

**NORTHTOWN MUNICIPAL UTILITY DISTRICT
MINUTES OF BOARD OF DIRECTORS' MEETING**

February 23, 2010

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

A meeting of the Board of Directors of Northtown Municipal Utility District was held on February 23, 2010, at the Wells Branch Community Center, 2106 Klattenhoff Drive, Austin, Texas. The meeting was open to the public and notice was given as required by the Texas Open Meetings Act. A copy of the Certificate of Posting of the notice is attached as **Exhibit "A"**.

The roll was called of the members of the Board:

Robin Campbell	-	President
Brenda Richter	-	Vice President
William E. Henderson	-	Treasurer
Scott M. Gray	-	Secretary
Alex Martinez	-	Assistant Secretary

and all of the Directors were present, thus constituting a quorum. Also present at the meeting were Jesse Kennis of Wells Branch Municipal Utility District; Andrew Hunt of SWWC Services, Inc. ("SWWC"); Allen Douthitt of Bott & Douthitt, P.L.L.C.; Scott Foster of Kimley-Horn & Associates, Inc.; Richard Fadal of TexaScapes, Inc.; Lee Hill and Alan Rivaldo, residents of the District; Trent Rush of TBG Partners; Jay Howard of Texas Disposal Services; Jim Nias and Kathryn Loayza of Jackson & Walker, LLP, representing Village @ Northtown, Ltd. and Kimberly S. Beckham of Armbrust & Brown, L.L.P. Deputy Keith Kinnard of the Travis County Sheriff's Department arrived later.

Director Campbell called the meeting to order at 5:45 p.m. and stated that the Board would first consider approving the consent items on the Board's meeting agenda: the minutes of the January 26, 2010 Board meeting and an amended Order Establishing Service Rates, Charges and Tap Fees and Adopting Rules and Policies with Respect to the District's Water, Wastewater and Drainage Systems. Director Campbell asked that the amended Order Establishing Service Rates, Charges and Tap Fees and Adopting Rules and Policies with Respect to the District's Water, Wastewater and Drainage Systems be pulled and included on the agenda for the next Board meeting. Ms. Beckham agreed to do so. Upon motion by Director Richter and second by Director Gray, the Board voted unanimously to approve the minutes of the January 26th Board meeting.

Director Campbell then stated that the Board would receive citizens' communications. Mr. Hill addressed the Board and requested that the District website include the SWWC application form that must be signed and notarized by all new residents. Director Campbell thanked Mr. Hill for the suggestion, and Mr. Hunt agreed to coordinate having the form added to the District website.

Director Campbell stated that the Board would postpone the security report until Deputy Kinnard arrived at the meeting. Director Richter advised the Board that she and Mr. Anderson

were still pursuing the dumping at the Dessau mobile home park. She reported that paint had been dumped in a pit and that it had been subsequently covered with dirt. Ms. Richter stated that Mr. Anderson had contacted the Texas Commission on Environmental Quality (“TCEQ”) concerning the dumping and that TCEQ was investigating and had issued a notice requiring clean-up within 30 days. Director Richter advised the Board that Mr. Anderson would follow-up with the TCEQ and report back to the Board at the next Board meeting.

Director Campbell stated that the Board would next receive the quarterly report from the District’s solid waste contractor. Mr. Howard addressed the Board and reviewed his report, a copy of which is attached as **Exhibit “B”**. He advised the Board that there had been eight resident complaints for failure to pick-up recycling on October 3rd. Mr. Howard reported that there had been a team miscommunication and an entire street had been missed. He advised the Board that the missed recycling bins were picked up the following Monday. Mr. Howard stated that most customer questions related to recycling volume limits. He stated that all customers received one bin and the service was provided one time per week, but noted that a customer could have more than one bin for an additional charge per bin. The Board then discussed the recycling program, including the volume limits, and thanked Mr. Howard for his report.

Director Campbell then recognized Mr. Kennis for purposes of receiving a report under the Interlocal Agreement with Wells Branch Municipal Utility District. Mr. Kennis reviewed his directives and noted that he was not able to get the Eagle Scouts for the Wildflower curb address project. He stated that he was working on alternatives and requested that the item be included on the meeting agenda for the next Board meeting. Ms. Beckham agreed to include the item. Mr. Kennis reviewed his report, a copy of which is attached as **Exhibit “C”**, and advised the Board that there had been extensive graffiti painted on the bridge, playscapes and sidewalks during the previous month. He stated that it was the worst he had seen for some time. Mr. Kennis reported that the graffiti had been temporarily painted over. He stated that his staff would be watching the areas closely and that, if it happened again, the Board might want to consider installing cameras to monitor the worst-hit areas. Mr. Kennis then reviewed the proposals for Stoney Creek playscape concrete removal, erosion repairs including the Meadow Pointe spillway and Harris Ridge bridge, and reinforcing the trail bank in the Stoney Creek park, copies of which are attached as **Exhibit “D”**. Director Richter and Director Henderson recommended approval of the proposals. After discussion, upon motion by Director Martinez and second by Director Gray, the Board voted unanimously to approve the proposals.

Mr. Kennis then presented the restrictive covenant violation report and advised the Board that no specific action was needed from the Board. He then explained the benefits of the Interlocal Participation Agreement with the Local Government Purchasing Cooperative (“*Cooperative*”), a copy of which is attached as **Exhibit “E”** (“*Purchasing Participation Agreement*”), and advised the Board that Wells Branch Municipal Utility District was a member. Director Richter asked if there was a fee for being a member. Mr. Kennis explained that there was no set fee for joining, but there was a service charge for items purchased through the Cooperative. He stated that, when Wells Branch bought six vehicles, there was a charge of \$400 for the purchase. Director Richter asked if the competitive bidding process was followed by the Cooperative. Mr. Kennis responded that it was, and that was a benefit of using the Cooperative. Ms. Beckham stated that, although purchases through the Cooperative complied with the competitive bidding process, the Board would still need to review and approve any proposed purchases before they were made. Director Campbell asked if Section 4(a) of the Purchasing

Participation Agreement referred to the purchase service fee. Mr. Kennis replied that this was his understanding. Mr. Hunt added that the processing fee was what the District would pay, but noted that the District would also share in any profits and could possibly get a check back at the end of the Cooperative's fiscal year. Director Gray asked if the District would have access to pricing information. Mr. Kennis stated that it would and that the Cooperative had a website where the District could get price quotes. He advised the Board that he typically got a quote and then did some separate price comparison work to make sure the pricing was favorable. After discussion, upon motion by Director Martinez and second by Director Gray, the Board voted unanimously to approve the Purchasing Participation Agreement with the Cooperative.

Director Campbell then noted that Deputy Kinnard had arrived, and recognized him for purposes of receiving the security report. Deputy Kinnard reviewed the status of the dumping situation with the Board, noting that the paint in the pit had been covered with fill and that Mr. Anderson would check with the TCEQ at the end of the 30-day clean-up period, which would expire on February 26th, to see if the area had been cleaned up. Director Richter stated that she had been disappointed with the process, because the paint cans were labeled "Dessau #2," but that party had not been charged with the illegal dumping. Deputy Kinnard responded that it would be hard to prove who dumped the paint. Deputy Kinnard then recommended that the Board consider a new security personnel monitoring system called "ARES." He distributed vendor information concerning the system, a copy of which is attached as **Exhibit "F"**. Deputy Kinnard explained that the security personnel monitoring system would monitor where the security officers were during the day. He explained that knowing what time the security officers were in and out of an area could help the District with graffiti control. Director Richter added that the monitoring system would also ensure that the security officers were doing their jobs. Deputy Kinnard noted that the monitoring device was inexpensive, costing approximately \$500, and that it would help set security protocols. Director Campbell asked if the devices were durable. Deputy Kinnard responded that they were. After discussion, the Board directed Ms. Beckham to include an item on the next Board meeting agenda to discuss the ARES monitoring system. Ms. Beckham agreed to do so. Deputy Kinnard then reported that there had been a "peeping tom" in the Brookfield area and that he had been observed crawling over fences. He stated that this had been going on for a couple of weeks in the evening hours. Director Gray asked if security patrols had been increased to address the problem. Deputy Kinnard responded that the Sheriff's Department had increased monitoring in the area. Director Campbell then asked that the Board consider approving check numbers 3671, 3675, 3676, and 3685, which were payments for security services. After discussion, upon motion by Director Henderson and second by Director Gray, the Board voted unanimously to approve the payments.

Director Campbell stated that the Board would next consider the Interlocal Agreement for Governmental Services with Wells Branch Municipal Utility District. Director Richter and Director Campbell reported that they had been working on the agreement, and that the version attached as **Exhibit "G"** was the final version which they recommended be approved by the Board. Mr. Kennis reminded the Board that the Wells Branch District Manager would only have the authority to spend up to \$1,000 per month to purchase expendable supplies and other materials. After discussion, upon motion by Director Henderson and second by Director Martinez, the Board voted unanimously to approve the Interlocal Agreement for Governmental Services with Wells Branch Municipal Utility District, as presented. Mr. Kennis advised the Board that the board of Wells Branch Municipal Utility District would consider the agreement at its meeting on March 2nd.

Director Campbell then stated that the Board would receive a report from the District's landscape maintenance contractor and recognized Mr. Fadal. Mr. Fadal advised the Board that his monthly report, a copy of which is attached as **Exhibit "H"**, contained the highlights from January. He reported that the work on the Tudor House pond was substantially complete, but that there was gravel that still needed to be spread. Director Richter asked when the work would be finished, and Mr. Fadal replied that it would be completed as soon as it was dry enough. He stated that his crews had completed the dead tree removal work in North Creek, and that the canopy had been raised to eight feet as a part of the winter maintenance program. Director Richter asked Mr. Fadal to provide a bid for installation of one or two more vines in the bare spaces around the lift station on Harris Ridge. Mr. Fadal agreed to do so. Mr. Fadal then reviewed the proposal for removal of dead trees from Old Stoney Creek and North Creek, a copy of which is attached as **Exhibit "I"**, with the Board. After discussion, upon motion by Director Richter, and second by Director Martinez, the Board voted unanimously to approve the proposal.

Director Campbell stated that the Board would next receive the engineer's report and recognized Mr. Foster. Mr. Foster reviewed his directives, noting that the work on the Tudor House pond would be completed in the next two weeks. He then presented the report attached as **Exhibit "J"**, noting that the plugging of the well in Northtown park had been a long, drawn-out process. Mr. Foster advised the Board that the well had potential to be a viable irrigation well, and that he had coordinated with the Parks Subcommittee, Horizon Environmental and Bee Cave Drilling to install a temporary cap. He recommended that the Park Subcommittee evaluate the viability of using the well as an irrigation well. Director Richter stated that the Park Subcommittee would need to understand what the water needs were and have cost information, including the cost of the wholesale water as compared to the cost of operating the well. Mr. Foster advised the Board that there was a preconstruction meeting scheduled for February 3rd for the Lakes at Northtown, Section 3. He reported that there had been coordination issues with the City of Austin concerning fire hydrants for the Heatherwilde/Wells Branch Parkway improvements. Mr. Foster stated that the Park Subcommittee had requested that he review fencing options and access issues related to the pond located at the northwest corner of the intersection of Merseyside and Harris Ridge, and that he was working on the scope of the work and related pricing.

Director Campbell reported that Director Richter and he had worked with Mr. Foster to evaluate the wastewater gravity line alternative to bypass the low-flow lift station and advised the Board that the bypass could cost up to \$4,300,000. He added that a bypass would require many line replacements. Director Campbell stated that, after reviewing the situation, he and Director Richter recommended that the low-flow lift station be improved and made permanent. Director Martinez asked if Director Campbell was recommending that the bypass idea be abandoned. Director Campbell confirmed that this was the recommendation. He added that, during the review process, they had learned that the service model was incomplete. Director Campbell advised the Board that Mr. Foster would need to determine if the low-flow lift station could handle the necessary flows, and evaluate where the capacity problems were. After discussion, the Board directed Ms. Beckham to include an item on the next Board meeting agenda to evaluate conversion of the low-flow lift system to a permanent lift station. Ms. Beckham agreed to do so.

Mr. Foster then reviewed the three different pond assessment program scenarios described in the memorandum attached as **Exhibit "K"**. He advised the Board that there were

34 ponds in the District, with 28 of them being maintained by the District. Mr. Foster reviewed the preliminary project budget and noted that the estimated cost of \$106,400 did not include any repair cost, but only included inventory, study, assessment and inspections. Director Richter noted that there were no as-built plans or other documents available showing what had been constructed in the District. She stated that the proposed work would identify the ponds, assist in providing information to Mr. Kennis and his employees for pond maintenance, and be helpful in connection with City of Austin coordination and related issues. Director Richter stated that the proposal request had been initiated due to the notice of violation previously issued by the City of Austin. After discussion, the Board directed Mr. Foster to prepare a services proposal for scenario number three. Mr. Foster agreed to do so. Mr. Foster reported that survey stakes had been placed and that it appeared that several fire hydrants and some bike signs might be in the way of the McCallen Pass/Heatherwilde Boulevard fencing project.

Director Campbell stated that the Board would next consider the proposal from Kimley-Horn and Associates, Inc. for preparation of the District's proposed 2010 bond application, a copy of which is attached as **Exhibit "L"**. Mr. Foster stated that the proposed fee had been reduced to \$34,000 and changes had been made to the proposal based upon Ms. Littlefield's comments. Director Campbell advised the Board that Mr. Foster had prepared his initial proposal based on a fee structure used in the past, but that Ms. Littlefield had requested several changes, including a change to the payment terms so that fifty percent of the fee would be paid when the bond application was filed and the remaining fifty percent payment would be paid at the time the bonds were sold. Director Campbell and Director Gray recommended approval of the revised proposal for preparation of the bond application, as presented. After discussion, upon motion by Director Richter and second by Director Martinez, the Board voted unanimously to approve the proposal.

Director Campbell stated that the Board would next discuss and consider park development matters. Director Richter reviewed the Park Project Budget/Timeline attached as **Exhibit "M"**. She reported that the Park Subcommittee had approved a \$615 expense for January related to a Kimley-Horn invoice. Director Richter stated that the Park Subcommittee had tried to include additional detail on the budget document concerning engineering fees. She advised the Board that there was a significant amount of work being performed on the Phase 2A park, including irrigation work, curb removal and asphalt repair. Director Richter stated that the substantial completion deadline had been extended to February 18th due to weather delays. She advised the Board that she would not recommend approval of further significant extensions of the substantial completion deadline for rains delays because the contractor had not diligently prosecuted the work. Director Richter recommended that the Board consider extending the substantial completion date to March 1, 2010, and require all major punch-list items to be complete by that deadline. She stated that liquidated damages would begin to accrue at \$500 per day after the deadline. Director Richter added that she wanted to see a change order on the next meeting agenda for credits that were due the District for the project. Ms. Beckham agreed to include an item. Mr. Foster recommended that the retainage not be released until April, 2010. He requested approval from the Board to continue working with the contractor to determine the substantial completion deadline. Mr. Foster recommended that the Board authorize the Park Subcommittee to determine the substantial completion deadline, but recommended that it not be later than March 8th. After discussion, upon motion by Director Martinez and second by Director Gray, the Board voted unanimously to authorize the Park Committee to extend the substantial

completion deadline up to March 8th, if deemed appropriate based on consultation with Mr. Foster.

Director Richter then directed the Board's attention to the Additional Services Addendum No. 6 submitted by Kimley-Horn and Associates related to the proposed pavilion improvements, a copy of which is attached as **Exhibit "N,"** and the proposal for the park pavilion submitted by TBG Partners, a copy of which is attached as **Exhibit "O"**. Director Richter advised the Board that the Park Subcommittee recommended approval of both proposals, including alternate number one and alternate number two in the TBG proposal, which would result in a contract total of \$50,700 for the TBG proposal. After discussion, upon motion by Director Gray and second by Director Martinez, the Board voted unanimously to approve the Kimley-Horn and Associates proposal and alternate number one and two of the TBG Partners proposal.

Director Campbell then advised the Board that the Signage Master Plan Subcommittee had not met on signage issues, but would meet soon. Director Richter noted that trail markers and trail signs were needed.

Director Campbell then stated that the Board would receive the bookkeeper's report and recognized Mr. Douthitt. Mr. Douthitt presented the updated cash activity report attached as **Exhibit "P"**. He called the Board's attention to the check which was being presented to replenish the manager's account. Mr. Douthitt then reviewed the proposed transfer out of the Logic tax account into the Logic Operating account, attached as **Exhibit "Q"**. He stated that the District's financials were in line with the budget and that the District was 87% collected on taxes. Mr. Douthitt advised the Board that the District was holding a \$10,000 holdback deposit and \$4,000 in builder deposits from DR Horton, but that \$7,700 was due from them in back charges. Director Henderson recommended that DR Horton be required to remove its signs in the District before any disbursements were made to them. After discussion, the Board directed Mr. Douthitt to follow up with DR Horton regarding the deposits and the signage removal. Director Henderson moved approval of the payment of the bills and invoices and the transfer. Upon second by Director Gray, the motion was unanimously adopted.

Director Campbell stated that the Board would next receive the general manager's report and recognized Mr. Hunt. Mr. Hunt reported that the District had experienced an 11.19% water loss, but noted that, over the prior twelve-month period, there had been an overall 5.54% gain. He stated that he had three write-offs, as shown on **Exhibit "R"**. Upon motion by Director Henderson and second by Director Gray, the Board voted unanimously to approve the write-offs. Director Campbell then stated that he and Director Martinez had been reviewing the Owner Authorization Agreement with Clear Wireless, LLC, and analyzing the potential impact of the proposed communication tower on the area, including the lift station. He advised the Board that Clear Wireless had agreed to remove the tower if it interfered with other area communication equipment or lift station operations and noted that the tower equipment would appear to be a part of the lift station, so that it was not readily apparent that it was there. Director Campbell stated that the Subcommittee recommended that the Board approve the agreement with Clear Wireless. After discussion, upon motion by Director Richter and second by Director Gray, the Board voted unanimously to authorize the Subcommittee to finalize and execute the agreement with Clear Wireless.

Mr. Hunt then directed the Board's attention to the SWWC letter to the District dated February 12, 2010, concerning costs incurred by SWWC related to implementation of the District's red flag program, a copy of which is attached as **Exhibit "T."** He stated that the District's contract with SWWC required that SWWC implement the red flag program, but noted that SWWC was incurring third-party costs associated with the program. He stated that SWWC proposed to begin invoicing the District for the fees incurred. Director Campbell stated that he took strong exception to a notice from SWWC stating that additional fees would be charged without Board approval. Mr. Hunt stated that the fees would not be charged until the Board approved them. After discussion, the Board directed Ms. Beckham to include an agenda item on the next Board meeting agenda for consideration of an amendment to the SWWC contract to incorporate the proposed fee structure. Ms. Beckham agreed to do so.

Director Campbell then stated that the Board would receive the attorney's report and recognized Ms. Beckham. Ms. Beckham reviewed the attorney's directives from the prior meeting and reported that her office was still reviewing the possibility of using a payment service like Fidelity Express to accept customer bill payments. She advised the Board that there could be issues with commingling of funds, insurance and bonding. Ms. Beckham stated that Mr. Anderson had agreed to obtain more information from the service, including the specifics as to the handling of funds collected from the District customers. Director Campbell stated that Wells Branch Municipal Utility District had given the District three months to find an alternative to the lock box at the Wells Branch office. Director Richter stated that, once an alternative was decided on, the District would need to put the information in the bills, post a sign at Wells Branch and put it on the website.

Director Campbell then recognized Mr. Nias for purposes of receiving a report on the Village @ Northtown. Mr. Nias stated that the developer had met with the City of Austin concerning proposed amendments to the land plan, and anticipated that the amendments would be approved in two phases. He stated that all proposed amendment would be presented to the Board for approval, but noted that the City of Austin could administratively approve some of the proposed changes. Mr. Nias and Loayza then reviewed the Land Use Exhibit attached as **Exhibit "U"**, pointing out the proposed changes to the single family areas and the proposed changes to the parkland. Director Richter asked if the proposed bridge would be constructed above the road. Mr. Nias stated that they were not certain, as it was still under review. The Board then discussed the above-road bridge option, including a pedestrian signal system to connect the bridge with the trail system.

Director Campbell stated that the Board would next consider taking action on the election items contained on the supplemental meeting agenda. Ms. Beckham reviewed the election items with the Board. Director Richter then moved that the Board approve the Order Calling Director Election for May 8, 2010 attached as **Exhibit "V"**; the Resolution Approving Joint Election Agreement attached as **Exhibit "W"**; and the form of Agreement to Conduct Joint Elections attached as **Exhibit "X"**; authorize the District's attorney to give notice of the election and authorize the filing of a Voting Rights Act submission to the U.S. Department of Justice. Upon second by Director Martinez, the motion was unanimously adopted.

There being no further business to come before the Board, the meeting was adjourned.

Date: _____.

(SEAL)

Scott M. Gray, Secretary
Board of Directors