MINUTES NORTHEAST OHIO REGIONAL SEWER DISTRICT BOARD OF TRUSTEES MEETING JULY 1, 2010

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown

D. DePiero

G. Starr

J. Bacci

W. O'Malley

R. Sulik

Ms. Kelly was absent.

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mr. O'Malley moved and Mayor DePiero seconded that the minutes of the June 17, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Installation of Officers

Director of Law, Marlene Sundheimer administered the Oaths of Office to Darnell Brown, Mr. Sulik, and Mayor DePiero.

Board of Trustees Elected Officers 2010 – 2011

Mr. Darnell Brown, President Mr. Ronald Sulik, Vice President Mayor Dean DePiero, Secretary BOARD OF TRUSTEES Regular Meeting July 1, 2010 Page 2 of 14

IV. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak at Public Session.

V. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP"). District representatives will be meeting with the state and federal governments on Friday, July 2nd primarily to discuss the term of the CSO LTCP, which will be incorporated into the Consent Decree, and to also discuss green infrastructure. Executive Director Ciaccia explained that this will be a significant meeting and its outcome will determine whether we can meet the government's September 30th deadline to complete the negotiations. Executive Director Ciaccia indicated that he remains positive and looks forward to the continued mitigation of CSOs.

Executive Director Ciaccia stated that Euclid Creek Tunnel (hereinafter "ECT") project, which will be bid within the next month. A pre-advertisement meeting was held on Tuesday, June 29th at the Great Lakes Science Center. There were 107 meeting attendees which included major tunneling contractors and 71 subcontractors registered with the District's Small Business Enterprise (hereinafter "SBE") program.

Presentations were given by Director of Engineering and Construction, Kellie Rotunno, Contract Compliance Manager, Tiffany Jordan, and design engineers from Hatch Mott MacDonald. Meeting attendees posed many good questions and there was a "meet-and-greet" session after the meeting. Many of the SBEs had tables and displayed information regarding their companies. Executive Director Ciaccia commended Director of Administration and External Affairs, Constance Haqq, and her staff for organizing this event. Given the magnitude and cost of the ECT project, the District is attempting to attract more bidders.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). A hearing took place on June 22nd regarding Judge Pokorny's disclosure of a potential conflict of interest. The District and all other parties present at the hearing agreed that there was no conflict.

The communities in opposition to the SMP raised questions concerning Judge Pokorny's desire to commence settlement hearings on July 1st. According to Executive Director Ciaccia, those communities indicated that moving forward with settlement at this time was "premature" and that they did not have the authority to discuss settlement prior to the determination of the pending Motion for Preliminary Injunction. Judge Pokorny agreed

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and pushed the date back. He also allowed for the Catholic Diocese and the business groups being represented by attorney Sheldon Berns to intervene and become parties in the case.

Judge Pokorny scheduled a hearing on August 24th on the Motion for Preliminary Injunction, which was filed by the communities in opposition to the SMP.

Executive Director Ciaccia indicated that at this time the District will continue to promote the SMP and inform the public of the need to implement this type of program in this region. October 1st is the tentative date for the implementation of a stormwater fee and billing for stormwater; however, it is uncertain as to how the pending litigation will impact this target date. This is a cumbersome process and there are many parties involved and many issues still need to be addressed. Conversely, the City of Cleveland Division of Water had indicated that they will be prepared to bill for stormwater on October 1st.

Paul Murphy, a former District employee and the current law director of the cities of Lyndhurst and Olmsted Falls, was scheduled to be deposed regarding a potential conflict of interest. The depositions were cancelled twice on the basis that Mr. Murphy was ill. This deposition will be rescheduled.

Executive Director Ciaccia moved to the next report item regarding the CWD billing system. The CWD continues to encounter problems with its new billing system. In the event of continuous estimated readings, the billing system will not process a bill unless there is an actual meter reading. Consequently, 57,000 bills have been suppressed which impacted the District's cash remittance and cash flow. According to Executive Director Ciaccia, the CWD has a plan in place to rectify this situation and are issuing approximately 5,000 bills each week. The District will provide staffing resources to the CWD beginning July 6th in an attempt to help expedite this process.

Executive Director Ciaccia indicated that the CWD's billing system issues have impacted the District's cash flow and if economic conditions were stable and interest earnings were substantial, this would be a problem. It is important that the bills be sent out to the customers. He stated that he cautioned CWD about wholesale adjustment and liberal payment plans once the bills are sent out. The District will monitor adjustments made to consumption and are planning to enhance staffing to support the CWD as well as gain more functional access to the billing system to allow our customer service reps to conduct transactions on behalf of the District.

Executive Director Ciaccia moved discussion to the Mill Creek Tunnel 3 (hereinafter "MCT-3") litigation. There was a hearing on Monday, June 28th before Judge O'Donnell on the District's Motion to Amend to Include the Civil Conspiracy and Civil Fraud and to

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raise the damages by \$7.5 million. The District's motion to amend was granted. Executive Director Ciaccia noted that in addition to the Joint Venture attorney, Franz Ward, each partner had their individual attorneys present. Travelers Insurance attorneys were also present.

Executive Director Ciaccia moved to the last report item and announced that Deputy Executive Director, F. Michael Bucci, was the Billiards champion in the 2010 Corporate Challenge event.

Mayor DePiero commended Mayor Frank Jackson for assigning Mr. Brown to assist with the CWD billing issues. Mayor DePiero emphasized his concern with the CWD billing issues. Given the upcoming stormwater billing, he commented that if the revenues are down this could "turn into a fiasco" for the District during a critical time. Mayor DePiero commented that "we really need keep our eye on this thing."

Executive Director Ciaccia agreed with Mayor DePiero and he stated that the District has many upcoming initiatives including the SMP, rate increases, the CSO LTCP, which will be financially based. The District's financial situation is tight since we had to advance the Tunnel Dewatering Pump Station (hereinafter "TDPS") and the Renewable Energy Facility (hereinafter "REF"). The TDPS and REF are big contracts and have put a strain on the District's ability to meet its debt service coverage. As we go into the bond market, we must have a "clean financial picture" as we attempt to sell our bonds and deal with the rating agencies. Having negative cash coupled with increased accounts receivables is not beneficial for us. Executive Director Ciaccia indicated that it is incumbent that we all stay on it, which he indicated that we will.

Mayor Starr questioned if the District bills for approximately 330,000 wastewater customers. Executive Director Ciaccia affirmed. Mayor Starr requested the estimated amount of stormwater customers. Executive Director Ciaccia indicated that it would be the same as wastewater.

Mayor Starr inquired whether the District has looked into alternative billing agents aside from the City of Cleveland. Executive Director Ciaccia replied that "we have not entirely" as it relates to stormwater. Director of Information Technology, Humberto Sanchez, added that in 2009 the District issued a Request for Proposals (hereinafter "RFPs") for a whole-package billing collection system. After evaluating the cost per bill, it was determined that this method was not feasible for the District. At that time, the CWD offered to provide the District the same billing service for stormwater at a lower cost.

Mayor Starr requested clarification as to what the economic disadvantages would be wherein Mr. Sanchez indicated that given the volume and cost to generate each bill, the

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District would be paying more per bill then it would collect. Executive Director Ciaccia clarified that Mr. Sanchez was speaking to stormwater billing only.

Mr. Bucci advised that the District's current wastewater rate structure is based on water consumption and that we would have to purchase meter reads from the City of Cleveland which would be cost prohibitive.

Executive Director Ciaccia did not anticipate that these problems will continue and once we overcome the suppressed bill issue, the system seems to be operating. If other problems occur as it relates to stormwater, then we do have alternative options that we can explore.

In reference to Mayor Starr's point regarding alternative billing agents, Executive Director Ciaccia agreed that it would be a good idea to explore alternative options.

Mr. Brown requested clarification on the differences between the consumption based billing for wastewater and the rate structure that will be used for stormwater. Mr. Bucci replied that the stormwater rate will be based on impervious surface and Equivalent Residential Units (hereinafter "ERUs"). The District will provide the CWD with the data being produced through our Geographic Information Systems (hereinafter "GIS") and stormwater bills will be a flat rate based on ERUs. There will be no need to conduct meter reads or estimate bills for the stormwater billing.

Mayor Starr inquired if the ECT project will be the largest capital improvement in the District's history at approximately \$200 million. Executive Director Ciaccia affirmed.

Mayor Starr referred to the MCT project and he suggested that we must have the broadest net possible of bidders in order to keep the project costs in line and competitive. Mayor Starr questioned, "What is the geographic advertised area for bidders on the Euclid Creek Tunnel?"

Ms. Rotunno advised that District representatives attended the North American Tunneling Conference in Portland, Oregon to promote our tunnel project and the overall CSO program. The ECT project will be advertised nationally and we had representation of the all of the national firms here in Cleveland. The District is reaching out to the national expertise and good representation was present from our local contracting community as well as some of our SBE firms. Ms. Rotunno anticipates that the bids received for the ECT will be some of the best teams that we have seen in a long time, and will hopefully be a combination of national firms, local firms that know the area and our geology and as well as SBEs.

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Mr. Brown referred to the comments made by Mayor Starr and he agreed that we have lessons to learn from our past history with tunneling projects namely the predictability of the alignment of the route and soil conditions. Much of our exposure resulted from unanticipated soil conditions. Mr. Brown inquired as to what steps are being taken to mitigate those types of exposures as we move forward with the design of these projects.

Ms. Rotunno replied that the technique to be used in order to construct the tunnel will be a single pass rather than the traditional two-pass method. The tunnel will be constructed as they drill in five feet increments and the pipe and grout will be immediately placed where the rock was bored.

This single pass method is also anticipated to alleviate gas intrusion, which resulted in differing site conditions on the MCT tunnel. By constructing the tunnel as we go, we are hopeful that in the event the rock quality is poorer than expected, then this tunnel construction methodology will help control this risk. Ms. Rotunno explained that many risks were taken into consideration with the design and construction methodology to be deployed.

Ms. Rotunno advised that the District modified its general terms and conditions for contract procurement. Specific to the ECT project, the District will have a Dispute Resolution Board (hereinafter "DRB"). The DRB will assist the District with resolving disputes and they have a 95% success rate.

An additional provision is the Escrow Bid Documents (hereinafter "EBD"), which means that if a contractor provides their bid documents, the basis for their bid will be under "lock and key" at the time the contractor enters into a contract. The contractor will be provided with an escrow bid agent and if there is an issue, then we can "unlock the vault" and examine their bid. This will protect the contractor as well as the owner.

Ms. Rotunno advised that the aforementioned changes will be in place for the ECT project, which were not available during construction of the MCT contract.

Mr. Brown appreciated Ms. Rotunno's explanation and he advised that it provides the District with a higher level of predictability and issues that we should be able to manage. Ms. Rotunno reminded the Board that the ECT is underground construction and that unpredictable issues may arise when dealing with underground construction. The District did however conduct its due diligence and put many controls in place to manage those differing site conditions.

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VI. Action Items

Authorization to Advertise

Resolution No. 177-10

Requirement contract for the delivery of 450 tons of bulk treated ice control (rock salt) for the Southerly and Westerly Wastewater Treatment Plants and the Environmental and Maintenance Services Center (EMSC). Anticipated expenditure: \$26,200.00.

Resolution No. 178-10

East Branch Euclid Creek – Dam Removal and Stream Restoration Project. Engineer's opinion of probable construction cost: \$503,745.00.

Resolution No. 179-10

Southerly Wastewater Treatment Center Maintenance Building Exterior Wall Panel Restoration, Contract WPR-1. Engineer's opinion of probable construction cost: \$2,793,853.00.

Resolution No. 180-10

Westerly Wastewater Treatment Center Combined Sewer Overflow Treatment Facility Rehabilitation (CSOTF-R). Engineer's opinion of probable construction cost: \$1,770,000.00.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution Nos. 177-10 through 180-10. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 181-10

RFPs for the Doan Brook Enhancement Project.

Resolution No. 182-10

RFPs for the Easterly Wastewater Treatment Plant Aerated Grit (EFPI-5).

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Resolution No. 183-10

RFPs for the Audio/Visual Equipment Maintenance Services Contract. Estimated Cost: \$50,000.00.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 181-10 through 183-10. After discussion, the motion carried unanimously.

Mayor Starr referred to Resolution No. 181-10 the Doan Brook Enhancement (hereinafter "DBE") project. In the past, there was controversy regarding non-profit corporations and the cultural gardens situated in the Doan Brook area. Certain groups appeared before the Board to voice their concerns, and Mayor Starr questioned as to what has changed since then.

Ms. Rotunno replied that the last time the DBE project was brought to the Board for consideration the District was requesting the assistance for value engineering. The City of Cleveland had advertised bids and the bids came back double the construction estimate and therefore they could not construct the project. The District conducted value engineering and it was determined that it could not be constructed due to the issues related to the cultural gardens, historical wall, trees and veteran's memorial within the area.

The City of Cleveland and the Environmental Protection Agency (hereinafter "EPA") reached an agreement which cut the DBE project in half and the City agreed to invest \$2.5 million whereas their original budget was \$5.5 million and the original construction bid was \$10 million. Ms. Rotunno indicated that the project cost is now 20% of the initial project estimate. The DBE will cover a smaller footprint and the District will administer the contract on behalf of the City of Cleveland. The DBE restoration area will occur in the area outside of the cultural gardens. The District will reengage with those stakeholders and educate them on the modified project scope and also develop a revised concept plan more suitable to the character of the park. Ms. Rotunno speculated that those stakeholders may frequent Board meetings in the future.

Authorization to Enter Into Agreement

Resolution No. 184-10

Water Pollution Control Loan Fund (WPCLF) Loan Agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for the WPCLF financing of the Euclid Creek Storage Tunnel (ECT) project. The total estimated WPCLF project cost (pre-bid) of

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the ECT Project is \$205,000,000.00 and will be financed at the WPCLF's interest rate to be determined on October 1, 2010.

MOTION – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution No. 184-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 185-10	Six	(6)	month	contract	with	Ajilon
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Professional Staffing, LLC to provide two temporary Infrastructure Service Representatives to handle inquiries pertaining to wastewater and stormwater infrastructure performance related issues.

Cost not to exceed \$35,000.00.

Resolution No. 186-10 Five (5) year lease agreement with Priemer

Investments Co., LLC for 50 reserved parking spaces at 4206 Euclid Avenue. The current lease will expire on August 31,

2010. Cost: \$222,972.00.

Resolution No. 187-10 Contract with RCR Services, Inc. for

renovation of the waste heat boilers at the Southerly Wastewater Treatment Plant.

Cost: \$820,171.19.

Resolution No. 188-10 Contract with The Colaluca Law Firm,

LLC, to represent the District in finalizing labor negotiations with Laborers International Union of North America –

Local 860. Cost: \$225.00 per hour.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 185-10 through 188-10. After discussion, the motion carried unanimously.

Mayor DePiero referred to Resolution No. 185-10 and he requested clarification on the responsibilities of the temporary staffing provided by Ajilon Professional Staffing, Inc. (hereinafter "Ajilon").

Executive Director Ciaccia advised that the District is receiving a high volume of SMP inquiries, and the Infrastructure Service Representatives will be required to handle

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customer service as well as retrieve information and data from the GIS system. The District anticipates needing to make these positions permanent once the litigation is settled and the SMP is fully implemented.

Mayor DePiero inquired if the temporary staff will be qualified to answer questions related to the SMP Credit Policy and stormwater billing, or will those inquiries be directed to the Director of Watershed Programs, Frank Greenland, and his staff. Mr. Greenland advised that these positions will be for infrastructure related matters in the maintenance service area.

Customer Service has been receiving many inquiries regarding stormwater billing and stormwater credits and they are prepared to answer basic billing questions. According to Mr. Greenland, "these positions are more for infrastructure-related issues out on the stream."

Mr. Sulik referred to Resolution No. 186-10 and he questioned the amount that the District currently pays for the parking spaces. Director of Operations and Maintenance (hereinafter "O&M"), Dave McNeeley, replied that the District currently pays \$42,000 per year. Mr. Sulik inquired if the new lease agreement is the current amount with a 3% increase. Mr. McNeeley affirmed.

Mayor Starr referred to Resolution Nos. 187-10 and questioned as to why the District only received two bids from 34 potential bidders for the waste heat boiler project. Mr. McNeeley advised that we sent out the bids. The bidders did not bid for reasons such as bonding concerns, timeliness of the bids, bid requirements or they were too busy. Seven of the contractors indicated that we were not capable of performing this specialized work. The District received two bids and one was from a local firm that is in the process of becoming certified through the District's SBE program. The other bidder is a company from New York.

Executive Director Ciaccia advised that extensive discussion was held at the Senior Staff meeting regarding the capital improvement projects that are bid under O&M namely they advertise for very large projects without an engineer's estimate like the Department of Engineering and Construction. Executive Director Ciaccia advised that going forward, the O&M bid process will follow engineering standards.

Mr. McNeeley added that the District did receive an estimate of \$1 million on this contract. Executive Director Ciaccia followed up by stating that he did not believe that was considered an "engineer's estimate."

Mr. Brown inquired if the issues have been reconciled and if we now have a consistent process and template for procuring this type service. Executive Director Ciaccia replied

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that engineering standards will be used in procuring these types of contracts.

Mr. Brown inquired about the location of the companies that bid on the waste heat boiler project. Mr. McNeeley explained that Nicholson & Hall is a New York based company and that RCR Services is located on East 33rd in Cleveland. The successful bidder was the local company.

Authorization to Amend Resolution

Resolution No. 189-10

Amend Resolution 249-08, regarding the Westerly Low Level Interceptor – Long Term Options (WLLI-LTO), to authorize issuance of a Request for Proposals to include design, bidding, construction administration, resident project representative support and contract close out services in addition to the alternatives analysis previously authorized.

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 189-10. Without objection, the motion carried unanimously.

Authorization to Adopt Budget

Resolution No. 190-10

2011 Operating Budget.

MOTION – After discussion, Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution No. 190-10. Without objection, the motion carried unanimously.

Mr. Sulik advised that the Finance Committee convened prior to the Board meeting to discuss the preliminary budget for 2011. It is required under state law that the preliminary budget be filed by July 16th. The Finance Committee is satisfied with the preliminary budget for 2011. The process to review the 2011 budget will begin at the end of 2010. Mr. Sulik indicated that the Finance Committee recommended that Resolution No. 190-10 for the preliminary 2011 budget be adopted.

Authorization to Apply for Grant

Resolution No. 191-10

Authorization to apply for Great Lakes Restoration Initiative Grant Funds.

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MOTION – Mr. O'Malley moved and Mayor Starr seconded to adopt Resolution No. 191-10. Without objection, the motion carried unanimously.

Authorization of Easement

Resolution No. 192-10

Acquire from the City of Cleveland two permanent easements and two temporary easements necessary for construction of the Lee Road Relief Sewer Project. Consideration \$62,425.00.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 192-10. Without objection, the motion carried unanimously.

Authorization to Donate

Resolution No. 193-10

Donate obsolete Information Technology equipment to RET3 Job Corp.

MOTION – Mayor Bacci moved and Mayor DePiero seconded to adopt Resolution No. 193-10. Without objection, the motion carried unanimously.

Executive Director Ciaccia introduced Pat Holland, former director of Cuyahoga County Solid Waste District, and Ken Kovatch of the RET3 Job Corp, and he stated that both were present at the Board meeting on behalf of Resolution No. 193-10. Mr. Brown thanked them for attending the meeting.

Authorization of Contract Modification

Resolution No. 173a-10

Modify Contract No. 09002121 to enable Wichert Insurance Services, Inc. ("Wichert") to procure crime coverage on behalf of the District from Chartis Insurance Group to complete the District's new insurance program. Modification cost not to exceed \$22,506.00 from July 1, 2010 to June 20, 2011.

MOTION – After discussion, Mr. O'Malley moved and Mayor DePiero seconded to adopt Resolution No. 173a-10. Without objection, the motion carried unanimously.

Mr. Brown required an explanation from staff on Resolution No. 173a-10.

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Mr. Bucci advised that Travelers Insurance would not renew the District's crime coverage policy. At the June 17th Board meeting, the District entered into contract with Wichert Insurance Services, Inc. (hereinafter "Wichert") to procure insurance which includes all coverage except for crime coverage. The recommendation is to procure crime coverage in the amount of \$7.5 million along with \$250,000 for faithful performance of duty.

VII. Information Items

1. Executive Director Ciaccia's Mid-Year Performance Report 2010.

Executive Director Ciaccia advised that included in the Board packets was the 2010 Mid-Year Performance Report and that he would happy to entertain any questions from the Board. Executive Director Ciaccia advised that his only concern was whether the District would be able to meet the goal of implementing the SMP this year.

Mr. Brown commented that from the Board's perspective, the issue is the level of effort that is applied towards meeting your goals and objectives, and it is not due to lack of oversight, knowledge or effort that the SMP may not be implemented in the proposed time period.

The Board appreciated Executive Director Ciaccia's update and input on the outcomes of goals that were established at the beginning of the year. This information is helpful and indicates that "we are focused and on task." We do have many challenges and this Board convenes every other week to move forward with the agenda.

2. 2010 GFOA Annual Budget.

Director of Finance, Jennifer Demmerle, advised that the District submitted the 2010 budget document to the National Government Finance Officers Association (hereinafter "GFOA"). This is the District's third year to be evaluated for the budget presentation award, which is their highest form of recognition for governmental budgeting reporting. Ms. Demmerle thanked District employees, Mary Paugh, Monica Johnson, John Gonzalez and Michael Uva for their efforts.

Mayor Starr commented that it is important to participate on a Board that oversees a \$1.2 billion-dollar corporation.

Mr. Brown commented that this is good work and indicates the strength of the District's financial management, capabilities and capacities. Mr. Brown stated that "it's worth a great deal of pride that we receive these documents and we know and understand how we

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are positioned financially." He commended Ms. Demmerle and her staff on their due diligence.

VIII. Open Session

No items for discussion.

IX. <u>Public Session</u> (any subject matter)

No members from the public registered to speak at Public Session.

X. Executive Session

Mr. Brown stated that there were personnel and litigation matters for discussion in Executive Session. Executive Director Ciaccia requested that the litigation matter be held.

MOTION – Mr. Sulik moved to enter into Executive Session to discuss personnel matters and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously. [Note: Mayor DePiero was not present during Roll Call.]

The Board met in Executive Session from 1:20 p.m. to 1:29 p.m.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. Sulik moved and Mr. O'Malley seconded the motion to adjourn at 1:29 p.m. Without objection, the motion carried unanimously.

Dean E. DePiero, Secretary

Board of Trustees

Northeast Ohio Regional Sewer District

Darnell Brown, President

Board of Trustees

Northeast Ohio Regional Sewer District