

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

October 27, 2009

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

A meeting of the Board of Directors of Northtown Municipal Utility District was held on October 27, 2009, 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, except Director Richter, who arrived later, thus constituting a quorum. Also present at the meeting were Allen Douthitt of Bott & Douthitt, P.L.L.C.; Jesse Kennis and Mona Oliver of Wells Branch Municipal Utility District; Sam Jones and Ken Heroy of Jones-Heroy & Associates, Inc.; Robert Anderson of SWWC Services, Inc. ("SWWC"); Richard Fadal of TexaScapes, Inc.; Scott Foster of Kimley-Horn & Associates, Inc.; Lupe Serna and Mr. Revaldo, residents of the District; and Kari Moore and Sue Brooks Littlefield of Armbrust & Brown, L.L.P. Deputy Keith Kinnard of the Travis County Sheriff's Department and Jay Howard of Texas Disposal Systems arrived later.

Director Campbell called the meeting to order at 5:49 p.m. and stated that the Board would first consider approving the consent items on the Board's meeting agenda: the minutes of the September 2 and September 22, 2009 Board meetings and the revised Merchant Account Application with CyberSource attached as **Exhibit "B"**. Upon motion by Director Gray and second by Director Martinez, the Board voted unanimously to approve the consent items.

Director Campbell then inquired whether there were any citizens' communications or Board member announcements. There being none, and Deputy Kinnard having not yet arrived at the meeting, Director Campbell recognized Mr. Kennis for purposes of receiving a report under the Interlocal Agreement with Wells Branch Municipal Utility District. Mr. Kennis stated that he was thankful for the recent rains, but noted that they had delayed work on the District's water well project. He stated that the park benches had been received. He called the Board's attention to his report included in the Board's meeting packet, a copy of which is attached as **Exhibit "C"**, and noted that most of the work which had been done the previous month was routine maintenance. Director Martinez stated that he felt that there were erosion problems and inquired whether there was anything that could be done to avoid these continuing to occur. Director Henderson inquired whether Director Martinez was concerned about any specific area, and Director Martinez clarified that he had observed a problem in the Brookfield area from the

soccer fields and dog park, where there was extreme ponding. Director Henderson stated that he had scheduled a meeting with the Wells Branch maintenance staff, as he had the same concern. Director Campbell noted that part of the problem arose because some of the District's park property was located in the floodplain, but that he felt the District should be able to address the ponding problem. Director Henderson added that the drainage appeared to be coming from a different area than in the past. Mr. Kennis then advised the Board that one invoice from Wells Branch Municipal Utility District had not yet been reviewed by the Park Subcommittee, and asked that the Board approve payment contingent upon the Park Subcommittee's approval of the invoice.

Director Campbell then recognized Ms. Oliver, for purposes of receiving a restrictive covenant status report. Ms. Oliver advised the Board that there was a trash can in public view at 13810 Greinert, and requested Board authorization to proceed with litigation. Director Gray inquired whether there had been any complaints from other residents regarding the trash can, and Ms. Oliver stated that there had not, but that she had identified the problem in her routine inspections of the District. She added that another neighbor had the same situation. The Board discussed concern regarding a possible waiver of the restrictive covenant prohibiting trash cans from being in public view, which needed to be balanced with the Board's wish not to spend money on infractions that didn't appear to be substantial. Ms. Littlefield suggested that the Board consider clarifying which cases it would pursue through a possible amendment of its restrictive covenant policy, and the Board agreed. The Board requested that Ms. Littlefield place this item on the Board's next meeting agenda for consideration. Ms. Oliver then advised the Board that she was beginning work on covenant enforcement in Wildflower, noting that she had begun with fence violations and was now moving into derelict vehicles. She stated that she was hoping that the Board would see some improvement in the maintenance and upkeep of the area once this occurred. Ms. Serna stated that she had received a postcard notifying her of a fence violation, but added that her yard was in the area where the new fence would be built. She stated that she had called the Wells Branch office and had gotten a recording that indicated that the mailbox was full, and inquired whether there was another number she could call. At this time, Director Richter arrived at the meeting. Ms. Oliver responded that she was currently getting a lot of calls, and would add her email address to the postcards. Ms. Serna stated that she could not repair the fence because of the new fence which was going to be constructed. Director Richter clarified that Ms. Serna could, in fact, repair her side fence, and that all of the fences needed to be properly maintained except the fence which would be replaced along McCallen Pass. Director Campbell stated that he did not believe that the full mail box should be a continuing problem, but that there had been a higher number of calls than usual because of the deferred covenant enforcement in the Wildflower Subdivision. He noted that residents could also contact Ms. Oliver's office through the District's website. After further discussion, the Board directed Ms. Oliver to modify the covenant violation postcards to add her email address, and she agreed to do so.

Director Richter stated that she would be providing the recommended changes to the Interlocal Agreement for Administrative and Governmental Services with Wells Branch Municipal Utility District to Ms. Littlefield for incorporation into a proposed contract, and hoped that approval of that contract would be on the November meeting agenda.

Director Campbell then recognized Mr. Fadal, for purposes of receiving a landscape maintenance report. Mr. Fadal pointed out that the District remained in Stage 2 water rationing,

and that the area was still experiencing a major historical drought. He added that, despite this, the District's park areas were looking nice, and that his crews were on schedule with maintenance. He stated that the Park Subcommittee had met and identified over 130 large dead standing and fallen trees and had requested a proposal from his company to remove them. Director Richter called the Board's attention to photographs of examples of these trees, and stated that she believed that they needed to be removed. Director Richter also advised the Board that the Park Subcommittee had authorized the removal of an old silt fence in the creek paralleling the Battenberg area up to the park within its authorized expenditure limit, and recommended approval of the proposal. Upon motion by Director Richter and second by Director Gray, the Board voted unanimously to approve the proposal attached as **Exhibit "D"**.

Director Campbell then recognized Mr. Howard, for purposes of receiving a report from the District's solid waste contractor. Mr. Howard presented the report attached as **Exhibit "E"**, and explained that there had been one delay in delivery of a trash container, but that his office did not have a record of having been contacted regarding the need for the container. Director Richter stated that she appreciated Texas Disposal System's professionalism, and the fact that the District did not receive complaints regarding their services.

Director Campbell then stated that the Board would receive the park development report. Director Richter apologized that the park budget was not included in the packet and noted that she had been delayed in reviewing it with Mr. Douthitt. She stated that expenditures were on track. Director Richter then requested that Ms. Moore provide the Board with an update regarding the meeting which had been held with the Wildflower residents on the McCallen Pass/Heatherwilde Boulevard fencing project. Ms. Moore advised the Board that there had been a good turnout by the homeowners and that there had been a very positive discussion at the meeting. She stated that 11 easements had been signed at the meeting, and that she had received two more earlier in the day and currently had 13 out of the 25 which were necessary for the project to proceed. She stated that Ms. Serna was working to get the rest of the residents to the next Homeowners' Association meeting and to obtain their approval of the required easements. Director Richter stated that some of the residents who lived along the park were very concerned about vandalism and wanted to pass this concern along to the Board members. She had noted that she and Ms. Moore had explained that the McCallen Pass/Heatherwilde Boulevard fencing was a right-of-way beautification project and that this fencing would not continue adjacent to the park. She stated that there had been some questions about the location of the fence and that some residents had referred to the fence as a sound barrier, which she had corrected. She added that a number of the residents were concerned that, if the District could not get all of the signatures required, it would not revisit the project. She stated that she and Director Henderson would not recommend keeping this project on the District's schedule indefinitely and felt that, if all of the residents would not provide their consent, the project would then be dead. She noted that she and Ms. Moore had encouraged the residents to call if they had questions or needed more information. Director Campbell thanked Ms. Serna and the members of the Wildflower Homeowners' Association Board of Directors for coordinating the meeting. Director Richter stated that she and Director Henderson had not yet had an opportunity to review the Ceylon Tea wet pond rules, and requested that that directive be carried over. Director Henderson confirmed that he had contacted Tom Anker regarding the proposed District condominium unit, and expected to receive more information from him.

Mr. Foster then advised the Board that construction had been a challenge as a result of the recent rains, and that the District's park contractor was currently repairing some washouts. He stated that he would meet with the Park Subcommittee on ongoing erosion and drainage issues. He noted that the rain had delayed the contractor's work, but that he anticipated that the parking lot would be complete by the first of November. He stated that the contractor had completed the dirt work and that the area looked much nicer. Mr. Foster then presented Pay Estimate No. 2 for the park construction project, a copy of which is attached as **Exhibit "F"**, and stated that he and the Park Subcommittee recommended approval of the Pay Estimate. Upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to approve the Pay Estimate as presented. Mr. Foster then explained that he had also received Change Order No. 3 from the contractor and noted that the first item on the Change Order was for electrical improvements. He reminded the Board that it had previously approved an allowance of \$5,000 for this work. He stated that the electrical work was now expected to cost \$9,300, which exceeded the Park Subcommittee's authority, but that he had reviewed the items of cost and felt that this was reasonable. Director Henderson requested that Mr. Foster provide an explanation for the Change Order, and Mr. Foster responded that the irrigation system was fairly large and that he had looked at alternatives to installing electrical, but had determined that it would be cost-prohibitive to provide solar power for the system. He stated that the \$9,300 would include installation of a transformer and taking electrical conduit underground to a control panel. He clarified that this would be just for the irrigation system and would not necessarily provide electrical for future facilities. Ms. Littlefield inquired whether the conduit would be sufficient for future buildings, and Mr. Foster stated that he believed the District would be able to pull additional line through the conduit. Director Gray inquired whether it would be more cost-effective to address this issue completely at this time, and Mr. Foster stated that he could not be more specific because the additional improvements had not yet been programmed. Director Richter then moved approval of the Change Order for \$9,300 for the electrical improvements. Director Henderson seconded the motion. Director Martinez inquired whether the Board was also being asked to approve \$4,600 for irrigation system improvements as well, and Director Richter stated that this would be discussed separately. Upon being put to a vote, the motion was unanimously adopted. A Change Order consistent with the approval by the Board is attached as **Exhibit "G"**.

Mr. Foster then explained that the contractor had also requested approval of \$4,600 for irrigation system improvements, even though the work had been included in the specifications. He stated that there had been a disagreement on the contract's requirements, and that he had discussed this with TBG Partners, who had prepared the specifications, and that TBG had advised him that they stood behind the specifications and that the work was included in the contract documents. After discussion, the Board agreed that it would not approve the Change Order with respect to the irrigation system improvements, and directed Mr. Foster to remind the contractor that, at the time the contract had been approved, it had clearly advised him that no change orders would be considered unless they were initiated at the request of the Board. Mr. Foster agreed to do so.

Director Campbell then stated that the Board would consider taking action regarding District signage. He advised the Board that he and Director Gray had met with Jeff Raudabaugh after the last Board meeting to review revisions to the logo and signage design based on the Board's feedback. He and Director Gray presented some schematic drawings, and the Board agreed that it was pleased with the design and layout. Ms. Littlefield reminded Director

Campbell that the Board would need to have at least one sign where the Board's meeting agendas could be posted, as required by the Water Code. Director Gray and Director Campbell agreed to address this requirement. Director Campbell stated that he was also working on getting the revised logo onto the District's website. Mr. Kennis stated that he would like to put the logo on a magnetic sign for Mr. Robles' truck and Ms. Oliver stated that she would also like to use it for the District's letterhead. The Board then discussed the fabrication of the signs, and what would be the most efficient and cost-effective way of having them produced. Ms. Littlefield reminded the Board that it was likely to be required to competitively bid the work, but noted that the Board could pre-qualify bidders. She suggested that Director Gray and Director Campbell talk to TBG Partners about what qualifications would be necessary for a sign manufacturer to do a good job on producing the signs. Director Gray and Director Campbell agreed to do so.

Director Campbell then noted that Deputy Kinnard had arrived at the meeting, and recognized him for purposes of receiving the security report. Deputy Kinnard reported that a coyote, which was not afraid of humans, had been observed in the park. After discussion, the Board agreed that Deputy Kinnard should identify a trapper, and that Director Campbell would be authorized to approve a contract to trap and relocate the coyote. Deputy Kinnard reported that there was no new graffiti in the District's parks, and stated that he felt the recent patrols had been effective in discouraging this. Director Richter inquired whether there had been any reports of drag racing on Heatherwilde Boulevard, and Deputy Kinnard responded that there had not. Director Henderson stated that he believed the Pflugerville Police Department had stopped individuals from utilizing the unlighted stretch of Heatherwilde Boulevard for this purpose. The Board agreed that it would like to look into installing security lighting along McCallen Pass and Ms. Littlefield agreed to place an item on the next Board meeting agenda to discuss this.

Director Campbell then stated that the Board would receive a report from the District's engineer and recognized Mr. Jones. Mr. Jones reported that he had sent a letter to KB Home regarding the need for maintenance of its water quality pond, a copy of which is attached as **Exhibit "H"**. He stated that he had talked to the developer for KB Home, who had indicated that KB Home would provide the necessary repairs. Mr. Jones reported that KB Home had not begun development of the Lakes at Northtown, Section 3, but was still working on platting issues. He presented the table showing the status of the District's MS4 permit's implementation, a copy of which is attached as **Exhibit "I"**. He pointed out that a report was due to the Texas Commission on Environmental Quality on November 12, and requested authorization to submit the report and that the Board authorize Director Campbell to sign the report once his office completed it. Upon motion by Director Henderson and second by Director Martinez, the Board voted unanimously to do so.

Mr. Jones then called the Board's attention to a memorandum from John Carlton regarding the bypass project, noting that the City had tentatively approved the necessary creek crossings without the requirement of a variance. He stated that this was conditional, but was the best he felt they could do without actual plans. Mr. Jones advised the Board that the contractor's estimate for the bypass was \$600,000 to construct the line, decommission the lift station and obtain any easements. Director Campbell stated that he did not believe any easements would be necessary as it appeared that the bypass would be constructed on District property, and Mr. Jones confirmed this. Mr. Jones stated that the estimate did not include any modification to the east lift station, but was still a little less than what he had originally estimated. He recommended that the Board solicit proposals from engineering companies to do a feasibility analysis with a more

detailed cost estimate and then, if the project proved feasible and the Board was prepared to proceed, to design the project. Director Richter inquired why Mr. Jones' firm was not going to design the project, and Mr. Jones responded that they did not do this type of work and that the District would need an engineering firm used to public work. He stated that all of his firm's work on the project had been based on City of Austin information and existing plans. Director Campbell noted that the Board had previously agreed that the project was desirable and that it would be a good idea to get off of the low flow lift station, and the Board agreed. After discussion, Director Richter inquired whether Mr. Foster's firm would be qualified to do this work, and he confirmed that it would. Director Richter then moved that the Board solicit a proposal from Kimley-Horn and Associates and that, if Kimley-Horn and Associates was not willing to submit a proposal, then Mr. Jones be authorized to solicit other proposals through a short list approved by Ms. Littlefield. Director Gray seconded the motion, which was unanimously adopted. Mr. Jones then reported that he had received the draft notice from the Texas Commission on Environmental Quality for the District's On-Channel Reservoir Permit Application, and that this would be published by Ms. Littlefield's office. Ms. Littlefield advised the Board that it would cost approximately \$900 to publish the notice.

Director Richter then inquired as to the status of completion of Heatherwilde/Wells Branch Parkway improvements, including the repair of the damage to the Wildflower Park and trails. Mr. Jones confirmed that the punch-list items had not yet been completed. Director Richter requested that Mr. Jones firmly tell the contractor and the project engineer to complete the project, and expressed extreme frustration at the lack of follow-through. Mr. Jones agreed to do so.

Director Campbell then stated that the Board would receive a report from the District's bookkeeper and recognized Mr. Douthitt. Mr. Douthitt advised the Board that he had discussed the Board's settlement offer of \$8,000 with Tommy Patterson, who had quickly accepted the proposal. He presented the Release attached as **Exhibit "J"**, and the Board confirmed that Director Campbell was authorized to execute the Release. Mr. Douthitt then presented the updated cash activity report attached as **Exhibit "K"** and reviewed it with the Board. He pointed out that this included a check to replenish the District's manager's account, as well as the manager's checks and park disbursements. Mr. Douthitt then reviewed the transfers, as summarized on **Exhibit "L"**. Director Henderson moved that the Board approve the bills and invoices and the transfers as presented, with the understanding that the additional check to Wells Branch Municipal Utility District would not be released until approved by the Park Subcommittee. Director Richter seconded the motion, which was unanimously adopted.

Director Campbell then recognized Mr. Anderson, for purposes of receiving the manager's report. Mr. Anderson reported that he had talked to Cheryl Forte about the Board's concern regarding the cell tower. He presented the write-off attached as **Exhibit "M"**, and requested approval. Upon motion by Director Gray and second by Director Henderson, the Board voted unanimously to approve the write-off. Mr. Anderson also advised the Board that he had met with Director Martinez on the Homeowners' Association grinder pump issue, and reminded the Board that two grinder pumps had failed, which had cost about \$7,000. He noted that, pursuant to the District's Rate Order, as well as the covenants applicable to Parkway Subdivision, the Homeowners' Association was required to pay these charges and, if it failed to do so, the charges could be assessed to the residents. Mr. Anderson stated that he and Director Martinez recommended revising the Rate Order, so that this maintenance cost would be a

District expense rather than an individual homeowner's expense. Ms. Littlefield reminded the Board that, previously, the Board had agreed to reimburse for the grinder pumps' original installation, and stated that she felt that the Board's also paying for the maintenance was consistent with its action in doing so. Director Richter then moved that the Board amend the District's Rate Order to eliminate the provision for backcharge of grinder pump maintenance to the Homeowners' Association. Upon second by Director Henderson, the motion was unanimously adopted. The Board confirmed that Mr. Anderson and Mr. Douthitt should reverse the charge to the Homeowners' Association for the \$7,000 repair item. Director Martinez stated that it had been discovered that some of the residents had been disabling the alarms on the grinder pumps. Ms. Littlefield suggested that the Board beef up the penalty in the Rate Order for tampering with the grinder pump systems, including the control panel and alarm. Upon motion by Director Richter and second by Director Gray, the Board voted unanimously to do so.

Mr. Anderson then reported that the City had agreed to install night watchman lights to illuminate the area in Meadow Pointe Park which had previously been discussed. Director Richter stated that she was not prepared to approve this proposal at this time, and would like to discuss the lighting with Deputy Kinnard before doing so. Director Richter pointed out that there had not been any recent problems in the park area, and suggested that Mr. Revaldo contact the Board if he felt there was a need for this lighting.

Director Campbell then recognized Ms. Littlefield, for purposes of receiving the attorney's report. Ms. Littlefield reviewed her directives from the previous Board meeting, and noted that she recommended discussing the potential lawsuit against the owners of 13807 Cambourne in executive session. Director Campbell noted that there had been some difficulty in implementing directives due to the fact that Board members and consultants did not receive them until shortly before the meeting. He requested Ms. Littlefield have her office speed up distribution of the directives, and she agreed to do so. Ms. Littlefield pointed out that the foreclosure report prepared by Southwest Securities indicated that there had been two foreclosures during the month of September. She stated that there had been two violations of the District's Erosion Control Rules, but that both had now been resolved.

Director Campbell then stated that, as there were no developers' or landowners' representatives present, the Board would discuss its holiday meeting schedule. Director Gray stated that he would not be available on Tuesdays through the month of November. After discussion, the Board agreed that Ms. Littlefield should coordinate rescheduling the Board's November and December meetings so they would occur the week prior to the normal monthly meeting date.

At 7:52 p.m., Director Campbell stated that the Board would convene in executive session, for purposes permitted by Section 551.071 of the Texas Government Code in order to receive legal advice from the District's attorney, and Section 551.074 of the Texas Government Code in order to discuss personnel matters. At 9:28 p.m., the Board reconvened in open session, and Director Campbell announced that no action had been taken during executive session. Director Campbell stated that he felt it would behoove the Board to clarify the scope of services for the District's engineer. Director Richter agreed, and recommended that the Board hold a work session to do this. After discussion, the Board directed Ms. Littlefield to schedule a Board work session in order to discuss engineering services.

There being no further business to come before the Board, the meeting was adjourned at 9:34 p.m.

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

(SEAL)

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Scott M. Gray, Secretary  
Board of Directors