

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368**

**Minutes of Meeting  
Thursday, November 5, 2009**

The Board of Directors (the "Board") of Harris County Municipal Utility District No. 368 (the "District") met in regular session, open to the public, at 6:30 p.m. on Thursday, November 5, 2009 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. Consultants in attendance were: Teague Harris, P.E. and Matt Carpenter, E.I.T. of Pate Engineers, Inc. ("Engineer"); Tracy Riley of Eagle Water Management, Inc. ("Operator"); Eric Comeau of Bob Leared Interests Inc. ("Tax Assessor/Collector"); Marsha Jan of McCall Gibson Swedlund Barfoot PLLC ("Auditor"); and Josh Golden, attorney, Andrew Johnson, attorney, and Mirna Jakupovic, paralegal, of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorney"). Also in attendance were: Thomas Carter, resident of Three Lakes, Rebecca Yost, resident of Pinecrest Forest, Margaret Moon and Leah Davis, residents in the District, Curtis Lacy of Waste Collection of America ("WCA"), and Jerrell Wolff of Residential Recycling of Texas ("RRT").

The President called the meeting to order at 6:40 p.m. and, in accordance with the notice posted pursuant to law, copies of Certificates of Posting are attached hereto as Exhibit "A", the following business was transacted:

I. **Public Comment.** There was no public comment.

II. **Tax Assessor/Collector's Report.**

1. **Tax Report.** The President then recognized Mr. Comeau who presented the Tax Assessor/Collector's Report, a copy of which is attached hereto as Exhibit "B". Upon motion by Director Bishop, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board approved the Tax Assessor/Collector's Report as presented.

2. **Public Hearing Regarding 2009 Tax Rate.** The President next convened the public hearing regarding the 2009 Tax Rate pursuant to notice published by the Tax Assessor/Collector on October 29, 2009 in the Houston Chronicle, a copy of which is attached hereto as Exhibit "C". The President then called for the members of the public to address the Board regarding the proposed tax rate. Mr. Carter introduced himself to the Board and asked whether the residents of Three Lakes will see an increase on their 2009 tax bills. Mr. Golden responded by saying that the tax rate remains unchanged from

the 2008 tax rate and added that most residents will see a decrease on their 2009 tax bills due to a decrease in the Districts average homestead value. Mr. Comeau stated that all sections in Three Lakes have decreased in value which will lead to decreased tax bills. There being no additional members of the public to comment, the President adjourned the public hearing at 7:05 p.m.

III. **General Business.**

Receive Garbage and Recycling Proposals and approve and/or reject same as desired. The President recognized Mr. Golden who reviewed with the Board the Proposals Summary, a copy of which is attached hereto as Exhibit "D". [Ms. Dunn entered the meeting at this time.]

Mr. Golden then explained the differences between the proposals received from Best Trash, Inc. ("Best Trash"), Republic Services, RRT, and WCA. Mr. Golden stated that Best Trash submitted an unsolicited proposal which offered the lowest combined rate for garbage and recycling services. Mr. Golden noted, however, that since the District already entered a one-year agreement for garbage services, the Board may wish to consider Best Trash in the future.

Mr. Golden then introduced Mr. Lacy and Mr. Wolff to the Board. Mr. Lacy first addressed the Board to review the WCA proposal for garbage and recycling services, a copy of which is attached here as Exhibit "E". Mr. Lacy stated that WCA can add recycling to the current one-year agreement for \$2.75 per home per month; however, should the Board agree to a new three-year contract, WCA can provide both twice-weekly curbside trash collection and once-weekly curbside recycling at a reduced total rate of \$14.63 per home per month.

Mr. Wolff next addressed the Board and reviewed the RRT proposal, a copy of which is attached hereto as Exhibit "F". Mr. Wolff stated that RRT can offer a one-year recycling contract for \$2.40 per month per home if the District or residents purchase recycling containers and \$2.50 per month per home if RRT provides containers. Mr. Wolff added that RRT can offer a three-year contract as well at \$2.35 per home per month if the District or residents provide recycling containers or \$2.40 per home per month if RRT provides containers. Mr. Wolff further noted that RRT provides weight tickets for measuring tonnage of recyclable materials collected, has no affiliation with landfills, and participates in school programs aimed at educating children about recycling.

Mr. Lacy next stated that WCA recently entered into an agreement with an out-of-state purchaser for collected recyclables. Mr. Lacy added that WCA can also provide weight tickets. Director Bishop inquired as to whether either company accepted glass. Mr. Lacy answered first, and stated that WCA does not recycle glass at this time. Mr. Lacy added that WCA would provide educational materials with recycling guidelines to the residents aimed at encouraging participation in recycling. Mr. Wolff stated, however, that RRT does provide glass recycling.

Mr. Wolff continued stating that RRT will provide informational letters with each bin as well as recycling stickers for regular bins. Extensive discussion next ensued regarding the size of recycling bins. [Mr. Johnson entered the meeting at this time.]

Mr. Lacy stated that WCA will have two separate trucks on Mondays, one for collecting garbage and one for recyclables. Discussion then ensued regarding WCA and RRT proposals and residents' participation in recycling. Director Lackey stated that based on the survey, an overwhelming number of residents support the District providing recycling service. Mr. Golden stated that the Board will review the offers at the end of the meeting and inform Mr. Lacy and Mr. Wolff as to the Board's decision. Mr. Lacy and Mr. Wolff thanked the Board for their time and departed the meeting. [Mr. Carter, Ms. Yost, Ms. Moon and Ms. Davis departed the meeting at this time.]

Security issues, including Contract Deputy Program. There were no matters to report at this time.

Public Water system safety. There were no matters to report at this time.

Review consultant contracts. At the Board's request, the item was deferred for discussion later in the meeting.

IV. **Audit Report.** Ms. Jan reviewed with the Board a draft of the reimbursement audit relating to reimbursable costs to 80 Huffsmith Venture Ltd. ("80 Huffsmith") and KB Home Lone Star, Inc. ("KB Home"), a copy of which is attached hereto as Exhibit "G". Ms. Jan discussed interest rate calculations and stated that 80 Huffsmith initially submitted a schedule for reimbursement in the amount of \$1,011,688.28, which included \$100,537.59 in developer interest, calculated at 5.5 percent and limited to two years. Ms. Jan stated that the Auditor has revised the reimbursable amount to \$1,070,434.33, which includes interest in the amount of \$171,756.40 calculated at 5.562610%, the net effective interest rate of the District's Series 2009 bond issue. Ms. Jan next stated that KB Home originally submitted a reimbursement in the amount of \$1,353,423.13, which included \$260,361.44 in developer interest, calculated at seven percent (7%) through November 15, 2009. The Auditor has revised the reimbursable amount to \$935,818.36, which includes interest in the amount of \$133,721.93 calculated at 5.562610 percent, the net effective interest rate of the District's Series 2009 bond issue. Ms. Jan then reviewed Schedule C of the draft reimbursement audit and stated that the District should have \$43,286 in surplus funds from the Series 2009 bond issue. Discussion next ensued regarding the progress KB Home has made with the Northern Point Homeowners Association and the interest earned by KB Home for the purchase price of the land. The Board directed the Attorney to forward correspondence to KB Home regarding the interest charged for the land, which the District is ready to purchase but KB Home is not ready to convey.

Upon motion by Director Cook, seconded by Director Lackey, after full discussion and with all Directors present voting aye, the Board unanimously approved the draft Reimbursement Audit as presented. [Ms. Jan departed the meeting at this time.]

V. **Operator's Report.** The President next recognized Mr. Riley who presented and reviewed the Operator's Report, a copy of which is attached hereto as Exhibit "H". Mr. Riley reported that the water accountability rate for the past billing cycle was 95.0% with 3,261 total accounts and that the Wastewater Treatment Plant ("WWTP") operated at 43% capacity during the month of October. Director Bishop reported on bad odor coming from the WWTP and stated that she contacted Mr. Plunkett on several different occasions regarding same. Mr. Riley stated

that the digester processor call Mr. Plunkett to explain what may be contributing to the odor and if the digester is the source, the odor will go away once the processor is removed. Mr. Riley also stated that the Operator will add more lime to control the odor. Ms. Bishop reported that the odor occurs mostly between 10 p.m. and 12 p.m. Mr. Riley stated that the time and day indicates that a nearby dumpster may be the source of the bad odor, but that the Operator will investigate the matter and report to the Board. Upon motion by Director Dunn, seconded by Director Daniel, after discussion and with all Directors present, the Board unanimously voted to accept the Operator's Report as presented.

VI. **Engineer's Report.** The President next recognized Mr. Carpenter who presented and reviewed the Engineer's Report with the Board, a copy of which is attached hereto as Exhibit "I".

Mr. Carpenter specifically requested the following Board actions: (i) approval to award the contract to construct the 12-inch water line adjacent to SH 249 to the low bidder, DL Elliott Enterprises, Inc. in the amount of \$183,180.00; (ii) approval to award contract to perform sanitary sewer rehabilitation to the low bidder, Insituform Technologies, Inc. in the amount of \$178,560.00; (iii) authorization to inspect Seapines Commercial Subdivision, Sec. 1, Northpont Ease, Sec. 1, Pinecrest Forest, Sec. 5, and Three Lakes Ease, Sec. 4 (the "Sections") and obtain prices from a contractor to repair any major deficiencies; and (iv) authorization to advertise for bids to construct WS&D to serve Ashford Grove, Sec. 1 and Phase 1 Detention to serve Ashford Grove Subdivision.

Mr. Carpenter reported that Klein ISD has reviewed the capital impact fee calculation and stated that Klein ISD understands the methodology for the calculation. Discussion ensued regarding an out-of-district fee calculation and amending the Rate Order to allow separate fees for non-profit organizations. Mr. Teague stated that he would recommend annexing the tract to extend the boundaries.

Mr. Johnson next discussed amending the Rate Order with respect to the monthly charge billed to the District's customers (the "NHCRWA Charge") in connection with the monthly fee paid by the District to the NHCRWA based on the total amount of ground water pumped at the District's water wells and/or the total amount of surface water delivered to the District by the NHCRWA. The Board unanimously authorized the Attorney to prepare the Rate Order recommendation for the Board to review.

Mr. Carpenter next reported on the service requests from Tomball RV Park and the Shell site developer. The Board requested the Attorney contact the Shell site landowner to discuss utility service request and possible annexation.

Upon motion by Director Daniel, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board voted unanimously to approve the Engineer's Report as revised along with the action items listed in the Report.

VII. **Attorney's Report.** The President next recognized Mr. Golden who requested the Board to authorize the Attorney to prepare utility conveyances documentation in connection with the Series 2009 bond issue. Upon motion by Director Cook, seconded by Director Lackey, after

discussion and with all Directors present voting aye, the Board unanimously voted to authorize preparation of utility conveyances documentation in connection with the Series 2009 bond issue.

VIII. **Consent Agenda:** Upon motion by Director Cook, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board unanimously voted to: (i) approve the minutes of October 15, 2009 Board meeting; (ii) adopt an Order Setting Rate and Levying Tax for 2009; (iii) adopt Order Appointing Tax Assessor/Collector; (iv) adopt an Order Amending District Information Form; and (v) adopt Resolution Concerning Tax Collection Procedures, including determinations of options for payment of taxes allowed by Tax Code, copies of which are attached hereto as Exhibits "J", "K", "L", and "M".

IX. **Executive Session.** At 9:49 p.m., the President called an executive session at the request of Mr. Golden, pursuant to Sections 551.071 of the Open Meetings Act, to discuss matters involving legal issues related to attorney client privilege. All meeting attendees were dismissed with the exception of the members of the Board of Directors, Messrs. Golden and Johnson, and Ms. Jakupovic.

X. **Regular Session.** At 10:42 p.m., the Board reconvened the meeting in Regular Session.

After full discussion and with all directors present voting aye, the Board unanimously voted to award a three-year garbage services agreement to WCA at the monthly rate of \$12.13 per home per month, subject to a written agreement on terms acceptable to the Board.

After full discussion and with all directors present voting aye, the Board unanimously voted to award a three-year recycling services agreement to RRT at the monthly rate of \$2.40 per home per month under the following conditions: (i) residents are to use 18-gallon containers provided by the RRT as approved by the District; (ii) residents may purchase or use their own larger containers; provided, however, that such containers **must** be appropriately identified with stickers provided by RRT; (iii) the effective date of the agreement shall be December 1, 2009; and (iv) RRT shall provide an information letter to the District's residents and submit it to the Board for approval at the time of contract execution; (v) either party has a right to terminate the agreement at any time by providing 30-days written notice after the first year.

XI. **Adjournment.** There being no further business to come before the Board, the Board adjourned the meeting at 10.55 p.m.

Passed and approved this 19<sup>th</sup> day of November 2009.

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Secretary, Board of Directors

(SEAL)

**Exhibits:**

- "A" Certificates of Posting
- "B" Tax Report
- "C" Public Hearing Notice
- "D" Garbage and Recycling Proposals Summary
- "E" WCA Proposal
- "F" RRT Proposal
- "G" Audit Report
- "H" Operator's Report
- "I" Engineer's Report
- "J" Order Setting Rate and Levying Tax for 2009
- "K" Order Appointing Tax Assessor/Collector
- "L" Order Amending District Information Form
- "M" Resolution Concerning Tax Collection Procedures