

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 83

**Minutes of Meeting of Board of Directors
October 15, 2009**

The Board of Directors of Montgomery County Municipal Utility District No. 83 met in regular session, open to the public on October 15, 2009, and held at 1300 Post Oak Boulevard, Suite 1400, Houston, Harris County, Texas, in accordance with the duly posted notice of meeting, and the roll was called of the duly constituted members of said Board of Directors, as follows:

John R. Bergeron, President
Milton H. Fried, Jr., Vice-President
Bert M. Cottrell, Secretary
Leslea S. Ortego, Assistant Secretary
Stanley W. Young, Director

and all persons were present, except Director Ortego, thus constituting a quorum.

Also present were Stacey Wagner of Wheeler & Associates, Inc. ("Wheeler"); Keith Billé of Costello, Inc. ("Costello"); Lisa Hernandez of Municipal Accounts & Consulting, L.P. ("MAC"); Rick Marriott of SWWC Services, Inc.; Tommy Weaver of Friendswood Development Company ("Friendswood"); Sherri Greenwood of BKD, LLP; Craig Rathmann and Julie Williams of Rathmann & Associates, L.P., who entered later in the meeting; Dan O'Malley, a resident of the District; and Joseph M. Schwartz and Linda Knox of Schwartz, Page & Harding, L.L.P. ("SPH").

The President called the meeting to order and declared it open for such business as might regularly come before it.

APPROVAL OF MINUTES

As the first order of business, the Board considered approval of the minutes of the Board of Directors meeting held on September 17, 2009. After review of the minutes presented, it was moved by Director Cottrell, seconded by Director Fried, and unanimously carried, that said minutes be approved as written.

BOOKKEEPING REPORT

The Board next reviewed the bookkeeping report dated October 15, 2009, a copy of which is attached as **Exhibit A**, including the checks presented for payment from the District's various accounts, and the Quarterly Investment Inventory Report for the period ending September 30, 2009, a copy of which is attached hereto as **Exhibit B**. After discussion on the matter, it was moved by Director

Cottrell that said reports be approved, that the checks identified in the bookkeeping report be approved for payment, with the exception of check no. 3408, which was voided, and that the District's Investment Officer be authorized to execute the Quarterly Investment Inventory Report on behalf of the Board and the District. Director Fried seconded said motion, which carried unanimously.

Mr. Rathmann entered the meeting at this time.

COMPLIANCE WITH TEXAS GOVERNMENT CODE CHAPTER 2264 RELATIVE TO ENERGY REPORTING

Ms. Hernandez presented a monthly electricity utility usage and expense report (the "Electricity Report") prepared by MCI, a copy of which is attached to the bookkeeping report. Mr. Schwartz reminded the Board that, pursuant to the energy efficiency and reporting requirements set forth in Texas Government Code Chapter 2264, the District must (i) report its annual electricity usage and costs in an electronic format and (ii) make that report publicly accessible. Mr. Schwartz stated that MCI has satisfied both requirements by preparing the Electricity Report in the necessary format and presenting the Electricity Report at today's public meeting.

ACCEPTANCE OF BID FOR PURCHASE OF DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009

As the next order of business, it was announced that, pursuant to a notice published as required by law, public bids for the sale of the District's proposed \$2,160,000 Unlimited Tax Bonds, Series 2009 ("Series 2009 Bonds") were to be received at this time and place. In that regard, Mr. Rathmann advised the Board that the District had been assigned a favorable credit rating by Standard & Poor's of BBB-. Mr. Rathmann then reported that five (5) bids had been received for the District's Series 2009 Bonds and that the low bid was submitted by First Southwest Company ("FSC") at a net effective interest rate of 5.628899%. Mr. Rathmann advised the Board that he had verified the accuracy of the bid submitted by FSC for the purchase of all of the Series 2009 Bonds, at a net effective interest rate of 5.628899%. After a discussion of the bids received, it was moved by Director Cottrell, seconded by Director Young and unanimously carried, that the Board accept the bid of FSC for the purchase of all of the Series 2009 Bonds at a net effective interest rate of 5.628899%.

ADOPTION OF ORDER AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF THE DISTRICT'S SERIES 2009 BONDS

There was next presented to the Board the Bond Order attached hereto as **Exhibit C** for the issuance of the Series 2009 Bonds. Mr. Schwartz reviewed said Bond Order in detail with the Board. Said Bond Order was considered by the Board and, thereupon, it was duly moved by Director Cottrell, seconded by Director Fried and unanimously carried, that said Bond Order be passed and adopted.

APPROVAL AND DISTRIBUTION OF FINAL OFFICIAL STATEMENT RELATIVE TO THE DISTRICT'S SERIES 2009 BONDS

As the next order of business, there was a discussion regarding the completion of the Final Official Statement to be prepared by Rathmann & Associates, L.P. in connection with the Series 2009 Bonds. After discussion on the matter, Director Cottrell moved that Rathmann & Associates, L.P. be authorized to complete the Final Official Statement and that same be adopted by the Board and District as final. Director Fried seconded said motion, which unanimously carried.

APPROVAL AND EXECUTION OF PAYING AGENT/REGISTRAR AGREEMENT IN CONNECTION WITH THE DISTRICT'S SERIES 2009 BONDS

The Board next considered and reviewed a Paying Agent/Registrar Agreement by and between the District and Wells Fargo Bank, N.A. relative to the Series 2009 Bonds. Mr. Schwartz reviewed the various provisions of the Agreement with the Board. After discussion of the Agreement presented, Director Fried moved that said Agreement be approved and that the President be authorized to execute the Agreement on behalf of the Board and the District. Director Cottrell seconded said motion, which unanimously carried.

APPROVAL AND EXECUTION OF ESCROW AGREEMENT IN CONNECTION WITH THE DISTRICT'S SERIES 2009 BONDS

The Board next considered and reviewed an Escrow Agreement by and between the District and Amegy Bank National Association in connection with the escrow of \$325,342 in proceeds from the District's Series 2009 Bonds. In that regard, Mr. Schwartz advised the Board that that an Application requesting the release of all of such escrowed bond proceeds in the amount of \$325,342 was submitted to the Texas Commission on Environmental Quality ("TCEQ") on September 2, 2009. Mr. Schwartz then reviewed the various provisions of the Agreement with the Board. After discussion of the Agreement presented, Director Cottrell moved that said Agreement be approved and that the President be authorized to

execute the Agreement on behalf of the Board and the District. Director Young seconded said motion, which unanimously carried.

ACT UPON ANY OTHER MATTERS CONCERNING THE DISTRICT'S SERIES 2009 BONDS

The Board next considered any other matters relating to the Series 2009 Bonds. In that regard, Mr. Schwartz presented for the Board's approval and execution a General Certificate and a Signature and No-Litigation Certificate. After discussion on said matters, it was moved by Director Cottrell, seconded by Director Fried and unanimously carried, that said Certificates be approved by the Board, that the President be authorized to execute the Certificates and the Secretary to attest same on behalf of the Board and the District.

ADOPTION OF RESOLUTION AUTHORIZING ISSUANCE OF NOTICE OF REDEMPTION OF THE DISTRICT'S \$700,000 BOND ANTICIPATION NOTE, SERIES 2008

The Board next considered providing notice to BBVA - Compass Bank that the District will exercise its option to redeem its \$700,000 Bond Anticipation Note on November 16, 2009. After discussion on the matter, it was moved by Director Cottrell, seconded by Director Fried and unanimously carried, that BBVA - Compass Bank be provided with such notice and that the Resolution Authorizing Issuance of Notice of Redemption of Bond Anticipation Note attached hereto as **Exhibit D** in connection therewith be adopted by the Board.

ENGAGEMENT OF AUDITOR FOR PREPARATION OF AUDIT RELATIVE TO DISBURSEMENT OF PROCEEDS FROM THE DISTRICT'S SERIES 2009 BONDS

The Board next considered the engagement of an auditor to conduct an audit relative to the Series 2009 Bonds. After discussion on the matter, Director Cottrell moved that the firm of BKD, LLP be employed to conduct such audit. Director Fried seconded said motion, which carried unanimously.

DISCUSSION REGARDING PAYMENT TO FRIENDSWOOD DEVELOPMENT COMPANY PURSUANT TO FOURTH AMENDMENT TO WATER SUPPLY CONTRACT BY AND BETWEEN THE DISTRICT AND MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 84

The Board deferred action relative to authorizing the payment to Friendswood Development Company pursuant to the Fourth Amendment to Water Supply Contract by and between the District and Montgomery County Municipal Utility District No. 84 ("No. 84") pending the TCEQ's approval of the pro rations for Phase II of the Water Plant which will be reflected in the bond application report prepared in connection with No. 84's next bond issue.

ANNUAL REVIEW OF ORDER ESTABLISHING POLICY FOR INVESTMENT OF DISTRICT FUNDS AND APPOINTING INVESTMENT OFFICER AND ADOPTION OF A RESOLUTION IN CONNECTION THEREWITH

The Board considered the annual review of an Order Establishing Policy for Investment of District Funds and Appointing Investment Officer ("Order"). In that regard, Mr. Schwartz discussed the proposed changes to the Order to substitute Ms. Ghia Lewis of Municipal Accounts & Consulting, L.P. for Ms. Teresa Rosenbaum as one of the District's Investment Officers and to the form of Certificate of Compliance From Sellers of Investments prescribed by the District's Investment Policy, which revisions are to satisfy federal regulations relative to disclosures that must be made to ensure that separate Federal Depository Insurance Corporation insurance coverage is in place covering the District's debt service account. After discussion on the matter, Director Cottrell moved that the Order be adopted to reflect the proposed changes as noted therein, that the Board adopt the Resolution Regarding Review of Order Establishing Policy for Investment of District Funds and Appointing Investment Officer attached hereto as **Exhibit E**, and that the President and Secretary be authorized to execute same on behalf of the Board and the District. Director Bergeron seconded said motion, which unanimously carried.

TAX ASSESSOR-COLLECTOR REPORT

Ms. Wagner presented the tax assessor-collector report for the month of September 2009, a copy of which is attached hereto as **Exhibit F**, including the checks presented for payment. After discussion concerning the tax assessor-collector report, Director Cottrell moved that said report be approved and that the checks identified in the report be approved for payment. Director Young seconded said motion, which carried unanimously. Ms. Wagner additionally presented for the Board's review a Delinquent Collections Listing as of September 30, 2009, a copy of which is attached hereto as **Exhibit G**.

DISCUSSION REGARDING HOUSE BILL 3646 REQUIREMENTS FOR ACCEPTANCE OF TAX PAYMENTS

Mr. Schwartz discussed the requirements of House Bill No. 3646 ("H.B. 3646"), recently passed by the 81st Texas Legislature and effective September 1, 2009, which amends §31.06(a) of the Texas Tax Code related to acceptance of credit card and electronic funds transfers for payment of taxes. Mr. Schwartz noted that H.B. 3646 is unclear as to whether it requires the District to accept both forms of payment. Ms. Wagner stated that Wheeler currently accepts tax payments by credit card but not by electronic funds transfers. Ms. Wagner noted, however, that Wheeler is currently reviewing

programs for the acceptance of electronic funds transfers and that she will advise the Board on Wheeler's progress.

DELINQUENT TAX COLLECTIONS ATTORNEY REPORT

Mr. Schwartz presented a Delinquent Tax Report from Perdue, Brandon, Fielder, Collins & Mott, L.L.P. ("Perdue") dated October 15, 2009, a copy of which is attached hereto as **Exhibit H**. A discussion ensued regarding the Teresa N. Debautista 2008 account reflected on the Report. After discussion, it was moved by Director Young, seconded by Director Fried and unanimously carried, that Perdue be authorized to proceed with filing suit for the collection of such 2008 delinquent taxes.

Ms. Williams entered the meeting at this time.

FINANCIAL ADVISOR'S RECOMMENDATION CONCERNING THE DISTRICT'S PROPOSED 2009 TAX RATE

There next followed a discussion concerning the requirements for notice of the District's intention to adopt a 2009 tax rate. Mr. Schwartz advised that, pursuant to the Texas Water Code, the District is required to provide a notice containing certain tax-related information in connection with each meeting at which the adoption of a tax rate will be considered. Mr. Schwartz further advised that the information to be included in the notice is set forth in the Water Code and includes the proposed tax rate to be adopted. He explained that the District must provide the notice by either (1) publishing it at least once in a newspaper having general circulation in the District at least seven days before the date of the meeting at which the tax rate will be adopted, or (2) mailing it to each owner of taxable property in the District, at the address shown on the most recently certified tax roll of the District, at least 10 days before the date of the meeting.

Mr. Rathmann next presented the Board with a recommendation regarding the District's proposed 2009 debt service and maintenance tax rates, a copy of which is attached hereto as **Exhibit I**. Mr. Rathmann recommended a proposed 2009 debt service tax rate of \$0.90 per \$100 of assessed valuation and a proposed 2009 maintenance tax rate of \$0.35 per \$100 of assessed valuation. After discussion on the matter, Director Cottrell moved that: (1) the Board accept the financial advisor's recommendation of a proposed 2009 debt service tax rate of \$0.90 per \$100 of assessed valuation and a proposed 2009 maintenance tax rate of \$0.35 per \$100 of assessed valuation, for a total tax rate of \$1.25 per \$100 of assessed valuation; and (2) the District's tax assessor-collector be authorized to publish notice of the District's intention to adopt such 2009 tax rate at its next meeting in the form and at the time required by law. Director Young seconded said motion, which unanimously carried.

The Board concurred that the notice should be published by the tax assessor-collector in the appropriate *This Week* section of *The Houston Chronicle*.

Mr. Rathmann and Ms. Williams exited the meeting at this time.

OPERATION AND MAINTENANCE REPORT

Mr. Marriott presented to and reviewed with the Board the operations and maintenance report for the month of September 2009, a copy of which is attached hereto as **Exhibit J**. Mr. Marriott provided additional information concerning the following matters:

Mr. Marriott presented to and reviewed with the Board a report reflecting various inquiries received from Director Bergeron regarding certain operation and maintenance invoices and Mr. Marriott's responses to such inquiries, a copy of which is attached hereto as **Exhibit K**. Mr. Marriott stated that, in the future, he would more carefully review SWWC's operation and invoices before they are billed to the District.

A discussion ensued regarding SWWC's charges for posting notices of District meetings at the District's official posting location within the boundaries of the District. Director Young stated that he would post all future notices of District meetings.

Mr. Marriott additionally advised the Board that he would be meeting on Friday of next week with representatives of Sludge-Net Dewatering Systems, Inc. to learn more about the new type of sludge hauling services being offered by Sludge-Net. Director Young stated that he would attend the meeting with Mr. Marriott.

The Board deferred consideration of appeals of District charges after noting that no appeals had been received.

DEVELOPER'S REPORT

The Board considered the developer's report. Mr. Weaver reported to the Board regarding the status of development and home sales within the District and within No. 84.

Mr. Weaver further advised the Board that he is still trying to meet with Montgomery County Commissioner Ed Rinehart to obtain the County's acceptance of the Bentwood Drainage Channel into the County's drainage system so that the County will contribute toward the cost of the maintenance of the channel.

ENGINEERING REPORT

The Board considered the engineering report. Mr. Billé presented to and reviewed with the Board a written report dated October 15, 2009, a copy of which is attached hereto as **Exhibit L**.

Mr. Billé advised the Board of the pay estimates which had been submitted in connection with the ongoing projects within the District. Mr. Billé recommended that the pay estimate reflected on the attached engineering report be approved for payment. After discussion on the matter, it was moved by Director Cottrell, seconded by Director Fried and unanimously carried, that the pay estimate reflected on the attached engineering report be approved for payment, as recommended by Mr. Billé.

STATUS OF ACCEPTANCE BY MONTGOMERY COUNTY OF STREETS FOR MAINTENANCE

Mr. Billé presented to and reviewed with the Board a chart reflecting the status of the acceptance by Montgomery County of the streets located within the District for maintenance. A copy of the chart is attached to the engineering report.

ACCEPTANCE OF SITE AND/OR EASEMENT CONVEYANCES

The Board deferred action relative to the acceptance of site and/or easement conveyances.

ACCEPTANCE OF CONVEYANCES OF UTILITY FACILITIES

The Board deferred action relative to the acceptance of conveyances of utility facilities.

DISCUSSION REGARDING COMPLIANCE WITH LONE STAR GROUNDWATER CONSERVATION DISTRICT'S DISTRICT REGULATORY PLAN

Mr. Schwartz updated the Board regarding surface water conversion requirements in order to comply with the Lone Star Groundwater Conservation District's District Regulatory Plan, as reflected in the attached engineering report.

APPROVAL AND EXECUTION OF FIRST AMENDMENT TO AGREEMENT FOR JOINT FINANCING, CONSTRUCTION AND MAINTENANCE OF SANITARY SEWER COLLECTION, LIFT STATION AND DRAINAGE FACILITIES BY AND BETWEEN THE DISTRICT AND NO. 84

Mr. Schwartz presented to and reviewed with the Board a proposed First Amendment to Agreement for Joint Financing, Construction and Maintenance of Sanitary Sewer Collection, Lift Station and Drainage Facilities by and between the District and No.

84, together with a summary of the proposed First Amendment, a copy of which summary is attached hereto as **Exhibit M**. After discussion on the matter, it was moved by Director Fried, seconded by Director Young and unanimously carried, that said First Amendment to Agreement for Joint Financing, Construction and Maintenance of Sanitary Sewer Collection, Lift Station and Drainage Facilities be approved by the Board and that the President be authorized to execute same on behalf of the Board and the District.

APPROVAL AND EXECUTION OF AGREEMENT FOR JOINT FINANCING, CONSTRUCTION AND MAINTENANCE OF EMERGENCY GENERATORS BY AND BETWEEN THE DISTRICT AND NO. 84

Mr. Schwartz presented to and reviewed with the Board a proposed Agreement for Joint Financing, Construction and Maintenance of Emergency Generators by and between the District and No. 84. After discussion on the matter, it was moved by Director Fried, seconded by Director Cottrell and unanimously carried, that said Agreement for Joint Financing, Construction and Maintenance of Emergency Generators be approved by the Board and that the President be authorized to execute same on behalf of the Board and the District.

ADOPTION OF RESOLUTION AUTHORIZING APPLICATION TO TCEQ REQUESTING APPROVAL FOR USE OF SURPLUS FUNDS AND INTEREST EARNED ON CONSTRUCTION FUNDS IN CONNECTION WITH INSTALLATION OF EMERGENCY GENERATORS AT LIFT STATIONS

The Board considered the adoption of a Resolution Authorizing Application to TCEQ Requesting Approval for Use of Surplus Funds and Interest Earned on Construction Funds in connection with the use of \$261,210 in surplus funds for the installation of emergency generators to serve the District's Lift Stations Nos. 1, 2 and 3 and No. 84's Lift Stations Nos. 1 and 2. After discussion, it was moved by Director Fried, seconded by Director Cottrell and unanimously carried that the Resolution Authorizing Application to TCEQ Requesting Approval for Use of Surplus Funds and Interest Earned on Construction Funds attached hereto as **Exhibit N** be adopted by the Board.

ADOPTION OF RESOLUTION AUTHORIZING USE OF SURPLUS FUNDS AND INTEREST EARNED ON CONSTRUCTION FUNDS IN CONNECTION WITH INSTALLATION OF AN EMERGENCY GENERATOR AT THE WASTEWATER TREATMENT PLANT

The Board considered the adoption of a Resolution Authorizing Use of Surplus Funds and Interest Earned on Construction Funds in connection with the use of \$268,775 in surplus funds for the installation of an emergency generator at the wastewater treatment plant. After discussion, it was moved by Director Young, seconded

by Director Cottrell and unanimously carried that the Resolution Authorizing Use of Surplus Funds and Interest Earned on Construction Funds attached hereto as **Exhibit O** be adopted by the Board.

SECOND AMENDMENT TO WASTE DISPOSAL AGREEMENT BY AND BETWEEN THE DISTRICT AND NO. 84

The Board deferred action relative to the approval and execution of a Second Amendment to Waste Disposal Agreement by and between the District and No. 84.

ATTORNEY'S REPORT

The Board next considered the attorney's report. Mr. Schwartz advised the Board that he had nothing further to discuss with the Board of a legal nature which was not covered under specific agenda items.

ADJOURNMENT

There being no further business to come before the Board, on motion made by Director Fried, seconded by Director Young, and unanimously carried, the meeting was adjourned.

_____/s/ Bert M. Cottrell_____
Bert M. Cottrell, Secretary
Board of Directors

LIST OF ATTACHMENTS

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| <u>Exhibit A</u> | Bookkeeping Report |
| <u>Exhibit B</u> | Quarterly Investment Inventory Report for the period ending September 30, 2009 |
| <u>Exhibit C</u> | Bond Order |
| <u>Exhibit D</u> | Resolution Authorizing Issuance of Notice of Redemption of Bond Anticipation Note |
| <u>Exhibit E</u> | Resolution Regarding Review of Order Establishing Policy for Investment of District Funds and Appointing Investment Officer |
| <u>Exhibit F</u> | Tax Assessor-Collector Report |
| <u>Exhibit G</u> | Delinquent Collections Listing as of September 30, 2009 |
| <u>Exhibit H</u> | Delinquent Tax Report from Perdue, Brandon, Fielder, Collins & Mott, L.L.P. dated October 15, 2009, |
| <u>Exhibit I</u> | Rathmann & Associates, L.P.'s 2009 Debt Service and Maintenance Tax Rate Recommendation |
| <u>Exhibit J</u> | Operation and Maintenance Report |
| <u>Exhibit K</u> | Report reflecting various inquiries received from Director Bergeron regarding certain operation and maintenance invoices and Mr. Marriott's responses to such inquiries |
| <u>Exhibit L</u> | Engineering Report |
| <u>Exhibit M</u> | Summary of First Amendment to Agreement for Joint Financing, Construction and Maintenance of Sanitary Sewer Collection, Lift Station and Drainage Facilities |
| <u>Exhibit N</u> | Resolution Authorizing Application to TCEQ Requesting Approval for Use of Surplus Funds and Interest Earned on Construction Funds |
| <u>Exhibit O</u> | Resolution Authorizing Use of Surplus Funds and Interest Earned on Construction Funds |