

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 140

Minutes of Special Meeting of Board of Directors

October 3, 2017

The Board of Directors (the "Board") of Fort Bend County Municipal Utility District No. 140 (the "District") met in special session, open to the public, on October 3, 2017, at 12:00 p.m., at 2277 Plaza Drive, 1st Floor, Sugar Land, Fort Bend County, Texas 77479, outside the boundaries of the District and in accordance with the duly posted notice of meeting, and the roll was called of the duly constituted members of said Board, as follows:

Jack Morgan Brady	President
Harry Murray	Assistant Vice President
Gene Tomas	
Janice Suchyta	
John Braswell	Assistant Secretary

and all of said persons were present, thus constituting a quorum.

Also present during all or part of the meeting were Greg Frank and Ron Dechert of Costello, Inc. ("Costello"); Mike Arterburn of Utility Tax Service, LLC ("Utility Tax"); Olivia Cuellar of McLennan and Associates, L.P.; Susan Lang of the City of Richmond ("City"); Jeanne McDonald, Joel Cleveland, and Olivia Galvan of Jeanne H. McDonald, P.C; and those persons listed on the sign-in sheet attached hereto.

PUBLIC COMMENTS

Director Brady welcomed everyone to the meeting and asked the directors and consultants to introduce themselves. A resident then inquired regarding the amount of water that entered the District during Hurricane Harvey. In response, Mr. Frank stated that he does not know and that modeling would be required to form a reasonably accurate estimation.

DIRECTORS

Mr. Cleveland then asked the Board if it would like to elect new officers. Director Suchyta then nominated Director Murray for President of the Board of Directors. Director Tomas seconded the motion, which passed unanimously. Director Murray then nominated Director Suchyta for Vice President of the Board of Directors. Director Braswell seconded the motion, which passed unanimously. Director Murray then nominated Director Tomas for Assistant Vice President of the Board of Directors. Director Suchyta seconded the motion, which passed unanimously. Director Murray then nominated Director Brady for Secretary of the Board of Directors. Director Suchyta seconded the motion, which passed unanimously. Mr. Cleveland then stated that Director Braswell will remain Assistant Secretary of the Board of Directors.

## MINUTES

The Board next considered approving the minutes of its regular meeting held on August 15, 2017, and special meeting held on September 19, 2017. Director Murray moved to approve the minutes of the August 15, 2017, regular meeting and September 19, 2017, special meeting as presented. Director Suchyta seconded the motion, which passed unanimously.

## ACTION LIST

There was no action list. Director Murray then requested that going forward all action items identified during the course of a Board meeting be listed by Ms. Galvan for review at the end of such meeting.

## TAX ASSESSOR-COLLECTOR'S REPORT

Mr. Arterburn distributed and reviewed with the Board the Tax Assessor-Collector's Reports for August 2017 and September 2017, copies of which are attached hereto. He reported that as of September 30, 2017, the District's 2016 taxes were 99.73% collected. Action was taken below.

Mr. Arterburn then reported regarding the disaster reappraisal being conducted by the Fort Bend Central Appraisal District (the "FBCAD"), stating that 13 local governmental entities have already requested reappraisal of property within their respective boundaries. He then reported that FBCAD is requesting that property owners assist FBCAD in the reappraisal process by submitting evidence of property damage and repair costs to FBCAD via its website or by mail. Mr. Arterburn stated that his office could prepare and distribute a mailer to the District's regarding the process for submitting evidence of property damage to FBCAD. After discussion, Director Suchyta moved to authorize the District's Tax Assessor Collector to prepare and distribute a mailer to District's residents regarding the process for submitting evidence of property damage to FBCAD and to forward the mailer to the Brazos River's Edge Community Association, Inc. for further distribution. Director Braswell seconded the motion, which passed unanimously.

Director Braswell then moved to approve the Tax Assessor-Collector's Report and the payment of the bills. Director Suchyta seconded the motion, which passed unanimously.

## DELINQUENT TAX ATTORNEY

Mr. Arterburn then presented that Delinquent Tax Attorney report, a copy of which is attached hereto. No action was necessary.

## BOOKKEEPER

Ms. Cuellar distributed and reviewed with the Board the Bookkeeper's Report from August 16, 2017, through October 3, 2017, and an Investment Report for August, copies of which are attached hereto. She reported a 14.57-month reserve in the District's operating account. Director Murray noted that legal and engineering fees presented for approval at the meeting were roughly

one-third of the budgeted amounts for such services for the year. Director Suchyta then directed the engineer and attorney to submitted itemized bills in advance of the District meetings for review. After discussion, Director Murray moved to approve the Bookkeeper's Report, the Investment Report, and the payment of the bills. Director Suchyta seconded the motion, which passed unanimously.

### OPERATOR'S REPORT

Ms. Lang next presented the Operator's Report dated August 31, 2017, a copy of which is attached hereto. She reported 784 connections and no identity thefts for August 2017. Ms. Lang also reported that notices have gone out to District customers regarding the switch to the use of chloramines to treat the potable water supplied to the District. She also reported that the City would not be terminating water service to its City customers and then asked if the Board wished to dispense with water service termination this month in light of Hurricane Harvey. After discussion, Director Braswell moved to approve the Operator's report and not to terminate service to those customers with delinquent accounts. Director Murray seconded the motion, which passed unanimously.

In response to a resident inquiry concerning a recent notice from the City of a surface rate increase, Ms. Lang reported to the Board that the City has increased its surface water by \$0.10, from \$2.10 to \$2.20 per 1,000 gallons, effective October 1, 2017. Mr. Cleveland then explained that the District is a member of the City's Groundwater Reduction Plan (the "GRP") established to meet the requirements of the Fort Bend Subsidence District to reduce groundwater pumpage. He also stated that the District sets the utility rates for its customers, not the City, and the District will have to determine whether to pass along the \$0.10 surface water rate increase to its customers or to subsidize the rates by paying the difference from its Operating Fund. Ms. Lang then reported that the increase is in line with the City's Water Master Plan and the anticipated costs associated with the completion of the City's surface water plant. After discussion, the Board concurred to include an item on the next meeting agenda to consider amending the District's Rate Order.

In response to a resident inquiry regarding the District's change to chloramines, Ms. Lang reported that the District's customers have been notified as of the October billing cycle of the transition to chloramines due to a surface water conversion mandate imposed on water suppliers.

### CONTRACT FOR WATER SUPPLY

Mr. Cleveland then reminded the Board that the District funded its pro-rata share of the Edgar Water Plant (the "Plant") pursuant to the Amended and Restated Water Supply and Wastewater Services Contract Between the City and the District (the "Contract"). He stated that the Plant is now online and, pursuant to the Contract, it is time for the parties to change the method by which the District is charged for its water supply. He stated that the City's water supply charges to the District will transition from those rates charged to in-city customers to the District's pro rata share of operating costs for the new Edgar Water Plant. In response to an inquiry from the Board, Mr. Cleveland clarified that the transition would lower the District's water supply charges. After discussion, Director Murray moved to authorize the attorney to submit a letter to the City requesting that the City's water supply charges to the District transition to the District's pro rata share of the

operating costs of the Plant pursuant to the Contract. Director Suchyta seconded the motion, which passed unanimously.

#### MAINTENANCE OF RECREATIONAL FACILITIES

a. Report on work performed by Champions Hydrolawn;

The Detention and Drainage Facilities Report dated October 3, 2017, a copy of which is attached hereto, was distributed to the Board. The Board then asked the attorney to follow-up with Champions to determine if a fallen tree near one of the District's detention ponds needs to be removed.

b. Consider taking action to close District's Nature Trail due to safety concerns and approve installation of safety fencing in the Nature Park;

The Board then considered acting to close the Nature Park due to safety concerns. Discussion ensued regarding fencing and signage measures to deter entrance to the Nature Park. After discussion Director Murray moved to approve the installation of fencing at three cul-de-sac entry points to the Nature Park, with such installation to be added to the current contract with Crostex Construction for the repair of the sinkhole; to put up signage at the entrances to the Nature Park to the effect that the park is closed due to hazardous conditions; and to authorize the Tax Assessor Collector to include a notice of the Nature Park's closure in the mailer being sent out regarding property reappraisal by FBCAD. Director Suchyta seconded the motion, which passed unanimously.

Mr. Cleveland then stated that emergency action was taken to install temporary fencing along the Nature Park by James King Construction for safety reasons and requested that the Board ratify the emergency measures. Director Murray moved to ratify and approve the installation of safety fencing by James King Construction along the Brazos River bank. Director Suchyta seconded the motion, which passed unanimously.

c. Report on work performed by James King Construction, and consider tree removal;

Mr. Cleveland reported that a tree in the Nature Park fell on a neighbor's fence, Mr. Windrow, but that Mr. King has not yet been able to get back there to assess the situation due to the wet, dangerous conditions. He stated that he has been in touch with Mr. Windrow, who is aware of the situation. This item was then tabled.

d. Report on work performed by Lake Management Services, L.P., and consider proposal to replace two fountain controllers that were damaged during Hurricane Harvey; and

Director Murray then stated that he will contact Mr. Newton regarding the status of the bacterial testing in the District's lakes and to obtain proposals, if necessary. He requested and action item to such effect.

In response to a resident statement regarding the need for E. coli testing on the District's lakes, Director Murray amended the previous action item to contact Mr. Newton to confirm sampling for E. coli of the District's lakes and obtain proposals, if necessary.

Mr. Cleveland then presented a proposal from Lake Management Services, L.P. in the amount of \$6,693.89 for repairs to the District's fountains damaged during Hurricane Harvey. Director Murray moved to approve the proposal from Lake Management Services, L.P. in the amount of \$6,693.89 for repairs to the District's fountains damaged by Hurricane Harvey. Director Tomas seconded the motion, which passed unanimously.

- e. Report on work performed by Brazos River's Edge Community Association, Inc. ("BRECA"), and consider request for additional maintenance of the District's baseball field.

Director Murray then stated that he will contact Mr. Newton regarding the status of the proposals for maintenance of the District's baseball field, and he requested an action item to such effect.

#### BOARD MEETINGS

The Board then discussed changing the time and/or location at which the District's regular meetings are held. In response to a resident inquiry regarding proposed meeting locations, Director Murray requested suggestions from the residents in attendance and asked that Ms. Galvan make a list for consideration. After discussion, Director Murray moved to, for the time being, continue to hold the District's meetings on the third Tuesday of every month at 2277 Plaza Drive, 1st Floor, Sugar Land, Fort Bend County, Texas 77479, and to change the regular meeting time to 6:00 p.m. Director Suchyta seconded the motion, which passed unanimously.

Ms. McDonald then addressed resident inquiries regarding the attendance of representatives from the District at the September Board meeting of Fort Bend County Municipal Utility District No. 145 ("FBMUD145"). Ms. McDonald explained that the Board, the District's Consultants, and Commissioner Morales did not attend the September board meeting of FBMUD145 after the attorney for FBMUD145 suggested that her board was more likely to approve the proposed berm if they did not attend. She also stated that Commissioner Morales had again called to offer support to help the two districts reach agreement.

#### LEGAL UPDATE – EMBANKMENT REMOVAL

Ms. McDonald asked the Board to convene in Executive Session to consult with their attorney on possible legal action.

EXECUTIVE SESSION TO DISCUSS: (A) PENDING OR CONTEMPLATED LITIGATION IN ACCORDANCE WITH SECTION 551.071 OF THE TEXAS GOVERNMENT CODE; (B) ACQUISITION OF REAL PROPERTY IN ACCORDANCE WITH SECTION 551.072 OF THE TEXAS GOVERNMENT CODE; (C) PERSONNEL MATTERS IN ACCORDANCE WITH SECTION 551.074 OF THE TEXAS GOVERNMENT CODE; (D) TO RECEIVE INFORMATION FROM EMPLOYEES OR QUESTION EMPLOYEES IN ACCORDANCE WITH SECTION 551.075 OF THE TEXAS GOVERNMENT CODE; OR (E) ECONOMIC DEVELOPMENT NEGOTIATIONS OR OFFERS OF FINANCIAL INCENTIVES FOR ECONOMIC DEVELOPMENT IN ACCORDANCE WITH SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.

The Board convened into Executive Session at 7:27 p.m. pursuant to Section 551.071 of the Texas Government Code to discuss anticipated litigation.

RECONVENE IN OPEN SESSION: RECONVENE IN PUBLIC SESSION TO CONSIDER AUTHORIZING DISTRICT STAFF AND CONSULTANTS TO TAKE ANY ACTION NECESSARY WITH RESPECT TO (A) PENDING OR CONTEMPLATED LITIGATION; (B) ACQUISITION OF REAL PROPERTY; (C) PERSONNEL MATTERS; AND (D) RECEIVING INFORMATION FROM OR QUESTIONING EMPLOYEES; (E) ECONOMIC DEVELOPMENT NEGOTIATIONS OR OFFERS OF FINANCIAL INCENTIVES; AND (F) ANY OTHER MATTERS RELATIVE TO ANY OF THESE MATTERS WHICH WAS DISCUSSED IN EXECUTIVE SESSION.

The Board then reconvened into open session at 7:58 p.m.

#### LEGAL UPDATE – EMBANKMENT REMOVAL

Director Murray then moved to authorize the attorney to revise the settlement agreement in regard to the Rio Vista Berm proposed by FBMUD145 and to submit it to FBMUD145 for approval; to authorize the attorney to request proposals for condemnation attorneys; to authorize the attorney to request proposals for real estate appraisers; and to approve obtaining a title report for property in connection with the proposed Rio Vista Berm. Director Brady seconded the motion, which passed unanimously.

#### ENGINEER’S REPORT

Mr. Dechert distributed and reviewed with the Board the Engineer’s Report dated October 3, 2017, a copy of which is attached hereto.

- a. Sinkhole: Receive report on the repair of the sinkhole in the District’s Nature Park; approve Pay Estimate(s) and Change Order(s), if any, and Certificate of Completion, if appropriate, for such project.

Mr. Dechert reported Crostex Construction Inc. has submitted the contract for repairs of the sinkhole in the District’s Nature Park and will mobilize the site in the next couple of weeks. No action was necessary.

- b. District's Rio Vista Berm: Receive report on District efforts to construct a flood protection berm adjacent to the Rio Vista community, approve a revised settlement and release agreement with Fort Bend County Municipal Utility District No. 145 ("MUD 145"), accept a revised Flood Protection Easement from MUD 145, and authorize Engineer to advertise for competitive bids for the construction of such berm.

Mr. Dechert reported receipt of a Letter of No Objection to the construction of the proposed Rio Vista Berm by the District from Odyssey Engineering Group, LLC, the engineer for FBMUD145. Mr. Dechert then requested that the Board consider authorizing him to solicit bids for construction of the Rio Vista Berm. Mr. Cleveland noted, however, that the District will not be able to commence construction until FBMUD145 grants the District an easement. After discussion, Director Murray moved to authorize the engineer to solicit bids for construction of the Rio Vista Berm. Director Tomas seconded the motion, which passed unanimously.

- c. District Berm: Receive report on section of District berm washed out by Hurricane Harvey, approve revised easement for construction and maintenance of such berm, if necessary, and authorize Engineer to advertise for competitive bids for the repair of the berm.

Mr. Dechert reported that the survey of the berm washout near the west bank of the DRS detention is complete. He also reported that Costello is in the process of determining a new alignment for the berm further from the river bank. No action was taken.

- d. Emergency Contingency Plan: Discuss and consider proactive measures that could be implemented in an emergency situation to mitigate flood risk to the District and its residents; authorize implementation of emergency preparations; authorize purchase of or request proposals for purchase of related equipment and/or supplies; and authorize related actions.

Mr. Frank then presented scenarios/alignments to mitigate flooding in emergency situations. He stated that Costello anticipates providing the Board with figures for supplies, equipment, and stand-by contracts for emergency preparedness measures at the November board meeting. No action was taken.

- e. Erosion: Review statements of qualifications from River Geomorphologists, receive recommendation of Engineer regarding award of contract for study of erosion along Brazos River bank, and select firm based on demonstrated competence and qualifications and authorize the engineers and attorneys to negotiate a contract to present to the Board.

Mr. Dechert reported that Costello has contacted several engineering firms for statements of qualifications to address the erosion along the Brazos River and has been informed that additional time is required for the engineering firms to finalize their

statements of qualifications. He then stated that he hopes to present statements of qualification by the District's next Board meeting.

- f. Storm Drain(s): Report on status of storm sewer drainage along northern boundary of District and installation of additional drainage inlet.

Mr. Dechert reported that James King Construction was instructed to inspect drainage inlets along the northern boundary of the District for possible blockage in the system, and Mr. King reported that no blockage was identified. He also reported that the engineer was notified that an existing Type-A inlet needs re-grading to direct water flowing from the DRS property more efficiently. Mr. Dechert reported that Costello requested a proposal from James King Construction for re-grading of the existing Type-A inlet but that a proposal had not been received in time for the meeting. No action was taken.

#### LEVEE IMPROVEMENT DISTRICT

Mr. Frank reported that the steering committee for the proposed Levee Improvement District No. 22 is working towards a public presentation of the feasibility of creating a district and a levee sometime in late October or November. No action was necessary.

#### COMMUNICATIONS

Director Murray then addressed the District's need to expand the methods the District uses to communicate with District residents to include communications through its partnership with BRECA and the creation of a District website. Director Murray moved to authorize the attorney to obtain proposals for website designers for the November Board meeting. Director Suchyta seconded the motion, which passed unanimously.

#### PUBLIC COMMENTS

This item was revisited. A resident then inquired regarding an approved expenditure for the District's Directors to attend the AWBD Winter Conference. In response, Mr. Cleveland stated that the Board would need to wait to address the AWBD Winter Conference at the District's next meeting because the item is not on the agenda.

A resident then inquired regarding the pickup of debris from Hurricane Harvey. In response, Director Murray recognized the efforts of the District's Developer, Mr. Les Newton, to address the pickup of debris at a developer's cost of approximately \$100,000.00. A resident then commented that the County has also conducted pick up of debris.



ADJOURNMENT

There being no further business before the Board, the meeting was adjourned.

  
Secretary



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ACTION LIST

DIRECTORS

Director Murray will contact the Developer to confirm status of E. coli sampling in lakes; and obtain proposals, if applicable.

Director Murray will contact the Developer to confirm receipt of proposals for baseball field rehabilitation.

TAX ASSESSOR COLLECTOR

Mr. Arterburn will distribute a mailer regarding the Fort Bend Central Appraisal District’s property reappraisal procedures. He will include a notice informing residents that the nature park is closed due to safety concerns. These will be forwarded to the Brazos River’s Edge Community Association as well.

BOOKKEEPER

Bookkeeper will email to the Directors copies of the attorneys’ and engineers’ invoices for review in advance of the Board meetings.

ENGINEER

Costello will provide figures for supplies, equipment, and stand-by contracts for emergency preparedness measures at the November board meeting.

Costello will present statements of qualifications for river geomorphologist at November meeting.

Costello will add fencing to close off cul-de-sac entrances to the Nature Park to the contract with Crostex Construction Inc.

Costello will procure a proposal from James King to re-grade an existing Type-A inlet along District’s northern boundary.

Costello will determine how best to repair the washed out section of the District's berm.

Costello will advertise for bids for construction of berm adjacent to Rio Vista.

#### ATTORNEY

Attorneys will send a letter to the City of Richmond requesting the City's transition of water supply charges to the District pursuant to the Amended and Restated Water Supply and Wastewater Services Contract Between the City and the District.

Attorneys will present proposals for website designers at the November Board meeting.

Attorneys will revise the proposed settlement agreement in regard to the Rio Vista Berm and submit to FBMUD145 for approval.

Attorneys will request proposals for condemnation attorneys.

Attorneys will request proposals for real estate appraisers.

Attorneys will investigate availability of proposed meeting places near the District.

#### RECREATIONAL FACILITY MAINTENANCE

Champions Hydrolawn will provide a proposal for tree removal along District detention pond.

Champions Hydrolawn or, if necessary, another vendor, will place signage that the Nature Park is closed.

James King will provide a proposal for tree removal along the Nature Park.