

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 249

Minutes of Meeting of Board of Directors  
November 15, 2007

The Board of Directors ("Board") of Harris County Municipal Utility District No. 249 ("District") met in regular session at the Board's regular meeting place on November 15, 2007, in accordance with the duly posted notice of regular meeting thereof, and the roll was called of the duly constituted officers and members of said Board of Directors, as follows:

Douglas Haude, President  
Dwight Rumph, Vice President  
Edward L. Wade, Secretary  
Norman C. Adamek, Assistant Secretary

and all of said persons were present, except Director Adamek, thus constituting a quorum.

Also present were Scott Novosad of Van De Wiele Engineering Incorporated ("VEI"), Gary Hastings of SWWC Services, Inc. ("SWWC"), Teresa Rosenbaum of Municipal Accounts & Consulting, L.P. ("MA&C"), Sissie Lawson of Wheeler & Associates, Inc. ("Wheeler"), A.J. Sullivan of Sam Yager Incorporated ("SYI"); Patsy Waldrop of BKD, LLP ("BKD"); and Daniel Ringold of Schwartz, Page & Harding, L.L.P. ("SPH").

The President called the meeting to order and declared it open for such business as might regularly come before it.

**APPROVAL OF MINUTES**

The Board first reviewed the minutes of its meeting held on October 18, 2007. Mr. Ringold informed the Board that Director Adamek requested a change on page no. 2 of the draft minutes and reviewed said change with the Board. After discussion, Director Wade moved that the October 18, 2007, minutes be approved, as amended. Director Rumph seconded the motion, which carried unanimously. The Board requested that, in the future, all minute changes be provided to the Board prior to the meeting at which the minutes are to be approved.

**COMMENTS FROM THE PUBLIC**

The Board next deferred consideration of comments from the public, as none were presented.

## **APPOINTMENT TO FILL VACANCY ON BOARD OF DIRECTORS**

The Board next considered the appointment of a new director to fill the vacancy on the Board of Directors. After discussion on the matter, Director Wade moved that Willie Hodge be appointed as a member of the Board, to serve the unexpired term of Clint Moore through May of 2008. Director Rumph seconded said motion, which unanimously carried.

## **ACCEPTANCE OF QUALIFICATION STATEMENT, BOND, OATH OF OFFICE, AFFIDAVIT OF CURRENT DIRECTOR AND ELECTION NOT TO DISCLOSE CERTAIN INFORMATION OF NEW DIRECTOR**

The Board next deferred consideration of the acceptance of Qualification Statement, Bond, Oath, Affidavit of Current Director and Election Not to Disclose Certain Information relative to the appointment of Mr. Hodge after noting that Mr. Hodge was not present at the meeting.

## **REORGANIZATION OF THE BOARD OF DIRECTORS**

The Board next considered the reorganization of the Board of Directors relative to the appointment of Mr. Hodge. After discussion on the matter, Director Wade moved that Mr. Hodge be named Assistant Secretary of the Board, and that all other officers of the Board remain the same. Director Rumph seconded the motion, which carried unanimously.

## **TRAINING REQUIREMENTS**

The Board next deferred discussion regarding training requirements for Directors pursuant to the Texas Open Meetings Act and the Texas Public Information Act and the procedures for compliance with same.

## **TAX ASSESSOR-COLLECTOR'S REPORT**

Ms. Lawson next presented and reviewed with the Board the tax assessor-collector's report dated as of October 31, 2007, including the checks presented for payment from the tax account, as listed therein, historical valuation and collection data, and a Delinquent Collections Listing as of October 31, 2007, copies of which are attached hereto as **Exhibit A**. After discussion of the tax assessor-collector report, Director Rumph moved that said report be approved and that the checks identified therein be approved for payment. Director Wade seconded said motion, which carried unanimously.

Ms. Lawson additionally presented and reviewed with the Board a Delinquent Tax Collections Report, dated November 15, 2007, prepared by Perdue, Brandon, Fielder, Collins & Mott, L.L.P., the

District's delinquent tax collection attorneys, a copy of which is attached hereto as Exhibit B. Ms. Lawson noted that no Board action was required at this time with respect to the accounts listed in such report.

**APPROVAL OF AUDIT RELATIVE TO THE PAYMENT OF PROCEEDS OF VARIOUS CONSTRUCTION PROJECTS AND RELATED COSTS FROM AVAILABLE SURPLUS FUNDS**

As the next order of business, the Board considered the approval of a reimbursement audit report prepared by BKD, an independent certified public accounting firm, in connection with the District's payment for various facilities and related costs from legally available surplus funds, a copy of which is attached hereto as Exhibit C, and the disbursement of said funds in accordance with same. Ms. Waldrop reviewed in detail with the Board a draft audit report in connection with the payment of funds to Houston Area Development Corporation, Forestar (USA) Real Estate Group, Inc., and KM Louetta Partners, LP. Mr. Ringold advised the Board that the Texas Commission on Environmental Quality's ("TCEQ") pre-purchase inspection was conducted on Tuesday, November 6, 2007, but that the TCEQ's authorization for purchase of facilities has not yet been received. After review and discussion of the report submitted, it was moved by Director Wade, seconded by Director Rumph and unanimously carried that the developer reimbursement audit report prepared by BKD in connection with the District's payment for various facilities and related costs from legally available surplus funds, be approved and that the Board authorize the disbursement of the funds in accordance with and as set forth in the audit report, subject to (i) receipt of the TCEQ's approval for purchase of the facilities and (ii) receipt of executed Receipts for same from those receiving funds.

Ms. Waldrop exited the meeting at this time.

**TAXATION OF GOODS-IN-TRANSIT PERSONAL PROPERTY**

Mr. Ringold next outlined for the Board the option available to the District to tax certain goods-in-transit personal property, as provided for and defined in Article VIII Section 1-n of the Texas Constitution and Section 11.253 of the Texas Property Tax Code, as added by House Bill No. 621 during the Texas Legislature's 80th Regular Session. He advised that under said provisions, the "Goods-in-Transit Exemption" applies to goods, wares, ores and merchandise other than oil, gas and petroleum products, as well as aircraft or repair parts used by a certified air carrier, provided that such property is acquired in or imported into Texas for assembling, storing, manufacturing, processing, or fabricating purposes and is subsequently forwarded to another location inside or outside of Texas not later than 175 days after acquisition or importation, and the location where said property is detained

during that period is not directly or indirectly owned or under the control of the property owner (the "Goods-in-Transit Property"). He further advised that the District may, by official action and following a public hearing, exercise its option to tax all such Goods-in-Transit Property. He noted that the District's option must be exercised before January 1 of the first tax year in which it proposes to tax the Goods-in-Transit Property.

A public hearing was next held, at which members of the public were allowed an opportunity to speak for or against the taxation of Goods-in-Transit Property by the District. After noting that no members of the public were present at the hearing, such hearing was closed.

The Board next considered the taxation of Goods-in-Transit Property for 2008 and future years. Following discussion, Director Wade moved that the District exercise its option to tax Goods-in-Transit Property for 2008 and future years, and that the Resolution Approving Taxation of Goods-in-Transit Pursuant to Texas Property Tax Code Section 11.253 attached hereto as Exhibit D relative to same be adopted by the Board and the District. Director Rumph seconded said motion, which carried unanimously.

#### **BOOKKEEPER'S REPORT**

Ms. Rosenbaum next presented and reviewed with the Board the bookkeeper's report dated November 15, 2007, including (i) the checks presented for payment from the General Operating Fund, Capital Projects Fund and the Sewage Treatment Plant Account, (ii) a Fund Balance Report, (iii) a Pledged Securities Report, (iv) an Actual vs. Budget Comparison for October 2007 for the Operating Fund and the STP Account, and (v) a Debt Service Payments Schedule, copies of which are attached hereto as Exhibit E. Ms. Rosenbaum then presented for approval (i) check no. 3647 in the amount of \$28,768.50 out of the District's General Operating Fund and check no. 1619 in the amount of \$38,731.50 out of the District's Capital Projects Fund to Gemini Contracting Services, Inc. ("Gemini") for payment of Pay Estimate No. 1 for the Water Supply Facility Modifications project. Ms. Rosenbaum additionally presented for approval check no. 1620 in the amount of \$95,054.69 to KM Louetta Partners, LP and two (2) wire transfers to Forestar (USA) Real Estate Group, Inc. in the amount of \$642,196.25 and Houston Area Development Corporation in the amount of \$464,136.13 relative to the District's payment of various construction projects and related costs from legally available surplus funds. After discussion on the matter, it was moved by Director Haude that the bookkeeping report be approved and that the various checks identified therein be approved for payment, except for check no. 3630, which was voided, and additionally that check no. 3647 in the amount of \$28,768.50 and check no 1619 in the amount of \$38,731.50 be issued to Gemini for payment of Pay Estimate No. 1 for the Water Supply

Facility Modifications project, and that check no. 1620 in the amount of \$95,054.69 be issued to KM Louetta Partners, LP, and the wire transfers to Forestar (USA) Real Estate Group, Inc. in the amount of \$642,196.25 and Houston Area Development Corporation in the amount of \$464,136.13 be issued for the District's payment of various construction projects and related costs from legally available surplus funds. Director Rumph seconded the motion, which carried unanimously.

Ms. Rosenbaum next presented a draft operating budget and a draft budget for the Sewage Treatment Plant for the fiscal year ending December 31, 2008, copies of which are included with the Bookkeeper's Report. The Board and its consultants were requested to review the proposed operating and Sewage Treatment Plant budgets and submit their comments regarding same to the District's bookkeeper in advance of the Board's next meeting.

#### **ARBITRAGE COMPLIANCE MATTERS**

The Board next considered the status of the Yield Restriction and Arbitrage Rebate Report being prepared by Arbitrage Compliance Specialists Incorporated ("ACS") in connection with the District's Series 2002 Unlimited Tax Bonds. Ms. Rosenbaum advised the Board that ACS is in the process of preparing said Report at this time and noted that said Report should be ready for review and approval at next month's meeting.

#### **ENGINEERING REPORT**

Mr. Novosad next presented and reviewed with the Board a written engineering report dated November 15, 2007, a copy of which is attached hereto as **Exhibit F**, relative to the status of various projects within the District. Mr. Novosad provided additional information concerning the following matters:

Mr. Novosad reminded the Board that, as discussed at last month's meeting, the Board concurred to grant Mark Carpenter's request relative to the construction of an extension of the water line serving his tract ("Project"), subject to reimbursement in accordance with the terms of Atko Partners' Utility Development Agreement, upon assignment of same to Mr. Carpenter, and to allow four (4) separate water taps for the Project. In connection therewith, Mr. Novosad presented and reviewed with the Board a Preliminary Cost Estimate, a copy of which is included with the Engineer's Report, and noted that the estimated cost for said extension is \$67,692.24. Mr. Novosad then requested that the Board consider authorizing VEI to move forward with the design plans for the Project. After discussion on the matter, Director Haude moved that the Board authorize VEI to move forward with the preparation of design plans for said Project. Director Rumph seconded the motion, which carried unanimously. There then ensued a discussion

regarding Mr. Carpenter securing an assignment of the Utility Development Agreement between the District and Atko Partners.

Relative to the Water Supply Facility Modifications project, Mr. Novosad presented and reviewed with the Board Pay Application No. 1 in the amount of \$67,500.00 received from Gemini, a copy of which is attached to the engineering report, and recommended that the Board authorize the payment of same. After discussion on the matter, Director Haude moved that the Board approve Pay Application No. 1 in the amount of \$67,500.00 to Gemini. Director Rumph seconded the motion, which carried unanimously.

Mr. Ringold next reminded the Board that, as previously discussed at last month's meeting, Forestar (USA) Real Estate Group, Inc. has requested that the District accept a conveyance of Restricted Reserve "C" (the "Facility") located within Spring Falls, Section One to the District. Mr. Novosad then reminded the Board that, as he and Mr. Hastings inspected the area and that the area contains significant vegetation that will need to be cleared in order for the drainage ditch to be maintained adequately. Mr. Novosad then informed the Board that it would cost approximately \$30,000 for the clearing and grubbing of the Facility. Director Haude informed the Board that he is not opposed to accepting the Facility, but noted that he feels that the District should not have to pay to improve the Facility prior to the District's acceptance. Mr. Sullivan then advised the Board that Forestar is not likely to expend funds for improvements to the Facility and noted that Forestar will most likely convey the Facility to the Homeowners Association if the District does not accept same. The Board deferred taking any action on the matter until next month's meeting. Mr. Sullivan informed the Board that he would discuss the matter further with Forestar and Mr. Novosad advised VEI would contact Spring Baptist Church and Harris County Flood Control District regarding participation in clearing the Facility.

Ms. Lawson exited the meeting at this time.

#### **RENEWAL OF DISTRICT WASTE DISCHARGE PERMIT**

The Board next considered the status of the District's application to the TCEQ for the renewal of the District's Waste Discharge Permit due to expire February 1, 2008. Mr. Novosad advised the Board that VEI is awaiting the final Permit from the TCEQ.

#### **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS GENERAL PERMIT**

Mr. Ringold next reminded the Board that effective August 13, 2007, the Texas Commission on Environmental Quality ("TCEQ") issued a general permit (TXR040000) for storm water discharges associated with small municipal separate storm sewer systems ("MS4s") located

in "Urbanized Areas," as such term is defined by the 2000 U.S. Census. Mr. Ringold further reminded the Board that the adoption of TXR040000 obviates the necessity for certain small MS4 operators to file for an individual permit for coverage, however, many small MS4 operators will be required to file a notice of intent ("NOI") with the TCEQ for permit coverage under TXR040000 and adopt a storm water management plan ("SWMP") prior to February 11, 2008. Mr. Novosad then advised the Board that the District was located within such an Urbanized Area. Mr. Ringold then reminded the Board that in connection with the issuance of TXR040000, the TCEQ issued an interpretive letter indicating that MS4 systems located within Harris County, Texas, would be permitted under the joint MS4 permit issued to the City of Houston, Harris County, and the Texas Department of Transportation, so long as one of those entities accepts all or part of such MS4s for operation and maintenance. Mr. Ringold next advised that, notwithstanding the TCEQ's issuance of the interpretive letter, there are certain private streets located within the District which the Homeowners Association owns and the District operates the associated MS4s, and that such MS4s will require permit coverage unless the TCEQ agrees that such MS4s are covered by the joint permit. Mr. Ringold then reminded the Board that a request for coverage of MS4s located within private streets is under review at the TCEQ, and noted that a response has not yet been received. Mr. Ringold informed the Board that, if the District is not included, it will need to prepare a SWMP and file a NOI for permit coverage under TXR040000 by February 11, 2008 and suggested that the Board consider engaging Stormwater Solutions ("SWS") to prepare a SWMP and a NOI for approval at the District's December or January meeting, if necessary. After discussion on the matter, Director Haude moved that the Board engage SWS to prepare a SWMP and a NOI for the Board's approval at its next meeting, if necessary. Director Rumph seconded the motion, which carried unanimously.

#### **APPROVAL AND EXECUTION OF LETTER AGREEMENT WITH RESPECT TO LEGAL FEES**

Mr. Ringold next presented and reviewed with the Board a Letter Agreement, a copy of which is attached hereto as **Exhibit G**. After discussion on the matter, Director Rumph moved that the Board approve said Letter Agreement authorizing the payment of \$30,000 to SPH for legal service in connection with the District's submittal and approval by the TCEQ of its eighth bond application report and proposed bond issuance and that the President be authorized to execute same on behalf of the Board and District. Director Wade seconded the motion, which carried unanimously.

#### **FUNDING OF PRELIMINARY ENGINEERING FEES**

Mr. Ringold next reminded the Board that, with respect to certain preliminary engineering fees incurred by developers of the

District and submitted for reimbursement pursuant to the terms of the applicable utility development agreement, the Board could either: (i) authorize disbursement of surplus funds in reimbursement of such fees based upon the District's consulting engineer's, attorney's and the independent auditor's review of same; or (ii) file an application for approval with the TCEQ. The Board then discussed the potential advantages and disadvantages of both approaches, and deferred taking action regarding same until its next meeting, at which it requested VEI provide additional information regarding its review of such fees.

#### **OPERATIONS AND MAINTENANCE REPORT**

The Board next considered the Operations and Maintenance Report. Mr. Hastings presented and reviewed in detail with the Board a written Operations Report for October 2007, a copy of which is attached hereto as **Exhibit H**.

Mr. Hastings advised the Board that a sewage back-up occurred in the sanitary sewer line on Cypresswood Drive heading north to Buffalo Springs Court. He further noted that SWWC found no flow in the line when they checked it. Mr. Hastings then requested that the Board consider authorizing SWWC to televise the sanitary sewer lines in Spring Lakes, Section 13 and 500-feet from Buffalo Springs Court and Cypresswood Drive. Mr. Hastings noted that the cost would be approximately \$8,500. After discussion on the matter, Director Haude moved that SWWC be authorized to televise the sanitary sewer lines in Spring Lakes, Section 13 and 500-feet from Buffalo Springs Court and Cypresswood Drive at a cost not to exceed \$8,500. Director Wade seconded the motion, which carried unanimously.

Mr. Hastings next requested that the Board consider authorizing SWWC to replace the check valves on the blowers at the sewage treatment plant and noted that it would cost approximately \$2,600. After discussion on the matter, Director Haude moved that Aqua Services be authorized to replace the check valves on the blowers at a cost not to exceed \$2,600. Director Rumph seconded the motion, which unanimously carried.

Mr. Hastings next advised the Board that the development of Mark Carpenter's tract is proceeding without an updated set of plans. Mr. Ringold informed Mr. Novosad that VEI needed to discuss the matter with Mr. Carpenter as soon as possible and ensure that he abides by the District's plan approval and inspection requirements.

Mr. Hasting next reminded the Board that, as discussed at last month's meeting, a bar screen failure occurred at the Sewage Treatment Plant. He advised that said bar screen has previously been repaired twice, but that this time it was damaged beyond

repair. Mr. Hastings then informed the Board of the various options available for replacement of the bar screen. Mr. Novosad then presented and reviewed with the Board a cost estimate for an Aqua-Guard, a copy of which is included with the operations report, and noted that same would cost approximately \$151,041. There then ensued a discussion regarding the cost and alternate options available. Mr. Novosad informed the Board that he would request Evan Cook to attend next month's meeting to discuss the matter further. Mr. Hastings informed the Board that he would find out the cost for the installation of a fine screen and report back at next month's meeting. No action was taken by the Board at this time.

#### **ISSUANCE OF UTILITY COMMITMENTS**

Mr. Ringold next informed the Board that Mark Carpenter's Utility Commitment Letter ("UCL") for his 5.687 acre tract has expired and noted that Mr. Carpenter is requesting that the District issue a renewal UCL for 4.834 acres out of his 5.687 acre tract. After discussion on the matter, Director Rumph moved that the Board (i) grant Mr. Carpenter's request for a new UCL for 4.834 acres out of his 5.687 acre tract, (ii) authorize SPH to prepare said UCL and (iii) authorize the President to execute same on behalf of the Board and District. Director Wade seconded the motion, which unanimously carried.

#### **DEVELOPER'S REPORT**

The Board next considered the developer's report. Mr. Sullivan advised the Board that he had nothing new to report at this time.

#### **ATTORNEY'S REPORT**

Mr. Ringold next advised the Board that a 2007 Census of Governments Local Government Finances Survey had been received and could be completed by SPH if the Board so desired. After discussion on the matter, the Board concurred that SPH not complete the Survey.

Mr. Ringold next presented and reviewed with the Board a brochure from Brothers Tank Service regarding the services they offer, a copy of which is attached hereto as **Exhibit I** .

#### **DISCUSSIONS WITH HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 110 REGARDING JOINT DRAINAGE FACILITIES**

Director Haude advised the Board that he had nothing new to report at this time.

Mr. Hastings and Mr. Novosad exited the meeting at this time.

## DISTRICT SECURITY ISSUES

The Board next considered the report on District security issues. Mr. Ringold advised the Board that the Harris County Sheriff's Office's call sheet summary for October 2007 has not yet been received. Mr. Ringold then advised the Board that the Law Enforcement Agreement Renewal had been received and presented and reviewed same with the Board. Director Haude then informed the Board that he received e-mail correspondence from Director Adamek regarding the letter dated October 27, 2007, received by District residents from the Spring Lakes Homeowners Association ("HOA") stating that the HOA would be assuming the security contract from the District. Director Rumph then advised the Board that he had spoken with an HOA Board member to gauge the HOA's interest in assuming the security contract. Director Haude further advised the Board that he spoke with Bill Graham and Sixto Ortiz regarding the matter to see where the HOA stands on the contract transfer. After a lengthy discussion on the matter, Director Rumph moved that (i) the Law Enforcement Agreement Renewal be approved, (ii) the President and Secretary be authorized to execute same on behalf of the Board and District, and (iii) SPH be authorized to prepare and forward correspondence to the HOA inquiring whether the HOA would be willing to assume the security contract with the understanding that the District will provide the HOA with the necessary funds to make the monthly payments, provided that the contract deputy continues to regularly patrol the District's sites and facilities. Director Wade seconded the motion, which carried unanimously.

## ADJOURN

There being no further business to come before the meeting, upon motion made by Director Rumph seconded by Director Wade and carried unanimously, the meeting was adjourned.

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Secretary

LIST OF ATTACHMENTS TO MINUTES

Exhibit A - Tax Assessor-Collector's Report

Exhibit B - Delinquent Tax Report

Exhibit C - Reimbursement Audit

Exhibit D - Resolution Approving Taxation of Goods-in-  
Transit Pursuant to Texas Property Tax Code  
Section 11.253

Exhibit E - Bookkeeper's Report

Exhibit F - Engineer's Report

Exhibit G - Letter Agreement

Exhibit H - Operator's Report

Exhibit I - Brothers Tank Service brochure