

**FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 35,**  
**OF FORT BEND COUNTY, TEXAS**

Minutes of Meeting of Board of Directors

August 5, 2020

The Board of Directors ("Board") of Fort Bend County Municipal Utility District No. 35, of Fort Bend County, Texas ("District"), met on August 5, 2020, in accordance with the duly posted notice of public meeting, and the roll was called of the duly constituted officers and members of said Board, as follows:

Susan Ruske, President  
Piero Battistini, Vice President  
Sergio Handal, Secretary  
Trevor Eynon, Assistant Secretary  
Steven Olsen, Assistant Secretary

all of whom participated in the meeting via telephone conference call, thus constituting a quorum.

Also attending the meeting via telephone conference call were: Erica Slater of Principal Management Group of Houston ("PMI"), Community Manager for Seven Meadows Community Association, Inc. ("Seven Meadows"); Billy Wilkes of Flock Safety ("Flock"); Esther Flores and Anna Duarte of Tax Tech, Inc. ("Tax Tech"); Anthea Moran of Masterson Advisors, LLC ("Masterson"); Taylor Watson of Municipal Accounts & Consulting, L.P. ("MAC"); Jeff Safe of Brown & Gay Engineers, Inc. ("BGE"); Katie May of Inframark ("Inframark"); and Bryan Yeates and Melanie Walsh of Schwartz, Page & Harding, L.L.P. ("SPH").

**EXPLANATION OF TELEPHONE CONFERENCE CALL MEETING PROCEDURES AND CALL TO ORDER**

Mr. Yeates explained to the Board the procedures to be used during the telephone conference call meeting. In connection therewith, he informed the participants that the meeting would be recorded, and requested that participants clearly state his or her name before speaking, including when making or seconding a motion. Mr. Yeates further explained that he would conduct a roll call vote for all motions and that Board members should wait to vote on a motion until his or her name has been called. Similarly, Mr. Yeates stated that a full roll call of all participants would be conducted at the start of each telephone conference meeting for attendance purposes.

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

**COMMENTS FROM THE PUBLIC**

The Board began by opening the meeting for public comments. No comments from the public were presented.

## **APPROVAL OF MINUTES**

As the next order of business, the Board considered approval of the minutes of its meeting held on July 1, 2020. After discussion, Director Ruske moved that the minutes for said meeting be approved, as written. Director Olsen seconded said motion, which unanimously carried.

## **FORT BEND COUNTY PRECINCT THREE CONSTABLE'S OFFICE ("FBCCO") ACTIVITY REPORT**

Ms. Slater next presented to and reviewed with the Board the FBCCO Activity Report for the month of July 2020, a copy of which is attached hereto as **Exhibit A**. The Board noted there were no action items in the report.

## **DISCUSSION REGARDING ADDITIONAL SECURITY MEASURES WITHIN THE DISTRICT**

The Board next considered potential additional security measures within the District. In that regard, Mr. Yeates advised the Board that, at its meeting on July 28, 2020, the Board of Directors of Fort Bend County Municipal Utility District No. 34, of Fort Bend County, Texas ("No. 34"), approved the installation of Flock's camera system within No. 34 in cooperation with Seven Meadows. The Board next recognized Mr. Wilkes, who reviewed and discussed with the Board a presentation prepared by Flock, a copy of which is attached hereto as **Exhibit B**, regarding the benefits of its motion-activated license plate reader cameras, as well as the management and support services provided by Flock. Mr. Wilkes advised the Board that the cameras cost approximately \$2,000 per camera per year and that each pole installed by Flock would cost approximately \$250. Mr. Wilkes then responded to various questions from the Board regarding the information to be collected by said cameras. After discussion, the Board requested that Mr. Wilkes prepare an exhibit in coordination with BGE, if necessary, depicting camera placement within the District.

Mr. Wilkes left the meeting at this time.

## **TAX ASSESSOR-COLLECTOR REPORT**

Ms. Flores presented to and reviewed with the Board the Tax Assessor-Collector Report for the month ending July 31, 2020, a copy of which is attached hereto as **Exhibit C**. After discussion, it was moved by Director Olsen, seconded by Director Battistini and unanimously carried, that the Tax Assessor-Collector Report be approved as presented, and that the disbursements identified therein be approved for payment.

## **DISCUSS IMPLEMENTATION OF SENATE BILL 2 AND CONSIDER ADOPTION OF RESOLUTION CONCERNING DEVELOPED DISTRICT STATUS FOR 2020 TAX YEAR**

Mr. Yeates next presented and reviewed with the Board a memorandum prepared by SPH concerning the new tax rate adoption procedures for special districts under Senate Bill 2, a copy of which is attached hereto as **Exhibit D**. Mr. Yeates noted that the procedures applicable to a particular district will depend, in part, upon whether it is determined to be a "Developed District" under Texas Water Code Section 49.23602. Mr. Yeates then reviewed with the Board a

worksheet completed by BGE to assist the Board in making this determination, along with a Resolution Concerning Developed District Status for the 2020 Tax Year.

### **2020 TAX RATE RECOMMENDATION**

Ms. Moran next presented the Board with a Tax Rate Analysis prepared by Masterson, a copy of which is attached hereto as **Exhibit E**, and reviewed her recommendation regarding the proposed 2020 debt service and maintenance tax rates. There next followed a discussion concerning the requirements for notice of the District's intention to adopt a 2020 tax rate. Mr. Yeates 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. Yeates 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. After discussion on the matter, Director Olsen moved that (i) the Board indicate its intention to set a 2020 debt service tax rate of \$0.33 per \$100 of assessed valuation and set a 2020 maintenance tax rate of \$0.095 per \$100 of assessed valuation, resulting in a combined 2020 tax rate of \$0.425 per \$100 of assessed valuation, and (ii) Tax Tech be authorized to publish notice of the District's intention to adopt such 2020 tax rate at its next meeting in the form and at the time required by law. Director Ruske seconded said motion, which unanimously carried. The Board concurred that the notice should be published by Tax Tech in the *Katy Times*.

Following further discussion, upon motion made by Director Handal, seconded by Director Olsen, and unanimously carried, the Resolution Concerning Developed District Status for the 2020 Tax Year, attached hereto as **Exhibit F**, was adopted by the Board.

### **DELINQUENT TAX REPORT**

Mr. Yeates reported that a Delinquent Tax Report was not received this month from Perdue, Brandon, Fielder, Collins & Mott, L.L.P., the District's delinquent tax collections attorneys. He stated that the next quarterly report will be provided in October.

### **STATUS OF NOTICE OF TERMINATION RELATIVE TO AGREEMENT BETWEEN THE DISTRICT AND MUNICIPAL FINANCIAL SERVICES, LLC ("MFS")**

Mr. Yeates advised the Board that a Notice of Termination was directed to MFS by SPH on behalf of the District on July 8, 2020, as previously authorized by the Board. He noted that termination of the agreement between the District and MFS will be effective as of October 8, 2020.

### **STATUS OF NOTICE OF TERMINATION RELATIVE TO AGREEMENT BETWEEN THE DISTRICT AND GREAT LAKES RECYCLING, INC., D/B/A SIMPLE RECYCLING ("SIMPLE RECYCLING")**

Mr. Yeates next advised the Board that a Notice of Termination was directed to Simple Recycling by SPH on behalf of the District on July 8, 2020, as previously authorized by the

Board. He noted that termination of the agreement between the District and Simple Recycling will be effective as of August 8, 2020.

### **BOOKKEEPER'S REPORT**

Mr. Watson presented to and reviewed with the Board the Bookkeeper's Report dated August 5, 2020, a copy of which is attached hereto as **Exhibit G**, including a Quarterly Investment Inventory Report and a draft budget for the District's fiscal year ending September 30, 2021. Director Olsen requested that MAC prepare a spreadsheet detailing actual income and expenses for the fiscal years ending September 30, 2018 and September 30, 2019, as well as the projected actual income and expenses for the fiscal year ending September 30, 2020. Mr. Watson advised that he will distribute the requested spreadsheet to the Board via email before the next Board meeting. After discussion, Director Olsen moved that the Bookkeeper's Report be approved and that the disbursements identified therein be approved for payment. Director Ruske seconded said motion, which unanimously carried.

### **ENGINEER'S REPORT**

Mr. Safe presented to and reviewed with the Board a written Engineer's Report, dated August 5, 2020, a copy of which is attached hereto as **Exhibit H**, relative to the status of various engineering and construction projects within the District, and discussed the matters contained therein. Mr. Safe reported on the status of design relative to the proposed repair of an approximate 300-foot portion of Little Prong Creek at Fry Road utilizing the SOX erosion repair system ("Little Prong Creek Erosion Repair"), including proposed outfall repair, as well as the status of communications with Double Oak Erosion ("Double Oak") regarding the Board's requirement for a 10-year warranty on materials, which Double Oak indicated will likely be honored. Mr. Safe next requested that the Board concur with No. 34's authorization for BGE to perform the annual inspection of six (6) tanks at the Joint Water Plant ("JWP"), which are not currently undergoing rehabilitation, for a total estimated amount not to exceed \$6,000. After discussion, it was moved by Director Handal that the Engineer's Report and all action items listed therein be approved, including concurrence in No. 34's: (i) approval of Pay Request No. 2 from DSP Industrial, Inc. in the amount of \$84,330.00, for recoating of ground storage tanks and hydro-tanks at Water Plant No. 1; and (ii) authorization for BGE to perform inspections of the six (6) tanks at the JWP for an amount not to exceed \$6,000, as discussed above. Director Olsen seconded said motion, which unanimously carried.

### **LANDSCAPE ARCHITECT REPORT**

Mr. Safe next presented to and reviewed with the Board a report from KGA DeForest Design, LLC dated August 5, 2020, a copy of which is attached hereto as **Exhibit I**. In connection therewith, Mr. Safe provided an update regarding the status of the contract with Republic Masonry & Fencing, LLC ("Republic") for the replacement of the existing fences at the District's Joint Wastewater Treatment Plant ("JWTP") and JWP. He advised the Board that, upon demolition of the existing fence at the JWP site, approximately 280 linear feet of elevation variance was discovered between the site and four adjacent lots at the northeast corner of the site, as depicted in photographs included with the Landscape Architect Report. He requested that the Board concur with No. 34's approval of a change order not to exceed \$28,000 in connection with the elevation variance, as discussed above, with Directors Haehnel and Hajovsky delegated to work with KGA on approval should the change order quote provided by Republic exceed said

amount. After a lengthy discussion, it was moved by Director Olsen that the Landscape Architect Report and all action items listed therein be approved, including concurrence in No. 34's approval of: (i) Pay Request No. 1 from Republic Masonry & Fencing, LLC ("Republic") in the amount of \$8,878.50, for construction of replacement fences at the District's JWTP and JWP; and (ii) a change order not to exceed \$28,000 in connection with the elevation variance, as discussed above, with Directors Haehnel and Hajovsky delegated to work with KGA on approval should the change order quote provided by Republic exceed said amount. Director Ruske seconded the motion, which unanimously carried.

### **CHAMPIONS HYDRO-LAWN, INC. ("CHAMPIONS") MAINTENANCE OPERATIONS AT LITTLE PRONG CREEK**

Mr. Safe next presented to and reviewed with the Board a Detention and Drainage Facilities Report dated August 5, 2020, prepared by Champions, for Little Prong Creek and corresponding photographs, a copy of which is attached hereto as **Exhibit J**. Mr. Safe advised the Board that there is graffiti on some concrete at Little Prong Creek near Dillon Creek Lane and requested that the Board concur with No. 34's approval of a proposal prepared by Champions in the amount of \$1,725.00 for removal of said graffiti. Director Battistini inquired whether the proposal from Champions includes application of a graffiti-resistant coating. After discussion, the Board deferred concurrence with No. 34's approval of Champion's proposal pending confirmation regarding whether application of a graffiti-resistant coating is included in said quote.

### **STORMWATER MANAGEMENT PROGRAM ("SWMP")**

The Board considered the status of the District's SWMP. In that regard, Mr. Yeates presented to and reviewed with the Board a SWMP Year 2 Status Update prepared by Storm Water Solutions, dated July 29, 2020, a copy of which is attached hereto as **Exhibit K**. Following discussion, the Board noted that no action was required on its part in connection with the SWMP Year 2 Status Update at this time.

### **OPERATIONS REPORT**

Ms. May presented to and reviewed with the Board the Operations and Maintenance Report ("O&M Report") for the month of May 2020, a copy of which is attached hereto as **Exhibit L**. Ms. May reported to the Board that the District had approximately 97% water accountability for the reporting period, discussed repairs made throughout the District, and reviewed with the Board an inspection report from Landscape Images of Texas, relative to the District's park facilities, a copy of which is attached to the O&M Report. Ms. May also presented one (1) account to be written off in the total amount of \$4.32.

Ms. May next reported that the recently installed lift pump no. 1 at Lift Station No. 2 has failed due to damage caused by increased ragging issues and noted that such damage is not covered under the pump manufacturer's warranty. Ms. May requested that the Board designate a Director to provide approval of either the repair of said pump for an estimated total cost of \$11,798.45, or the replacement of said pump for an estimated total cost of \$17,700.25, subject to recommendation to be provided by Inframark in consultation with BGE. Mr. Safe next advised the Board that BGE is working with Inframark to develop long term remedies to mitigate the ongoing ragging issue and discussed with the Board various proposed options in connection with

same. He advised that BGE will provide its recommendation to the Board after further investigation. Ms. May next inquired as to whether the Board would like for Inframark to file an insurance claim in connection with the failed lift pump, noting the District's deductible is \$5,000. A lengthy discussion ensued regarding the ongoing ragging issues within the District. Following the discussion, the Board requested that Inframark prepare notices to customers requesting that they refrain from flushing wipes under any circumstances and advising customers of the damage caused to District facilities when wipes are introduced into the District's sanitary sewer collection system.

In connection with the District's Virtual Native Plant Event, Ms. May advised the Board that Inframark is working with Director Ruske to develop on-demand, 10-minute pre-recorded videos to be available to registrants over a 30-day period, as previously authorized by the Board. Director Ruske and Ms. May next discussed the proposed content with the Board.

Ms. May next requested direction from the Board regarding disposition of delinquent utility accounts during pendency of COVID-19. It was noted that, at its previous meeting, the Board authorized Inframark to continue to suspend termination of water service and any related delinquent fees for District customer accounts until the District's August Board meeting.

After discussion, Director Battistini moved that the Board: (i) authorize Inframark to write off one (1) account, as detailed above; (ii) delegate authority to Director Handal to authorize repair or replacement of the lift pump discussed above for an amount not to exceed \$30,000; (iii) authorize Inframark to file an insurance claim on behalf of the District in connection with said pump; (iv) approve the production of videos in connection with the District's Virtual Native Plant Event for a cost not to exceed \$6,000 and delegate authority to the Board President to coordinate said production; (v) authorize Inframark to a) resume termination of water service to those customers who are delinquent pursuant to the terms of the District's Rate Order, and b) approve installment payment agreements ranging from three (3) to six (6) months in duration for customers that are able to provide written evidence of a significant financial hardship resulting from the COVID-19 Pandemic. Director Ruske seconded the motion, which unanimously carried.

#### **AMENDMENT TO AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT WITH INFRAMARK**

The Board deferred consideration of an Amendment to the District's Amended and Restated Professional Services Agreement with Inframark.

#### **AMENDMENT OF RATE ORDER**

The Board deferred consideration of a proposed amendment of the District's Rate Order to address proposed rate increases by Inframark.

#### **CYBERSECURITY TRAINING**

Mr. Yeates next discussed the cyber security training course required to be completed annually by each Board member. He reminded the Board that SPH recommended completing such training by June 14, 2020, and requested that all Directors who have not already done so provide the course completion certificate to SPH for the District's files.

## **ATTORNEY'S REPORT**

The Board next considered the Attorney's Report. In that regard, Mr. Yeates advised that he had nothing further to report to the Board other than the items previously discussed.

## **SUPPLEMENTAL AGENDA REGARDING AMENDED AND RESTATED ORDER IN CONNECTION WITH THE DIRECTORS ELECTION**

The Board next considered the approval of an Amended and Restated Order Calling Directors Election (the "Amended Order") in connection with the District's Directors Election scheduled for November 3, 2020, attached hereto as **Exhibit M**. Mr. Yeates reminded the Board that the Board previously postponed the Directors Election called for the May 2, 2020, uniform election date in accordance with the Governor's proclamation issued on March 18, 2020. He advised that the Amended Order provides for the Fort Bend County ("FBC") Elections Administrator to conduct the Directors Election by, jointly with elections of other political subdivisions, using county election officials, voting equipment, and polling locations at a shared expense. Although the FBC Elections Administrator will conduct the Directors Election, he advised that the Texas Water Code and the Texas Election Code authorize the Board to designate an agent to perform certain duties in connection with the Directors Election, and that the Amended Order names Melanie Walsh as such agent (the "Election Agent"). Mr. Yeates further advised the Board that notice of the Directors Election must be given in accordance with the requirements of the Texas Election Code and may be given by one or more of the following methods: (i) publishing the notice in a newspaper published in the territory of the District or of general circulation in the District at least ten (10) days before the election, but not more than thirty (30) days before the election; (ii) posting the notice at a public place in the District at least twenty-one (21) days before the election; or (iii) mailing the notice to each registered voter in the District at least ten (10) days before the election. He further advised that, in addition to the above, notice must be posted at the location used for posting notices of the meetings at least twenty-one (21) days before the election. Following discussion of the options, the Board concurred that notice of the Directors Election be given by posting same at the locations where notice of meetings of the Board are posted, as such posting meets all legal requirements under the Texas Election Code. After discussion on the matter, Director Handal moved that said Amended Order be passed and adopted, that the President and Secretary be authorized to execute the Amended Order, and that the Election Agent be authorized and directed to make necessary arrangements for the Directors Election in accordance with the Amended Order. Director Ruske seconded said motion, which unanimously carried.

## **APPROVAL OF JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES BETWEEN THE DISTRICT AND FBC**

The Board next considered (i) the approval of the Joint Election Agreement and Contract for Election Services (the "Election Services Contract") between the District and FBC, and (ii) the approval of the payment of the initial deposit to FBC for the District's costs associated with the November 3, 2020, Directors Election. After discussion, Director Ruske moved to approve the Election Services Contract and payment of the deposit to FBC. Director Olsen seconded said motion, which carried unanimously.

**FUTURE AGENDA ITEMS**

The Board considered items to be placed on future agendas. Mr. Yeates advised the Board that the following items will be included on the agenda for the Board of Directors meeting scheduled for September 2, 2020: (i) a public hearing to be conducted in connection with setting the District's 2020 tax rate; (ii) adoption of an operating budget for the fiscal year ending September 30, 2021; and (iii) engagement of the District's auditor in connection with preparation of the audit report for fiscal year ending September 30, 2020.

**ADJOURNMENT OF MEETING**

There being no further business to come before the Board, Director Ruske moved that the meeting be adjourned. Director Eynon seconded said motion, which unanimously carried.

(SEAL)

/s/ Sergio Handal  
Secretary, Board of Directors

## **TABLE OF EXHIBITS**

**August 5, 2020**

- Exhibit A: Monthly Contract Deputy Report
- Exhibit B: Presentation by Flock Safety
- Exhibit C: Tax Assessor-Collector's Report
- Exhibit D: Memorandum regarding Implementation of Senate Bill No. 2 (Adoption of Tax Rates)
- Exhibit E: 2020 Tax Rate Recommendation
- Exhibit F: Resolution Concerning Developed District Status for 2020 Tax Year
- Exhibit G: Bookkeeper's Report
- Exhibit H: Engineer's Report
- Exhibit I: Landscape Architect Report
- Exhibit J: Detention and Drainage Facilities Report
- Exhibit K: SWMP Year 2 Status Update (2020)
- Exhibit L: Operations and Maintenance Report
- Exhibit M: Amended and Restated Order Calling Directors Election