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February 7, 2014

Re: Metropolitan Sewer District Procurement Policies

Dear Stakeholder,

You have probably seen significant news coverage or your office may have been contacted by a constituent concerning the procurement policy dispute between Hamilton County and the City of Cincinnati as it relates to the Metropolitan Sewer District (MSD). Much of the information circulating in our community is inaccurate and misleading. Please allow me to clarify the issue by presenting some facts.

The Ohio Revised Code (ORC) specifically delineates the powers and authorities of County government in Ohio. The procurement policy issue boils down to the fact that MSD, as a County owned sewer district, operated by the City of Cincinnati under the 1968 Agreement, can only function within the authority granted to the County under the ORC. The Attorney General issued an opinion in 1991 speaking to this specific issue. To a large degree, the current procurement policy issue revolves around attempts by the City of Cincinnati to force MSD to follow procurement policies which would place the County in direct violation of Ohio and Federal law.

The County and City each have distinct responsibilities under the 1968 Agreement. The City is responsible for operating the utility. The County, as owner, is responsible for setting sewer rates, approving budgets, issuing debt, holding necessary permits in the County's name, etc. These responsibilities put the County in a fiduciary position on behalf of the ratepayers of the sewer district. In this capacity, the County will not support policies which are illegal or unconstitutional.

Policies approved by Cincinnati City Council and now reflected in Chapters of the City's Municipal Code, namely Local Preference (321), Local Hire (318), and Responsible Bidder (320), all contain unsupported, unjustified geographic preferences which a Federal Judge has indicated violate the

Privileges and Immunities Clause of the U.S. Constitution. In addition, the apprenticeship requirements of the City's Responsible Bidder ordinance also violate provisions of the Ohio Revised Code.

The assertion that the current procurement dispute results from a discretionary policy preference of the County to avoid helping the local workforce is inaccurate, misguided, and does a disservice to the public seeking to understand a very important issue. The issue, in fact, is the legality and constitutionality of the proposed policies – not the County's policy position on workforce development or local hiring. In defense of the ratepayers, every proposed policy of MSD should be justified on a cost/benefit basis, but the County cannot engage that point of the discussion until the legal issues are resolved.

The County, as the lead defendant in the federally mandated consent decree, is committed to completing the work associated with that program on time and under budget. Currently, no projects are at risk of missing deadlines where stipulated penalties would apply. The Board of County Commissioners passed a resolution directing MSD to bid all consent decree projects consistent with County procurement policies - a stance which is consistent with existing MSD administrative rules and regulations. So, the projects have been and will continue to be "released" and are ready to advance from the County's perspective. At this point, the only delay is the City's insistence to follow procurement policies which are inconsistent with State law.

The County and the City have a long history of successfully managing joint projects, most notably the Stadiums and the Banks projects. In these cases, the City and County advanced mutual goals for training and local workforce development. The County has recommended a similar approach to advancing sewer work for MSD, but it will not, and cannot, support or advance an approach which is unconstitutional or violates Ohio law.

The County has acted in good faith exploring every possible resolution to this issue and has been consistent in its position that legal action would be an unfortunate last resort. In the end, however, we have a duty to our ratepayers, bondholders, and to federal courts to ensure that our programs are advanced in a legal and cost effective manner.

Thank you for your attention in this matter and please feel free to contact my office if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Monzel". The signature is fluid and cursive, with the first name "Chris" written in a larger, more prominent script than the last name "Monzel".

Chris Monzel
President, Hamilton County Board of County Commissioners