

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

March 23, 2010

THE STATE OF TEXAS           §  
                                          §  
COUNTY OF TRAVIS           §

A meeting of the Board of Directors of Northtown Municipal Utility District was held on March 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
Scott Gray	-	Secretary
Bill Henderson		Treasurer
Alex Martinez	-	Asst. Secretary

and all of the Directors were present, thus constituting a quorum. Also present at the meeting were Allen Douthitt of Bott & Douthitt, PLLC; Scott Foster and Michael Mott of Kimley-Horn & Associates, Inc.; Jesse Kennis and Mona Oliver of Wells Branch Municipal Utility District; Robert Anderson of SWWC Services, Inc.; Crystal Kaylakie of Southwest Securities; Lee Hill and Mr. Revaldo, residents of the District and Sue Brooks Littlefield of Armbrust & Brown, L.L.P.

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 February 23, 2010 Board meeting; 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 attached as **Exhibit "B"** and the Plumbing Inspection Services Agreement with Roadrunner Inspection Services, LLC, attached as **Exhibit "C"**. Upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to approve the consent items.

Director Campbell then stated that the Board would receive citizens' communications and Board member announcements. There being none, Director Campbell then stated that the Board would consider taking action regarding District security. He noted that Deputy Kinnard had been unable to attend the meeting. Director Richter reported that the Sheriff's Department had identified and arrested the individual who had stolen the golf cart. She stated that there were no unusual security items to report. She asked Ms. Oliver to coordinate a meeting between Earnest Robles and Deputy Kinnard on the ARES system and Ms. Oliver agreed to do so. Director Richter also reported that the dumping problem behind the mobile home park had been turned over to Mr. Anderson for further action.

Director Campbell then recognized Mr. Kennis and Ms. Oliver for purposes of receiving a report under the District's Interlocal Agreement with Wells Branch Municipal Utility District. Mr. Kennis reviewed the summary of activities attached as **Exhibit "D"**. He called the Board's attention to the proposal attached as **Exhibit "E"** for the ARES monitoring system. Director Richter expressed concern that Mr. Kennis had initially said there would be no cost for installation and his proposal indicated that there would be expense involved. Mr. Kennis responded that this was just in case materials were required for the installation and confirmed that there would be no labor charges. He then presented the proposals attached as **Exhibits "F"** through **"L"**, noting that these had been requested by the Park Subcommittee to address some deficiencies noted during the park walk-through. He stated that the biggest items were for concrete swales where erosion had been noted. He explained that these proposals had been prepared in accordance with Mr. Foster's specifications. Director Richter stated that these proposals would not normally come to the Board, but would be approved by the Park Subcommittee or approved under the Wells Branch Interlocal Agreement, but these were being presented to provide additional documentation under the Interlocal Agreement. Director Richter then moved approval of all of the proposals. Director Gray seconded the motion, which was unanimously adopted.

Ms. Oliver then reported that Wildflower was showing a lot of improvement. Director Richter agreed that the alleys looked much better. Ms. Oliver stated that some residents had questioned why the rules were being enforced now, but many seemed pleased that something was being done. She requested approval of lawsuits in connection with fence maintenance violations at 14013 Golden Flax Trail, 13917 Golden Flax Trail and 111 Wild Senna Drive. Director Richter expressed concern about taking action on these fence violations because they seemed to be minor conditions. Ms. Littlefield noted that it tended to create more violations when enforcement was not pursued, and stated that the Board could send another letter allowing the residents another opportunity to come into compliance. Director Gray expressed concern that some of these residents might not understand the consequences and asked that the next letter be translated into Spanish. Ms. Littlefield confirmed that she could do this. Director Gray then moved approval of the proposal to send an additional letter, translated into Spanish, to the three addresses in question. Director Richter seconded the motion. Upon being put to a vote, the motion was unanimously adopted. Director Campbell inquired whether there had been any further action on the shed on the parking pad in Wildflower. Ms. Oliver stated that she understood that the Board would allow it to be used as a garage. The Board asked Ms. Littlefield to check the directives on this and she agreed to do so.

Director Campbell then reported that Mr. Fadal had been unable to attend the meeting. Director Richter stated that he was participating in the Mayor's committee on small businesses and added that the Board was pleased to support this effort. Director Richter called the Board's attention to Mr. Fadal's report, attached as **Exhibit "M"**, noting that the clean-up around the creek had dramatically improved the look of the area.

Director Campbell then recognized Mr. Foster for purposes of receiving the engineer's report. Mr. Foster presented his report, attached as **Exhibit "N"**. He stated that he had met with KB Homes' engineer to review the condition of the Lakes pond. He stated that he had also responded to a complaint from a resident regarding the drainage structure, which was creating some ponding water. He stated that KB Homes was working on a drainage solution. Mr. Foster

then presented Pay Estimate No. 1 for the Lakes at Northtown Section 3, a copy of which is attached as **Exhibit “O”**, and recommended approval. He stated that he expected completion of this project in June. Upon motion by Director Gray and second by Director Richter, the Board voted unanimously to approve the pay estimate, as recommended. Mr. Foster then called the Board’s attention to the letter on the backcharges on the lift station which had been sent by Ms. Littlefield’s office, a copy of which is attached as **Exhibit “P”**. Ms. Littlefield agreed to follow-up on the charges prior to the next Board meeting. Mr. Foster explained that there was an on-going concern regarding the fire hydrants along the extension of Wells Branch Parkway, which were located on the water line and were behind the guard rail. He stated that the City was refusing to accept the improvements. He added that the waterline had been completed before the roadway and estimated that the cost to move the hydrants was around \$30,000. He stated that he did not think this should be a District expense. Director Richter inquired if this was holding up the Village development and Ms. Littlefield responded that it was not, as Mr. Nias had advised her that his office was still working on revisions to the land plan and that some of these changes would require City Council approval.

Mr. Foster stated that he was still working on the cost-benefit analysis related to the proposed irrigation well. Mr. Foster stated that well costs were actually around \$70,000 to \$80,000 per well and that he felt the estimate of about \$7,000 which the District had been given was grossly inadequate. Director Richter stated that she appreciated Mr. Foster’s input on this subject and added that the Park Subcommittee would get a better idea of the costs and bring back a recommendation to the Board. Mr. Foster then called the Board’s attention to the draft water rights permit included in the Board’s meeting packet, a copy of which is attached as **Exhibit “Q”**. He stated that this permit required the installation of two wells to provide makeup water for the ponds. Director Henderson requested that this be factored into the cost-benefit analysis Mr. Foster was doing and Mr. Foster agreed to do so.

Mr. Foster then advised the Board that his firm had completed the feasibility report on the proposed sanitary sewer flow diversion and presented a report, a copy of which is included in the permanent records of the District. He reminded the Board that a preliminary determination had been made that it was not feasible to take the low flow lift station off-line due to line constraints downstream. He stated that the Dessau force main failure had affected his recommendation in this regard, and stated that he would provide additional information later in the meeting. He then called the Board’s attention to the pond maintenance plan and related services proposal for Scenario No. 3 attached as **Exhibit “R”**. Director Martinez stated that he believed phasing the work was appropriate, and would support it. Director Richter then moved approval of Scenario No. 3 only, with the understanding that the Board would consider the other phases at a later time. Director Martinez seconded the motion, which was unanimously adopted. Director Campbell requested that the revised wet pond rules be brought back to the Board at the next meeting. Ms. Littlefield agreed to do so.

Mr. Foster then advised the Board that he had done the preliminary location survey work for the McCallen Pass fencing project. He stated that he did not recommend relocating the fire hydrant which conflicted with the fence, but instead recommended that a gap be left in the fence to allow access to the hydrant. Director Richter agreed and stated that this was not optimal, but because the hydrant was next to the alley and not a yard, it would not affect the overall project. She added that relocating the hydrant would create a cost issue.

Mr. Foster reported that he and the Park Subcommittee had met onsite to confirm locations for the disc golf tee boxes and holes. He reminded the Board that it had asked about accessibility requirements under the Americans with Disabilities Act and reported that the TDLR was now working on its policy and, once that was done, the District would have better guidance to assure compliance with the Act. Director Richter suggested not moving forward with the project until this information was received, because the policy could dramatically affect costs.

Mr. Foster reported that the Village @ Northtown contacted his firm about performing a feasibility study for the proposed Wells Branch Parkway pedestrian crossing, but that he had not heard back from them. He proposed that, if he did proceed with this project, his firm perform the work as a District consultant, with an escrow from the developer to cover the costs. The Board agreed that it would prefer this approach.

Mr. Foster then reported that the City had contacted Mr. Anderson in early March about a wastewater force main break which had taken about six days to repair, resulting in six days of pumping and hauling wastewater, primarily out of the low flow lift station. He stated that the City had ultimately determined that the line which had failed was a District force main. He stated that the plan notes for the line clearly identified it as a District facility. Ms. Littlefield confirmed that the line was built in the early 1980's and accepted by the District. She added that it had been financed in the District's first bond sale. Mr. Foster stated that the City was being cooperative and had, in fact, repaired the line at its expense. Ms. Littlefield added that the City would be requesting reimbursement for the costs of the repair. Mr. Foster stated that the rest of the line was in an unknown condition. He noted that he and Mr. Anderson had discussed the possibility of doing investigative potholing, but that there was some risk to doing this type of assessment as it could further impact the integrity of the line. Mr. Foster stated that the City had advised him that it had a long-term plan in place to bring an interceptor line up to the creek, but that his preliminary work in analyzing the District's wastewater system had determined that the existing lines to that point were inadequate for anticipated flows. He stated that the City had indicated that it was willing to consider a waiver of certain design requirements in order to reduce the segments of line that would have to be replaced from six segments to one. He stated that this approach would also require the reconstruction of the lift station and force main from the interceptor to the point of connection. Mr. Foster added that one of the benefits of doing this project was that the City had indicated it would possibly cost participate. Mr. Foster stated that the estimated project cost was between \$5 Million to \$7 Million, but that he could not provide more accurate costs at this time. Mr. Foster stated that he would need to do an alternative cost analysis to determine the best course of action and that he was still in assessment mode. Director Campbell asked if the lines to the East lift station were as old as the line which had failed. Mr. Foster stated that the line along Howard Lane was put in at the same time. Director Campbell stated that he understood that the City had also suggested going west to McCallen Pass as an option. Mr. Foster stated that this was an option and would be considered, but there were some environmental concerns since this route would affect the creek and the District's park and greenbelt. He stated that this approach also did not address the limitations of the force main south of Howard and did not facilitate the long-term City plan to take the low-flow lift station off-line. He concluded that it might be a "wash" on costs with this option. Director Richter inquired what action the Board was being asked to take. Mr. Foster then presented the proposal from TexaScapes attached as **Exhibit "S"**, which he pointed out was for repair of the damage to the area around the lift station caused by the pumper trucks. Director Henderson inquired about

the timing of the construction work, and expressed concern about spending money to revegetate the area when contractors would likely just tear it up again. Mr. Foster responded that it would be many months before plans could be submitted to the City and the District would likely not start construction on the project until January 2011. He then reviewed his proposal for master planning and mapping of the District's water and wastewater systems, attached as **Exhibit "T"**. He recommended that at least Task 1 be authorized at this time. He acknowledged that the water master planning was the lowest priority. After discussion, Director Richter moved that the Board authorize Mr. Foster to move forward with Task 1 as recommended. Upon second by Director Martinez, the Board voted unanimously to approve Task 1. Director Richter inquired if Kimley-Horn was staffed to get this done and Mr. Foster confirmed that they were. Mr. Foster requested that a subcommittee be appointed to work with him on this project. Director Campbell and Director Martinez agreed to serve on this Subcommittee. Mr. Foster stated that the proposed Subcommittee meeting would be shortly before the next Board meeting, since there was still much work to be done.

Ms. Kaylakie then addressed the Board regarding the District's proposed 2010 bond application, and stated that the District had the capacity to bond more than the \$5.2 Million in bonds which had originally been proposed and that KB Homes had additional lots coming on line in 2010 that could also be taken into consideration. She stated that she would work with Mr. Foster and Mr. Douthitt to determine what should be bonded. Ms. Littlefield stated that she believed the Board would propose to use some of its reserves to finance a portion of the project and asked whether the capitalized interest which had been included in the projected bond issue could be eliminated. Ms. Kaylakie agreed to look into this. The Board agreed that the Bond Subcommittee would evaluate the revised proposal.

Director Campbell then stated that the Board would receive a report from the District's Park Subcommittee. Director Richter stated that a more detailed budget would be provided at the next Board meeting. She stated that the McCallen Pass security lighting issue was something the Board would like to discuss with the Village @ Northtown at the time the developer came in for a reimbursement contract. She explained that some old District signs had been sold for scrap and the check had been submitted to Mr. Douthitt.

Director Campbell then stated that the Board would consider taking action regarding the District's Phase 2A Park Improvements. Mr. Foster presented Pay Estimate No. 5 from Central Road and Utilities, attached as **Exhibit "U"**. He stated that he recommended approval as did the Park Subcommittee. Ms. Littlefield recommended not releasing the check until Mr. Foster received a release of the lien claim that had been filed by the paving subcontractor, and advised the Board that the subcontractor, JD Ramming, had filed a lien which, while not effective as to public property, was problematic. She stated that she had reported this to the bonding company. Director Richter moved approval of the pay estimate on this basis. Upon second by Director Henderson, the motion was unanimously approved.

Mr. Foster then presented Change Order No. 5 from Central Road and Utilities for the Phase 2A Park Improvements, noting that this included additional contract time for rain days. He reminded the Board that it had previously approved extending the completion date to March 8. He noted that, in addition, there had been some discussion of making an adjustment for quantities and related work days, and reviewed a proposal for additional landscaping and

sodding. Ms. Littlefield stated that she was concerned about the magnitude of the cumulative change orders on this project and discussed limitations on the Board's ability to approve changes orders over a certain percentage of the original construction contract price under the Texas Water Code. The Board discussed the need to revegetate in order to obtain City acceptance. Director Richter requested that the Board authorize the Park Subcommittee to move forward with revegetation around the parking lot area and bring back a proposal for the revegetation of the soccer fields. Mr. Foster recommended that the Change Order be subdivided into two change orders, with 5A being a deduct change order for approximately \$10,000 and an increase in contract days for a total of 29 days and with 5B being for revegetation of the site.

Director Campbell apologized that he had been out-of-pocket and unable to get with Director Gray on a recommendation on the signage master plan, but stated that the Subcommittee hoped to move forward on this before the next Board meeting.

Director Campbell then recognized Mr. Douthitt for purposes of receiving the bookkeeper's report. Mr. Douthitt distributed the updated cash activity report attached as **Exhibit "V"** and reviewed it with the Board. He advised the Board that the City of Austin had been over a month behind on its wholesale billings and that he had received another invoice from the City on the previous Friday. He requested approval of the latest invoice from the City, together with the related check. He advised the Board that Texas Disposal Systems had been underbilling the District based on its most recent rate adjustment and that he had received an invoice to true-up the amount due, which was being presented for payment. He reminded the Board that the District had withheld \$10,000 from DR Horton from the proceeds of the District's last bond issue and requested approval of a payment to refund the balance of the escrow, after payment of the inspection fees and backbills, and the remaining builder deposits which had been posted by DR Horton. Mr. Douthitt also advised the Board that he had relayed the Board's request to remove all lingering DR Horton signage from the District to Mr. Anker and that Mr. Anker had agreed to confirm when all of the signs were removed so the check could be released. Mr. Anderson reminded the Board that there was also a remaining issue on the backbill for charges relating to the Parkside condominiums. He stated that the amount remaining due needed to be resolved before the escrow was released. Mr. Douthitt requested that the Board approve the check subject to the Park Subcommittee's and Mr. Anderson's approval. Mr. Douthitt then reported that the District was 91.7% collected on taxes. He presented two transfer letters, attached as **Exhibits "W"** and **"X"**, and requested that they be approved. Upon motion by Director Gray and second by Director Henderson, the Board voted unanimously to approve the payments and transfers as presented, with the directive to Mr. Douthitt to hold the payment to DR Horton pending approval by the Park Subcommittee and Mr. Anderson, as previously discussed.

Director Campbell then recognized Mr. Anderson for purposes of receiving the operator's report. Mr. Anderson reported that the District currently had 2,793 active connections. He stated that all lab tests had been satisfactory. He requested the approval of the write-off set forth on **Exhibit "Y"**. Upon motion by Director Richter and second by Director Gray, the Board voted to approve the write-off. Mr. Anderson then advised the Board that there was an \$899 past-due balance for one customer who had experienced several water leaks. He stated that he had approved a payment plan, but that the customer, who was a renter, had defaulted under the

plan and had now moved from the District. He added that he anticipated that she would show up on the write-off list presented at the next meeting.

Mr. Anderson then presented the memorandum regarding implementation of the “red flag” rules and related costs attached as **Exhibit “Z”** and reminded the Board that these rules had been issued by the Federal government in 2003 and had now been made applicable to utilities. He stated that the rules were intended to protect customers’ identities from theft. He stated that his company had developed a program to comply with the Federal regulations and provide the District with protection from potential violations. Mr. Anderson explained that all customers who opened an account must pass the first level of scrutiny and that there were also various other levels of review which were implemented if there was a discrepancy at the first stage. He added that the only instances of Level 5 review that had been experienced had occurred when a customer was trying to open an account using fraudulent information. He explained that most districts were passing through the \$4.65 charge for the Level 1 review by adding this to the service initiation charge in their rate orders. Mr. Anderson stated that, although the additional charges could also be passed through, it was likely that, if an individual was using fraudulent information, the District would not actually recoup the charges. Director Richter moved that the Board approve an amendment to the District’s rate order to add a \$5 service initiation fee for all new customers and provide for the pass-through of the other costs, and implement the corresponding changes in SWWC’s contract. Upon second by Director Henderson, the motion was unanimously adopted.

Mr. Anderson then advised the Board that the lock box at Wells Branch was used an average of 1.6 times per day, with the highest use at the end of the month. He reminded the Board that this lock box had resulted in some problems, and that some of the payments had been misdirected, which had created delinquency issues. He added that Wells Branch had requested that the District find an alternative to this lock box. He stated that he had found a service, Fidelity Express, which might be an alternative. Ms. Littlefield agreed to follow up on this alternative. Mr. Anderson then advised the Board that JPMorgan and Water Asset Management had contracted to purchase Southwest Water Company, but assured the District that such a purchase would not change current operations. Mr. Anderson then advised the Board that, in connection with the force main failure, he had been instructed by Ms. Littlefield and Mr. Foster to create an emergency action plan, to be sure the District was prepared in the event of any future line failures. He explained that he had contacted Peabody Construction, which was the contractor the City had utilized for the original repair, and that they were familiar with the area, the requirements and the pipe. He stated that they had agreed to be on-call 24-hours a day, as would the pump and haul company, in the event he needed to call them out due to a future failure.

Director Campbell then stated that the Board would receive the attorney’s report and recognized Ms. Littlefield. Ms. Littlefield reviewed her directives from the prior Board meeting. She called the Board’s attention to the foreclosure report which indicated that there had been four foreclosures in February, and confirmed the termination of the District’s contract for erosion control inspections. She noted that a draft of the proposed water use permit, which had been reviewed by Mr. Foster and Mr. Heroy, was in the packet. Director Campbell inquired about a condition included in the draft permit on a buffer zone set-back and slope limitations. Mr. Foster

stated that this condition was consistent with the City of Austin requirements, but stated that he would confirm that this was not a potential problem before proceeding with the permit.

Ms. Littlefield then presented the Second Extension to the Interlocal Agreement with the City of Austin for solid waste and recycling services to Lakes at Tech Ridge Development attached as **Exhibit "AA"**, and reviewed it with the Board. Upon motion by Director Richter and second by Director Gray, the Board voted unanimously to approve the Second Extension.

Ms. Littlefield then stated that there were no contested positions for the May 8 election, so the Board could cancel the election and declare the unopposed candidates elected as of May 8, 2010. She presented the Order Declaring Election of Unopposed Candidates and Canceling May 8, 2010 Director Election attached as **Exhibit "BB"** and reviewed it with the Board. Upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to approve the Order.

Director Campbell then recognized Mr. Foster for purposes of receiving an update on Change Order No. 5. Mr. Foster recommended that the Board approve Change Order No. 5A as a deduct change order in the amount \$10,542.93, consisting of line items 1-7 on the detail attached as **Exhibit "CC"**. He noted that this Change Order would also provide for an additional 29 working days, extending the completion date to March 19. Ms. Littlefield noted that it was now March 23 and this extension would not get the contractor to that date. She inquired whether the work was now complete. Mr. Foster responded that the contractor had only requested 29 days, but was currently only 95% complete. After discussion, upon motion by Director Richter and second by Director Martinez, the Board voted unanimously to approve Pay Estimate 5A, a copy of which is attached as **Exhibit "DD"**

Mr. Foster then recommended that the Board separately approve Pay Estimate No. 5B, relating to sodding and revegetation. He stated that he believed items 8, 9 and 10 on **Exhibit "CC"** would total approximately \$77,000. He stated that he would like approval to work with Ms. Littlefield to approve Pay Estimate 5B if possible under the competitive bidding statutes, or otherwise try to bid the work out with the approval of the Park Subcommittee. He added that the Park Subcommittee wanted the area around the parking lot sodded, while the other areas could be hydromulched. Director Campbell suggested that Ms. Littlefield and Mr. Foster look at the applicable statutes and that the Board authorize the Park Subcommittee to take whatever action necessary to proceed with the revegetation in compliance with applicable statutes, with a goal of keeping the total cost under \$50,000. Director Richter moved that Director Campbell's recommendation be approved and the Park Subcommittee be authorized to approve a change order or contract for the work consistent with this recommendation. Upon second by Director Henderson, the motion was unanimously adopted. Mr. Anderson stated that, if the soccer fields were seeded, then the District would need to put signs up to keep people off the area until the grass was established.

Mr. Revaldo then reported that someone had thrown a beer bottle over his fence into his yard and inquired if there was a policy when someone was drinking back behind the fence on the greenbelt. Director Richter agreed to notify Deputy Kinnard of the problem. Mr. Revaldo also reported that three dogs in his neighborhood had been let out of their fenced yard and gotten lost

and one had been struck by a car. The Board agreed to look into posting information about this problem on the District's website or on the back of the next utility bill.

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

(SEAL)

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Scott Gray, Secretary  
Board of Directors

Date: \_\_\_\_\_