

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368

Minutes of Meeting

October 2, 2008

The Board of Directors (the "Board") of the Harris County Municipal Utility District No. 368 (the "District") met in regular session, open to the public, at 6:30 p.m. on Thursday, October 2, 2008 at the District's regular meeting place, Graceview Baptist Church, 25510 Tomball Parkway, Tomball, Texas, whereupon the roll was called of the members of the Board to-wit:

Roy P. Lackey	President
Tiffani C. Bishop	Vice President/Investment Officer
Sharon L. Cook	Secretary
Eric Daniel	Treasurer
Allison V. Dunn	Assistant Secretary

All members of the Board were present. Also in attendance was: Mark T. Stendahl, P.E., consulting engineer ("Engineer"); Mike Plunkett of Eagle Water Management, Inc. ("Operator"); Noel Barfoot of McCall, Gibson & Company, PLLC ("Auditor"); Cary Dunham of Hargrove Construction; Michael A. Crouch, Principal, of Landmark Properties & Development Co.; Cpl. Swindler and Lt. Young of Harris County Constable's Office, Precinct 4; Andrew Dunn, the District's liaison to the Harris County Constable's Office, Precinct 4; and Andrew P. Johnson, III, Joshua W. Golden and Marian D. Henderson of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorney").

The President, after finding that notice of the meeting was posted as required by law and determining that a quorum of the Board was present, called the meeting to order at 6:35 p.m. for such business as may properly come before the Board.

1. **MINUTES.** The Board first considered approval of the Minutes of the August 21, 2008, September 4, 2008 and September 18, 2008 meetings. Director Lackey requested that the minutes of the September 18, 2008 meeting be corrected to reflect that Mrs. Sweeney spoke of a rumor that pumps were turned off and to remove the reference to two (2) pumps running. Director Lackey further stated that the minutes should reflect that Mrs. Sweeney refused to state the source of her rumor. Mr. Plunkett added that the reference to "failure of generator" should be changed to "failure of a control panel". Upon motion by Director Daniel, seconded by Director Cook, after further discussion and with all Directors present voting aye, the Board approved the minutes of the August 21, 2008 and September 4, 2008 meetings as presented and approved the minutes of the September 18, 2008 meeting as corrected.
2. **AUDIT REPORT.** The President next recognized Mr. Barfoot, who presented and reviewed the Draft Annual Audit Report for Fiscal Year Ended May 31, 2008, a copy of which is attached hereto as Exhibit "A". Mr. Barfoot stated that the District had a

clean audit, the fund balances were healthy and that there was nothing out of the ordinary. Upon motion by Director Dunn, seconded by Director Lackey, after discussion and with all Directors present voting aye, the Board approved the draft Audit Report subject to the review by the District's Attorney.

3. **OPERATOR'S REPORT.** Mr. Plunkett presented and reviewed with the Board the Operator's Report, a copy of which is attached hereto as Exhibit "B" as follows:
 - a. Hurricane Ike. Mr. Plunkett reported that everything was up and running after the storm, all power has been restored and the diesel fuel supply has been restored to before-storm capacity level. Director Lackey then asked how much fuel the District used to run the generators, to which Mr. Plunkett replied approximately 2,000 gallons.
 - b. General Operations. Mr. Plunkett reported that the District's bill vs. produced accountability rating was 95.72% and that the District has a 4-month average of 95%. Mr. Plunkett stated that there were no excursions from the Wastewater Treatment Plant; however, he received odor complaints last Friday night, due to sludge hauling being backed up and that he also received complaints from residents on Logenbriar that sludge haulers were coming into the subdivision too early. Mr. Plunkett also reported that he anticipated shutting down the South Plant in the next couple of weeks so that the contractor can install some air headers. Director Bishop noted that there were some "No Trespassing" signs down in the District. Director Cook noted that Parkway Chevrolet has a leak at the meter box and that it is pretty bad. Director Dunn directed the Operator's attention to a leak near the community mailbox in Northpointe East on Avalon Springs.
 - c. Customer Correspondence. Mr. Plunkett reported that he received one letter from Landmark Property Development (the owner of the strip center containing Canyon Cleaners) which stated that their backflow prevention device was stolen which caused the Customer to have a large leak. Mr. Plunkett further reported that the Customer had a Constable's Report to verify their claim. Mr. Plunkett stated that he adjusted the Customer's bill by using the prior 3-month average, which translated into a \$602.00 adjustment. [Director Bishop and Mr. Crouch entered the meeting at 6:45 p.m., during the Operator's Report.] Mr. Crouch expounded upon the Operator's explanation regarding the water loss due to the theft and requested that the Security Patrol be stepped up in the area. Upon motion by Director Daniel, seconded by Director Lackey, with all Directors present voting aye, the Board approved the adjustment to Landmark Property Development's bill.
 - d. Termination List. Discussion next ensued regarding of the Termination List. Mr. Plunkett stated that they elected not to make the terminations presented at the meeting on September 4th, on September 15th as scheduled due to the Hurricane. Upon motion by Director Cook, seconded by Director Lackey, after discussion

and with all Directors present voting aye, the Board approved the Operator's Report as presented and authorized termination of delinquent accounts as recommended.

[Mr. Barfoot departed the meeting at this juncture. Harris County Constables entered the meeting at this time: Cpl. Swindler, Lt. Young, & Andrew Dunn.]

4. **ENGINEER'S REPORT.** Mr. Stendahl presented and reviewed the Engineer's Report with the Board, a copy of which is attached hereto as Exhibit "C".
 - a. Water Quality Monitoring. Mr. Stendahl reported that test results for the month of September have been received and that the results were all non-detects.
 - b. Stand-by Power Generators. Mr. Stendahl reported that bid packages for the generator purchase are being prepared with a separate proposal for installation of the three generators and requested authorization to advertise and solicit proposals.
 - c. Water Well No. 6. Mr. Stendahl reported that the well construction is complete and the motor and pumping equipment are on order. The remaining work is scheduled to be completed by January 25, 2009, but site drainage issues will delay this work. Mr. Stendahl directed the Board's attention to a proposal to modify the site grading and drainage plans, which will result in a Change Order to the contract. Pay Estimate No. 7 in the amount of \$127,485.00 from Bussell & Sons, LLC is attached to the Engineer's Report for the Board's approval. Mr. Stendahl then presented and reviewed with the Board a proposal from Pate Engineering ("Pate") to perform the surveying services related to site grading and stormwater detention facilities for the Water Well No. 6 Site, a copy of which proposal is attached to the Engineer's Report. Upon motion by Director Lackey to accept the proposal from Pate, seconded by Director Cook, after further discussion and with all Directors present voting aye, the motion carried.
 - d. Power Line Easement. With respect to the power line easement, Mr. Stendahl reported that Center Point has prepared a Facilities Extension Agreement which reflects construction cost to the District of \$6,815.00, a copy of which is attached hereto as Exhibit "D" for approval by the Board. Mr. Stendahl further stated that the \$6,815.00 does not include a payment of \$1,600.00 for preparation of an easement document to Center Point's specifications.
 - e. Well Collector Line. Mr. Stendahl next directed the Board's attention to two proposals received from Tolunay-Wong Engineers for materials testing services for the construction of the Water Well No. 6 site improvements and proposal from Tolunay-Wong Engineers for materials testing services for the construction of the Water Well No. 6 Well Collector water line construction, copies of which are attached hereto as Exhibits "E" and "F", respectively.

- f. Water Plant No. 1 – Motor Control Center ("MCC"). The MCC and control components have been installed and tested and are in operation. A final inspection was held on October 1, 2008 which resulted in one remaining item, the complete testing and demonstration of the alarm annunciator system.
- g. Wastewater Treatment Plant – Phase 4 Expansion. Construction of the digester basin and chlorine chamber structures is complete. Underground piping installation is nearly complete. The relocation of the air line is complete and the head-works structure is being constructed. Pay Estimate No. 12 in the amount of \$56,868.30 is recommended for payment by Pate. The Contractor was given an extra 21 days contract extension at Board's discretion due to the fatal crane accident on July 3, 2008. The Board was not obligated to grant any time extension due to the accident, but did so to show compassion to the Contractor.
- h. Well No. 4 Motor Repair. The new pump is on order and will be installed at no cost to the District.
- i. Bond Issue No. 10. Pate expects to have the draft bond application ready for distribution to the District's Consultants on October 10, 2008.
- j. Conversion to Chloramine Disinfection. Mr. Stendahl reported that delays resulting from the TCEQ seminar on new chloramination requirements, and Hurricane Ike will result in the submittals to the City of Houston and Harris County being made in late October at the earliest. Mr. Stendahl further stated that the chloramine conversion will need to have two separate deadlines.
- k. Emergency Generator Load Bank and Trailer. Mr. Stendahl reported that the trailer has been delayed because FEMA commandeered the manufacturing facility so the District's trailer was put on hold.
- l. Valero Corner Store. Mr. Stendahl reported that the Valero Convenience Store is probably going to be operational in the next 4 weeks.
- m. BL Technology Proposal. Prior to the discussion on this subject, Director Daniel stated that he had a conflict in that he is an employee of BL Technology. Mr. Johnson requested that Director Daniel complete and execute a *Conflict of Interest Form*, as well as an *Affidavit* regarding Director Daniel's public disclosure of a conflict of interest on this subject matter. Director Daniel having complied with the Attorney's request, executed the Conflict of Interest Form and Affidavit, copies of which are attached hereto as Exhibits "G" and "H", respectively, and then recused himself from the discussion on this matter. The Board then considered BL Technology's contract proposal for construction of Water System SCADA and Security System, Phase I in the amount of \$395,831.00, a copy of which contract proposal is attached hereto as Exhibit "I".

Upon motion by Director Lackey, seconded by Director Dunn, after discussion and with all Directors present voting aye, except Director Daniel who abstained from the vote, the Board approved the Engineer's Report as presented, approved Pay Estimate No. 7 from Bussell & Sons, LLC for the Water Well No. 6 in the amount of \$127,485.00; approved Pay Estimate No. 12 from N&S Construction Co., LP for the Wastewater Treatment Plant Expansion in the amount of \$56,868.30; approved the proposal from Tolunay-Wong Engineers for materials testing services for the construction of the Well No. 6 site improvements; approved proposal from Tolunay-Wong Engineers for materials testing services for the construction of the Well No. 6 Well Collector water line construction; authorized advertising and solicitation of proposals for the emergency generator purchase and installation contracts; authorized the execution of the Facilities Extension Agreement and payment of Facilities Extension Fees and Easement Fees totaling \$8,415 to Center Point Energy for electrical power service to Well No. 6; and accepted the proposal from BL Technology for construction of Water System SCADA and Security System, Phase 1 in the amount of \$395,831.

5. **DEVELOPER'S REPORT.** Mr. Dunham presented the developer's report with respect to the 33-acre Cobblestone Development. Mr. Dunham reported that he is presently in negotiations with a car dealership for development of a portion of the property.
6. **SECURITY REPORT.** The President next recognized Corporal Swindler who presented the Harris County Constable's Report for the months of August and September. Corporal Swindler reported that most of the burglaries of motor vehicles occurred at the movie theatre and that there was also criminal mischief at the movie theatre. Director Daniel asked whether the officers could generate a report that shows all the criminal activity at the movie theatre. Mr. Dunn stated that he didn't think that 3-4 months of information would reveal much and had planned to look at the crime statistics after the theatre has been operational for a year. Discussion then ensued regarding the need for more security around the theatre and how to get the owner of the theatre to take responsibility for the costs. Upon motion by Director Cook, seconded by Director Dunn, after discussion and with all Directors present voting aye, the Board approved the Security Report.
7. **GENERAL BUSINESS:**
 - a. Recycling Survey. The Board requested the Attorney to prepare the Survey for review at the next meeting.
 - b. Bob Leared Interest's Contract. Mr. Johnson reminded the Board that the Tax Assessor/Collector had requested an amendment to his contract to allow for mileage reimbursement due to the high cost of fuel. Upon motion by Director Lackey, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board approved the amendment to the Tax Assessor/Collector's contract.

- c. Northern Point Walking Trail. Discussion ensued regarding the problems with the design of the walking trail and concern that the current design will interfere with the main function of the detention pond. Director Daniel stated that he feels like the Board should not allow the pond to exist in its present design and that the Northern Point Homeowners Association ("NPHOA") will not be able to install and maintain the type of trail that would be acceptable to the Board. Discussion then ensued regarding whether or not Mr. Stendahl should work with the NPHOA to insure the trail meets the District's standards and ADA requirements. The Board then expressed concern that Mr. Stendahl's assistance would be misconstrued as the Board's willingness to maintain the trail should the proper upkeep and maintenance prove too costly for the NPHOA. The Board then expressed concern that disallowing the trail would cause the NPHOA to lose approximately \$20,000 in construction costs that it had purportedly paid to the contractor. However, it was also a point of contention that a properly designed trail would cost much more than the \$45,000 NPHOA budgeted to expend and the upkeep and maintenance would be a constant drain on finances. The Board stated that it did not want other subdivisions to take it upon themselves to construct improvements upon the District's property which improvements could alter the original intent of the property, such as drainage.
- d. Miscellaneous. Director Lackey stated that there are residents dumping storm debris in the detention pond and advised the Operator and Constables to keep a look out for such illegal dumping.

8. ATTORNEY'S REPORT.

- a. Easement Acquisitions. Mr. Johnson updated the Board on the status of the various easement acquisitions necessary for the District's construction projects. Mr. Johnson stated that negotiations were proceeding with the owners of the Sandlien property and that a new survey has been ordered. Mr. Johnson also stated that although the Board had previously authorized condemnation of the property, the owner had conveyed the property to a third party prior to the District's filing condemnation papers. Mr. Johnson further added that in the interest of time, in case negotiations break down again, he has prepared and presented a Resolution Authorizing Acquisition of Water Line and Proceedings in Eminent Domain, a copy of which is attached hereto as Exhibit "J". Upon motion by Director Cook, seconded by Director Daniel, after discussion and with all Directors present voting aye, the Board adopted the Resolution as presented.
- b. North Harris County Regional Water Authority ("RWA"). Mr. Johnson next distributed a letter from the RWA dated September 22, 2008, which states that the pumpage fees will increase from \$0.99/1,000 to \$1.50/1,000 gallons, effective January 1, 2009. Mr. Johnson then stated that the Board may need to amend its Rate Order to allow for the increase in pumpage fees prior to January 1, 2009.

- c. Triple B Constructors. Finally, Mr. Johnson informed the Board that he had just received a check in the amount of \$14,701.82 from Triple B Services, LLP and a proposed Release with respect to construction of Water Distribution, Sanitary Sewer and Drainage Facilities to serve Ashford Place, Section 1. Mr. Johnson stated that he would review the Release and place it on the next agenda for the Board's approval.

There being no further business to come before the Board, upon motion by Director Cook, the President adjourned the meeting at 8.44 p.m.

Passed and approved this 16th day of October, 2008.


Secretary, Board of Directors

EXHIBITS:

- A - Draft Audit Report
- B - Operator's Report
- C - Engineer's Report
- D - Center Point Facilities Extension Agreement
- E - Tournay-Wong Proposal
- F - Tournay-Wong Proposal
- G - Conflict of Interest Form
- H - Affidavit of Director Daniel
- I - BL Technology Contract
- J - Condemnation Resolution