

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 140

Minutes of Regular Meeting of Board of Directors

March 20, 2018

The Board of Directors (the "Board") of Fort Bend County Municipal Utility District No. 140 (the "District") met in regular session, open to the public, on March 20, 2018, at 6:00 p.m., at Joy Lutheran Church, 717 FM 359, Richmond, Fort Bend County, Texas 77406, 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:

Harry Murray	President
Janice Suchyta	Vice President
Gene Tomas	Assistant Vice President
David Smith	
Suzan Orr	

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

Also present during all or part of the meeting were Ron Dechert, Steve Wilcox, and Greg Frank 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"); Josh Fort of Champions Hydrolawn, Inc. ("Champions"); Joel Cleveland, Olivia Galvan, and Sarah Vink of Jeanne H. McDonald, P.C; and those persons listed on the sign-in sheet attached hereto.

PUBLIC COMMENTS

Mr. Cleveland then stated that the Board may have received a mailer regarding a continuing education opportunity from the Association of Water Board Directors ("AWBD") regarding the impacts of Hurricane Harvey on water districts. He stated that it has historically been standard practice for the District to reimburse directors for registering and attending such seminars, but he wanted to present the information to the new directors.

The meeting was then opened for additional public comments.

Mr. Cleveland then outlined the meeting agenda and announced that further public comments would be addressed later in the meeting.

ENGINEER'S REPORT

Mr. Dechert presented the Engineer's Report dated March 20, 2018, a copy of which is attached hereto.

a. District's Rio Vista Berm:

Mr. Dechert reviewed the status of the project to reconstruct the District's Rio Vista Berm, reporting that the contractor, Solid Bridge Construction, LLC ("SBC"), installed the sluice gate and is waiting for an additional part to install a 24" flap gate to the backslope interceptor structure. He also stated that seeding of the area also needs to be completed and that the engineer is verifying that all remaining punch list items are completed, including bringing low spots up to grade. After discussion, no action was necessary.

b. Southern Berm:

Mr. Dechert reported that the Southern Berm is currently under design. No action was necessary.

c. Emergency Flood Mitigation:

Mr. Dechert then reported that the bid packages for the flood mitigation materials for emergency deployment (the "Emergency Materials") have been completed and that public advertisement will be made with bids being due on April 6, 2018. Mr. Dechert also reported that requests for proposals from operators (the "Stand-By Operators") regarding a stand-by contract for services related to the installation of the Emergency Materials have also been completed and that proposals will be received prior to the next Board meeting. Mr. Cleveland then recommended that the Board authorize the Emergency Preparedness Plan ("EPP") Committee to work with Costello to review the bids and proposals and present recommendations regarding the purchase of the Mitigation Materials and the hiring of the Stand-By Operator at the District's next meeting. After discussion, Director Murray moved to authorize the EPP Committee to review the bids and proposals and present its recommendations at the District's next meeting. Director Smith seconded the motion, which passed unanimously.

d. Sluice Gate:

Mr. Dechert reported that the sluice gate on the Texas Department of Transportation ("TxDOT") outfall at FM 359 and Jones Creek is currently under design. He stated that design drawings have been requested from TxDOT. No action was necessary.

e. NRCS Grant:

Mr. Cleveland reminded the Board that at a previous Board meeting the District authorized Costello to apply for a bank stabilization grant from the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") to address bank erosion concerns along the Brazos River. Mr. Dechert reported that the NRCS approved the District's application and that funding for the project may occur in the near future, with a total estimated project cost of approximately \$9 million. He reported that the NRCS is awaiting receipt of federal funds before disseminating official award letters to approved applicants, and, therefore, there has yet been no

official award to the District. He then reviewed the proposed scope of the project as it was submitted to NRCS.

Mr. Dechert then reviewed the federal funding obligations of NRCS grant recipients. He stated that the NRCS Emergency Watershed Protection Grant provides that construction costs will be shared on 90/10 basis, with 90% funded via federal dollars and 10% via local match (i.e., the District). He also stated that the grant only covers a portion of engineering and other non-construction costs related to the project. He further reported that the grant will not cover upfront costs incurred before the grant is officially awarded or costs associated with land acquisition. He then reported that the grant requires the project to be completed within 220 days of award of the grant and that the District would require an extension if it were to proceed with the bank stabilization project.

Discussion ensued regarding the District's ability to meet the obligations and timing requirements associated with the NRCS grant. In response to an inquiry from the Board regarding requesting an extension of time to complete the project, Mr. Dechert stated that the District could apply for an extension but that it is not guaranteed. Mr. Frank further stated that obtaining support from the District's congressman would be beneficial when requesting an extension. Mr. Cleveland then reported that a consultant specializing in NRCS grant administration and compliance will also need to be engaged and requested authority to request proposals for grant administration and compliance services. Action was taken below.

Mr. Wilcox then reported that the bank stabilization project presented in the District's application to the NRCS was one possible method and explained that alternative methods exist and may be more cost effective. He then requested authority to investigate a palisade option. Action was taken below.

After discussion, Director Smith moved to authorize Mr. Cleveland to meet with a representative of Congressman Pete Olson's office regarding support for a project extension, to authorize Mr. Cleveland to request proposals from consultants specializing in NRCS grant administration and compliance, to authorize Mr. Wilcox to investigate the feasibility of a palisade option at a cost not to exceed \$5,000, and to authorize Mr. Cleveland and Costello to continue investigating the requirements and conditions related to the District's receipt of the NRCS grant and to provide cost estimates for the project. Director Tomas seconded the motion, which passed unanimously.

f. Drainage Inlets:

Mr. Dechert then reported that Mr. King has been unable to make contact with the DRS homeowner at 2411 DRS Drive regarding the installation of an additional drainage inlet. After discussion, Director Murray moved to authorize the District's attorney to prepare a letter to the DRS property owner regarding obtaining a drainage easement for the additional

inlet and to authorize Costello to work with Director Smith on possible alternative options. Director Suchyta seconded the motion, which passed unanimously.

g. District Berm:

Mr. Dechert reviewed the estimated schedule for completion of the project.

BOOKKEEPER

Ms. Cuellar distributed and reviewed with the Board the Bookkeeper's Report from February 21, 2018, through March 20, 2018, and Investment Report for February, a copy of which is attached hereto. She reported a 16.61-month reserve in the District's operating account. After discussion, Director Murray moved to approve the Bookkeeper's Report, the Investment Report, and the payment of the bills. Director Tomas seconded the motion, which passed unanimously.

BOND ISSUE

Mr. Dechert reported that he was in the process of preparing the bond application for submittal to the Texas Commission on Environmental Quality ("TCEQ"), as previously directed by the Board. He then reviewed with the Board the draft summary of costs for the projects to be included in the bond application. Director Murray then inquired about the contingencies estimated in the summary of costs and requested that the Board consider allocating an additional \$200,000.00 to cover possible cost overruns. The Board then inquired about the ability to use bond proceeds to meet the District's financial obligations should it proceed with the NRCS grant project. Mr. Cleveland then stated that the District's share could likely be included in the bond application but that he would need to confirm. He then presented for the Board's consideration a Resolution Authorizing an Application to the TCEQ for Approval of Project and Bonds, including those projects listed in the summary of costs presented by Mr. Dechert. Discussion then ensued regarding delaying submission of the District's Bond application until the District's consultants could provide additional information regarding the feasibility of proceeding with the NRCS grant and bank stabilization project. After discussion, the Board concurred to include an additional \$200,000.00 in contingency costs to the summary of costs. The Board tabled action on the Resolution Authorizing an Application to the TCEQ for Approval of Project and Bonds for further discussion at the Board's May meeting.

Mr. Cleveland then presented for the Board's approval an engagement letter with Orrick, Herrington & Sutcliffe LLP to act as special tax counsel for the upcoming bond sale. Director Smith moved that the Board approve engaging Orrick, Herrington & Sutcliffe LLP as special tax counsel for the District's proposed Series 2018 Bonds. Director Suchyta seconded the motion, which passed unanimously.

RESOLUTION OF INTENT TO REIMBURSE

Mr. Cleveland explained to the Board that they can adopt resolutions expressing the District's intent to reimburse its Operating Account for expenditures related to construction of the District Berm, the South Berm, and the TxDOT Sluice Gate improvement from future bond proceeds. He then presented for the Board's consideration a Resolution Expressing Intent to

Reimburse the Operating Account for expenditures related to construction of the District Berm, a Resolution Expressing Intent to Reimburse the Operating Account for expenditures related to construction of the South Berm, and a Resolution Expressing Intent to Reimburse the Operating Account for expenditures related to construction of the Sluice Gate. After discussion, Director Murray moved to approve the resolutions as presented. Director Smith seconded the motion, which passed unanimously.

#### MINUTES

The Board next considered approving the minutes of its special meeting held on February 15, 2018, and regular meeting held February 20, 2018. After discussion, Director Murray moved to approve the minutes of the February 15, 2018, special meeting and February 20, 2018, regular meeting as presented. Director Tomas seconded the motion, which passed unanimously.

#### TAX ASSESSOR-COLLECTOR'S REPORT

Mr. Arterburn distributed and reviewed with the Board the Tax Assessor-Collector's Report for February 2018, a copy of which is attached hereto. He reported that as of February 28, 2018, the District's 2017 taxes were 96.75% collected. After discussion, Director Murray moved to approve the Tax Assessor/Collector's Report and payment of the bills. Director Orr seconded the motion, which passed unanimously.

#### DELINQUENT TAX ATTORNEY

There was no report.

#### OPERATOR'S REPORT

Ms. Lang presented the Operator's Reports for February, a copy of which is attached hereto. She reported 804 connections, 9 delinquent accounts, and no identify thefts for February 2018. Ms. Lang also presented a handout regarding the City of Richmond's clean up and shredding events open to the District's residents. After discussion, Director Murray moved to approve the Operator's Report; and terminate service to those customers with delinquent accounts. Director Smith seconded the motion, which passed unanimously.

#### RATE ORDER

Mr. Cleveland reported that at the District's last meeting the Board requested an agenda item to consider amending its Rate Order to address the District's policies related to the assessment of late fees and the disconnection of delinquent accounts. He then suggested that the Board amend the Rate Order to more clearly provide that a late charge of 10% is added to an account once the account is passed due. He then reviewed the Rate Order provisions regarding termination of water service to customers with delinquent accounts. After discussion, Director Suchyta moved to approve an Amended Rate Order, effective April 1, 2018, to provide that a customer's water service will not be disconnected for delinquencies of \$30.00 or less or before the 30<sup>th</sup> day after the due date that gave

rise to the delinquency; and to clearly provide that a late charge of 10% is added to an account once the account is passed due. Director Orr seconded the motion, which passed unanimously.

#### WEBSITE

Director Murray reported that the Communications Committee met and reviewed proposals for web design services. He then presented and reviewed a bid comparison, and he reported that the committee's recommendation is to engage Off Cinco. After discussion, Director Orr moved to approve the contract for web design services with Off Cinco, subject to attorney review. Director Smith seconded the motion, which passed unanimously.

Director Murray then requested that the Board consider reimbursement of fees associated with the purchase of domain names and hosting services incurred by Mr. Sammy Larbi in the amount of \$273.82. After discussion, Director Smith moved to reimburse Mr. Larbi for fees associated with the purchase of domain names and hosting services in the amount of \$273.82. Director Murray seconded the motion, which passed unanimously.

#### MOSQUITO SPRAYING

Mr. Cleveland then presented a contract from Cypress Creek Mosquito Control, Inc. to perform weekly mosquito spraying in the District at a cost of \$72 per week. After discussion, Director Murray moved to approve the contract for mosquito spraying services. Director Suchyta seconded the motion, which passed unanimously.

#### MAINTENANCE OF RECREATIONAL FACILITIES

a. Report on work performed by Champions Hydrolawn;

Mr. Fort presented the Detention and Drainage Facilities Report from Champions dated March 20, 2018, a copy of which is attached hereto. No action was taken.

b. Report on work performed by James King Construction;

There was no report.

c. Report on work performed by Lake Management Services, L.P. and approve work order for repair of fountain;

Mr. Cleveland presented a proposal from Lake Management Services, L.P. to perform fountain repairs for the fountain in lake two in the amount of \$2,592.42. After discussion, Director Murray moved to approve the proposal to perform fountain repairs at lake two in the amount of \$2,592.42. Director Suchyta seconded the motion, which passed unanimously.

- d. Report on work performed by Brazos River's Edge Community Association, Inc., consider proposal(s) for purchase of chairs, tables, and other equipment, and consider resolution to declare current tables and chairs surplus property; and

Mr. Cleveland presented two proposals from Brazos River's Edge Community Association, Inc. ("BRECA") to procure tables and chairs for the District's Party Barn. Ms. Vanessa Marsters, BRECA President, stated that the District's Party Barn tables and chairs are over a decade old and some were no longer safe to use. She also stated that the proposals also include heavy duty carts to store and move the tables and chairs. Ms. Marsters then recommended Proposal 2 in the amount of \$4,065.81. Mr. Cleveland then requested that the Board approve a resolution declaring the old tables and chairs to be surplus property so that they may be disposed of once the new equipment arrives. After discussion, Director Smith moved to approve Proposal 2 in the amount of \$4,065.81, with the District reimbursing BRECA for the costs of the purchase, and to approve the resolution declaring the old tables and chairs to be surplus property. Director Murray seconded the motion, which passed unanimously.

- e. Consider proposal(s) for maintenance of District ball field.

Director Murray then presented proposals from J.Kru Land Services, LLC and Earthcare Management regarding maintenance of the District's baseball field. Director Murray then recommended that the Board approve the proposal from J.Kru Land Services, LLC in the amount of \$12,215.00. He also volunteered to coordinate scheduling the maintenance and repairs of the ball field with BRECA. After discussion, Director Murray moved to approve the proposal from J.Kru Land Services, LLC in the amount of \$12,215.00. Director Suchyta seconded the motion, which passed unanimously.

#### 2018 DIRECTOR ELECTION

Mr. Cleveland stated that the election items requiring action were on the Supplemental Agenda.

#### ACCEPT THE CERTIFICATION OF UNOPPOSED CANDIDATES REGARDING THE MAY 5, 2018, DIRECTORS' ELECTION

Mr. Cleveland reported that the May 5, 2018, Directors' Election is uncontested, resulting in the re-election of Directors Tomas and Smith. Mr. Cleveland then presented the Certificate of Unopposed Candidates for the Board's consideration. Action was taken below.

#### ADOPT ORDER DECLARING CANDIDATES ELECTED

Mr. Cleveland then presented the Order Declaring Candidates Elected and cancelling the May 5, 2018, election. Action was taken below.

Director Murray moved to accept the Certificate of Unopposed Candidates regarding the May 5, 2018, Director's Election and to approve the Order Declaring Candidates Elected and the cancellation of the May 5, 2018, Directors' Election. Director Suchyta seconded the motion, which passed unanimously.

g. District Berm:

This item was revisited. Mr. Cleveland asked the Board to convene in Executive Session to consult with its 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 7:56 p.m. pursuant to Section 551.071 and Section 551.072 of the Texas Government Code to discuss anticipated litigation and acquisition of real property.

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 8:28 p.m.

g. District Berm:

No action was necessary.

PUBLIC COMMENTS

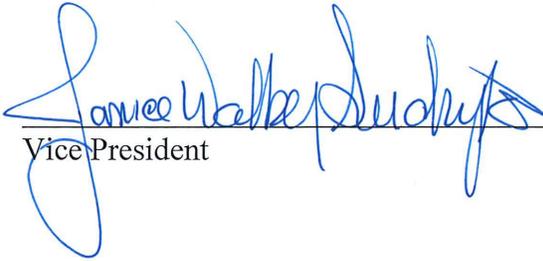
The Board then opened the floor to public comments.

ADJOURNMENT

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

(District Seal)



  
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Vice President

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## ACTION LIST

### ATTORNEY

Mr. Cleveland will prepare and negotiate any necessary easements for the District's emergency contingency measures.

Mr. Cleveland will include reimbursement for attendance to a Breakfast Seminar hosted by the AWBD on the April meeting agenda.

Mr. Cleveland will prepare a letter to DRS property owner requesting cooperation with the installation of a District drainage inlet.

Olson & Olson will prepare for submission of final offers for land acquisitions related to District Berm and prepare associated resolutions.

Mr. Cleveland will review the contract with Off Cinco for website design and maintenance services.

Mr. Cleveland will prepare a Resolution Declaring Certain Property to be Surplus and Authorizing the Disposal of Such Property (i.e., Party Barn tables and chairs).

Mr. Cleveland will investigate the powers of Fort Bend County during emergency situations and its ability to assist the District with deployment of emergency flood mitigation measures.

### COMMITTEES

#### *Emergency Preparedness Committee*

Emergency Preparedness Committee will commence review of bids for emergency contingency materials and proposals for operators regarding installation of emergency contingency materials and present recommendations to the Board.

### DIRECTORS

Director Murray will coordinate the construction schedule for improvements to the baseball field.

### ENGINEER

Costello will follow-up with subcontractor/supplier to repair fence posts near nature park.

Costello will continue to work with contractor to resolve punch list items for Rio Vista Berm.

Costello will design the sluice gate on TxDOT outfall at FM359 and Jones Creek.

Costello will advertise for bids for purchase of materials in connection with the District's emergency contingency measures.

Costello will solicit proposals from operators for installation of emergency contingency materials and training regarding same.

Costello will conduct a walkthrough with Director Smith regarding drainage alternatives along the norther boundary of the District.

Costello will draft an operations manual for flood mitigation facilities.

Costello will draft the District's Bond Application for submission to the TCEQ with other District consultants as necessary.

### **NRCS GRANT ACTION LIST**

#### **ATTORNEY**

Mr. Cleveland will request proposals from consultants specializing in NRCS Grant administration and compliance.

Mr. Cleveland will investigate what land rights will need to be obtained for the proposed bank stabilization project and NRCS grant.

Mr. Cleveland will investigate the ability of the District to sell bonds for the District's share of the NRCS project.

Mr. Cleveland will contact Congressman Pete Olson's office regarding an extension of time related to the NRCS grant.

#### **ENGINEER**

Costello will work with attorney on cost estimate for the District's share of NRCS grant project.

Costello will investigate the feasibility of an alternate erosion mitigation technique (palisades) in connection with NRCS grant (not to exceed \$5,000).

Costello will work with attorney to identify pre-grant award requirements and measures needed to be undertaken and develop an estimated comprehensive schedule for completing such measures, along with land acquisition, permitting, design, and construction of the proposed projects (i.e., slope and rip rap vs. palisades) to permit the Board to evaluate the potential time frames for the projects.

#### **FINANCIAL ADVISOR**

Mr. Lentz will prepare cashflow analyses of alternative \$5,500,000 and \$3,460,000 bond issues.