

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 94**  
**Minutes of Meeting of Board of Directors**  
**July 7, 2020**

The Board of Directors (the "Board") of Montgomery County Municipal Utility District No. 94 (the "District") met in regular session, open to the public on July 7, 2020, in accordance with the duly posted notice of meeting, and the roll was called of the duly constituted members of said Board, as follows:

Jim Spitzmiller, President  
Jason Schultz, Vice President  
Joseph Frost, Secretary  
Merry Leonard, Assistant Secretary  
Eric Lugger, 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 Jon VanderWilt of Costello, Inc. ("Costello"); Michael Williams and Jeanette Montes of Gulf Utility Services, Inc. ("Gulf Utility"); Jorge Diaz of McLennan & Associates, LP ("McLennan"); Dave Ciarella of Enhanced Energy Services of America, LLC ("EES"); Sergeant Ronny Glaze of the Montgomery County Constable's Office ("MCCO"); Brittany Keeswood of Assessments of the Southwest, Inc. ("ASW"); Barbara Nussa of Republic Services, Inc. ("Republic"); Brian Toldan of McCall Gibson Swedlund Barfoot PLLC ("McCall"); Lisa Dominey of ProMed Realty Services, L.L.P. ("ProMed"); Casey Wallace of Wallace & Allen, LLP ("Wallace & Allen"), counsel for Pro Med; Mark Barnier a representative of Pro Med's contractor; John Rigsdell, Jerry Rueschhoff, and John Kessler, residents of the District; and Spencer Creed and Kristin Eddlemon of Schwartz, Page & Harding, L.L.P. ("SPH").

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

Mr. Creed 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. Creed 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. Creed 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 the Board.

**PUBLIC COMMENTS**

There were no comments from the public at this time.

The Board deferred the adoption of a Resolution Adopting Public Comment Policies and Procedures.

### **MINUTES OF MEETING**

The Board considered approval of the minutes of the Board meeting held on June 2, 2020. After discussion on the matter, it was moved by Director Schultz, seconded by Director Forst and unanimously carried, that the minutes of the Board meeting held on June 2, 2020, be approved, as written.

### **UNAUTHORIZED CONSTRUCTION OF DRAINAGE DITCH ON DISTRICT PROPERTY**

A discussion ensued regarding the recent unauthorized construction of a drainage ditch on District property to drain an adjacent commercial tract and related issues. Mr. Creed reminded the Board that in 2017, ProMed made a request to the District to maintain the wetland areas located behind their commercial property for purposes of draining that property. Thereafter, the Board authorized SPH to prepare a Maintenance Agreement between the District and ProMed memorializing the terms and conditions related to maintenance of the wetlands area by the property owner, subject to ProMed providing the District with a plan sheet and written confirmation from an environmental consultant that the project did not require a United States Army Corps of Engineers (“USACE”) permit or approval. Mr. Creed noted that the District never received such confirmation, and that the item regarding approval of the Maintenance Agreement was eventually removed from the agenda. He advised that ProMed has recently constructed a drainage ditch on that same District property without obtaining the District’s approval. Mr. Wallace addressed the Board at this time and advised that the drainage ditch was constructed in order to improve drainage in the area and to decrease the risk of flooding of the parking lot and commercial businesses within Pro Med’s property during heavy rain events. Following further discussion on the matter, the Board directed that Mr. Wallace provide the District with (i) his written opinion that no violations of USACE rules occurred during the construction of the drainage ditch, and (ii) written confirmation from a qualified environmental consultant that the project did not require a USACE permit or approval. The Board further directed that all spoil created from the excavation be promptly removed from the area by hand and disposed of offsite. Mr. Wallace agreed to provide the requested opinion and have any remaining spoil promptly moved offsite. He advised that he would investigate the ability to obtain the requested confirmation from an environmental consultant. He then exited the meeting at this time, along with Ms. Dominey and Mr. Barnier.

### **REPORT FROM THE MONTGOMERY COUNTY CONSTABLE'S OFFICE REGARDING SECURITY**

Sergeant Glaze next presented and reviewed a security report provided by the Montgomery County Constable's office for the month of June 2020, a copy of which report is attached hereto as **Exhibit A**. No action was taken by the Board at this time.

Sergeant Glaze exited the meeting at this time.

## **AUDIT REPORT**

The Board considered the approval of the District's Audit Report ("Report") prepared for the District's fiscal year ended March 31, 2020, and the execution of an audit affidavit in connection therewith. Mr. Toldan presented and reviewed with the Board a draft of the Report prepared for the fiscal year ended March 31, 2020, a copy of which is attached hereto as **Exhibit B**. Mr. Toldan presented and reviewed with the Board the Management Representation Letter prepared by McCall (the "Management Representation Letter"), a copy of which is included with the Report (**Exhibit B**). After discussion, it was moved by Director Leonard, seconded by Director Luger and unanimously carried, that, subject to incorporation of any appropriate changes resulting from comments received from the District's consultants and the Board, the audit report for the fiscal year ended March 31, 2020, be approved, that the President be authorized to execute the Annual Filing Affidavit and Management Representation Letter on behalf of the Board and the District, and that such audit report and Annual Filing Affidavit be filed with the appropriate governmental authorities, including the Texas Commission on Environmental Quality. Director Spitzmiller abstained from the above discussion and vote.

Mr. Toldan exited the meeting at this time.

## **STATUS OF NEW CONTRACT FOR ELECTRICITY SERVICES FOR TERM BEGINNING IN 2024**

The Board next considered the status of a new contract for electricity services for the term beginning in 2024. Mr. Creed reminded the Board that, at the previous meeting, it authorized the President or Vice President to execute an electricity contract on behalf of the District for a term beginning in 2024, at a price not to exceed \$0.0362 per kWh and with a term of up to forty-nine (49) months. Mr. Ciarella addressed the Board at this time and provided a pricing update. Following discussion, Director Leonard moved that the President or Vice President be authorized to execute an electricity contract with a term of up to forty-nine (49) months, subject to the price not exceeding \$0.040 per kWh and subject to SPH's review of the contract. Director Luger seconded the motion, which unanimously carried.

Mr. Ciarella exited the meeting at this time.

## **REPORT BY REPUBLIC SERVICES, INC.**

Ms. Nussa next addressed the Board on behalf of Republic and presented a report, a copy of which is attached hereto as **Exhibit C**. The Board deferred consideration of dates to hold the District's annual document shredding event.

## **TAX ASSESSOR/COLLECTOR'S REPORT**

Ms. Keeswood next presented and reviewed with the Board the Tax Assessor/Collector's Report for the month of June 2020, including a delinquent listing as of July 1, 2020, copies of which are attached hereto as **Exhibit D**. After discussion, it was moved by Director Leonard that the Tax Assessor/Collector's Report be approved and the disbursements identified therein be approved for payment. Director Spitzmiller seconded the motion, which carried unanimously.

## **DELINQUENT TAX REPORT**

Mr. Creed reminded the Board that the District's delinquent tax attorneys, Perdue, Brandon, Fielder, Collins & Mott, L.L.P., provide written reports on a quarterly basis, and advised that no report was received for presentation at today's meeting.

## **OPERATIONS REPORT**

The Board next considered the Operations Report. Mr. Williams presented a written report prepared by Gulf Utility, a copy of which is attached hereto as **Exhibit E**, and reviewed same with the Board.

Mr. Williams advised that Gulf Utility obtained approval from Director Spitzmiller to replace certain equipment on the central panel at water well no. 2 at a cost of \$8,675. Following discussion, Director Leonard moved that replacement of the equipment be ratified and approved in all respects. Director Schultz seconded the motion, which unanimously carried.

Mr. Williams next advised that lift pump no. 1 located at lift station no. 1 is in need of being repaired or replaced. He advised that it will cost approximately \$6,500 to rebuild the pump, approximately \$9,074 to replace the existing pump with the same equipment and approximately \$20,000 to replace the pump with a Flygt pump. Following discussion, Director Lugger moved that Gulf Utility be authorized to replace lift pump no. 1 located at lift station no. 1 with a Flygt pump at a cost of approximately \$20,000. Director Schultz seconded the motion, which unanimously carried.

Mr. Williams next advised that Gulf Utility was recently sold to Utility Partners, LLC and that he will continue to be the District's representative on behalf of Gulf Utility. He noted that there will be no changes to the District's normal operations as a result of the sale.

The Board next discussed the disposition of delinquent accounts during the pendency of the COVID-19 Pandemic. Following discussion, the Board concurred that Gulf Utility be authorized to (i) continue suspending termination of water service and any related delinquent fees for District customer accounts through the end of July 2020, (ii) send letters to those customers who are delinquent to offer payment plans, and also advise that the District will begin moving back to its normal delinquency procedures under the Rate Order and (iii) waiving the fee charged to District customers for such letter under the District's Rate Order.

Mr. Creed next provided the Board with an update regarding the District's pending insurance claim for repair of water well no. 2. He reminded the Board that the insurer indicated its intent to approve \$6,500 of the remaining claim in connection with chlorination disinfection costs, and that the District is in receipt of the check in amount of \$6,500.

## **ENGINEER'S REPORT**

Mr. VanderWilt presented to the Board a written Engineer's Report, dated July 7, 2020, a copy of which report is attached hereto as **Exhibit F**, relative to the status of various projects within the District.

Mr. VanderWilt addressed the Board regarding the status of repair of drainage outfall erosion and placement of rip-rap by Solid Bridge Construction, LLC ("Solid Bridge"). He advised that the District is in receipt of Pay Estimate No. 1 and Final from Solid Bridge, in the amount of \$45,600, a copy of which is attached to the Engineer's Report. Following discussion, Director Leonard moved that the Board approve payment of Pay Estimate No. 1 and Final in the amount of \$45,600, as recommended by Costello. Director Frost seconded the motion, which unanimously carried.

Mr. VanderWilt next provided the Board with an update concerning the status of improvements to the wastewater treatment plant by Montgomery County Municipal Utility District No. 119 ("No. 119"). He advised that No. 119's engineer provided correspondence to the District regarding Pay Estimate No. 6 in the total amount of \$195,948. A copy of said correspondence is attached to the Engineer's Report. Mr. VanderWilt noted that the District's share of the estimate is \$15,543.90. Following discussion, Director Leonard moved that the Board concur in the District's payment of its share of Pay Estimate No. 6 to No. 119. Director Frost seconded the motion, which unanimously carried.

Mr. VanderWilt next advised that a section of sidewalk is missing near the intersection of Channing Springs Drive and Kallie Hills Lane. Following discussion, the Board requested that Costello obtain photos of the area and pricing information to extend the sidewalk for review by the Board at the next meeting.

A discussion ensued regarding a request received from a District resident who resides on Eden Meadows to trim the trees located on District property and along the fence line. It was noted that, at the previous meeting, the Board authorized trimming of the trees at a cost not to exceed \$1,000. Mr. VanderWilt advised that Storm Water Solutions, LP has provided a quote for this project in the amount of \$1,610. Mr. Rueschhoff addressed the Board at this time and advised that he could obtain pricing for this project from a local contractor utilized by the association. Following discussion, the Board requested that Mr. Rueschhoff provide the contractor information to Costello and that Mr. VanderWilt obtain a quote from them for consideration by the Board.

**HISTORICAL BILLING FOR DISTRICT'S SHARE OF OPERATING COSTS ASSOCIATED WITH HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 92 ("NO. 92") AND NO. 119 WASTEWATER TREATMENT PLANTS**

A discussion ensued regarding historical billing of the District's share of operating costs associated with the No. 92 and No. 119 wastewater treatment plants. In that regard, the Board reviewed (i) a summary prepared by Costello, which reflects the District's residential and commercial connections that sent flow to the wastewater treatment plants from May 2019 – March 2020 and (ii) a summary prepared by McLennan, which reflects the actual versus adjusted expense allocations during the period based upon those connections, copies of which are attached hereto as **Exhibit G**. Mr. Creed noted that, as reflected in the summary, the errors appear to have resulted in the District being overbilled by No. 119 approximately \$42,324.97 during this period, and approximately of \$30,617.25 by No. 92. Following discussion, Director Leonard moved that SPH be authorized to send correspondence to No. 92 and No. 119 to request the issuance of refunds to the District, and that billing of expenses associated with operating costs of the wastewater treatment plants be corrected going forward. Director Lugger seconded the motion, which unanimously carried.

## **ASSOCIATION CONSTRUCTION PROJECTS WITHIN DISTRICT PROPERTY AND RELATED COMMUNICATIONS**

It was noted that this item was addressed earlier in the meeting.

## **STORMWATER MANAGEMENT PROGRAM**

The Board considered the status of the District's Stormwater Management Program ("SWMP"), including any training necessary under the SWMP and comments from the public. No action was taken by the Board.

## **ISSUANCE OF UTILITY COMMITMENTS**

The Board deferred consideration of issuance of utility commitments after noting that no requests had been received.

## **BOOKKEEPER'S REPORT**

Mr. Diaz next presented and reviewed a written Bookkeeper's Report dated July 7, 2020, including the District's Investment Report for the month of June 2020, copies of which are attached hereto as **Exhibit H**. After discussion, it was moved by Director Schultz that the Board approve the Bookkeeper's Report and Investment Report, and authorize the District's Investment Officer to execute the Investment Report on behalf of the Board and the District. Director Leonard seconded the motion, which carried unanimously.

## **STATUS OF WEBSITE**

The Board considered the status of the District's website. It was noted that Apollo IT Consulting, LLC did not provide a report this month.

## **CYBERSECURITY TRAINING**

Mr. Creed next addressed the Board regarding annual cybersecurity training as required by Chapter 2054, Texas Government Code. He advised that the Association of Water Board Directors has completed its online training webinars and is now offering "on demand" training sessions going forward. He requested that any directors who have not completed the training do so at their earliest convenience.

## **ASSOCIATION OF WATER BOARD DIRECTORS ("AWBD") ELECTION(S)**

The Board next considered designating a District representative for purposes of voting in AWBD election(s). Following discussion, Director Frost moved that Director Leonard be authorized to vote in AWBD election(s) on behalf of the Board and the District. Director Spitzmiller seconded the motion, which unanimously carried.

## **JOINT ELECTION WITH MONTGOMERY COUNTY**

The Board next considered the approval of any necessary documentation and/or agreements to facilitate the joint election with Montgomery County for November 3, 2020. Following discussion, Director Leonard moved that any necessary documentation and/or agreements between the District and Montgomery County associated with the joint election be approved, and that the President be authorized to execute same on behalf of the Board and the District. Director Spitzmiller seconded the motion, which unanimously carried.

## **ATTORNEY'S REPORT**

The Board next considered the Attorney's Report. Mr. Creed presented the Annual Financial and Operating Report Pursuant to SEC Rule 15c2-12 (the "Report") prepared by McCall, Parkhurst & Horton, L.L.P. ("MPH"), a copy which is attached hereto as **Exhibit I**. Upon motion made by Director Schultz and seconded by Director Leonard, the Board unanimously approved the Report and the filing of same by MPH.

## **EXECUTIVE SESSION**

The Board determined it would not be necessary to enter into Closed Session pursuant to Texas Government Code, Section 551.071.

## **POSSIBLE FUTURE AGENDA ITEMS**

The Board considered items for placement on future agendas. No specific agenda items, other than routine and ongoing matters, were requested.

## **ADJOURN**

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

/s/ Joseph Frost  
Secretary  
Board of Directors

## **LIST OF EXHIBITS**

EXHIBIT A	Security Report for June 2020
EXHIBIT B	Draft Audit Report
EXHIBIT C	Report provided by Republic Services, Inc.
EXHIBIT D	Tax Assessor/Collector's Report
EXHIBIT E	Operations Report
EXHIBIT F	Engineer's Report
EXHIBIT G	Summaries prepared by Costello, Inc. and McLennan & Associates, LP
EXHIBIT H	Bookkeeper's Report
EXHIBIT I	Annual Financial and Operating Report Pursuant to SEC Rule 15c2-12