

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 83

**Minutes of Special Meeting of Board of Directors
November 12, 2009**

The Board of Directors of Montgomery County Municipal Utility District No. 83 met in special session, open to the public on November 12, 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 Cottrell, who entered later in the meeting, and 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"), who entered later in the meeting; Rick Marriott of SWWC Services, Inc.; Tommy Weaver of Friendswood Development Company ("Friendswood"); Sherri Greenwood of BKD, LLP; Dan O'Malley, Mike Zenner and Richard Myers, residents of the District; and Patricia M. Daniels and Judy Gallaway 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 October 15, 2009. After review of the minutes presented, it was moved by Director Fried, seconded by Director Young, and unanimously carried, that said minutes be approved as written.

STATUS OF APPLICATION REQUESTING RELEASE OF ESCROWED BOND PROCEEDS IN CONNECTION WITH THE DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009; ADOPTION OF RESOLUTION REQUESTING RELEASE OF ESCROWED BONDS PROCEEDS IN CONNECTION WITH \$23,995 ESCROWED FOR SORTERS ROAD AND BENTWOOD OAKS DRIVE BRIDGES IMPROVEMENTS

Ms. Daniels addressed the Board concerning the status of the District's application requesting the release of escrowed bond

proceeds from the District's Series 2009 Bonds in the total amount of \$325,342. In that regard, she reported that, by letter dated October 20, 2009, the Texas Commission on Environmental Quality ("TCEQ") had approved the release of \$301,347 in escrowed bond proceeds for the utilities constructed to serve Enclave at Oakhurst, Section 2, and Fairways at Oakhurst, Section 3, but that the TCEQ had denied the District's request for release of \$23,995 for the Sorters Road and Bentwood Oaks Drive Bridges improvements pending the receipt of a cost sharing agreement between the District and Montgomery County Municipal Utility District No. 84 ("No. 84"). Ms. Daniels further reported that SPH had prepared such a cost sharing agreement that would be presented for the Board's approval later in the meeting under agenda item no. 17. Ms. Daniels then presented for the Board's adoption a Resolution Requesting Release of Escrowed Bond Proceeds in the amount of \$23,995 for the Sorters Road and Bentwood Oaks Drive Bridges improvements. After discussion, it was moved by Director Fried, seconded by Director Young and unanimously carried that the Resolution Requesting Release of Escrowed Bond Proceeds attached hereto as **Exhibit A** be adopted by the Board.

APPROVAL OF AUDIT RELATIVE TO DISBURSEMENT OF PROCEEDS FROM THE DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009

The Board considered the approval of an audit report relative to the District's \$2,160,000 Unlimited Tax Bonds, Series 2009 ("Series 2009 Bonds") and the disbursement of bond proceeds in accordance therewith. In that regard, Ms. Greenwood reviewed with the Board an audit report prepared by BKD, LLP, in connection with the payment of funds to Friendswood. Ms. Daniels also noted that \$745,126.03 of the proceeds from the Series 2009 Bonds will be utilized for payment of the redemption price (principal and all accrued interest) of the District's Series 2008 Bond Anticipation Note held by BBVA - Compass Bank (the "BAN"). After discussion, Director Young moved that the audit report be approved by the Board and that proceeds of said Series 2009 Bonds be disbursed in accordance with said report subject to (i) closing on the sale of the Series 2009 Bonds on November 16, 2009, and (ii) the receipt of an executed Receipt and Indemnity from Friendswood, and that proceeds from the District's Series 2009 Bonds in the total amount of \$745,126.03 be utilized for full and final payment of the District's BAN. Director Fried seconded said motion, which unanimously carried.

Director Cottrell and Ms. Hernandez entered the meeting during the review of the audit report.

APPROVAL OF INTERNAL REVENUE SERVICE FORM 8038-G RELATIVE TO THE DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009

The Board next considered authorizing the execution and filing of Internal Revenue Service Reporting Form 8038-G relative to the issuance of the District's Series 2009 Bonds. After discussion on the matter, it was moved by Director Cottrell, seconded by Director Young and unanimously carried that the President be authorized to execute said form on behalf of the Board and the District.

CORRESPONDENCE FROM BOND COUNSEL REGARDING EXPENDITURE AND INVESTMENT OF BOND PROCEEDS AND INTERNAL REVENUE SERVICE RESTRICTIONS ON SAME IN CONNECTION WITH THE DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009

Ms. Daniels next presented and reviewed correspondence from SPH, as Bond Counsel for the issuance of the Series 2009 Bonds, addressed to the Board of Directors regarding certain provisions of the federal tax law and regulations of the Internal Revenue Service ("IRS") pertaining to the expenditure and investment of proceeds of the Series 2009 Bonds. She advised the Board that certain periodic reviews and reports are required in order to monitor compliance with the requirements set forth therein and that arbitrage rebate or yield reduction payments could be required to be made based on said review and reports. Ms. Daniels also explained that the District's bookkeepers would monitor investment rates and that the District's financial advisor would review the debt service fund balance and coverage in connection with the annual tax rate recommendation. Ms. Daniels advised the Board, however, that compliance with the IRS requirements is ultimately the responsibility of the Board of Directors.

CONSIDER AND ACT UPON ANY OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE DISTRICT'S \$2,160,000 UNLIMITED TAX BONDS, SERIES 2009

The Board next considered authorizing the execution of various closing documents relative to the District's Series 2009 Bonds, including the District's Receipt, a No-Litigation Certificate and a Federal Tax Certificate. After discussion on the matter, it was moved by Director Cottrell, seconded by Director Young and unanimously carried that the President be authorized to execute such closing documentation and the Secretary to attest same on behalf of the Board and the District, and that SPH be authorized to approve closing on the sale of the Bonds.

BOOKKEEPING REPORT

The Board reviewed the bookkeeping report dated November 12, 2009, a copy of which is attached as **Exhibit B**, including the

checks presented for payment from the District's various accounts. After discussion on the matter, it was moved by Director Cottrell that said bookkeeping report be approved, that the checks and wire transfers identified in the report be approved for payment, with the exception of check no. 3440, which was voided. Director Young seconded said motion, which carried unanimously.

Ms. Hernandez presented proposed operating budgets for the District's fiscal year ending December 31, 2010, copies of which are attached to the bookkeeping report, and requested that the Board and consultants provide their comments, if any, prior to next month's meeting.

TAX ASSESSOR-COLLECTOR REPORT

Ms. Wagner presented the tax assessor-collector report for the month of October 2009, a copy of which is attached hereto as **Exhibit C**, including the checks presented for payment. After discussion concerning the tax assessor-collector report, Director Fried moved that said report be approved and that the checks identified in the report be approved for payment. Director Cottrell seconded said motion, which carried unanimously. Ms. Wagner additionally presented for the Board's review a Delinquent Collections Listing as of October 31, 2009, a copy of which is attached hereto as **Exhibit D**.

DELINQUENT TAX COLLECTIONS ATTORNEY REPORT

The Board deferred action relative to the review of a delinquent tax report from the District's delinquent tax collections attorneys, Perdue, Brandon, Fielder, Collins & Mott, L.L.P., since a report was not received this month.

PUBLIC HEARING REGARDING ADOPTION OF THE DISTRICT'S PROPOSED 2009 TAX RATE

As the next order of business, the Board conducted a hearing regarding the setting of the District's proposed debt service and maintenance tax rates for 2009. Mr. Zenner advised the Board that he believes that the District's proposed total 2009 tax rate of \$1.25 is too high. The Board acknowledged Mr. Zennar's comment and then the public hearing was closed.

SETTING OF THE DISTRICT'S 2009 DEBT SERVICE AND MAINTENANCE TAX RATES AND ADOPTION OF ORDER IN CONNECTION THEREWITH

The Board next discussed the setting of the District's 2009 tax rate. In that regard, Ms. Wagner confirmed that a notice had been published in the appropriate *This Week* insert in the *Houston Chronicle* in accordance with all legal requirements and as directed

at the October 15, 2009, Board meeting. Whereupon it was moved by Director Cottrell that (i) the Board levy a 2009 debt service tax rate of \$0.90 per \$100 of assessed valuation and a 2009 maintenance tax rate of \$0.35 per \$100 of assessed valuation, resulting in a total 2009 tax rate of \$1.25 per \$100 of assessed valuation, as proposed at the District's Board meeting held on October 15, 2009, and as reflected in the notice published in the *Houston Chronicle - This Week*; and (ii) the Order Levying Taxes attached hereto as **Exhibit E** be adopted in connection therewith, said Order to be effective as of November 16, 2009, and that the President be authorized to execute the Order and the Secretary to attest same on behalf of the Board and the District. Director Young seconded said motion, which carried unanimously.

APPROVAL AND EXECUTION OF AN AMENDMENT TO THE SECOND AMENDED AND RESTATED DISTRICT INFORMATION FORM IN CONNECTION WITH THE LEVY OF THE DISTRICT'S 2009 TAX RATE AND THE ISSUANCE OF THE DISTRICT'S SERIES 2009 BONDS

Ms. Daniels next presented and discussed with the Board an Amendment to the Second Amended and Restated District Information Form in connection with the levy of the District's 2009 tax rate and the issuance of the District's Series 2009 Bonds. After discussion on the matter, Director Fried moved that the Amendment to the Second Amended and Restated District Information Form be approved and that the Board members present be authorized to execute same on behalf of the Board and the District. Director Cottrell seconded said motion, which carried unanimously.

OPERATION AND MAINTENANCE REPORT

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

Mr. Marriott addressed the Board concerning certain operation and maintenance invoices questioned by Director Bergeron in connection with work performed at the water plant. With respect to the repair of the concrete fence at the water plant, he reported that 19 panels of the fence were replaced at a cost of \$252.00 per panel, resulting in a total repair cost of approximately \$4,788.00 instead of approximately \$9,000.00 as previously invoiced. Mr. Marriott also reported that the overtime charges associated with the installation of a safety shower were adjusted by \$30.00. Mr. Marriott stated that the District's operation and maintenance bill was reduced from \$13,777.43 to \$9,071.48 as a result of the adjustments discussed above.

In response to an inquiry from Director Young, Mr. Marriott discussed the procedures for terminating service to those customers reflected on the Delinquent List should the customers fail to pay their outstanding balance prior to the payment deadline. Mr. Marriott noted that five (5) of the customers listed on the Delinquent List have already paid their outstanding balance.

Mr. Marriott further advised the Board that he, Director Young and a representative of Costello had met with representatives of Sludge-Net Dewatering Systems, Inc. ("Sludge-Net") last month to learn more about the new type of sludge hauling services being offered by Sludge-Net. In that regard, he presented for the Board's review a Service Introduction Report provided by Sludge-Net, a copy of which is attached hereto as **Exhibit G**. Mr. Marriott then discussed with the Board the process used by Sludge-Net for processing and hauling sludge. He advised the Board that the process is quicker and that the District would save approximately \$2,678.00 per year in sludge hauling costs. Mr. Marriott further advised the Board that the process is also quieter due to less frequent sludge hauls resulting in fewer trucks entering and exiting the wastewater treatment plant site. Mr. Marriott reported, however, that an offsite lift station may be required to process the sludge as well as an electrical supply. Mr. Marriott stated that he and Mr. Billé would analyze all costs associated with transferring to Sludge-Net's system for processing and hauling sludge and report to the Board regarding same.

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 advised the Board that all streets located within the District have now been accepted by Montgomery County for maintenance.

Mr. Weaver further advised the Board that he is still working 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

November 12, 2009, a copy of which is attached hereto as **Exhibit H**. Mr. Billé provided additional information concerning the following matter:

Mr. Billé addressed the Board concerning the installation of permanent generators for operation of the wastewater treatment plant and lift stations. In that regard, Mr. Billé advised the Board that he and Director Young had met with representatives of Godwin Pumps to discuss the possibility of installing pumps to operate the lift stations which would most likely be less expensive than installing emergency generators at each lift station. Mr. Billé reported that he and Director Young would continue to analyze the installation of pumps for operation of the lift stations and report to the Board further regarding same. Mr. Billé noted that he would continue with the preparation of the plans and specifications for the installation of permanent generators for operation of the wastewater treatment plant and the site work for the installation of either generators or pumps for operation of the lift stations.

Mr. O'Malley advised the Board that several neighbors are complaining regarding the flooding near golf course hole no. 11 and inquired as to whether action could be taken soon to address the flooding. Mr. Billé advised that said flooding issues are the golf course's responsibility. Mr. Zenner stated that the management company for the golf course is preparing to replace the inlet and drainage pipe at golf course hole no. 12 in order to rectify flooding in that area. A discussion ensued regarding whether the golf course could also be persuaded to perform repairs at golf course hole no. 11. Mr. Billé advised that the residents could file a complaint with Montgomery County.

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

Ms. Daniels 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 AGREEMENT FOR JOINT FINANCING AND CONSTRUCTION OF SORTERS ROAD AND BENTWOOD OAKS DRIVE BRIDGES IMPROVEMENTS BY AND BETWEEN THE DISTRICT AND NO. 84

Ms. Daniels presented to and reviewed with the Board a proposed Agreement for Joint Financing and Construction of Sorters Road and Bentwood Oaks Drive Bridges Improvements by and between the District and No. 84. After discussion on the matter, it was moved by Director Cottrell, seconded by Director Fried and unanimously carried, that said Agreement for Joint Financing and Construction of Sorters Road and Bentwood Oaks Drive Bridges Improvements be approved by the Board and that the President be authorized to execute same on behalf of the Board and the District.

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. Ms. Daniels advised the Board that she had nothing further to discuss with the Board of a legal nature which was not covered under specific agenda items.

STATUS OF 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 status of the District's 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. Ms. Daniels advised the Board that the Application was filed with the TCEQ on November 3, 2009, and is undergoing the review process.

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

<u>Exhibit A</u>	Resolution Requesting Release of Escrowed Bond Proceeds
<u>Exhibit B</u>	Bookkeeping Report
<u>Exhibit C</u>	Tax Assessor-Collector Report
<u>Exhibit D</u>	Delinquent Collections Listing as of October 31, 2009
<u>Exhibit E</u>	Order Levying Taxes
<u>Exhibit F</u>	Operation and Maintenance Report
<u>Exhibit G</u>	Service Introduction Report from Sludge-Net
<u>Exhibit H</u>	Engineering Report