

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
MAY 20, 2010

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown  
D. DePiero  
G. Starr  
J. Bacci  
S. Kelly  
W. O'Malley  
R. Sulik

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

II. Approval of Minutes

**MOTION** – Mayor DePiero moved and Mr. O'Malley seconded that the minutes of the May 6, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the arraignment hearing on Tuesday, May 18<sup>th</sup> of the District's former General Counsel, William Schatz. Mr. Schatz entered a guilty plea to the charges brought against him. Mr. Schatz's sentencing hearing is scheduled for August 10<sup>th</sup> at which time the sentence will be imposed, including restitution.

Executive Director Ciaccia advised that Resolution 147-10 on today's agenda is to propose the examination of certain District contracts. He wanted to state for the record

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that “we’ve had three years looking back at these contracts.” We came into the District with new eyes. I was new. Marlene was new. Kellie is new. “And we have spent a great deal of time looking at a number of contracts, a number of change orders, and a number of legal settlements.” Executive Director Ciaccia stated that “we have done what we needed to do from a new eyes perspective and it’s not to say that we shouldn’t do more. And that is what we are going to talk about today.”

The District authorized the Calfee audit and cooperated with the federal investigation by spending over a half of million dollars and organizing hundreds of thousands of documents in an electronic format. Executive Director Ciaccia stated that the District has a lot of work to do as it relates to past contracts and current contract management procedures. The District will continue to conduct internal and external audits and is considering having the State of Ohio or an outside agency conduct a performance audit.

Mr. Brown referred to comments made at the May 6<sup>th</sup> Board meeting wherein the Board provided staff with their recommendations on how to proceed. He advised staff that the Board is expecting at some point a report from staff regarding how those suggestions become action items and subsequent work plans.

Executive Director Ciaccia moved to the next report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter “CSO LTCP”). On May 13<sup>th</sup>, the District submitted an initial draft of the Consent Decree to the state and federal governments for consideration. The District is scheduled to meet with the governments on May 26<sup>th</sup>.

Mr. Brown indicated that the terms and conditions being negotiated are based on the conflicting viewpoints as it relates to the size of the capital program required in order to satisfy the minimum controls. Mr. Brown stated that he was not sure whether a “validation” or an “update of those projects, program and subsequent costs” is necessary since the fees passed onto the ratepayers is “dictated” by the size of this program and those projects.

Mr. Brown stated that recognizing that the program was put together and has been in existence for a number of years, he wondered whether the projects and value of those particular projects were the same today and whether the plan should be updated. He was just wondering whether it made sense for the District to do an updated capital plan. Mr. Brown indicated that he talked to some other cities or agencies that have revisited that issue and based on getting a new number, were able to come to agreement on a lower number that saved money for ratepayers.

Executive Director Ciaccia replied, “those are very good points,” and he advised that there have been many discussions on how we should present this matter to the public. The Board and staff have engaged this discussion during Executive Sessions to discuss

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the projects, the approach and the program's costs. The CSO LTCP is estimated to cost \$3 billion and the number of years to implement the program has yet to be determined. Since we are still involved with litigation negotiations, we have not been able to publicly discuss "the specifics of the program."

Mr. Brown indicated that "we have an idea to what facilities we think it would take to address the program" but the size of the pump station and the pipe "drive costs." Mr. Brown stated that "to the extent that what we envision takes care of where we see them pushing us in terms of number of overflows, etc., then we right-size our infrastructure based upon that direction and agreement."

Mr. Brown commented that we should make sure the "the sizing of our facilities is to the extent it should be as opposed to oversized for additional capacities...that cost monies." Mr. Brown suggested that we "give some thought" as we finalize terms and conditions as to "what those ultimately are, or should be, so that at the end of the day our costs are for what we actually need, as opposed to over-built."

Director of Engineering and Construction, Kellie Rotunno, replied that "those are all very good questions" and that negotiating team has asked similar questions during this process. One of the key points to achieving the "right-size CSO solution for our community and for our ratepayers is to build in as much flexibility" as possible into the Consent Decree. With respect to green infrastructure, the District wants opportunities to "substitute green for gray," which can be a cheaper alternative to achieving the same levels of control. Ms. Rotunno indicated that it is critical that the terms and conditions of the Consent Decree remain flexible.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). Judge Pokorny was assigned to the District's case as a visiting judge. Law Director, Marlene Sundheimer, will be attending a Case Management Conference (hereinafter "CMC") today at 2:00 p.m.

Executive Director Ciaccia advised that nine communities filed answers indicating that they were in agreement with the SMP. Four communities failed to respond and therefore the District is unsure as to their positions. Nineteen communities indicated that they want the court to make the determination. Fourteen communities filed for a Motion for Definite Statement and requested clarification of the District's claim. Sixteen communities, of which twelve of those communities are situated outside of Cuyahoga County, do not believe that the District has the authority to implement the SMP.

The District opposed the Motion for Definite Statement filed by fourteen communities and the Motion to Intervene filed by Attorney Sheldon Berns on behalf of various

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business owners, and the Cleveland Catholic Diocese. The District filed a Motion to Dismiss the City of North Royalton's counterclaim.

A Motion for Preliminary Injunction was filed by twelve communities including Bedford Heights, Beachwood, Broadview Heights, Brecksville, Cleveland Heights, Glenwillow, Independence, Lyndhurst, Oakwood, Olmsted Falls, Solon and Strongsville. Executive Director Ciaccia indicated that his community of residence, Broadview Heights, initially supported allowing the court to make the determination as to the District's authority.

The Motion for Preliminary Injunction is to prevent the District from taking further steps towards the development of the SMP, implement or promote our regional SMP as set forth in Title V including creating, drafting, reviewing and developing policies for the SMP or sending correspondence to or soliciting comments from member communities regarding the program or its implementation or working with third party entities including the City of Cleveland Division of Water (hereinafter "CWD") to pursue the implementation of the program.

Executive Director Ciaccia commented that a Motion for a Preliminary Injunction to stop us from sending out a bill prior to a court decision was expected, but to "slam the door...on free speech to promote a program" or engage in issues that are important to the region "is very disappointing." Executive Director Ciaccia indicated that it is very disappointing on personal level that his community of residence is involved. The District will continue to fight this motion and that this shows "how hard it is to get things done in our region."

Executive Director Ciaccia advised that prior to the Motion for Preliminary Injunction being filed, the District had decided to push back the initial date for stormwater billing from July 1<sup>st</sup> to October 1<sup>st</sup> for various reasons. The modifications to the CWD billing system will not be completed by July 1<sup>st</sup>, we need additional time to develop the SMP Credit Program and bring closure to the pending court cases. A new visiting judge was assigned to the District's case and some of those issues will be addressed at today's CMC.

Mayor DePiero commented that in reference to stormwater management "we all share that it's an important project" and that "in the long-run it's going to help promote our region." Mayor DePiero indicated that he is "100% with this program."

Mayor DePiero was pleased to see that the SMP billing date was moved to October 1<sup>st</sup> which will provide Judge Pokorny more "breathing room." According to Mayor DePiero, Judge Pokorny is a "fair judge" and "somebody who will make the right decision" and by being a visiting judge, this will "help our case more and takes the politics out of it."

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Mayor DePiero stated that “we want to have all communities eventually cheerleading this program in their communities and cooperating.” However, there is division amongst the communities. Mayor DePiero suggested “to let these communities air their grievances” and if we can receive some assurance from the court that this will not be a one year or two year court case, then we should let the court make the determination while the District continues to develop and promote the SMP. However, we will not implement the SMP or bill for the program until the court makes its final determination. This will alleviate much of the controversy alleging that “this was rammed down everyone’s throat.” Mayor DePiero believed that this would reach out to the communities that do not agree with the District’s authority to implement the SMP and hopefully get us closer to a resolution.

Executive Director Ciaccia indicated that Mayor DePiero presented a “fair recommendation that we should consider.” The District should be free to develop and promote the SMP while we are going through this process. This strategy will be further discussed with our legal team.

Executive Director Ciaccia moved to the next report item regarding the proposed amendment to Senate Bill 110 which was drafted by Attorney Sheldon Berns and presented by Ohio State Senator, Tim Grendell (R-District 18). The attempt to amend Ohio Revised Code (hereinafter “ORC”) §6119 through this amendment to SB 110 was unsuccessful. SB 110 passed yesterday without Senator Grendell’s amendment.

Executive Director Ciaccia advised that we will be following this amendment closely in order to determine whether it gets attached to another bill. The District is utilizing its state advocacy firm, Tucker Ellis & West LLP (hereinafter “Tucker & Ellis”), and they plan to watch this potential amendment closely and speak with some of our representatives.

The Council of Regional Districts (hereinafter “CORD”), which represents ORC §6119 utilities throughout the State of Ohio, hired advocacy representation. Executive Director Ciaccia indicated that the CORD and AOWMA are both concerned about this potential amendment.

Executive Director Ciaccia advised that “this is very bad policy” and that we intend to monitor this situation closely.

Executive Director Ciaccia moved to the next report and advised that the District held a meeting regarding the SMP Credit Policy Manual. Orange Village, Seven Hills, Mayfield Village, and Twinsburg responded. Beachwood, Lyndhurst, Mayfield Village, Mayfield Heights, South Euclid and Cleveland attended the Euclid Creek Watershed

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Council and submitted joint comments. We also received comments from ArcelorMittal, pipe vendors, and a resident. Staff will bring a revised SMP Credit Policy to the Board in June. Executive Director Ciaccia commented that it would be nice if other communities would “put down the swords” and provide comments to the District with respect to the Credit Program. If we prevail, the District will move forward with or without their comments.

Executive Director Ciaccia moved to the next report item regarding government relations. The District’s federal advocacy firm, Alcade & Fay, have continued to work with Senator Voinovich and Senator Brown and Congresswoman Fudge and Congressman Kucinich. Senator Brown submitted \$2 million and the others submitted \$1 million for the District’s Renewable Energy Facility (hereinafter “REF”). The final appropriations bills are expected before the fall.

Executive Director Ciaccia moved to the next report item regarding the Water Resources Development Act (hereinafter “WRDA”). Senators Voinovich and Brown have submitted numerous projects to the Senate Environment and Public Works Committee, which were due by May 18<sup>th</sup>. Most of those projects are stormwater related. Executive Director Ciaccia commented that as the District continues to “chase money...some of our communities are fighting us” on the stormwater management issue.

Executive Director Ciaccia moved to the next report item regarding the District’s finances. At the 33% benchmark, the District’s revenues are a little behind. Executive Director Ciaccia advised that we are working with estimates for the reason that the CWD billing system is encountering problems with some of its financial reporting data. Executive Director Ciaccia discussed this with Commissioner Nielsen and his team and we plan to provide the Board with an update on these issues at the next meeting.

Executive Director Ciaccia advised from an O&M [operations and maintenance] standpoint, we are doing well at 28%.

Our total cash balance in the capital account is declining which was expected since we are getting projects out. This area indicates whether and how soon the District should go to the bond market and address rates. The District is undergoing a rate study and anticipating a bond issuance in October since the amount of cash on hand in the capital account will not sustain the amount of expenditures for our Capital Improvement Program (hereinafter “CIP”).

Executive Director Ciaccia moved to the next report item regarding the Economic Impact Analysis (hereinafter “EIA”) being conducted by Cleveland State University. This study will provide the District with an idea of how our program impacts the community, which will be a “useful tool” as we move into rate increase discussions.

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Executive Director Ciaccia advised that an engineer told him prior to today's meeting that the District is "the biggest game in town right now as it relates to jobs and the economy." Executive Director Ciaccia advised that in order to comply with the Consent Decree as well as benefit the environment, there will be many new District projects. The District is getting these projects "out the door" and "on design" which positively impacts this region and creates job opportunities, boosts economic development and enhances the quality of life for our customers.

Executive Director Ciaccia introduced four students, William Robinson, Aaron Cooper, Greg Broadwater and Eric Giles, from St. Martin de Porres in Cleveland. These gentlemen participated in a Work Study Program through a partnership between St. Martin de Porres and the engineering firm, Wade-Trim.

Executive Director Ciaccia thanked them for their involvement and indicated that the District will be more directly involved with St. Martin de Porres which "has an excellent track record" with the amount of their students that "go onto to college and make good things for themselves." The District is proud to be involved with them.

Mr. Sulik advised that St. Martin de Porres was mentioned today in the *Wall Street Journal* "for an outstanding job that they are doing in our community."

On behalf of the Board, Mr. Brown congratulated the students and thanked Wade-Trim for the partnership with the District. Mr. Brown indicated that "we are humbled by your presence" and he hoped that attending the meeting would be a learning experience for the gentlemen.

Executive Director Ciaccia added that there was an article about St. Martin de Porres featured on the front page of the Cleveland metro section in *The Plain Dealer* today.

Executive Director Ciaccia was proud to announce that Director of Administration & External Affairs, Constance Haqq, and her staff won a first place award from the National Association of Government Communicators for the District's booklet, "A Healthy Environment Starts At Home."

V. Action Items

Authorization to Advertise

Resolution No. 134-10                      Asphalt replacement for the east driveway located at the Westerly Wastewater Treatment Center. Anticipated Expenditure: \$112,000.00.

Resolution No. 135-10                      Purchase of one (1) replacement local control panel for the Westerly Wastewater Treatment Plant Final Effluent Pump Station. Anticipated Expenditure: \$28,500.00.

**MOTION** – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution Nos. 134-10 and 135-10. Without objection, the motion carried unanimously.

Authorization to Issue Request for Qualifications and Proposals (RFPs/RFOs)

Resolution No. 136-10                      Authorization to issue Request for Qualifications and Proposals – RFPs/RFOs for automation organizational assessment and management support services.

**MOTION** – Mayor Starr moved and Ms. Kelly seconded to adopt Resolution No. 136-40. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 137-10                      Purchase from sole source vendor, Skalar, Inc., a robotic chemical oxygen demand analyzer to assist with the required analytical workload. Cost not to exceed \$41,320.00.



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Resolution No. 138-10

Direct purchase from sole source vendor, Abel Pumps Corporation, on an as-needed basis for replacement parts for the high pressure pumps in the Thermal Conditioning Unit at the Southerly Wastewater Treatment Plant. Cost not to exceed \$100,000.00.

Resolution No. 139-10

Direct purchase from sole source vendor, Moyno Industrial Products, on an as-needed basis, replacement parts for the Moyno Pumps in operation at all Wastewater Treatment Plants. Cost not to exceed \$100,000.00.

**MOTION** – Ms. Kelly moved and Mr. O'Malley seconded to adopt Resolution Nos. 137-10 through 139-10. After discussion, a Roll Call was taken and the motion carried with one "No" vote by Mayor Starr on Resolution Nos. 137-10, 138-10 and 139-10.

Mayor Starr stated that these are approximately \$241,000 worth of no-bid contracts. In Ohio, capital purchases are competitively bid, but there may be exceptions and he requested that the Law Director address those. However, with respect to Resolution No. 137-10 for the purchase of over \$41,000 in laboratory equipment, he questioned, "Why can't we find any other vendors to bid on this?"

Director of Watershed Programs, Frank Greenland, advised that the District attempted to locate other vendors or sources that provide this particular type of instrumentation and could find none. This is the only vendor that we could find able to provide automated COD [chemical oxygen demand] analysis; and therefore, the contract was not competitively bid.

Mayor Starr inquired if there are other companies that manufacture laboratory equipment. Mr. Greenland replied that there are many companies that manufacture laboratory equipment, but we could not find other vendors that manufacture this specialized instrumentation.

Mayor Starr commented that there must be "dozens of laboratory equipment operators like this, manufacturers, not only in the U.S. but in the world since there are hundreds of sewage treatment plants throughout the world."

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Executive Director Ciaccia stated that if we were to “bid out for the manually operated equipment, it could have been more competitive.” The District is attempting to locate “cost-effective equipment and this is the only company providing it at this time.” Executive Director Ciaccia turned discussion over to the Manager of Analytical Services, Mark Citriglia.

Mr. Citriglia advised that Skalar, Inc. is the only company that offers an automated solution and is the first company to offer the robotic system. Many companies offer the manual solutions with a digester block.

Mayor Starr inquired if there are “other plants throughout the U.S. and world governments that use automated technology?” Mr. Citriglia indicated that there are and that this is a brand-new product.

Mayor Starr inquired if this is the only automated manufacturer in the world. Mr. Citriglia replied that “this is the only one” and that this product was recently demonstrated at a Pittsburgh conference.

Mayor Starr referred to the wording used that “there is not another comparable instrument” and he questioned if the word “similar” was substituted could this potentially open up the bidding process. Mr. Citriglia replied that “there wasn’t even one similar” and that no other vendors had an “automated routine that will do this analytical work.” Skalar, Inc. was the first company to introduce this instrument into the marketplace.

Mayor Starr questioned as to “who is our present supplier of this equipment?” Mr. Citriglia replied that “it is not Skalar because we don’t have this equipment.” The District purchased the block digesters and manual pieces from Hach Company.

Mayor Starr questioned, “What are you going to save? Productivity? Hours?” Mr. Citriglia replied that that we will save approximately three and half man hours per day. It will take approximately 30 to 40 minutes to set the instrument which will run overnight. Staff will upload the instrument data file into the laboratory information system, which reduces the amount of time it takes to manually enter the data into the system. Furthermore, the amount of hazardous chemicals that employees handle will be reduced.

Mr. Greenland explained that the District is “trying to be more productive in the lab” by seeking additional options to provide more lab services throughout the region.

Mayor Starr inquired whether the “Law Director agrees with this?” Director of Law, Marlene Sundheimer, replied “yes.” The purchase of equipment does not have to be competitively bid if there is a sole source for the acquisition of a particular piece of equipment. Capital construction projects have a more strict bidding process. However,

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in the purchasing area, there is more flexibility for sole source acquisitions and procurements.

Mayor Starr referred to "number six" and stated that "a \$100,000 contract no-bid dealing with pumps and part replacements," and he inquired if "the only supplier in the world is in Pennsylvania?" Director of Operations and Maintenance, Dave McNeeley replied that "these are Abel pumps" which are "specific to our Zimpro process at Southerly."

Executive Director Ciaccia clarified that the District is purchasing replacement parts for existing pumps and therefore replacement parts must be compatible with those pumps. There is only one distributor for that particular part.

Mr. Brown inquired if these are the original equipment manufactured parts. Mr. McNeeley replied "yes, both of these are original equipment manufactured...these are just parts."

Mayor Starr inquired if this is a physical metal part. Mr. McNeeley replied that "it could be any of the components that are unique to that pumping system from the manufacturer."

Mayor Starr inquired as to how many parts we will be replacing wherein Mr. McNeeley replied "a lot." We have 10 Abel pumps each having multiple parts.

Mayor Starr inquired as to why we are not buying a new pump. Executive Director Ciaccia replied that the Zimpro thermal conditioning units will be replaced when the District constructs the new REF. It would not be prudent to replace those units at this time since they will be eliminated in 2013.

Mayor Starr commented that "we face the same dilemma when we have old equipment like fire pumps that are 20, 30 years old and you want to continue to reuse them." Manufacturers stop making those parts, but we have parts designed. Mayor Starr inquired if the District considered the option of having Cleveland tool & die manufacturers make these parts.

Mr. McNeeley advised that we have looked into the possibility of having replicate parts made, but "because of the nature of the system" it is difficult getting the specifications from the manufacturers and they are reluctant to provide us with that information.

Mayor Starr questioned if the "manufacturer of this sole part that we are agreeing to enter into refuses to share those specifications?" Mr. McNeeley replied "yes, they have [and] they are still in production."

Executive Director Ciaccia raised the concern that from a liability standpoint we would expose ourselves to potential risk and not be able to hold the manufacturer responsible if we do not use the parts approved for that particular pump.

Mr. Brown commented that this is a requirement contract and that the District will spend what it needs up to \$100,000. Mr. McNeeley affirmed.

Authorization to Purchase and Enter Into Agreement

Resolution No. 140-10

Purchase a Johnboat and Enter into an agreement to rent the boat to the Cuyahoga County Planning Commission for monitoring work associated with the Cuyahoga River Green Bulkhead Project. Cost not to exceed \$13,200.00.

**MOTION** – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution No. 140-10. Without objection, the motion carried unanimously.

Authorization of Appropriation

Resolution No. 141-10

Appropriation of one (1) permanent easement (ECT-1P), owned by the Villa Beach Club Co., necessary for the construction of the Euclid Creek Tunnel Project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$7,450.00.

Resolution No. 142-10

Appropriation of one (1) permanent easement (ECT-7P), owned by the McDonald’s Corporation, necessary for the construction of the Euclid Creek Tunnel Project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$19,800.00.

Resolution No. 143-10

Appropriation of one (1) permanent easement (ECT-13P), owned by the Michelle Fuerst, necessary for the construction of the Euclid Creek Tunnel Project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$12,000.00.

**MOTION** – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution Nos. 141-10 through 143-10. Without objection, the motion carried unanimously.

Sewer Use Code Matter

Resolution No. 144-10

Adopting Hearing Examiner Findings regarding the Sewer Account of Brooks Properties, Inc., c/o Alan Grotenrath, Northeast Ohio Regional Sewer District Case No. 10-006.

**MOTION** – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 144-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 145-10

Contract with Environmental Express for sole source laboratory supplies. Cost not to exceed \$84,056.50.

Resolution No. 146-10

One (1) year requirement contract with Kemira Water Solutions, Inc. for Ferric Chloride Solution for use at all Wastewater Treatment Plants. Cost: \$306,020.00.

**MOTION** – Mayor Starr moved and Mayor DePiero seconded to adopt Resolution Nos. 145-10 and 146-10. Without objection, the motion carried unanimously.

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Resolution No. 147-10

Contract with Bricker & Eckler, LLP for the review and analysis of construction contract legal settlements and change orders. Option-A: Estimated cost of \$300,000 (20 Contracts, 3 Months). Option-B: Estimated cost of \$600,000 (40 Contracts, 6 Months).

**MOTION** – After discussion, Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution No. 147-10, Option-A. A Roll Call was taken and the motion carried with one “No” vote by Mayor Starr.

Mr. Brown opened discussion on Resolution No. 147-10. Executive Director Ciaccia referred to comments made at past Board meetings regarding the proposal to examine past contracts as it pertains to change orders and legal settlements. Staff discussed this proposal with the law firm Bricker & Eckler LLP (hereinafter “Bricker & Eckler”) since they conducted a similar assessment after the Cuyahoga County corruption was exposed.

Executive Director Ciaccia advised that the District mapped out a potential strategy with Bricker & Eckler to conduct an inclusive review and they will prepare a report of their findings. The estimated cost is approximately \$15,000 per contract.

The Department of Engineering and Construction and Law Department have selected some potential projects to be reviewed. We went as far back as 1979 and looked at all projects that exceeded 10% of the base contract amount or included legal settlements. We also examined projects that were included on the list provided by Mayor Starr at the May 5<sup>th</sup> Board meeting.

Since the budget for each contract is \$15,000, Executive Director Ciaccia provided the Board with a “low-end” proposal of \$300,000 (Option-A) and a “high-end” proposal of \$600,000 (Option-B). Staff will submit a list of projects to the Board. Executive Director Ciaccia indicated that “we can go a lot further with this, but it’s going to be very costly” and he wanted to “limit ourselves at least at the onset and see what type of results we get from this type of assessment.” Executive Director Ciaccia recommended that the District move forward with Option-A.

Executive Director Ciaccia advised that he did not want anything to “stand in the way of getting our financial audit released” and that we need this by June or September at the latest. The District will need to have a clean financial audit prior to going to the bond market and rating agencies.

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Executive Director Ciaccia reiterated his desire to pursue Option-A which would be the review of 20 contracts over a 3-month period at a cost not to exceed \$300,000 and the project list can be finalized with the Board's input.

Executive Director Ciaccia indicated that Jack Rosati, Richard Blake and Scott Davis from Bricker & Eckler were present at the meeting to address any questions from the Board.

Mr. Brown referred to a comment made by Mayor DePiero at the May 6<sup>th</sup> Board meeting and he questioned "How widely [do] we need to cast the net so that we are not throwing good money after bad?" What are the appropriate parameters and additional due diligence that needs to be conducted? We could reserve the right, if we select Option-A, to conduct additional due diligence and examine additional projects. If we come back with nothing and based upon the firm's findings, the Board could then determine whether or not we are satisfied with the level of due diligence or if we require more. Mr. Brown opened the floor to questions from the Board.

Mayor DePiero thanked Mr. Brown and stated, "that was my concern and continues to be my concern" and that "supports some type of continued audit." According to Mayor DePiero, it was "a good choice" to engage Bricker & Eckler since it "is an excellent firm with a great reputation around the state."

Mayor DePiero indicated that his concern dealt with the age of some of the contracts, and that Mr. O'Malley informed him that some of these companies are no longer in business. Mayor DePiero commented that "the people that ran the jobs or even ran the companies may not even be around. They might be dead or out of business or they might have sold the company." Mayor DePiero advised that he did not "want to just draw a number that doesn't make sense." What would we gain from that "other than to say we did it." Mayor DePiero commented that we would not be able to go after findings over ten years old.

Executive Director Ciaccia advised that those were valid points and that there may be "nothing gained" going after firms that are no longer in business and the issue raised on going "over ten years" is something we should consider.

Executive Director Ciaccia recommended hiring Bricker & Eckler up to \$300,000 and "if we can achieve it at less or if...we find something that require more extensive analysis, then we will pay more go get into that analysis."

Mayor Starr inquired if there were any staff members present at the Board meeting from the Internal Audit Department. Deputy Executive Director, F. Michael Bucci, informed him that Internal Audit Manager, John Wasko, was at a conference.

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Mayor Starr questioned if any other staff members from Internal Audit were available to discuss this "important topic" and he indicated that he "would assume that they would have been here." Mr. Bucci advised that the Internal Audit staff reports to him and that he would be able to address Mayor Starr's questions.

Mayor Starr requested that Mr. Rosati, Mr. Blake and Mr. Davis report to the podium and provide the Board with their background and auditing and experience in audits, fraud audits and recoveries.

Mr. Rosati explained that their team will consist of three engineers; two registered professional engineers and one engineer graduate. Two of those engineers are attorneys with several years of practice and one engineer is a law student currently clerking at Bricker & Eckler. The law student will be graduating in one year and will be fully supervised by attorneys. Each has experience in wastewater and water work.

Mr. Rosati advised that the team will examine contract documents and understand the legal aspects. They will review the technical engineering aspects of the contracts, change orders and settlements. They will analyze those settlements and change orders to determine whether the contractors were appropriately entitled to any change to the contract amount and if there was sufficient backup to support the amount of the change to the contract or the settlement.

Mr. Rosati stated that the team will discuss the relevant contract terms, potential defenses to the claims, merits of the claims and whether there were deficiencies in the record that may affect our ability to render an opinion, and "those will be identified with specificity."

Mr. Rosati advised that he has "a little over 21 years of practice" and that his practice "has been focused on construction law exclusively." Bricker & Eckler has numerous wastewater clients around the state that they advise on various matters. Bricker & Eckler regularly conducts training programs for public agencies, design professionals, construction managers and others with regard to analyzing their claims.

Mr. Rosati stated that Mr. Davis and the construction team will examine the entitlement and amount of these items and the backup for those and he turned discussion over to Mr. Blake to address the overall approach of one particular investigation.

Mr. Blake advised that he has 8-years experience as a prosecutor with the Treasury Department in Washington D.C. working on complex document cases. He worked in the United States Attorney's Office in Cleveland and prosecuted multiple cases. Mr. Blake was chairman to the Environmental Crimes Criminal Task Force in Cleveland and



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worked on multiples cases with the Board. Mr. Blake prosecuted multiple cases with the Ohio Department of Transportation involving construction, bridges and other matters.

After leaving the government, Mr. Blake worked on multiple investigations, most of which he was not at liberty to discuss since they are not for public disclosure. He was also involved with the Cuyahoga County investigation. The Board should have been provided with a copy of that report; however, he was not able to discuss the details of the report.

As with any investigation, the District's investigation will include the examination of facts and documents. Mr. Blake advised that "we will do our best to view it on the specifications of what should have been done; what in our review was actually done; speak with as many people as we deem appropriate to get you an answer; review whatever documents we deem appropriate to get you an answer; and at the end...give you a report so that you can then speak to the public in confidence saying what [was] and what was not done." It is the intent of Bricker & Eckler to provide the District with a report that "you are confident in." If questioned, the District "can say that you did everything possible that was available to you at that time."

Mayor Starr stated that Bricker & Eckler listed six items to be included for each contract and he questioned whether "we have a copy of the contract yet." Mr. Rosati replied that the contracts they will be reviewing are being downloaded onto a disk.

Mayor Starr clarified that he was referring to their engagement letter. Mr. Rosati replied that the engagement letter will be finalized after the terms of the projects are defined.

Mayor Starr questioned, "What happened if we spend \$300,000 or \$600,000 and you find nothing?" Mr. Rosati replied that "it's our job to tell you the truth, and if we find nothing, we will tell you that we found nothing."

Mayor Starr questioned, "How much it would cost us then?" Mr. Rosati replied that "if you spend \$300,000, it will cost you \$300,000."

Mayor Starr inquired whether there were alternative options and whether a contingency fee was explored by the administration. Mayor Starr advised that he provided Mr. Brown with a copy of a proposal which focused on an accounting function and not a legal function. Mayor Starr indicated that his proposal is:

"...an alternative method of attempting to recover potentially millions of dollars worth of lost taxpayers' money. My proposal would save the District hundreds of thousands of dollars in paying for outside legal counsel firm on an hourly

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basis. My alternative would be to go out for an RFP to hire accounting firms that would be willing to review past contracts and identify improper payments. My focus would be in three areas in this proposal that I view as an accounting solutions, not a legal solution.

1. Any duplicate payments identified by that firm selected that were made by the Northeast Ohio Regional Sewer District.
2. Payments made by the Northeast Ohio Regional Sewer District for work not performed or substantiated per terms of the contract.
3. Payments made by the Northeast Ohio Regional Sewer District for work not authorized per the contract.”

Mayor Starr inquired as to why conducting an audit on a contingency basis “wouldn’t be a valuable alternative” instead of paying \$300,000 or \$600,000 and “let the auditors wander wherever they want to.”

Mayor Starr commented that “there are at least ten years of records that are available that was produced by us for the federal government, so that’s at least—located somewhere in Northeast Ohio in a room in boxes.” He assumed that those documents were categorized which would make it easier if we were to issue RFPs for external auditing firms.

Mayor Starr commented that “I think you are on the right track [and] I agree with your concept, and we talked about this and I appreciate you mentioning it over 17 months ago.” Mayor Starr indicated that “we had a lot on the plate and I respected that and we have come a long way, but I’m just exploring an option here.”

Mr. Bucci advised that subsequent to the May 6<sup>th</sup> Board meeting he spoke with a reputable local auditing firm that has a forensic auditing section. Their opinion on contingency audits was “that they are supposed to be independent auditors...if their payment was based on a finding, that could compromise their independence because then they would have to find something in order to recover fees.” This firm indicated that they would not accept that type of engagement. They believe that their job is to do the work, be paid for the work and report on their findings. Mr. Bucci stated that this firm “felt that could compromise or be viewed as a compromise of their independence.”

Mayor Starr inquired which accounting firm Mr. Bucci was referring to and whether it was a local firm. Mr. Bucci advised that the firm was Skoda Minotti, which is local.

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Mayor Starr questioned, "Is this work done on a national basis, at all? Is this an accepted practice?" Mr. Bucci replied, "Not that I'm aware of." Mayor Starr stated, "You are not, really? The federal government doesn't do this?" Mr. Bucci replied, "They may... I'm not aware of...they may." Mayor Starr stated "you are not aware" and he questioned "but it is a practice?" Mr. Bucci replied that "it's a practice to do forensic auditing."

Executive Director Ciaccia indicated that during his tenure at CWD, many firms proposed contingency audits with respect to customers cheating on their waters bills, but he was not aware of this method being used in construction audits.

Mr. Rosati wanted to address a service Bricker & Eckler can provide that an auditing firm cannot perform. Many of these claims will probably be based on different site conditions, a condition which essentially means that the contractor encountered soils or something of that nature which resulted in additional costs. According to Mr. Rosati, their professional engineers can go back and examine the soil borings and compare those to the records of the conditions that existed to determine whether they were sufficiently different and therefore justified that investment.

Mr. Rosati explained that combination items will probably be included in these claims. For instance, "Eichleay damages or unabsorbed home office overhead require an inspection or an evaluation of whether a contractor is entitled to a specific type of claim based on what was going or not going on the site at the time." A combined engineering and legal background is "very helpful in doing that kind of an audit."

Mayor Starr inquired if an audit firm can subcontract out to an engineering firm. Mr. Rosati stated they could but that he "would almost guarantee you they won't find an engineering firm that will take it on a contingency basis." Mr. Rosati turned discussion over to Mr. Blake to address the contingent fee issue for recovery on an audit.

Mr. Blake stated that at the May 6<sup>th</sup> Board meeting, Mayor Starr referenced Medicare fraud, and Mr. Blake indicated that he is familiar with the Medicare fraud program. He works on healthcare fraud cases regularly and prosecutes many healthcare fraud cases.

Mr. Blake assumed that Mayor Starr was referring to the RAC audits, which is a program that has been in existence for many years and recently became nationwide through the White House. Mr. Blake indicated that "the situation that we have here versus a RAC audit are not similar" and would be comparing "apples to oranges." RAC audits are primarily aimed at hospitals.

Under the RAC audit, there are ongoing relationships between hospitals and Medicare or CMS, which means they receive money on a monthly basis. Those audits include the examination of money paid several months or years prior to determine if they fit within

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the parameters of the Medicare rules. If overpayments or up-coding is discovered by the auditors, then the government has the ability to recuperate the money at that time by requesting the money from the hospital or withholding their following month's entitlement.

In this instance, if we find that overpayments were made on a contractor from six years prior, then we have to go to that company. We do not have any leverage over the people and we would have to file a lawsuit. Mr. Blake indicated that although a contingency basis "sounds good at first...the practicalities of it would negate any benefits that you would receive from it." The District would first have to locate a firm willing to work on a contingency basis and only get paid if they recuperate the money. If a company is willing to work for "a portion of a portion of a portion of money...you would have to make a judgment as to whether you want that company working for you."

Mayor Starr commented that we risk paying \$300,000 or \$600,000 and possibly recover nothing, but if we do find cause, then we still have to pay additional litigation costs to recover assets, and you cannot recover assets from companies that no longer exist. Assets can be recovered from individuals or states.

Mayor Starr stated that "the other point you raised is the same point that Julius raised last time in regard to the information that I provided to you on Medicare," and he questioned on "closed contracts, doesn't the government provide an opportunity to go after government fraud after contracts have ceased?"

Mr. Blake inquired whether Mayor Starr was referring to an outside group. Mayor Starr stated outside group or inside group.

Mr. Blake stated that the inside groups you refer would be the inspector general's office and are prohibited by law to work on a contingency basis. They are government employees and receive paychecks every two weeks. Mr. Blake advised that he was not aware of any outside groups that conduct RAC audits.

Mayor Starr questioned, "Are you an expert in the area?" Mr. Blake indicated that he was not. Mayor Starr replied, "all right, that's very good...you just got my no vote on that one."

Mr. Blake stated that he only tells the truth and what the District will receive for \$300,000 is "the truth and the knowledge." We are in the service business and work at your pleasure.

Executive Director Ciaccia interjected that "if we pay \$300,000 and we find nothing that is not a risk to me."

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Mayor Starr stated that for the last 38 years District contracts have been mismanaged and money has been wasted. We know that on one contract \$15 million to \$20 million was mismanaged. Mayor Starr indicated that "our dilemma here is [that] we are going out publicly to ask for some significant rate increases. Some may be the highest in the State of Ohio, maybe in the history." He questioned "How do we establish our credibility and recover legitimate monies that have been improperly spent in the past?"

Executive Director Ciaccia replied that we are attempting to recover \$33 million that we believe was overpaid on the MCT-3 project and we spent nearly \$2 million to put that case together. We are attempting to recover money for the failed installation of a product in the BCI-3D litigation. In the 3320 Woodland matter, we are attempting to recover \$12 million in damages which incurred as a result of negligence on behalf of the contractor and a land owner. Executive Director Ciaccia stated that "we are doing everything possible and the Board has authorized us to incur legal fees to chase this money that we absolutely know we are owed." We are now attempting to identify any additional projects that we should be examining.

Mr. Brown commented that "so in this instance...what we are doing is trying to get closure and the only way we can get closure is do some level of examination to see whether or not there is a basis for pursuing additional action." We can only know if somebody conducts the due diligence on a sample of selected projects in which we have set parameters for. Executive Director Ciaccia affirmed. If we find something, then we would pursue those further; however, if we find nothing, then at least we have closure that the project oversight on those cases was adequate and that there is "no other smoking gun out there as it relates to these types of projects." Mr. Brown stated that as a Board, this is something we would like know as well as receive closure on project oversight issues.

Executive Director Ciaccia added that the District turned over 10-years of contracts to the federal government. They produced charges which resulted in the District modifying its civil case in the KM&M matter by \$7.5 million. The staff has been very aggressive in trying to recuperate our customers' money.

Mayor Starr stated that the Bricker & Eckler team does not list any forensic auditors in their proposal, and he questioned "How could you possibly go through these contacts without auditors? This is an accounting procedure, not a legal procedure."

Mr. Rosati indicated that he respectfully disagreed with that analysis because when change orders and legal settlements are reviewed by engineers and attorneys. In the field, the consulting engineer examines change order requests that are submitted by contractors and they are supposed to, with legal assistance, compare it to the provisions of the

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contract, technical specifications and determine whether there is a variation that entitles that contractor to additional money. They are supposed to seek backup documentation. If a contract has additional soil requirements, they are supposed to have truck tickets specifying the amount of materials used as well as the how much labor was needed to rectify the situation. If equipment breaks down, they have to show the cause of the equipment breakdown and who was at fault.

Mr. Rosati stated that engineers can do that but auditors cannot. "They both come down to an analysis of money, but they come down to an analysis of money that is based on a technical entitlement to money and a legal entitlement to money, not an accounting principle."

Mayor Starr indicated that he was very pleased with the work conducted by the Cleveland auditing firm, Jefferson Wells. He advised that Jefferson Wells discovered "a lot of double billings...without the assistance of outside legal counsel." Mayor Starr commented, "You are telling me that auditors cannot find double billings, payments not authorized...I find that astonishing."

Mr. Rosati agreed that auditors can discover double billings. Mayor Starr stated "at a cheaper rate." Mr. Rosati replied "as can we" and "it's not difficult if you are looking at a contract and looking at payments to determine double billing." Mr. Rosati indicated that double billing is not so apparent to an auditor if a contractor bills the District for work performed that was in the original bid scope and was supposed to be included in the bid price, and "that's something we can bring to the table that an auditor cannot bring."

Mayor Starr stated that "I think you are probably making my case that there should be a combination of auditors and lawyers, maybe." Mr. Rosati replied that if the Board chooses to hire auditors to work alongside with Bricker & Eckler, then that would be fine.

Mayor Starr inquired as to why "you broke it off at \$1 million...why not \$500,000?" Executive Director Ciaccia advised that it was his decision and he wanted to draw a parameter and that we certainly do not have to cut it off there.

Mayor Starr inquired if the investigation will focus on just one past employee or will it include other employees and contractors. Executive Director Ciaccia replied that "we have a diverse list" and "everyone that's involved will be interviewed." That includes former and current employees and Board members.

Mayor Starr inquired whether the contingency alternative was a possibility in which Mr. Rosati advised that it is not an option for his firm, Bricker & Eckler. Mayor Starr replied,

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“Well of course not because you want to hire in at \$250 an hour. I would want to say no, too. We need some independent information. That’s my point.”

Executive Director Ciaccia requested an opportunity to review Mayor Starr’s proposal and sit down with Bricker & Eckler in order to query their proposal and then come back to the Board.

Mayor Starr replied, “Maybe I would like to see our Audit Department, which I have the highest respect for, and kind of do a memorandum of analysis of this proposal here and...if it’s an acceptable practice...because what we are talking about, at least on the first initial step of discovery, maybe saving some money.” Executive Director Ciaccia advised that “we would certainly do that if that’s your desire” and that “it’s a good suggestion.”

Mr. Brown stated that we have a proposal and that legitimate questions and concerns have been raised about this proposal. Staff in conjunction with the Audit Committee will conduct due diligence and come back to the Board with a recommendation as to the feasibility of the stated resolution versus Mayor Starr’s proposal.

Mayor Starr indicated that he will “spend time on that” and “would certainly take that on that challenge.” He intends to invite a few accountants that practice in this area and maybe they can provide additional information. Mayor Starr commented, “Don’t take anything I’ve said to be criticism.”

Executive Director Ciaccia was concerned that by not taking action on Resolution No. 147-10 today could impact the District’s financial audit. If we delay, we risk “getting our financial audit mired” and we will need to request an extension from the state, which may or may not be granted.

Mr. Brown questioned if two weeks will “put us in a critical path for that?” Executive Director Ciaccia replied, “Yes.”

Mayor Starr questioned, “What did we do for 38 years of audits? What did they produce?” Executive Director Ciaccia replied that those are largely financial audits which examine our books to ensure proper accounting. Mayor Starr replied, “Apparently, they missed a lot.” Executive Director Ciaccia stressed that the financial audit “is critical for us.”

Ms. Kelly stated that as a Board member who has served for 15 years and having “a lot of experience with what’s going on and a lot of knowledge, I am very comfortable at the level and the speed that we are going, the due diligence that we are doing, the

transparency, the firms that we have hired, and I think that we need to move on and complete the work of this investigation.”

Ms. Kelly commented that we have “a lot of work” and “new endeavors” ahead of us. She agreed with saving money, but did not understand why anybody would be expected to work on a contingent basis and put in countless number of hours and not get compensated.

Ms. Kelly then moved to adopt Resolution No. 147-10, which was seconded by Mayor Bacci. Mr. Sulik inquired if the motion was to adopt Option-A or Option-B. Ms. Kelly indicated that she wanted to adopt Option-A and Mayor Bacci concurred.

Mayor DePiero moved to amend and then quickly withdrew that motion, and he indicated that has a “tremendous amount of respect” for Mayor Starr and has used him “as a sounding board on issues to my city...for years.” However, “we do need to move on and get going with this.”

Mayor DePiero indicated that he was concerned about delaying the state audit. It would be beneficial to have more time, but because of the state audit and moving forward “with finding out what we are going to find or not going to find and putting it behind us or going after somebody, I think we need to do that.”

Mayor DePiero speculated that after reviewing the rate schedule, Bricker & Eckler must be working at a reduced rate. Executive Director Ciaccia affirmed. Mayor DePiero stated, “I know that for a fact...so knowing their expertise their type of firm, you only get what you pay for, and I think that we should be mindful of that going forward.”

Mayor DePiero indicated that his reasoning behind the motion to amend would be in favor of going up to the \$300,000, but to reexamine the Option-A list. Mayor DePiero suggested that we “toss” the old contracts and “focus on what we are able to and talk to folks who were involved.”

Ms. Kelly requested clarification as to Mayor DePiero’s amendment. Mayor DePiero indicated that he “didn’t amend it” and that he “threw that out to maybe look at that Option-A...” Mr. Brown interjected that Mayor DePiero was simply providing “insight as to what the parameters should be for the selection of the projects under Option-A” and then he clarified that Mayor DePiero withdrew his amendment.

Mr. O’Malley questioned, “What exactly are we looking for? Are we looking to go back “X” amount of years and find an issue that we can go back and get monetary compensation? Are we looking to just go back “X” amount of years and make sure at



this point in time the sewer District has taken care of the issues that happened in the past and go on with life?”

Mr. O'Malley commented that given the District's upcoming initiatives, “we have got to let the public know that things that happened here in the past don't go on anymore.”

Mr. O'Malley inquired how far we can go back to seek monetary damage? Mr. Rosati advised that if the recovery is based on a breach of written contract, that in Ohio there is a 15-years statute of limitation from the date of the discovery of the fraud. Therefore, there is a variety of statutes and limitations, and those will be discussed on each project based on our findings.

Mr. O'Malley advised that he is not interested in getting involved with companies that we cannot get any recourse on, and he suggested eliminating companies that are no longer in existence and investigate contracts with companies that we can “go back and get some recourse on.”

Executive Director Ciaccia indicated that he understood the concerns raised by Mayor DePiero and Mr. O'Malley. He summarized that the Board wanted to move forward with Option-A in an amount not to exceed \$300,000 and eliminate projects in which there is no possibility of “recovering anything.”

Executive Director Ciaccia stated that “we will get a product that will be of some benefit to us.” Although we have the Calfee report and conduct additional audits as it relates to our current performance, there is still a lot to be learned from the mistakes made in the past.

Mr. Brown inquired whether there was an estimated time schedule. Mr. Rosati replied that we are anticipating a two to three month period and that they will charge for the hours expended on each project.

Mr. Brown concluded discussion on this matter by stating that as we move forward with this process, nothing precludes us from engaging in further discussions with Bricker & Eckler as to the concerns raised by Mayor Starr and any additional suggestions that may arise by the Audit Committee or others that could potentially shed more light on this development.

Executive Director Ciaccia affirmed and replied that “we are taking Mayor Starr's comments seriously” and that “we will investigate and see if that is something that we want to bring back to the Board” for consideration to be either incorporated into the process or pursued separately.

VI. Information Item

1. Capital Improvement Program Status Update.

Mr. Brown requested that the information item be held. There were no objections from the Board.

VII. Open Session

No items for discussion.

VIII. Public Session (any subject matter)

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

IX. Executive Session

Mr. Brown stated that there were matters for discussion in Executive Session.

**MOTION** – Ms. Kelly moved to enter into Executive Session to discuss the status of mediation in the BCI-3D litigation and the upcoming mediation strategy for the 3320 Woodland Avenue litigation matter 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.

The Board met in Executive Session from 2:04 p.m. to 2:21 p.m.


X. 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 2:22 p.m. Without objection, the motion carried unanimously.



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Dean E. DePiero, Secretary  
Board of Trustees  
Northeast Ohio Regional Sewer District



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Darnell Brown, President  
Board of Trustees  
Northeast Ohio Regional Sewer District