations for MSD, and as subsequently amended, on January 24, 2001; and

WHEREAS, the Board has received draft amendments to Article XXIV of the Rules and Regulations which would add Section 2403, which text is attached hereto and by this reference made a part hereof as Exhibit A; and

WHEREAS, the Board did, pursuant to and consistent with Section V, Paragraph 2(b) of the 1968 Agreement, publish notice of a public hearing on the proposed MSD rules in the Cincinnati Enquirer newspaper on December 28, 2013 and January 4, 2014 to be held on January 8, 2014 at 11:30 AM at the County Administration Building. Additionally, the proposed MSD rules and public hearing notice were posted on the Hamilton County Board of County Commissioners website, <http://hamiltoncountyohio.gov/hc/bocc>; and

WHEREAS, the Board did hold and conclude a public hearing on January 8, 2014, 2014 to receive public comments on amending Article XXIV by adding Section 2403 to the Rules and Regulations for MSD; and

WHEREAS, legal counsel has reviewed said amendments of the Rules and Regulations for MSD.

NOW, THEREFORE, BE IT RESOLVED, by this Board of County Commissioners of Hamilton County, Ohio that Article XXIV, Section 2403 of the Rules and Regulations for MSD, as set forth in Exhibit A, is hereby adopted and effective immediately.

BE IT FURTHER RESOLVED, that this Board of County Commissioners hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board of County Commissioners and that all deliberations of this Board of County Commissioners and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

BE IT FURTHER RESOLVED, that the Clerk of the Board be and hereby is authorized and directed to certify copies of this resolution to Christian Sigman, Hamilton County Administrator, Scott Stiles, Interim City Manager of the City of Cincinnati, Tony Parrott, Director of the Metropolitan Sewer District, and Jeff Aluotto, Assistant County Administrator.

ADOPTED at a regularly adjourned meeting of the Board of County Commissioners of Hamilton County, Ohio, this 8th day of January, 2014.

Mr. Hartmann YES

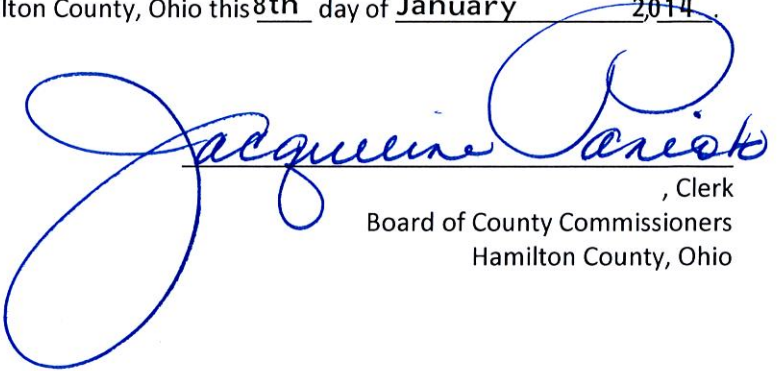
Mr. Monzel YES

Mr. Portune YES

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution adopted by the Board of County Commissioners in session this 8th day of January, 2014

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners of Hamilton County, Ohio this 8th day of January 2014



, Clerk
Board of County Commissioners
Hamilton County, Ohio

Exhibit A

Section 2403 Reports to the Board/County Administration and Recordkeeping

2403-1 Monthly Program Management Activity (“PMA”) Reports

A. General Duty

MSD shall submit to the County Administration, Program Management Activity (“PMA”) Reports summarizing the activities completed during each month.

B. Timely Submission

The PMA Report for each month must be submitted no later than 20 days after the last day of each month.

C. Content of PMA Reports

Each PMA Report shall contain three general sections: (a) Director’s Overview, (b) Monthly Program Activities, and (c) Monthly Program Financials. The minimum analytic reporting requirements for each general section are specified in the subsections below. MSD shall, where applicable, measure the analytics reported in each PMA Report against the Programmatic Performance Metrics in accordance with section (D) of this rule. Performance data should reflect each month’s performance, as well as year (calendar year) to date and program-to-date, as applicable. The County, upon receipt of the report, may approve the report, raise questions or seek additional information, or pursue additional policy directives. These metrics may be modified as deemed appropriate by the Board or County Administration.

1. Director’s Overview. This section provides the MSD Executive Director’s opinion about the Program’s overall health, key accomplishments and major risks. Specific reporting areas and analytics shall include, at a minimum:

- Program’s health, including, but not limited to, budget compliance, schedule compliance, and relationships with the Regulators and MSD ratepayers
- Regulatory coordination (during the reporting month and for the next three months)
- County coordination (legislative and other critical actions required during the next three months)
- Risk management (program risks and mitigation or recovery strategies)
- Significant upcoming events (public meetings, conferences, etc.)
- Progress toward meeting each milestone date under the Final Wet Weather Improvement Program, as conditionally approved on January 6, 2010, as may be amended from time to time (“WWIP”), issued pursuant to the Consent Decrees issued in *United States of America, et al. v. The Board of County*

Commissioners of Hamilton County, et al., Case No. C-1-02-107, U.S. District Court, S.D. OH (“Consent Decree”)

- Identification of any WWIP project that is within 180 days of any of the project’s WWIP milestone dates, risk assessment regarding milestone achievement, and recovery plan, as appropriate
 - Report on all Memoranda of Understanding (“MOU”) and grant applications/agreements executed during the reporting month, including the parties to the MOU/Grant, purpose, and details on all related MSD financial obligations arising from each MOU/Grant. The report shall also address all MOUs under negotiation as well as any MOUs/Grants expected to be negotiated within the next six months.
2. Monthly Program Activities. This section provides a summary of the number and phase status of the active projects in a particular month for the five active capital project categories: (1) Consent Decree/WWIP, (2) Non-Consent Decree Asset Management, (3) Sustainable Infrastructure, (4) Local Sewer and Lateral, and (5) Business Case Evaluation projects under internal consideration at MSD. The term “project” as used in this Section 2403 shall mean any project, work, or activity listed in this paragraph, including those in pre-planning, planning, design, easement acquisition, or construction phases. For each active project category, specific reporting areas and analytics shall include, at a minimum (see Table 2403-1 below for more details for supporting documentation):
- Project activity phase (i.e. close-out, construction, design, project on hold, etc.)
 - Number of projects in each activity phase
 - Cumulative costs for projects in each activity phase
 - Total number of projects and total cost for each active project category
 - For those Projects that have completed planning or design phases and have not advanced to the next phase within six months, a report to the Board with an explanation for the delay and identifying those projects that may be deemed impaired and the related costs of such impairment
 - LMCPR activities shall be reported in a separate section and the costs of those activities shall be reported in current dollar and in 2006 dollars as compared to the \$244.3 million budget
 - Project governmental permitting activities, including submission of PTI applications
 - Safety performance and accident statistics by facility or department as appropriate.
3. Monthly Program Financials. This section provides a detailed accounting of activities in each month that impacts Program financials. Specific reporting areas

and analytics shall include, at a minimum (see Table 2403-1 for more details on program financials and supporting documentation):

- Master Cash Flow Schedule (“MCFS”) and actual spending to date for projects included in the MCFS
- Cash flow for projects or activities not included in the MCFS, if any
- Schedule variances
- Budget variances
- Legislation activities including, where applicable, legislated funding
- Monthly allowance spending
- Contracting activities
- Bidding activities
- Change orders
- Notices of Advisement
- Program Contingency usage report
- De-Legislation activities.

D. PMA Performance Metrics and Documentation Requirements

Where applicable, each PMA Report shall state the goal or acceptable performance metric for each activity, indicate whether the performance metric has been achieved, and provide documentation supporting satisfaction of the applicable performance metric in accordance with Table 2403-1. If the performance metric is not achieved, MSD shall describe corrective actions which are being taken to bring that activity back to an acceptable performance level.

Performance Metrics may be modified with approval by the Board of County Commissioners.

Table 2403-1 Monthly Program Management Activity (PMA) Performance Metrics and Documentation Requirements

<u>Program Activity</u>	<u>Metric</u>	<u>Supporting Documentation</u>
Active capital projects summary	None	Base Report: Narrative and summary (chart/table) of active project activities Appendix: Program and Project Controls Score Card
Permit applications	Submit application prior to applicable deadline	Ohio EPA time stamped copy of application or other documentation

		supporting timely submission
Permit violations	No NPDES permit limit exceedances or other violations	Report of all permit violations, including description of the violation, actions taken to return to compliance, and measures implemented to prevent reoccurrence; copy of notification letters or other communication to all local, state and federal governmental agencies for overflows, bypasses, or noncompliance activity; copies of correspondence to and from governmental agencies regarding any permit noncompliance
Safety performance	No lost time accidents; no significant OSHA noncompliance or MSD safety audit findings	Report of all safety accidents and incidents by facility or department as appropriate, and measures taken to prevent reoccurrence of any accident or incident
Cash flow forecast vs. actual expenditures	90% of original baseline forecast for each month	<p>Base Report: cash flow chart</p> <p>Appendix:</p> <ol style="list-style-type: none"> 1. Program Cash Flow Report. All projects that will have cash expended thru Phase 1 shall be included in the Master Cash Flow Schedule. The monthly report will present an 18-month rolling period, updated each month. All months in the current fiscal year should be included even as additional months are added and shall include, at a minimum: <ul style="list-style-type: none"> • Project ID number • Project description • Budget by phase • Monthly actual expense • Budget to actual variance by month. 2. Variance analysis. An analysis shall be provided detailing the reasons for each project variance exceeding 5% or a minimum of \$100,000, and the plan for budget recovery or correction. 3. Failure to achieve the required confidence level for three

		consecutive months shall result in a report by MSD to the Board identifying the cause of the inadequate confidence level and providing a corrective action plan.
Schedule variances	No Variance > 30 days	<p>Base Report:</p> <ol style="list-style-type: none"> 1. Provide a schedule variance report that includes all active projects categorized by phase. The report will include as a minimum: <ul style="list-style-type: none"> • Project ID • Project Description • Schedule Duration • Baseline Schedule • Baseline Schedule Adjustment • Current Schedule • Schedule Variance • Comment Column for explaining schedule adjustments. 2. Provide a summary of projects exceeding metric with explanations and plan for schedule recovery. 3. Detailed supporting information including change order documentation and the recovery plan for each project in variance shall be made available for the Board's review.
Budget variances	Zero budget variance	<p>Base Report:</p> <ol style="list-style-type: none"> 1. Provide a budget variance report for all active projects in an Excel file that includes, at a minimum (only WWIP projects require reporting 2006\$ values in addition to current): <ul style="list-style-type: none"> • Project ID • Project description • Actual costs incurred by year and in 2006\$ • For current year provide Monthly actual/forecasted cost in actual \$'s and

		<p>2006\$' s</p> <ul style="list-style-type: none"> • Forecasted annual costs to completion in both actual \$'s and 2006\$'s. • Include BAC, current EAC (in actual \$'s and 2006\$'s), previous quarter's BAC and EAC (in actual \$'s and 2006 \$'s) and related Variances • Total each numeric column with subtotals for WWIP and AM projects. <p>2. Report a summary of projects exceeding metric with explanations and plan for budget recovery or adjustment.</p> <p>3. Detailed supporting information including change order documentation and the recovery plan for each project in variance shall be made available for the Board's review.</p>
Legislation	None	Base Report: provide a forecast of upcoming legislation requests for the next three months
Allowance expenditures	Zero budget exceedances	<p>Base report: narrative report on all allowance budgets</p> <p>Appendix: summary (chart/table) of allowance spending addressing project total cost, monthly expenditure, description of work performed, quantity, if applicable (e.g., number of manholes or feet of pipe), project location and Contract, Task Order and Work Order numbers</p>
Contracting activities	N/A	<p>Base report: report all contracting activities (by contract type, value, vendor name), including MSA's, PSA's and their individual task orders. This information will be reported in Excel format and include year to date as well as current month data.</p> <p>Appendix: Bid Board Summary</p>

Change Orders and Notices of Advisement	Continuous reduction in the amount of change to time and cost	Base report: report all Change Orders or NOA's and provide analysis as to causes of schedule and cost growth and the measures being taken to improve project cost and schedule growth
Program Contingency Usage	N/A	Base report: forecasted program contingency vs. actual use Appendix: Program Contingency Log (see Section 2405-2(A)(4))
De-Legislation activities	Compliance with Section 2405-3	Submit annual report each January. Monthly report project level de-legislation activity: report shall include project level detail categorized by Stage 1, 2 or 3 (see Section 2405-3 (B) and will provide appropriate summary level data

2403-2 Other Reports and Notices to the Board and/or County Administration

A. Project Status and Performance Reporting

1. Report of Substantial Completion of Construction under Consent Decree/WWIP:

- a. Prior to awarding a WWIP project design contract, and again prior to awarding a construction contract, MSD will review with the County Administration the scope of work to confirm that it aligns with the WWIP prescribed scope of work.
- b. For each WWIP project, at least 30 days prior to the anticipated substantial completion of construction date, MSD will meet with the County Administration to review the project's status and whether the project has reached substantial completion of construction under the consent decree/WWIP.
- c. For each WWIP project, MSD shall report achievement of substantial completion of construction under the Consent Decree, to the County Administration within 10 working days of the date on which substantial completion of construction under the Consent Decree/WWIP has been achieved and declared. Each report shall contain a Certificate of Substantial Completion of Construction under the Consent Decree signed by the project design professional engineer or similarly qualified person who has personal and substantial knowledge of the project details and has reviewed the project status. MSD shall provide the County Administration with the basis for determining that the WWIP project has reached substantial completion of construction under the Consent Decree, and provide copies of all documents supporting such determination, along

with a description of all applicable warranties for the project. MSD will provide the County access to all warranty information upon request.

2. Report of Project Performance. Except as noted below in this Section 2403-3(B), one year after substantial completion of construction has been achieved and declared for each project, the MSD shall submit to the County a project performance report, including relevant technical data, demonstrating that the project is performing as it was designed to perform. If relevant warranties applicable to any project expire in one year or less, then the deadline for submission of this report shall be no less than 90 days prior to the expiration of the first of such warranties. The information that is required under this rule is not intended to serve as a replacement for, or in lieu of, any post-construction monitoring required under the Consent Decree.

B. Memoranda of Understanding (MOU) and Grant Financial Activity

MSD shall submit to the County Administration on a quarterly basis, a report of all MOU and Grant financial activity. The report shall include, at a minimum:

- MOU/Grant Contract Number or other identifying information
- MOU/Grant Parties
- Description of services provided or performed, or activities funded by Grant
- Description of the MOU/Grant agreement, including details of party(ies) receiving financial or other benefits from the MOU/Grant agreement
- Expenditures for the quarter and cumulative total expenditures. All expenditures shall adhere to the capitalization policies in Section 2405-4 of the MSD Rules and Regulations.

C. Notices From MSD to the Board Involving Legal Disputes

1. MSD shall provide written notice to the Board of any claim, complaint, appeal or other legal action that is anticipated to be asserted by MSD against a party. The notice shall be submitted to the Board under the attorney client privilege in the form of a memorandum describing the facts and legal authority supporting the claim, and shall be submitted at least 14 days in advance of filing said claim or assertion.
2. MSD shall immediately, upon MSD's receipt of any form of notice of same, provide to the Board notice and copies of all claims, complaints, threats thereof, appeals, notices of violation from any regulatory agency, compliance reports from any regulatory agency, documents that assert any non-compliance with any consent decree, order, or permit, whether against MSD itself, the City in its role as operator of MSD, and/or the Board in its role as owner of MSD.

3. MSD is prohibited from entering into any settlement agreement or resolution of any claim or threat of claim, whether initiated by MSD or another person, without the prior approval of the Board, except for matters which involve in the aggregate a payment of no more than \$25,000 to MSD, or the other persons, and do not involve the transfer of other consideration or equitable relief. The notice shall be submitted to the Board under the attorney client privilege and shall include, at a minimum:
 - The Director's analysis of the claim
 - Negotiation issues and strategy
 - Recommendation to accept or reject the settlement.
4. Copies of all required notifications or notices to all local, state or federal governmental agencies required under the consent decrees, NPDES permits or air pollution permit for the Mill Creek WWTP incinerator, such as noncompliance notifications, overflow notices, or bypass notifications.

2403-3 Review Process for Consent Decree Reports, Permit Applications and other official documents due to Government Agencies

The County Administration must review and approve all Consent Decree and WWIP reports, WWIP project Permit to Install applications, and other official documents prepared by MSD which are due to government agencies, prior to submission of such reports, applications or documents to the relevant government agency. To ensure the County Administration has adequate time to conduct its review, the schedule below shall be followed:

- For consent decree quarterly reports, submit to County Administration at least 10 business days in advance of the deadline to submit the report to the government agency;
- For consent decree annual reports, and all WWIP required studies and non-standardized reports, submit to County Administration at least 15 business days in advance of the deadline to submit the study or report to the government agency; and
- For all WWIP project Permit to Install (PTI) applications, submit to County Administration at least 15 business days in advance of planned submittal date.

2403-4 WWIP Project Cost Estimates

The MSD shall immediately report to the County Administration when it learns or determines that any dollar amount estimated to be spent exceeds the applicable WWIP project cost estimate, as set forth in the WWIP. Each report of WWIP cost estimate exceedance, and each subsequent monthly report required herein, shall be accompanied by a corrective action plan to bring the project back under the cost estimate, with subsequent monthly reports providing an update on the effectiveness of the corrective action plan. For purposes of this rule, the term "immediately" shall mean within 24 hours of any business day in which MSD first discovers or reasonably knows that a WWIP project cost estimate has been, or will likely be, exceeded by actual or obligated MSD spending.

2403-5 Document Control/Recordkeeping

A. General Duty

Upon the initiation of each WWIP and Asset Management project, MSD shall create and maintain a file, either electronically or in paper, satisfying all recordkeeping requirements established under this rule. The file for each project shall contain all records regarding project status, cost estimates, contracts, schedules, significant correspondence with the County, other government entities or third parties, and any other pertinent information. All project files shall be kept in one location. For any active WWIP project initiated prior to the effective date of this rule, MSD shall make a reasonable effort to maintain a file in accordance with this rule. In addition:

1. MSD shall maintain a separate file for all monthly PMA Reports submitted to the County and all reports submitted to government entities during a particular calendar year.
2. MSD shall maintain in its Document Control files, all Professional Services Agreements, Work Orders, Task Orders, and similar agreements, not associated with a project file. All accounts payable documentation, including ID Bill transactions will be maintained in a manner that is available to County review.
3. MSD shall designate and provide the County with the contact information for the person(s) responsible for maintaining the files in accordance with this rule. In the event the person(s) responsible for maintaining these files changes, MSD shall so notify the County within 10 business days of such change.

B. County Access

The County shall have unfettered access for review or copying to all documents, information and files, whether electronic, paper or otherwise, maintained by MSD.

C. Duration of File Maintenance

1. In general, the individual WWIP and Asset Management paper project files shall be maintained for at least three years after the particular project is completed. To the extent possible, all files shall be maintained in an electronic format, and be stored for a minimum of 10 years or the asset's useful life, whichever is longer.
2. All studies and as-built/record drawings should be maintained for the duration of the associated asset's useful life.
3. If a project includes fixtures or equipment accompanied by a warranty, the files shall be maintained for at least three years or through the expiration of the warranty, whichever is longer.