

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

November 25, 2008

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

A meeting of the Board of Directors of Northtown Municipal Utility District was held on November 25, 2008, 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 Sam Jones of Sam Jones Consulting, Inc.; Mike Morin of SWWC Services, Inc.; Jesse Kennis, Mona Oliver and Don Williams of Wells Branch Municipal Utility District; Richard Fadal of TexaScapes, Inc.; Brad Sanders, representing the Wildflower Homeowners’ Association; Jim Nias of Jackson Walker, representing The Village @ Northtown, Ltd.; Allen Douthitt and Mary Bott of Peña Swayze & Co., L.L.P. and Sue Brooks Littlefield of Armbrust & Brown, L.L.P. Deputy Keith Kinnard of the Travis County Sheriff Department and his canine partner, Cora, arrived later.

Director Campbell called the meeting to order at 5:45 p.m., and stated that the Board would first consider the consent items on the Board’s meeting agenda: the minutes of the October 28, 2008 Board meeting; the Amended Order Establishing 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 Resolution Confirming Annual Review of District’s Code of Ethics and Financial Investment, Travel and Professional Services Policy and Investment Strategy 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 noted that Deputy Kinnard had not yet arrived at the meeting and inquired whether there were any citizens’ communications. There being none, Director Campbell recognized Mr. Williams, for purposes of receiving a report under the Interlocal Agreement with Wells Branch Municipal Utility District. Mr. Williams distributed photographs of the dog park improvements and the grass which had been installed to cover the eroded areas. He also advised the Board that Travis County had agreed that the District could paint over the graffiti on the bridge. Mr. Williams reported that his crews had done some general maintenance work, including some restoration repairs to the pond and the area that had been red-tagged. He

stated that the dog park was now complete, and displayed examples of the signs which would be installed within the dog park. After discussion, the Park Subcommittee agreed to meet with Mr. Williams before the signs were installed. Director Richter advised the Board that Mr. Williams was putting together a status report on the park improvements as requested, in order to assure that the full Board was kept informed on this park development improvement. She also reported that the Park Subcommittee was scheduled to meet with him the following week.

At this time, Deputy Keith Kinnard and Cora arrived at the meeting and Director Campbell recognized Deputy Kinnard for purposes of receiving the security report. Deputy Kinnard stated that there was not too much activity within the District at this time, except the ongoing problem with graffiti. He also confirmed that, in Brookfield, there had been increased discussion of the problem with burglary of vehicles in that area. He noted that this problem was not out of the ordinary for the area, but the matter was getting some additional media attention through the Citizen Observer Program. Deputy Kinnard reported that he had a Neighborhood Watch meeting scheduled for the following month, and that his crews would increase their patrols during the holidays.

Director Campbell then recognized Ms. Oliver, for purposes of receiving the restrictive covenant status report. Ms. Oliver stated that the lawns at 1110 Olympic and 1214 Olympic had still not been properly maintained, and the Board discussed whether or not to proceed with enforcement action with regard to those violations. After discussion, Director Richter moved that the Board authorize the District's attorney to move forward with a notice letter to each of the residents, accompanied by the form of petition which would be filed if they did not come into compliance, and with a directive that the matter should be brought back to the Board at the December 16<sup>th</sup> meeting if the residents had not come into compliance by that date. Upon second by Director Martinez, the motion was unanimously adopted. The Board requested that Ms. Oliver follow up on the status of compliance prior to the December Board meeting, and confirmed that it would file suit to enforce compliance if necessary. Ms. Oliver noted that she had made contact with a representative of the Brookfield Homeowners' Association, which was represented by Alliance Management Company. She stated that she had been informed that they were proceeding with covenant enforcement, but were interested in the District filing suit if it came to the point of a lawsuit. She also reported that the Homeowners' Association had indicated that it was patrolling with uniformed security officers. Director Campbell then recognized Mr. Sanders, for purposes of receiving a report regarding Wildflower Homeowners' Association restrictive covenant matters. Mr. Sanders reported that the engine block which Director Richter had mentioned at the previous meeting had been removed, but that he had been unable to locate the sink which she had reported. He stated that he felt the homeowners were trying to comply with the covenants, and that he was continuing to work with the Sheriff's office to enforce the parking restrictions. He also reported that the Homeowners' Association Board was working on setting up a Neighborhood Watch program for the community. Director Campbell reminded Mr. Sanders of the need for documentation, including photographs, if the Homeowners' Association wanted the District to pursue a lawsuit with regard to any covenant violation.

Director Campbell then stated that the Board would consider taking action regarding park development matters, and recognized Director Richter for a Park Subcommittee report. Director Richter presented the proposal from TBG Partners, attached as **Exhibit "D"**, for updating the District's park master plan at a cost not to exceed \$6,500. She also presented the proposal from

Kimley-Horn Engineering attached as **Exhibit “E”**, and explained that this firm would assist the District with updating its site plan. She noted that the individual with Kimley-Horn that she had met with, Scott Foster, was the same person who had worked on the District’s site plan back in 2004. She added that he had already met with the City of Austin to get clarification on what needed to be done, and had tailored his proposal to what the City had stated was required. She noted that the proposal was for \$29,200, and stated that the Park Subcommittee would like authorization to negotiate a contract. Director Gray inquired how long a site plan approval would remain valid, and Director Henderson stated that he understood that it would be good for three years. Ms. Littlefield stated that she understood that there was a process to extend a site plan prior to its expiration. Director Richter noted that she felt very comfortable with Kimley-Horn and TBG Partners, and stated that either of the Subcommittee members would be willing to meet with any Board member on site if they had questions that needed to be answered regarding the process. After discussion, Director Richter moved that the Board approve the proposal with TBG Partners, and authorize the Park Subcommittee to proceed with negotiations with Kimley-Horn for a contract in an amount not to exceed \$30,000 for the site plan and development work. Director Martinez seconded the motion, which was unanimously adopted.

Director Richter then reminded the Board that there had been discussion about additional postings of Board meetings throughout the District. She noted that signs had previously been installed which were not currently being updated. Director Richter stated that Mr. Williams had agreed to coordinate having the District’s Board meeting agendas posted, and the necessary information included on the signs to allow the residents to be informed about the Board meetings. Director Campbell inquired whether there were posting signs in the new sections of the District, such as the Lakes at Northtown. Director Richter stated that there were not, but that she would work with representatives of the Lakes at Northtown to identify a sign location. Director Campbell pointed out that, in the future, a sign would also be required within the Village @ Northtown area, and Director Richter agreed.

Director Campbell then recognized Mr. Fadal, for purposes of receiving a report from the District’s landscape maintenance contractor. Mr. Fadal reviewed his report, a copy of which is attached as **Exhibit “F”**, with the Board, and reported that all of his directives had been completed. He stated that he had begun work on the routine maintenance of the soccer field and dog park areas, and also explained that his crews had completed all poison ivy treatments for the year. He stated that he would submit a new proposal for additional poison ivy treatments in 2009. Mr. Fadal updated the Board on the status of the dead stump and tree removal, noting that this project was complete. He reminded the Board that the lift station replanting was on hold until the construction work at the site was completed, and that Mr. Jones would authorize him to proceed when that was done. Mr. Fadal also advised the Board that the 50 acre park trail clearing was in process, and that he had accelerated the Wildflower creek work, and completed it the previous week.

Director Campbell then stated that the Board would receive a report from the District’s bookkeeper, and recognized Mr. Douthitt. Mr. Douthitt presented his bookkeeping report, and explained the format to the Board. He noted that his company would make any changes that the Board requested in order to be sure that the Board had all of the information it desired. The Board discussed the transition in bookkeeping services from SWWC Services, Inc. to Peña Swayze & Co., L.L.P., and Mr. Douthitt explained that some of the accounts had not yet been reconciled because Municipal Accounts & Consulting, SWWC’s bookkeeping subcontractor,

had not yet closed out the accounts for the audit. He reviewed the updated cash report attached as **Exhibit "G"**, and the Board discussed its desired invoice cutoff date, which was 10 days before each Board meeting, except for invoices for utilities, per diems and bills that accrued penalties. After discussion, Director Henderson moved that the Board approve the payment of the bills and invoices, including the payments from the park account, as reflected on the updated cash report. Upon second by Director Richter, the motion was unanimously adopted. Mr. Douthitt then presented the transfer letter attached as **Exhibit "H"**, and requested Board approval. Upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to do so.

Director Campbell then stated that the Board would receive a report from the District's general manager, and recognized Mr. Morin. Mr. Morin advised the Board that he was coordinating with Mr. Douthitt on the transition of bookkeeping services, and that it was working well. He stated that the District had experienced a 12.71% water loss during the previous billing period, which was higher than anticipated, but offset by gains in the prior month. Director Campbell pointed out that Mr. Morin's report had initially indicated that there had been another water gain during this billing period. Mr. Morin responded that there had been a problem with the report which he had received from his operators, but that he was comfortable with the water loss figure he was presenting now. Mr. Morin then presented the write-off list attached as **Exhibit "I"**, and reviewed it with the Board. Ms. Littlefield inquired who would check the write-offs against the list of refund checks, to be sure that there were no duplicate entries now that bookkeeping services and billing services were being separated. Mr. Morin stated that both he and Mr. Douthitt would check to be sure that no one received a refund who was on the write-off list. Director Campbell pointed out that the aged account receivable report indicated some accounts with substantial new charges even though they were clearly bad customer accounts. Mr. Morin stated that this generally meant that the customer had entered into a payment plan. The Board discussed the fact that several homebuilders were on the refund list, even though they had accounts which were past-due. After discussion, Director Richter moved that the Board reconsider the payment of Check No. 3019 to DR Horton, and void that check because of outstanding sums due from the company to the District. Ms. Littlefield pointed out that, under the District's rate order, the District could apply the required builder deposit to pay any sums which were due to the District. Director Richter amended her motion to include a directive to apply any builder's deposit against any past due sums payable by the builder to the District, and to require the builder to replenish the deposit in accordance with the rate order. Upon second by Director Henderson, the motion, as amended, was unanimously adopted. Director Richter then moved that the Board approve the write-offs, as presented. Upon second by Director Henderson, the motion was unanimously adopted. Mr. Morin then reported that there had been problems with regard to the District's lift stations, noting that a pump on Lift Station No. 3 had sucked up a piece of chain and needed a repair and Lift Station No. 2 was currently running on one pump. He explained that there had been several problems experienced by the contractor in pulling the pumps on Lift Station No. 1, noting that the crane operator had caused some damage when the pumps were pulled for the lift station upgrade. After discussion, the Board agreed that the contractor was responsible for any additional costs incurred, and Mr. Morin agreed that the contractor would be held responsible for the payment to his company for the work necessary to repair the lift station facilities. Director Campbell inquired as to the backup for the pledge agreements which had been discussed at the prior Board meeting, and Mr. Morin stated that he would bring this to the next Board meeting for consideration. Director Campbell added that he

would like historical information showing the number of these agreements that had been entered into, and the District's loss history, and Mr. Morin agreed that he would provide it.

Director Campbell stated that the Board would next consider the T-Mobile proposal for lease of District land for a telecommunications tower, and noted that he felt that the amount being offered for the lease was not significant, but that the District might receive additional revenues in the future if additional carriers were added to the tower. He stated that T-Mobile's form contract had several problem items, including making the District responsible for FCC and FAA compliance. Director Campbell noted that, at this time, the Subcommittee, which consisted of himself and Director Martinez, had nothing to present to the Board. Director Richter stated that she believed there were access issues regarding the site which T-Mobile had selected. After further discussion, the Board agreed that the Subcommittee should continue its negotiations with T-Mobile. Director Martinez noted that he had some concern about the location which T-Mobile had chosen and would like to see alternatives.

Director Campbell then stated that the Board would consider taking action regarding the Lakes at Tech Ridge, including the status of the past-due account for the irrigation meters. Ms. Littlefield presented the letter which she had sent to Kay Taylor, the attorney for Lakes at Tech Ridge, attached as Exhibit "J", and the response from Ms. Taylor, attached as Exhibit "K". Mr. Morin confirmed that he had received a payment in the amount of \$63,195.04, which was sufficient to pay off the actual water and wastewater usage charges on the two meters, but which did not include any of the penalties. Ms. Littlefield advised the Board that, after discussion with Director Campbell, she had advised Ms. Taylor that she anticipated that the Board would have an objection to waiving the penalties for the water usage, as there was no question that those charges were due, even if there had been some misunderstanding on the part of her client regarding the basis for the wastewater charges. Ms. Littlefield inquired as to the amount of the water penalties, and Mr. Morin indicated that the total water penalties were \$10,701.69. Director Campbell stated that he would personally favor requiring the payment of the water penalties, and deferring the wastewater penalties for one year, provided that the customer stayed current during that time. After discussion, Director Richter moved that the Board require the payment of the accrued water penalties in the amount of \$10,701.69, agree to defer the penalties for the wastewater charges provided that the accounts were kept current for one year, require reimbursement for legal fees incurred by the District in connection with the past-due accounts and, subject to the required payments being made, authorize moving forward with an interlocal agreement with the City of Austin to allow irrigation water to be provided by the City of Austin subject to receipt of an escrow in the amount of \$10,000 to cover the District's costs. Director Richter further moved that the Board require the security deposits for the two accounts to be adjusted to be consistent with the District's rate order, and obtain a commitment from the customer to minimize its water usage during the winter-averaging period which was upcoming. Director Henderson seconded the motion, which was unanimously adopted.

Director Campbell then stated that the Board would receive the attorney's report, and recognized Ms. Littlefield. Ms. Littlefield advised the Board that her directives from the previous Board meeting had been completed, and that she had brought a letter for Director Campbell's signature regarding the amounts to be paid by Pflugerville in connection with the easement conflict issue. She stated that she would place an item back on the December agenda regarding the pledge agreements and guarantees of payment which SWWC Services, Inc. was accepting, and noted that her office was working with the City of Austin to determine the best

avenue for enforcement of Brookfield Homeowners' Association's obligations with respect to maintenance of the Brookfield wet ponds. Ms. Littlefield stated that Pflugerville had indicated informally that it would not charge the District for wastewater once the connection to the City of Austin for Settler's Meadow was made, but that she was pursuing obtaining something in writing documenting that agreement. Ms. Littlefield noted that there had been several erosions control violations noted relating to the DR Horton development in Parkside at Northtown, and that, at this time, the penalties relating to these violations had not been paid. She suggested charging the penalties against DR Horton's homebuilder deposit, and the Board agreed.

Director Campbell then recognized Mr. Jones, for purposes of receiving a report from the District's engineer. Mr. Jones advised the Board that Pay Estimate No. 6 and Final for the Dessau utility wastewater project, a copy of which is attached as **Exhibit "L"**, was included in the Board's meeting packet. He stated that, since the packet had gone out, the City of Austin had confirmed that Excel had completed the punch list, and Pate Engineering had given him its letter of acceptance. He stated that Excel was also updating its warranty period and had provided a new bond as requested. Mr. Jones recommended approval of the final pay estimate, as presented. Upon motion by Director Richter and second by Director Martinez, the Board voted unanimously to approve the pay estimate. Mr. Jones then reported that the contract for the final piece of the work, which was to be completed on behalf of Dessau Fountains, had been awarded to Keystone Construction. He stated that he had observed a problem with the contractor's security fence, and had notified Pate Engineering to see that it was addressed. Mr. Jones then presented the Resolution Authorizing Application for Permit to Appropriate State Water Under Section 11.143, Texas Water Code, a copy of which is attached as **Exhibit "M"**, and requested approval of the resolution in connection with the District's application for on-channel reservoir permits. Upon motion by Director Richter and second by Director Gray, the Board voted unanimously to approve the resolution. Mr. Jones then explained that the Village @ Northtown would be presenting a change order for utility facilities to be installed within Heatherwilde Boulevard, and that he anticipated bringing the change order to the Board for approval at the next meeting. Director Richter inquired as to the status of the trail repairs, and Mr. Jones stated that they were not complete, and that he believed the contractor was waiting until the waterline construction was finished. Mr. Jones presented Pay Estimate No. 1 for the Settler's Meadow waterline, a copy of which is attached as **Exhibit "N"**, and recommended approval. Ms. Littlefield presented the letter for signature by Director Campbell, confirming Pflugerville's agreement to compensate the District for the cost related to the waterline conflicts attached as **Exhibit "O"**. Upon motion by Director Richter and second by Director Richter and second by Director Henderson, the Board voted unanimously to approve the pay estimate and to authorize Director Campbell to execute the letter relating to the conflicts. Mr. Jones then reminded the Board that this was the same project for which Pate Engineering had requested approval of a proposal for additional services and, reminded the Board that the additional costs were related to a delay which necessitated a plan revision. The Board responded that it had requested a reconciliation of the fees which Pate Engineering had charged since the date of the original contract proposal, and stated that it would not consider the proposal for additional services until that reconciliation was received. Mr. Jones agreed to follow up on the request.

Director Campbell then stated that the Board would receive a report from developers' and landowners' representatives, and recognized Mr. Nias. Mr. Nias stated that the City of Austin had approved the amendment to the District's land use plan which had previously been approved by the Board of Directors, and stated that he had brought copies of the updated plan, a copy of

which is attached as **Exhibit “P”**, for the District’s records. Mr. Nias also reported that he had asked Cunningham Allen to forward an electronic copy to Mr. Jones, and Mr. Jones confirmed that he had received it. Mr. Nias stated that he also wanted to give the Board an update on changes to the project, and explained that the Heatherwilde Boulevard construction had gotten ahead of the utility plans slightly. He reminded the Board that this project involved four parties - three developers as well as the County – and explained that, after discussion, the choice had been made to proceed with installation of the utilities by change order. He explained that, otherwise, it would have resulted in Heatherwilde Boulevard being paved and later having to be torn up in order to install the utilities. He stated that, as a result of the possible damage to the roadway and the additional cost which would result, he felt that this was a change order the Board would want the developers to make, and the Board agreed.

There being no further business to come before the Board, the meeting was adjourned at 7:50 p.m., upon motion by Director Gray and second by Director Henderson.

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

(SEAL)

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Scott M. Gray, Secretary  
Board of Directors