

RESOLUTION AMENDING ARTICLE XXIV OF THE RULES AND REGULATIONS OF
THE METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI
ADDING SECTION 2405

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 did pass a resolution on December 16, 2009 establishing a Financial Policy Manual for MSD; and

WHEREAS, the Board has received draft amendments to Article XXIV of the Rules and Regulations which would add Section 2405, 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 8th, 2014 amending Article XXIV by adding Section 2405 to the Rules and Regulations for MSD, affording public comment on the same; 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 2405 of the Rules and Regulations for MSD, as set forth in Exhibit A, is hereby adopted and effective immediately, except as expressly set forth differently in the Rules and Regulations herein being as passed by the Board.

BE IT FURTHER RESOLVED, that MSD is directed to update the December 16, 2009 Financial Policy Manual in accordance with this Article XXIV, Section 2405 of the Rules and Regulations for MSD.

BE IT FURTHER RESOLVED, that the December 16, 2009 MSD Financial Policy Manual remains in full force and effect except as superseded by any Rule and Regulation for MSD.

BE IT FURTHER RESOLVED, that, if there is a conflict between the MSD Financial Policy Manual established by this Board of County Commissioners on December 16, 2009 and this Article XXIV, Section

2405 of the Rules and Regulations for MSD, the Article XXIV, Section 2405 of the Rules and Regulations will control.

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

Article XXIV, Section 2405

Section 2405 Financial and Budget Protocol

This section establishes a financial and budget protocol to facilitate the effective allocation of funds and oversight of expenditures for Projects (defined below in 2405-2A) in the implementation of the Capital Improvement Program (“CIP”) and all capital Projects and spending. The rules promulgated under this section require adherence to strict standards of Project and financial management, transparency, and accountability. The MSD Financial Policy Manual (approved by the Board December 16, 2009, as may be amended by the Board) is considered to provide implementing procedures to this Rule, and is hereby incorporated by reference herein. Any updates to the MSD Financial Policy Manual shall be consistent with the policy established herein, and shall be approved by the Board.

2405-1 Performance Assessment

To evaluate the effectiveness of the financial and budget protocols, the Board may, at its discretion, employ the services of a professional service firm to perform a performance assessment relating to the activities of the MSD to evaluate the economy and efficiency of MSD operations, capital improvement programs, wet weather programs, overall program achievement and design, service levels and priorities for resource allocation, staffing levels, and operations costs and workloads. The Board may establish such procedures as it deems appropriate for each performance assessment. The Board, at its discretion, may establish for each performance assessment a review team consisting of appropriate partners from the County, MSD, and others identified by the Board. The review team shall review the performance assessment and provide to the Board a report analyzing the performance assessment, with an emphasis on identifying findings and recommendations which will result in financial savings to MSD and MSD ratepayers.

2405-2 Contingency

No capital Projects shall be proposed or included in any legislation, budget, plan or program with any financial contingency. Instead, each capital Project shall be offered for approval bearing a cost estimate that shall serve as a Project cost cap, which cap may be altered by resolution approved by the Board.

A. Capital Improvement Program (CIP) Contingency

1. Annual Cash Flow Based Program Contingency (“Program Contingency”) is the planning, design, construction and procurement of capital assets, including structures, systems, fixtures, and major equipment (collectively referred to as “Projects”) contingency that is based on a set percentage of the forecasted annual cash flow amount for Projects, and is budgeted annually to be used only for unforeseen or materially different conditions, design shortfalls identified after funding is legislated,

or emergencies. The Program Contingency amount shall be proposed annually by MSD with its CIP, and reviewed and approved annually by the Board and shall thereafter be automatically adjusted quarterly correlating to Projects completed, terminated and suspended, and remaining Projects' cash flow for the fiscal year. Program Contingency shall not be used to pay for:

- Goods or services that are not legislated by the Board;
 - Goods or services that are not directly related to Projects; and
 - Goods or services resulting from consultant's and/or contractor's negligence or to cover any scope of work that is not included or reasonably inferable in the Request for Proposal, Master Services Agreement and/or Professional Services Agreement with consultant, and bid and/or contract documents with the contractor.
2. Consistent with Section 2405-3, below, and unless otherwise approved by the Board, at the end of each fiscal year all unspent Program Contingency allocated for the fiscal year is automatically terminated and set at zero dollars.
 3. Program Contingency is included in the annual MSD CIP budget as a separately legislated line item for Projects legislated. Anticipated expenditures shall be included in the annual cash flow projection schedule included in each annual CIP so Projects may continue with minimal interruption for approved scope or cost changes, subject to *Appendix A – Contingency Management Delegated Authority*, below.
 4. Each decision to use funds from the Program Contingency shall be made by MSD on a case-by-case basis. MSD shall keep accurate accounting and detailed descriptions of Program Contingency use ("Program Contingency Log") for each separate Project and each use of Program Contingency. MSD shall submit the Program Contingency Log to the Board monthly. The Program Contingency Log shall contain the following:
 - Project ID
 - Project Description
 - Project Type
 - Vendor Name
 - Contract or Task Order Number
 - Change Order Description and Change Order Date
 - Original Contract Amount
 - Adjusted Contract Amount
 - Original Contract Time
 - Adjusted Contract Time and
 - Identification of Change Order Type.

Project Type shall be one of the following:

- Combined Sewer Overflow
- Allowance
- Sustainable
- Treatment, or
- Sewer.

The Change Order Type categories shall be one of the following:

- Unforeseen Conditions
- Errors and Omission
- Owner Directed Change
- Emergencies, or
- Other.

5. MSD shall be responsible for the operation of internal controls related to the Program Contingency account, including but not limited to reconciliation and tracking. Such controls shall use procedures which shall include, at a minimum, the following:

- MSD shall not include any contingency funding in budget estimates for Projects utilized for forecasting cash flow. Contingency may be considered in Business Case Evaluations and other Project evaluation tools. Project legislation shall not include any contingency amount. Annual and multi-year CIP budgets shall not include any contingency amount outside of the single Program Contingency line item.
- Project contingency will be funded solely from the annual approved Program Contingency, and will be allocated based on a calculated percentage of projected cash flow for Projects. An eighteen (18) month cash flow projection shall be developed and maintained. Each quarter the 18-month period will be advanced one quarter. The Actual versus Forecasted cash flow data will be reported monthly to the Board in accordance with Section 2403-1 of the MSD Rules and Regulations.

6. Calculation of the annual Program Contingency shall be as follows:

- 15% of planning and design cash flow amount
- 6% of construction cash flow amount

- 4% of major equipment purchase.

Example: For a \$100 million projected annual cash flow, assuming \$10 million is for planning and design, \$80 million for construction, and \$10 million for major equipment purchase:

\$10,000,000 x 15% =	\$1,500,000
\$80,000,000 x 6% =	\$4,800,000
<u>\$10,000,000 x 4% =</u>	<u>\$400,000</u>
TOTAL: \$100,000,000	\$7,700,000 or 7.7%

7. On a quarterly basis, MSD shall provide to the County an updated Program Contingency calculation. When Program Contingency funds are used for a Project, those funds shall be allocated to the Project so that the total cost of the Project is accurately reported.
8. Over time, as actual experience with the Program Contingency is gained, the County may modify the annual Program Contingency calculation factors to reflect a more accurate prediction of required budget.
9. This Section 2405-2(A) shall become effective January 8, 2014.

B. Use of Construction Manager at Risk or Design Build Contracts for Project Contingency

Notwithstanding the general prohibition on financial contingencies for capital projects under Section 2405-2, the use of Construction Manager at Risk or Design Build Contracts may be used as project delivery methods, which include contingencies, in accordance with Ohio Revised Code Chapters 9 and 153 and the requirements specified below.

1. Each contract shall contain the following:
 - A Guaranteed Maximum Price or Lump Sum Bid
 - Language specifying the amount of the contingency and its authorized use.
2. MSD shall submit each draft contract to the Board for review and approval prior to including the draft contract in the RFQ/RFP documents, and MSD shall submit any subsequent proposed changes to the contract, including the final contract, to the Board for review and approval prior to contract execution.

Appendix A – Contingency Management Delegated Authority

The Board has sole authority, through its legislation, to authorize annual Program Contingency, changes to the legislated amount of each annual Program Contingency, delegation of its authority regarding use of the Program Contingency, and changes to the legislated amount for individual Projects. Through this Rule, the Board specifically delegates the limited authority listed below to the individuals holding the positions set forth below. All authority not delegated as specifically set forth below is retained by the Board.

Primary Approval	Design Cost*	Construction Cost*	Time Increase	Reviewing Authority
Field Inspector	N/A	Up to \$5,000 each occurrence; not to exceed 1% of project cost in aggregate	No authority to approve time or schedule extension	Project Construction Manager
Project Design Manager	Up to \$5,000 each occurrence; not to exceed 2% of initial engagement contract amount in aggregate	N/A	No authority to approve time or schedule extension	Principal Engineer
Project Construction Manager	N/A	Up to \$25,000 each occurrence; not to exceed 1.5% of project initial contract amount in aggregate	No authority to approve time or schedule extension	Principal Engineer
Principal Engineer	Up to \$25,000 each occurrence; not to exceed 4% of initial engagement contract amount in aggregate	Up to \$50,000 each occurrence; not to exceed 2% of project initial contract amount in aggregate	No authority to approve time or schedule extension	Project Delivery Superintendent
Project Delivery Superintendent	Up to \$50,000 each occurrence; not to exceed 7% of initial engagement contract amount in aggregate	Up to \$75,000 each occurrence; not to exceed 2.5% of project initial contract amount in aggregate	Time or schedule extension up to 30 days or 5% of original contract schedule, without exceeding project / program schedule and Consent Decree deadline, where applicable	Review and Recommended by Change Order Committee and supported by Project Design/Construction Manager and Principal Engineer
MSD Executive Director/ Director	Up to \$75,000 each occurrence; not to exceed 10% of initial engagement contract amount in aggregate	Up to \$150,000 each occurrence; not to exceed 4% of initial engagement contract amount in aggregate	Time or schedule extension up to 90 days or 15% of original contract schedule, without exceeding project / program schedule and Consent Decree deadline, where applicable	Review and Recommended by Change Order Committee and supported by Project Delivery Superintendent

County Administrator or Designee	Up to \$150,000 each occurrence; not to exceed 15% of initial engagement contract amount in aggregate	Up to \$300,000 each occurrence; not to exceed 6% of initial engagement contract amount in aggregate	Time or schedule extension up to and without exceeding project / program schedule and Consent Decree deadline, where applicable	Review and Recommended by Change Order Committee and supported by Project Delivery Superintendent; and supported by MSD Director
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2405-3 De-Legislation

A. Annual De-Legislation

1. All prior approvals for funding for the MSD Projects listed in 2405-3(A)(3) below are hereby automatically de-legislated, de-authorized, and terminated, effective the last day of each fiscal year. The Board may, at its discretion, modify the list of projects in subsection (A)(3) below.
2. MSD shall provide to the Board by January 31 of each year, a report confirming the decertification of unspent funds of all Project accounts. If MSD identifies any special circumstance requiring an encumbrance to extend beyond the calendar year, by November 30 of each year MSD shall request such extension(s) and provide detailed justification for each extension. MSD's request(s) shall be submitted in writing for the Board's review and approval. The Board shall either approve or disapprove all requests for encumbrance extensions by December 31 of each year.
3. CIP Projects requiring annual de-legislation include:
 - 10180100 Sewer Relining Trenchless Technology Program
 - 10180105 Manhole Rehabilitation Trenchless Technology Program
 - 10180465 Rainfall Derived Infiltration and Inflow Program
 - 10180750 WWIP Progress Studies and Recreation Management
 - 10180900 MSD Sustainable (Green) Infrastructure Program
 - 10190107 Recreation Management
 - 10190207 Combined Sewer Capacity Program
 - 10190209 Urgent Capacity Response
 - 10190307 Home Sewer Treatment Systems Extensions
 - 10199000 Wet Weather Program Management and Support Services
 - 10280002 Land Acquisition
 - 10280035 Emergency Sewer Repairs
 - 10280124 CIP Project Planning
 - 10280160 CSO and SSO Overflow Compliance Monitoring
 - 10280180 WWT System Asset Renewal
 - 10280421 Flow Monitoring and Modeling for Compliance
 - 10280440 Flow and Water Quality Modeling
 - 10280451 High Risk System Asset Renewal

B. Periodic De-Legislation of Legislated Funding

1. The implementation of the Program Contingency for all Projects shall necessitate periodic de-legislation of currently budgeted CIP funds. This de-legislating of CIP funds may be implemented at three stages.

a. Stage 1: Upon conclusion of planning for each Project:

When a Project with a separate planning budget is transitioned from Project planning to design, terminated during or upon conclusion of Project planning phase or Project planning activity is suspended for over 90 days, all unused, legislated Project planning phase dollars shall be de-legislated as of that date.

b. Stage 2: Upon award of a design, property appropriation or construction contract, or related Task Order, for a Project:

When a contract is awarded for Project design, property appropriation, and construction, any and all legislated budget in excess of the contract amount shall be automatically terminated and de-legislated. When a construction contract is awarded, all remaining design phase funds shall be automatically terminated and de-legislated. All legislated budget line items supporting the previous phase shall also be de-legislated, e.g. MSD Admin, ROW. If the contract amount is greater than the legislated budget, the overage shall be funded from Program Contingency.

c. Stage 3: Upon final completion of a Project (all punch list items are complete and final payments made, including retainage):

When a construction Project achieves final completion, all remaining and/or unused legislated dollars for the Project shall be automatically terminated and de-legislated. If a Project is terminated during construction, or suspended for over 180 days, all remaining and/or unused legislated design and construction funds shall be automatically terminated and de-legislated, and the corresponding Program Contingency amount, based on the terminated or suspended Project's cash flow, shall be automatically terminated and de-legislated.

2. This Section 2405-3 shall become effective January 8, 2014, and shall be applicable to the 2014 CIP budget, and all budgets thereafter.

2405-4 Capitalization Rules

A. Adherence to Government Capitalization Standards

MSD shall adhere to authoritative text and guidance on fixed asset capitalization issued by the Governmental Accounting Standards Board (“GASB”) as well as “non-authoritative” text issued by the Government Finance Officers Association (“GFOA”). MSD’s procedures to implement this policy shall be presented to the Board for review and approval.

B. Cost Capitalization

MSD shall capitalize the following costs:

1. Direct Costs – Costs directly related to the acquisition of a specific asset and directly charged to that Project.
2. Internal Costs – Internal costs directly related to the acquisition of a specific asset or clearly related to the acquisition of capital assets charged to a specific Project, e.g., internal labor costs. These costs include but are not limited to Project managers, modelers, planners, schedulers, estimators, and legal and right of way activities. Monthly, these costs should be separately tracked and allocated internally if incurred outside of specific Project IDs such as within the Program Manager Support Services, CIP Planning and Sustainable Infrastructure. At the end of each calendar year, these amounts will be de-legislated and appropriated into Project specific IDs.
3. External Costs – External costs directly related to the acquisition of a specific asset or clearly related to the acquisition of capital assets charged to a specific Project, e.g., design and construction contracts.
4. Indirect Costs – Costs that are related to the acquisition of assets but not specific Projects will be allocated to projects as long as they are clearly related to Projects under development or construction, including but not limited to accounts payable, procurement, document control, consent decree legal costs, and enterprise risk management costs. In general, indirect costs will be allocated annually across all active Projects weighted by level of expenditures. At the end of each calendar year, these amounts will be de-legislated and appropriated into Project specific ID for all Projects that were active during the calendar year.

C. Capitalization Policies

MSD shall adhere to the following capitalization policies:

1. Projects that have completed the planning or design phases shall advance to the next phase within six months. Those Projects that do not advance within six months shall

be reported to the Board monthly in accordance with Section 2403-1 of the MSD Rules and Regulations.

2. In instances of stoppage of development/construction, costs incurred to date shall be expensed given that there is no useful life over which economic benefit (revenue) will be provided by the use of the asset.
3. When a capital asset is built or acquired that replaces another asset, any remaining value of the original asset that has not yet been depreciated shall be written off.
4. Surveys, plans and studies shall be capitalized if expenses for such activities are incurred after it has become probable that an asset will be acquired. Consequently, the cost of a feasibility study shall not be capitalized, even if the associated asset ultimately is capitalized (because the cost was incurred prior to a determination of feasibility.) Those planning activities that cannot be allocated to a specific Project shall be expensed.
5. MSD shall not capitalize on MSD's books those Projects on other property and for which MSD is not responsible for the long term maintenance, use, or control.
6. Capital assets shall be defined as land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, infrastructure, and all other tangible property used in operations and that have initial useful lives extending beyond a single reporting period.

2405-5 Master Cash Flow Schedule

- A. The Master Cash Flow Schedule (MCFS) shall be populated with Project specific expenditures and Project specific time schedules. All capital spending shall be included.
- B. The MCFS shall be updated monthly reflecting cost and schedule changes for each of the Projects. The schedule shall include dollars spent and expected to be spent, but shall not include encumbered or legislated amounts.
- C. MSD shall report to the County, on a monthly basis, the 18-month MCFS at Project level detail in accordance with Section 2403-1 of the MSD Rules and Regulations.
- D. MSD shall report Project cost information on a monthly basis in accordance with Section 2403-1.

2405-6 Prohibition of Transfers of Legislated Funds

MSD shall not transfer line item funds in any Operating budget or CIP budget from one specific line item matter, or Project, to another, unless approved the Board.

2405-7 Procedures for Allowance Spending

A. Allowances

This section 2405-7 applies to all allowances identified in section 2405-3(A)(3) above.

B. Allowance Budgets

MSD shall prepare an annual detailed budget for each Allowance activity as part of its annual CIP budget, which budget shall include at a minimum information on the following for each activity:

- Project ID number, description, Allowance Title
- Contract, Work Order and Task Order
- Vendor
- Invoice number, date
- Asset Location
- Asset Description
- Quantity, Unit Costs, Extended Costs, Allocated labor/other costs,
- Project costs from prior periods
- Total Cost

C. Procedures for Allowance Spending

1. MSD shall obtain Board legislative approval prior to incurring obligations or expending funds for any and all Allowance funded construction activity exceeding \$25,000, with the exception of construction activity undertaken through the Emergency Sewer Repairs Allowance.
2. MSD shall report monthly to the County a detailed monthly expenditure activity report for each allowance identified in section 2405-3(A)(3) above in accordance with Section 2403-1 of the MSD Rules and Regulations.
3. MSD shall not use any funds authorized for Allowance spending for any purpose other than that which was authorized by the Board.

2405-8 Memoranda of Understanding (MOU)/Grants; Transfers, Payments, Disbursements to City of Cincinnati

- A. If MSD intends to or is required to execute an MOU or grant application/agreement with an entity (including but not limited to departments of the City, other government entities, and utilities, or private organization) for either operating or capital needs, MSD shall present the terms of the MOU/Grant to the County for review and approval prior to executing any MOU/Grant.

- B. MSD shall report quarterly to the County all MOU/Grant financial activity in accordance with Section 2403-2 (B) of the MSD Rules and Regulations.
- C. MSD shall not transfer, make payment, or disburse funds to the City of Cincinnati for matters or costs other than those specifically permitted under the Agreement between the City and Board dated July 14 and 15, 1997 and referred to as the “Indirect Cost Plan” in the December 24, 1997 City-Board Agreement (addressing City Overhead matters), without the prior written approval of the Board.
- D. MSD shall report monthly to the County, all transfers, payments and disbursements to the City of Cincinnati in accordance with Section 2403-1(D) and Table 2403-1 of the MSD Rules and Regulations.

2405-9 MSD Funded Public Relations Account

- A. The project budget format, as defined in Section 1.9.5 of the MSD Financial Analysis Manual, dated June 13, 2013, will be modified. The budget for Public Relations will become a separate budget line item rather than being contained within the Miscellaneous Costs budget line item.
- B. If a project requires budget for Public Relations activities, this new budget line item will reflect the requested budget amount in all MSD funding request documents. The purpose for the Public Relations activities will be clearly explained.