



**MINUTES OF THE REGULAR MEETING
OF THE BOARD OF TRUSTEES
OF FOX METRO WATER RECLAMATION DISTRICT
HELD WEDNESDAY, SEPTEMBER 25, 2024**

The Board of Trustees met in a regular monthly meeting at 9:30 A.M. in the offices of the District at the Water Pollution Control Plant on Wednesday September 25, 2024. Present were Trustee Judith S. Sotir, Trustee Michael Funkey, Trustee Chuck Nelson, Trustee Randall Brown and Trustee Scott Gryder. Also present were District Manager Karen Clementi, Regulatory Manager Tim Rubis, Controller Linnea Scherer, Human Resources Supervisor Dan Rivera, Plant Manager Joel Ilseman, Senior Project Engineer James Kerrigan, IT Supervisor Dan Vargas, and Senior Administrative Assistant, Norma Rodriguez. Also in attendance were Mr. Tim Gavin from Lauterbach & Amen, LLP, Mr. Michael Lingl and Ms. Jodi Frailey from IIFFC and Mr. Brian W. Dahl from Fox Valley Building Trades Council.

11367

The bills were presented and read. It was moved by Trustee Funkey that the bills that have been presented and paid during the month of August 2024 be approved in the amount of \$6,240,270.80. Motion was seconded by Trustee Brown, put to vote and unanimously carried that the bills be paid as presented.

11368

It was moved by Trustee Funkey seconded by Trustee Brown, put to vote and unanimously carried that the Financial Report for August 2024 be approved as submitted.

Controller Linnea Scherer addressed the Board with the Controller's Report. She reported the audit is nearing completion and year-end entries have been posted into the District's accounting system. These will change a few things on the Financial Report.

One change is the Fixed Assets have been updated and now they reflect new assets purchased during the years, assets which have been removed or replaced, and updated values for accumulated depreciation.

11369

The other change is the District's long-term debit has also been updated to reflect payments made during the year. The District's long-term debt has decreased from \$106M to \$99M.

It was moved by Trustee Brown, seconded by Trustee Nelson, put to vote, and the Motion was unanimously carried that the Controller's report for August 2024 be approved as presented.

After addressing Trustee Funkey's questions regarding the minutes on page 4 with regard to the NPDES permit requirements and the correction on page 15, it was moved by Trustee Brown, seconded by Trustee Gryder, put to vote, and the Motion was unanimously carried that the minutes of the August 21, 2024 Regular Board Meeting Minutes be approved as written. Each of the Trustees having received and read copies of said minutes before the meeting.

In Public Comments, Trustee Sotir on behalf of the Board, congratulated all of the employees who celebrated birthdays in the month of September.

Manager Clementi introduced Senior Administrative Assistant Norma Rodriguez, who was nominated to receive the Fox Pride Award for the month of September. Manager Clementi and the Board thanked Norma for her dedication to the District.

Plant Manager Joel Ilseman introduced Joel Gonzalez as the Union representative at today's Board Meeting. Joel is a Senior Journeyman Electrician and vice president of the Union. Joel is also part of the Negotiations Committee and is doing a great job with negotiations and his job duties at the District.

Manager Clementi introduced, Field secretary Connie Perez as the non-union representative. She is shadowing with Norma today training to provide back up and help assist with administrative duties.

11370

With no other Public Comments, it was moved by Trustee Brown, seconded by Trustee Nelson, put to vote and the Motion was unanimously carried that the Regular Board Meeting be temporarily adjourned for the Committee of Local Improvements.



The Regular Board Meeting temporarily adjourned at 9:41 A.M.

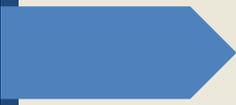
In the Committee of Local Improvements Manager Clementi addressed the Board and introduced Mr. Tim Gavin a principal at Lauterbach & Amen, LLP who gave a presentation providing information on Elected Officials and the importance of Segregation of Duties. This presentation was generated from past questions from the Trustees on proper roles and responsibilities.

Mr. Gavin stated he has been in public accounting for approximately 20 years and the entirety of that time has been serving the local government industry. He said his goal today is to share some wisdom and help define that balance between hands on and oversight. He is also going to touch on some best practices and resources that will give the Board a level of guidance.

Mr. Gavin said his definition of internal control is reasonable restrictions on the operations to reduce risk. Internal control is an umbrella concept that applies to almost everything that it is done from processes, to oversight and to segregation of duties which is today's primary topic. Controls exist to make sure that operations are effective and efficient and free from things that can go wrong. The initial element of internal control is control environment. COSO was a committee that established the framework approximately 40 years ago and they defined control environment as "the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization." This touches every single element of the organization from the role as the Board down to the employees and what their expectations are and it sets the tone for everything else that happens within the organization.

The five main characteristics of Control Element are; the Governing body as well as management sets the tone at the top, the Governing body, elected officials are truly independent from Management, the assignment of authority and responsibility, staff competency and accountability. Mr. Gavin reviewed each characteristic and explained them in detail.

Mr. Gavin said the segregation of duties can be one of the most crucial element of internal control and organizational management. When



speaking with regard to segregation, it means segregating three primary functions. The functions are approval, custody and accounting/reconciling, this means for example, that the organization does not want its bank signor to be reconciling the accounts. The Board's role is to provide the oversight, setting the policy, lay the ground work at a higher level and the day-to-day operations are segregated. The transactional and executive duties are delegated by the Board to Management as a measure of segregation. The best example of this is to differentiate between strategic guidance (Board's role) versus logistical execution (Management's role).

Mr. Gavin said the Government Finance Office Association (FGOA) has a series of publications and guides for Elected Officials. He quoted language of one of those guides which states, "A governing body, which is responsible for overseeing management, is ultimately responsible for ensuring that management achieves all three objectives. Management, in turn, must be able to provide reasonable assurance that each of the objectives is being achieved." "Ultimately, management's 'job description' is to do what needs to be done to ensure that the entity is achieving its objectives."

Mr. Gavin stated there are three elements that start the framework of efficient execution and they begin with appointing competent experts and they can be internal or external. The other element is setting policies and expectations and trusting that they are doing their job but verify and evaluate the performance.

The Board should want to get to a level of oversight that is reasonable with respect to allowing management to execute the policy and expectations while providing the level of oversight to assure accountability.

Manager Clementi said she will email Tim's presentation to all Trustees for reference. She said staff is working on a new Trustees Packet and which will include all the acronyms.

Trustee Funkey said one of the statements Mr. Gavin said was trust but verify the duty management owes to the Board. He said it is really difficult to do that in a situation like this where there is such a great disparity between the members of the Board and Management



because Management is so highly technical and the Board is not. Without micromanaging management, how does the Board verify? Mr. Gavin said the element of trust is such a key part of every relationship, personal and professional. Trust can be broken and that's at the point which micromanaging may become necessary. The preliminary steps the Board needs to take is to make sure they are hiring and/or appointing the right people. That should be the most crucial element in establishing that level of trust. Trustee Funkey said he does not have a problem with the word "trust", the word he has a problem with is "verify". Mr. Gavin said "verify" may not be the perfect term but the Board should get to some level of comfort with what management is reporting. The Board should do their due diligence in appointing any professional or consulting employees and look at segregation of duties.

At 10:00 A.M. Manager Clementi opened and read aloud bids received for the DCM 3 AHU Replacement Project as follows: Helm/Mechanical, Inc., – Total Bid \$65,800.00; Voris Mechanical, Inc., - Total Bid \$82,200.00; R.J. O'Neil, Inc., - Total Bid \$91,811.00; Dahme Mechanical – Total Bid \$69,888.88; MG Mechanical Contracting – Total Bid \$84,000.00, It was moved by Trustee Funkey, seconded by Trustee Gryder, put to vote and unanimously carried to accept the bid from Helm/Mechanical, Inc., for \$65,800.00 and hold the bid from Dahme Mechanical for \$69,888.88 pending specification review and approval by Fox Metro Reclamation District and Engineering Staff.

Continuing with the Committee of Local Improvements, Manager Clementi introduced Jodi Fraily, Regional Manager and Mr. Michael Lingl, Special Project Manager from Indiana Illinois Iowa Foundation (IIIFFC) who attended the meeting to answer any questions on the proposed Responsible Bidders Ordinance.

Mr. Lingl gave background information on his organization. They are a Labor Management Organization and have been in existence for approximately 25 years. They represent contractors that are signatory to the Operating Engineers Local 150 and the majority of the work they do is public works for a large number of local Governments and Municipalities.



Mr. Lingl said the origins of responsible biddings start with the State of Illinois. They require the contracts be awarded to the lowest responsible bidder. The State defined that for themselves, they did not define it for the District. The IIFFC encourage the wastewater Districts to define for their organization what constitutes a responsible bidder. At the State level, they have the highest level of responsibility and they also have a pre-qualification process and a rating process so you can only work specific categories and up to specific dollar amounts. Obviously, that's not practical for every municipality or Wastewater District that is why it is allowed under law to define what a responsible bidder is for the Wastewater Districts.

Mr. Lingl said one of the core values that he believes in is Apprenticeship because the best people in the industry come from an Apprenticeship Program. The benefits are that when you hire an electrician or a plumber, that is what you are getting.

Mr. Lingl said with regard to responsibility, it starts with responsiveness. He encourages the District to require an Affidavit of Compliance to be included in its bid packets and spell out as many criteria as possible for the contractor to provide information before the bid is awarded to that contract. Responsiveness is the lowest hurdle and there are no legal challenges whatsoever. Having objective criteria is probably the best legally defensible position. Mitigating risk for the District is critical and having those standards in place are going to be beneficial going forward. Mr. Lingl suggested including Liquidated Damages to each and every project and enforce them.

Trustee Gryder thanked Mr. Lingl for coming to the Board Meeting and reiterated to the Trustees if they have an opportunity to visit the training site, it is very impressive and believes this Responsible Bidder Ordinance is good for the District.

Ms. Jodi Frailey said with regard to mitigating risk, adopting any type of Procurement Policy and/or Ordinance actually puts objective criteria in place just for contractors to meet in the beginning of the process at the bidding. This is also similar to an insurance policy for the District, showing that it puts the criteria in place and



contractors have to meet those criteria and if they don't meet the criteria, that contractor can be dismissed. With this policy or Ordinance in place, the District does not have to deal with any vague description of what constitutes what a responsible and non-responsible contractor is. Once good criteria is put in place, like Apprenticeship and skill workers on the line, the District knows that the project is going to be performed on time and under budget and it has the backing to know that they have Apprentices working and getting paid a prevailing wage. This is good for the District and is good for the workers.

Manager Clementi said one thing she believes is important from staff's perspective is the message it sends to the District is bargaining unit regarding holding them accountable because this being integrated into the District's culture, and was discussed during the last negotiations sessions that was just completed. If an employee wants the pay for an electrician, that employee needs to complete the appropriate steps to obtain it. This sends a very good message to the employees on how Management is going to run the District and is going to hold them to the same standard internally as it holds its external contractors.

Trustee Nelson said with the District is currently going through a very large project which is the Bar Screen Replacement Project. Once this project is complete, just like it is with every other project, it will be turned over to the District. Staff has to make sure that they are getting something that is completed to a very high satisfactory degree. This definitely sends a message to the District's workforce that the job is going to get done right the first time and then it will be the responsibility of District staff to maintain it going forward.

Trustee Funkey said there has been discussion with regard to this proposed Ordinance, and he has been on both sides of it. He is against any Ordinance the limits the number of bidders that can bid on a District job. He is in favor of the information that is called for such as Apprenticeship and how long the contractor has been doing business and if the contractor has had any violations, but he is not sure that should be made part of the Ordinance. He is also opposed to the paragraph that mentions admission to the nature of the construction.

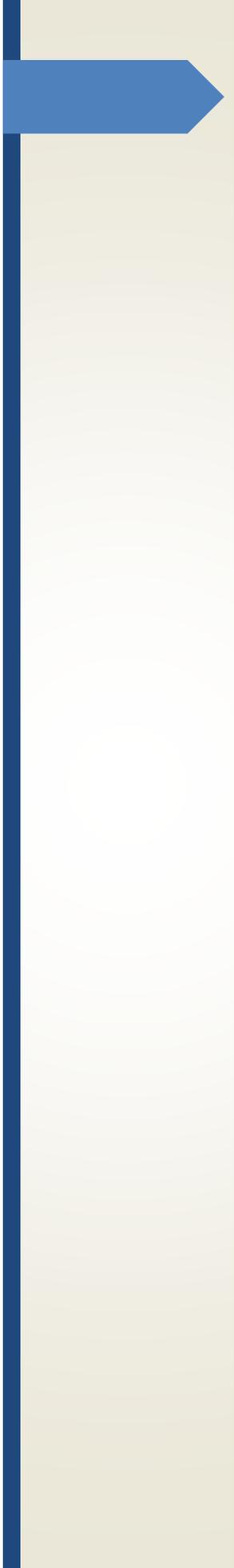


Trustee Funkey believes that the information that is specified and described should be called out and received by the District prior to the time the bids are opened at the Board Meeting in order to consider the bidder's responses in determining the lowest bid. He disagrees with the statement that the State of Illinois has said the District can accept the lowest responsible bid but it did not specify what that is. He believes the cases under that would specify what that is and he would be opposed to anything that limits in any way any discretion that the District has to determine what is the lowest responsible bid. He said this is a complicated situation, he has sat on this Board for eighteen years and there have been many bids that have been opened. He said he can't think of a situation where it would have been easier or better for the District to have this proposed Ordinance or a situation where any particular bid required what is provided in the proposed ordinance.

Trustee Funkey asked Mr. Lingl if he wanted the Board to schedule a special meeting just to consider this Ordinance and discuss it with the District's attorney because he has a lot of comments on the provisions of the proposed Ordinance.

Mr. Lingl said he doesn't think there is any intention in the Ordinance to limit who bids on projects. It is not different than a job posting, because it includes a list of minimum qualifications. He said the error would be to try and evaluate each individual bid as suggested. Having clear criteria established before the bid opening and used for every bid opening would be the standard that would be most defensible going forward to any possible challenges or litigation. He doesn't see or is aware of any public body that has established objective criteria that they hold everybody to. This is a standard that goes forward and it takes a lot of the thought process and guesswork out of the equation.

Trustee Sotir said she does not see that the District is limiting anyone from bidding unless someone who is not qualified. That is the only criteria that she sees that the proposed Ordinance is addressing. Trustee Gryder sees the proposed Ordinance as the District setting its standards and the bidders have to meet those standards. Trustee Sotir said the District wants to give the



contractor an opportunity to grow their business, but if they don't have the qualifications at this point, the District is at a level that those qualifications need to be addressed and if they are not addressed the District will have a contractor who cannot fulfill their contract. She said the Ordinance can be modified but the concept behind it is very clear. Ms. Frailey agrees with Trustee Sotir's comments and in addition, the District is setting its own criteria that is objective because it wants its people to be safe on their jobs and make sure that the contractor can do business in the State of Illinois. It is important to have the Affidavit of Compliance to check off and know that the District is setting the standards and in order to work for the District those standards have to be met on all projects. With regard of limiting bidders, Ms. Frailey argued that responsible bidding practices actually promote competitive bidding legitimately. Labor costs are mandated by the State such a prevailing wage and material costs. She said some other things can be negotiable with attorneys.

Trustee Funkey said the proposed Ordinance says in section "M" says that in order for the bid to be accepted "Bidder must provide evidence of relevant experience on similar size and scope projects in the past (5) years that indicate the necessary capacity to perform the project and must provide adequate references(s) verifying the quality of work performed." He stated that there is nothing in the ordinance that indicates that any of those requirements are negotiable or changed because it is an Ordinance and it is intended to be the requirement established by the District. Trustee Funkey said when he reads this, any perspective bidder that has not been in business for five years and/or had experience in similar size and scope projects is not eligible to bid. That removes from the District's group any potential bidders and potential contractors that haven't done any work for the last five years and he believes that's wrong. Trustee Sotir and Trustee Gryder disagree and do not interpret that clause to mean that.

Trustee Funkey said any bidder who handles sewage treatment plants and have been in business for five years are the only ones that can submit a bid and questioned how are those contractors to start a new business, supposing there is a brand new company that consists of principals that have been in business for a long time but



the business is brand new, but they can't submit a bid. Trustee Sotir said that is where the Ordinance can be modified to the point of saying "or" as opposed as "and." Trustee Funkey argued that is not what the Ordinance says and that is why he is opposed to limiting who can bid on the project and reiterated he doesn't see where the District has ever had a problem. Mr. Lingle said he disagrees with Trustee Funkey because he is aware of at least two incidents in the last three years at Fox Metro where the contractor did not have enough experience and that was one of the key components for the District rejecting the bids. Trustee Funkey stated that he is not saying the District can't reject the bid, he is saying he does not want to restrict the District of what bids can be submitted.

Attorney Ingemunson stated that from a legal perspective there is a Statute that sets standards. There is a big discretion in rejecting a bidder. The Court says essentially, they are going to uphold the rejection of the bid barring fraud, unfair dealing, favoritism and other arbitrary conduct. There is case law that says if the District puts an Ordinance in play, the District has to follow it to the level of the law and it cannot deviate from that Ordinance whatsoever. If the District does not follow that Ordinance, then it can get sued. Trustee Funkey said he is not opposed in considering how long a contractor has been in business, he is not opposed in considering whether or not there has been an Apprenticeship Program and believes there should be one, and he is not opposed to a lot of the other criteria, he just doesn't believe it should be in an Ordinance, it should be in the invitation to bid. If a contractor wants to bid on a project, they should send the required verified information and that information gets opened before the bid. This way staff has an idea of who is bidding on the project, what their criteria is and then the lowest reasonable bidder can be determined. He said the Board can't just approve an Ordinance and work things out, because that is the statement of the District as he understands it.

Manager Clementi believes what Trustee Sotir and Ms. Frailey meant was that this was just a starting point and the District can modify the Ordinance before the Board passes it. The proposed Ordinance is just a template to start with and the Board can include or delete whatever they want or don't want in the Ordinance. Manager Clementi said this is the first template that she, Kerry Behr



from Engineering and James the Senior Project Manager have modified and brought to the Board to review. This can be modified as many times as needed before its approved. Attorney Ingemunson said the District has never had an Ordinance so clearly staff wants to get it right, the Board does not have to rush into this. Trustee Sotir said this is something the Board needs to address and can take whatever time it needs to create a good document.

Trustee Funkey inquired what recent examples have there been where the District had problems and an Ordinance like this would have solved those problems. Manager Clementi named the contractor and gave details of the situation. Discussion ensued.

Trustee Sotir said she has heard where the Trustees stand with regard to this proposed Ordinance and this issue is not resolved. The Board will continue with this discussion at another Board Meeting. She thanked Trustee Funkey and Attorney Ingemunson for reviewing the proposed Ordinance and their feedback. She believes this proposed Ordinance needs to be reviewed from Management's perspective and weigh the two. She is not sure if it has to be an Ordinance, the District may just need to come up with a policy. Trustee Gryder stated he would like to vote on this at some point and Trustee Nelson concurred. Trustee Nelson said his concern with a Policy versus an Ordinance is that with an Ordinance you are quantifying basically a policy because it solidifies guidelines. Trustee Gryder said the Trustees have a duty to the District's ratepayers and if they are not setting standards it sets the District up for liability.

With no other matters to come before the Committee of Local Improvements, it was moved by Trustee Brown, seconded by Trustee Funkey, put to vote and the Motion was unanimously carried that the Committee of Local Improvements adjourn and the Regular Board Meeting reconvene.

The regular Board Meeting reconvened at 10:50 A.M.

Attorney Ingemunson advised the Board there was no Attorney's Report this month.

Senior Project Engineer James Kerrigan addressed the Board with



the Construction Report. Mr. Kerrigan requested approval of Partial Payment No. 15 to Vissering Construction in the amount of \$129,814.59 for the 111th St. Pump Station project. The project is 95% complete and the pay request was reviewed by Trotter and Associates. ComEd has installed the new power cables and the various shut downs to liven up the new station are currently being coordinated

Mr. Kerrigan requested approval of Partial Payment No. 7 to Newcastle Electric, Inc., in the amount of \$211,998.00, for the Orchard Road Pumping Station Generator Replacement Project. The project is 86% and the pay request was reviewed by Trotter and Associates. The generator has been tested, and final integration and training is currently underway.

Mr. Kerrigan reported that the Oswego Pump Station HVAC Replacement Project with Complete Mechanical Services, Inc is 98% and there is no pay application submitted for this project this month. The equipment installation has been completed and the final closeout of the project is underway.

Mr. Kerrigan Reported that the North Aurora Pumping Station Watermain Installation Project with J&S Construction Sewer and Water, Inc., is 1% complete and there is no pay application submitted for this project this month. Staff is continuing to work on finalizing the necessary easement, and is coordinating with the park district on landscaping of the old facility.

Mr. Kerrigan requested approval of Partial Payment No. 6 to Steve Spiess Construction, Inc., in the amount of \$132,210.01 for the Boulder Hill Sanitary Sewer Repairs Project. The project is 89% complete and the pay request was reviewed by H.R. Green. Final surface paving is being scheduled and is anticipated to be completed next month.

Mr. Kerrigan requested approval of Final Payment No. 4 to Otto Baum Company, Inc., in the amount of \$10,257.39 for the DCM 2 Masonry Repairs Project. The project is 100% and the pay request was reviewed by Staff. The project is complete.



Mr. Kerrigan requested approval of Final Payment No. 2 to Proline Fence Company in the amount of \$21,257.20 for the Solar Property Fencing project. The project is 100% complete and the pay request was reviewed by staff. The project is complete.

Mr. Kerrigan requested approval of Partial Payment No. 2 to Williams Brothers Construction, Inc., in the amount of \$230,450.73 for the North Waste Water Treatment Plant Bar Screen Replacement Project. The project is 6% complete and the pay request was reviewed by Trotter and Associates. The contractor has mobilized to the site, exploratory investigations have been completed, and utility relocations and removal are underway.

Mr. Kerrigan reported that the Solar Farm #2 with General Energy Corporation is 10% complete. There is no pay request this month. The contractor has submitted construction drawings for review and is preparing the necessary permit applications. It is anticipated that final layout drawings for the panels will be completed by late September, with construction starting by the end of the year. SimpleRay's construction permits with Kendall County and the Village of Montgomery are in the process of being transferred to General Energy.

11373

It was moved by Trustee Funkey, seconded by Trustee Nelson, put to vote and the Motion was unanimously carried that the Construction Project Report be approved as published and payments be made as requested.

11374

Manager Clementi addressed the Board with the Manager's Report and requested Authorization to seek bids for Building P-1 Server Room HVAC Equipment Installation project to be opened on October 23, 2024 at 10:00 A.M., at the Board of Trustees Meeting. It was moved by Trustee Brown, seconded by Trustee Nelson, put to vote and unanimously carried to Authorize to seek bids for Building P-1 Server Room HVAC Equipment Installation project to be opened on October 23, 2024 at 10:00 A.M., at the Board of Trustees Meeting.



The next item discussed in the Manager's Report was the IAWA 100th Annual Conference. Manager Clementi said Trustee Sotir, Trustee Nelson, Trustee Brown, Trustee Gryder and herself attended the conference. Trustee Sotir stated that this was probably the best meeting she has attended as a Trustee. She said she found this conference to be very interesting, it was the 100th year of existence and it focused a lot on the history of wastewater treatment.

Trustee Nelson agreed with Trustee Sotir that it was a great conference and he enjoyed the presentation given by Shawn from Progressive Energy regarding the District's solar Field and coming up with a battery that can store excess energy which can be used or put back into the grid. Trustee Clementi said this will be a topic of discussion next month in the Committee of Local Improvements. She said shawn and herself have been working on this in the background for a very long time and are very excited about the financial opportunities this will bring to the District.

Trustee Gryder congratulated Manager Clementi on her election to first Vice President of the IAWA Board.

Manager Clementi thanked the Trustees for attending the IAWA Conferences because she brings back the Trustees comments to the IAWA Committee and plan the conference around that. The District has such a strong presence at this conference and the Committee is hoping to draw in more Trustees if they make the curriculum more interesting to them. Discussion ensued.

Manager Clementi reported that as of this morning, she received notice that the Union had approved the last negotiated contract and it is within the guidelines previously described by the Board. She would like the approval of the Board to advise the Union that it has been approved and at the next regular Board Meeting the Board can formally sign the contract.

Trustee Sotir requested an Executive Session to discuss personnel, and related matters.



11375

It was moved by Trustee Funkey, seconded by Trustee Brown, put to vote and unanimously carried to temporarily adjourn for an Executive Session.

The Regular Board Meeting temporarily adjourned for Executive Session at 11:06 A.M.

11376

It was moved by Trustee Brown, seconded by Trustee Nelson, put to vote and unanimously carried that the Executive Session be adjourned and resume the Regular Board Meeting.

Regular Board Meeting reconvened at 1:03 P.M.

No decisions were made in Executive Session.

11377

With no other business to come before the Board, it was moved by Trustee Brown seconded by Trustee Gryder, put to vote and the Motion unanimously carried that the Regular Board Meeting be adjourned.

Meeting adjourned at 1:04 P.M.

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