

MINUTES  
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165

February 3, 2022

The Board of Directors (the "Board") of Harris County Municipal Utility District No. 165 (the "District") met in regular session, open to the public, on the 3<sup>rd</sup> day of February 2022, at the offices of Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas, outside the boundaries of the District, and the roll was called of the members of the Board:

Alan Bentson	President
David Molina	Vice President
Wayne Green	Secretary
Scott Nilsson	Assistant Secretary
Scott Barr	Assistant Vice President

and all of the above were present, thus constituting a quorum.

Also attending the meeting were Lori Buckner of Myrtle Cruz, Inc.; David Keel and Maurice Mullaly of DAC Services, Inc. ("DAC"); Brenda McLaughlin of Bob Leared Interests, Inc. ("BLI"); Sherri Greenwood of BKD, LLP ("BKD"); Wes Alvey and Chris Hoffman of H2O Consulting, Inc. ("H2O"); Josh Wailes of Mike Stone Associates, Inc. ("MSA"); Darrin Fentress of BGE, Inc. ("BGE"); David Colunga and Daniel Whitton of Taylor Morrison of Texas, Inc. ("Taylor Morrison"); Lacey Hamilton of KGA/DeForest Design, LLC; Robert Oliver of SWA Group; and Jessica Holoubek, Brooke Milbauer, and Jane Miller of Allen Boone Humphries Robinson LLP ("ABHR").

PUBLIC COMMENT

Director Bentson offered any members of the public attending the meeting by telephone the opportunity to make public comment. There being no members of the public requesting to make public comment, Director Bentson moved to the next agenda item.

SECURITY REPORT

The Board reviewed a patrol report received from Harris County Constable Precinct 5 and discussed adding 2 additional patrol officers. Following discussion, Director Molina moved to authorize Director Bentson to execute an Interlocal Agreement with Harris County for the addition of 2 patrol officers. Director Barr seconded the motion, which passed unanimously.

## MINUTES

The Board considered approving the minutes of the January 6, 2022, regular meeting. Following review and discussion, Director Molina moved to approve the minutes presented. Director Barr seconded the motion, which passed unanimously.

## 2022 DIRECTORS ELECTION

Ms. Holoubek discussed procedures related to the 2022 Directors Election. She reviewed an Order Calling Directors Election.

Ms. Holoubek discussed that Notice of Election may be required to be posted or published and provided to the County Clerk and Voter Registrar of Harris County.

Following review and discussion, Director Molina moved to (1) adopt the Order Calling Directors Election and direct that the Order be filed appropriately and retained in the District's official records; and (2) authorize the Secretary's agent to post or publish and provide to the County Clerk and Voter Registrar Notice of Election, if required, and to direct that the Notice be filed appropriately and retained in the District's official records. Director Barr seconded the motion, which passed unanimously.

## SERIES 2022 UNLIMITED TAX BONDS

Ms. Greenwood requested the Board authorize BKD to prepare the developer reimbursement report for amounts to be reimbursed to the developers from the proceeds of the Bonds.

Following review and discussion, Director Molina moved to (1) authorize the auditor to begin preparation of the developer reimbursement report; and (2) schedule a special meeting on February 17, 2022, at 5:00 p.m. to approve a Preliminary Official Statement and authorize notice of a sale. Director Barr seconded the motion, which carried unanimously.

## SUPPLEMENTAL REIMBURSEMENT REPORT FOR BOND ANTICIPATION NOTE SERIES 2021 ("BAN")

Ms. Greenwood reviewed a draft of a supplemental developer reimbursement audit setting forth the amounts to be reimbursed to Astro Marvida LP. After review and discussion, Director Molina moved to approve the supplemental developer reimbursement report and authorize developer reimbursement, subject to receipt of a signed receipt by the developer receiving funds. Director Barr seconded the motion, which passed unanimously. Followed by a roll call vote, the motion passed unanimously with all Directors voting in favor of the motion.

## ASSOCIATION OF WATER BOARD DIRECTORS CONFERENCES

The Board discussed the Association of Water Board Directors winter conference. The Board then considered authorizing attendance at the summer conference. After discussion, Director Molina moved to approve reimbursement of all eligible expenses for Directors who attended the winter conference, which the bookkeeper confirmed were submitted in accordance with the District's guidelines, and to authorize attendance of any interested Directors at the summer conference. Director Barr seconded the motion, which carried unanimously.

## FINANCIAL AND BOOKKEEPING MATTERS

Ms. Buckner reviewed the bookkeeper's report. She discussed current public fund investment markets, reviewed the District's investment report, reviewed budget to actual revenues and expenses and variances. Following review and discussion, Director Molina moved to (1) accept the bookkeeper's report; and (2) authorize payment of the bills. Director Barr seconded the motion, which passed unanimously.

## TAX ASSESSMENT AND COLLECTIONS MATTERS AND DELINQUENT TAX COLLECTION

Ms. McLaughlin discussed the tax assessor/collector's report and delinquent tax report, copies of which are attached, reviewed the checks presented for payment from the tax account and reported regarding taxes collected to date and delinquent taxes from previous tax years.

The Board also considered an appeal from a taxpayer requesting a waiver of penalty and interest.

Following discussion and review of the information provided by the District tax assessor collector, Director Molina moved to (1) accept the tax assessor/collector's report; (2) authorize payment of the bills; and (3) deny the taxpayer appeal presented. Director Barr seconded the motion, which passed unanimously.

## EXEMPTIONS FROM TAXATION

The Board concurred to defer discussion and action until the February 17, 2022 special board meeting.

## OPERATION OF DISTRICT FACILITIES AND AMEND RATE ORDER

Mr. Hoffman distributed and reviewed a management and operations report, a copy of which is attached.

The Board discussed the District's water accountability for the month of January 2022. Mr. Hoffman reported 1 new commercial tap and 44 new residential taps installed during the month of January 2022. He also reviewed routine maintenance and repairs within the District completed and ongoing during the month of December 2021, and discussed repair of the breaker at lift station no. 3. He also requested approval to repair booster pump no. 1 at water plant no. 4 for an estimated cost of \$8,814.

Mr. Hoffman also discussed replacing a failed water meter at the Cue Apartments and options for taking readings until he can get a replacement part. He recommended installing a saddle tap for an insertion flow meter.

The Board next discussed amending the District Rate Order to change the pass-through percentage rate charged for surface water received from the West Harris County Regional Water Authority ("WHCRWA").

Ms. Hoffman next presented a list of delinquent customers and reported the residents on the termination list were delinquent in payment of their water and sewer bills or taxes and were given written notification, in accordance with the District's Rate Order, prior to the meeting of the opportunity to appear before the Board of Directors to explain, contest, or correct their bills and to show why utility services should not be terminated for reason of non-payment.

Mr. Hoffman presented the following customer appeals:

1. 8243 Stratford Canyon; requesting reimbursement of repair costs;
2. 19315 Desert Moon; requesting reimbursement of repair costs;
3. Miramesa Homeowner's Association ("HOA"); request a bill adjustment; and
4. 542225; requesting an adjustment due to a leak.

Following review and discussion, Director Barr moved to (1) approve the District operator's report; (2) authorize termination of delinquent accounts in accordance with the District's Rate Order, and direct that the delinquent customer list be filed appropriately and retained in the District's official records; (3) authorize repairs and maintenance, as recommended by H2O; (4) authorize reimbursement of repair costs to customers, as requested; and (5) authorize a leak adjustment, as requested by the customer and as recommended by the District operator. Director Molina seconded the motion, which passed unanimously.

The Board took no action with regard to the Miramesa HOA's request for a bill adjustment.

## STORM WATER QUALITY PERMITS AND OTHER STORM WATER ISSUES

There was no discussion for this agenda item.

## PARK MAINTENANCE

Mr. Wailes reviewed a park and landscape management report, a copy of which is attached. The Board considered estimates for repair of lighting at Amhurst Park and nutria population management. Following review and discussion, Director Molina moved to (1) approve the park and landscape management report; and (2) authorize repair of lighting and nutria population management, as proposed. Director Barr seconded the motion, which passed unanimously.

Mr. Wailes discussed debris left on the greenbelt by homeowners that back to the greenbelt. The Board requested that MSA ask the homeowners to remove debris behind fencing with a follow up letter from ABHR if the debris is not removed.

## KGA/DEFOREST DESIGN, LLC REPORT

Ms. Hamilton reviewed a landscape architect report from KGA, a copy of which is attached.

Ms. Hamilton reported regarding construction of Miramesa South Phase 2 Landscape Improvements and recommended approval of Pay Estimate No. 3 in the amount of \$85,141.26, payable to Triple E. She also discussed proposed Change Order No. 1 to the contract with Triple E for Miramesa South Phase 2 Landscape Improvements to increase the contract in the amount of \$45,321. The Board determined that Change Order No. 1 is beneficial to the District

After review and discussion, Director Molina moved to (1) accept the landscape architect report from KGA; (2) approve Pay Estimate No. 3 in the amount of \$85,141.26, payable to Triple E for Miramesa South Phase 2 Landscape Improvements, as recommended by KGA; and (3) approve Change Order No. 1 in the amount of \$45,321 as an increase to the contract with Triple E, based upon the Board's finding that the Change Order is beneficial to the District and KGA's recommendation. Director Barr seconded the motion, which carried unanimously.

## SWA GROUP REPORT

Mr. Oliver discussed the status of construction of Avalon at Cypress West Road and Mason Road landscape project and recommended that the Board approve Pay Estimate No. 1 in the amount of \$48,529.80, Pay Estimate No. 2 in the amount of \$36,397.35 and Pay Estimate No. 3 in the amount of \$36,397.35, all payable to Earthcare Management, Inc.

Mr. Oliver also reviewed plans for the public area of the Avalon at Cypress recreation center and requested authorization to advertise for bids for construction.

After review and discussion, Director Molina moved to (1) accept the landscape architect report from SWA; (2) approve Pay Estimate No. 1 in the amount of \$48,529.80, Pay Estimate No. 2 in the amount of \$36,397.35 and Pay Estimate No. 3 in the amount of \$36,397.35, all payable to Earthcare Management, Inc. for construction of Avalon at Cypress West Road and Mason Road landscape project, as recommended by SWA; and (3) authorize SWA to advertise for bids for construction for the public area of the Avalon at Cypress recreation center. Director Barr seconded the motion, which carried unanimously.

### ENGINEERING MATTERS

Mr. Mulally discussed the engineer's report, a copy of which is attached, and reviewed the status of construction projects in the District.

Mr. Mulally discussed the status of the following projects and requested authorization to advertise for bids for construction:

1. Force Main Facilities in Marvida Terrace Drive Street Dedication Section 1;
2. Avalon Landing Lane Street Dedication 1, water, sewer and drainage;
3. Avalon Landing Lane Street Dedication 1 paving;
4. Ultimate Drainage Channel & Drainage Impact Study;
5. Avalon at Cypress West Section 1, water, sewer and drainage;
6. Avalon at Cypress West Section 1, paving;
7. Avalon at Cypress West Section 2, water, sewer and drainage;
8. Avalon at Cypress West Section 2, paving; and
9. Avalon at Cypress West Traffic Impact Analysis.

Mr. Mullaly stated that bids were received for construction of the Bridge Creek West Lift station and recommended that the Board award the contract to Peltier Brothers Construction ("Peltier") in the amount of \$1,107,000 (210) calendar days. The Board concurred that, in its judgment, Peltier, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Marvida, Section 8 paving and recommended that the Board award the contract to Beyer Construction ("Beyer") in the amount of \$1,162,935.45. The Board concurred that, in its judgment, Beyer, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 2 water, sewer and drainage and recommended that the Board award the contract to Fellers & Clark ("Fellers") in the amount of \$585,000. The Board concurred that, in its judgment, Fellers, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 2 paving and recommended that the Board award the contract to Harris Construction ("Harris") in the amount of \$475,461.55. The Board concurred that, in its judgment, Harris, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 5 water, sewer and drainage and recommended that the Board award the contract to Fellers in the amount of \$211,700. The Board concurred that, in its judgment, Fellers, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 5 paving and recommended that the Board award the contract to Park Construction ("Park") in the amount of \$196,525.50. The Board concurred that, in its judgment, Park, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 6 water, sewer and drainage and recommended that the Board award the contract to Fellers in the amount of \$260,500. The Board concurred that, in its judgment, Fellers, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon at Cypress, Section 6 paving and recommended that the Board award the contract to Harris in the amount of \$255,199.35. The Board concurred that, in its judgment, Harris, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for construction of Avalon Channel Crossing and recommended that the Board award the contract to Lonnie Lischka Company ("Lischka") in the amount of \$1,167,318.75. The Board concurred that, in its judgment, Lischka, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly next reported that bids were received for construction of a 12" waterline along Mason Road to Bridge Creek Terrace Drive and recommended that the Board award the contract to Ballast Point Construction ("Ballast") in the amount of \$142,015. The Board concurred that, in its judgment, Ballast, was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly stated that bids were received for repair of the Remington Grove Stormwater Box Culvert and recommended that the Board award the contract to Infrastructure Construction Services ("ICS") in the amount of \$203,925. The Board concurred that, in its judgment, ICS was a responsible bidder who would be most advantageous to the District and would result in the best and most economical completion of the project.

Mr. Mullaly reported the status of the following projects, and presented the following pay applications and change orders:

1. Avalon at Bridge Creek Ultimate Channel; Pay Estimate 8 in the amount of \$80,588.64, payable to Allgood Construction Co. ("Allgood");
2. Avalon at Cypress Section 1 Paving; Pay Estimate No. 3 in the amount of \$330,121.07, payable to Lindsey Construction, Inc.;
3. Avalon at Cypress Section 3 Paving; Pay Estimate No. 1 in the amount of \$148,398.95, payable to Allgood;
4. Avalon at Cypress Section 4 paving; Pay Estimate No. 1 in the amount of \$35,474.67, payable to Allgood;
5. Bridge Creek Section 5; Pay Estimate No. 1 in the amount of \$55,269.36, Pay Estimate No. 2 in the amount of \$203,482.62, Pay Estimate No. 3 in the amount of \$284,387.54 and Pay Estimate No. 4 in the amount of \$127,974.60, all payable to Blazey Construction;
6. Marvida Section 1 water, sewer and drainage; approve a Certificate of Substantial completion;
7. Marvida, Section 6 and 7 water, sewer and drainage; Pay Estimate No. 8 in the amount of \$405,707.33, payable to Park Construction;
8. Marvida, Section 11 water, sewer and drainage; Pay Estimate No. 1 in the amount of \$130,755.19, payable to Fellers;
9. Marvida Terrace Drive Section 1 water, sewer and drainage; Pay Estimate No. 1 in the amount of \$431,512, payable to Fellers;
10. Marvida Lift Station No. 1; Pay Estimate No. 6 in the amount of \$57,487.50 payable to Reddico Construction;
11. Marvida Drainage Phase I Grading; Pay Estimate No. 15 in the amount of \$146,054.61 and Pay Estimate No. 16 in the amount of \$164,641.59, both payable to Paskey;
12. Marvida Drainage Phase I; Pay Estimate No. 13 in the amount of \$19,131.19 payable to Paskey Incorporated;



13. Marvida Drainage Phase 2 South; Pay Estimate No. 4 in the amount of \$200,245.93 and Pay Estimate No. 5 in the amount of \$428,571.83, both payable to Allgood;
14. Marvida Drainage Phase 2 North; Pay Estimate No. 4 in the amount of \$414,748.34 and pay Estimate No. 5 in the amount of \$368,972.83, both payable to Paskey Incorporated;
15. Marvida Longenbaugh; Pay Estimate No. 1 in the amount of \$286,644.33, payable to Fellers;
16. Westgreen, Section 6 paving; Pay Estimate No. 2 in the amount of \$40,637.38, payable to Allgood Construction Co.;
17. West Road, Section 1; Pay Estimate No. 1 in the amount of \$215,889.01;
18. West Road, Section 2 paving; Pay Estimate No. 4 in the amount of \$441,973.67, payable to Lindsey;
19. Mason Road Phase 1 Paving; Pay Estimate No. 2 in the amount of \$9,990, payable to Unitas;
20. Langham Creek Mass Grading in U500-02 Basin Phase 2; Pay Estimate No. 11 and Final in the amount of \$642,494.31, payable to Allgood Construction Co.;
21. Water Plant No. 2 Fence Replacement; Pay Estimate No. 5 in the amount of \$3,603.78, payable to Republic Masonry & Fencing, LLC;
22. Water Plant No. 5; Pay Estimate No. 17 in the amount of \$139,150, payable to Long & Son;
23. Expansion of wastewater treatment plant no. 1; Pay Estimate No. 15 in the amount of \$1,000,947.90, payable to R.P. Constructors;
24. Wastewater treatment plant no. 2; Pay Estimate No. 13 in the amount of \$680,350.50, payable to ALLCO, LLC;
25. Force main and Waterline to serve Wastewater Treatment Plant No. 2; Pay Estimate No. 3 in the amount of \$167,292.88, payable to Sequira Civil Construction dba SC2 and Change Order No. 1 increasing the contract total by \$50,498; and
26. Langham Creek Phase 2; Pay Estimate No. 3 in the amount of \$675,368.29 payable to Serco Construction.

The Board concurred that the change orders listed above are beneficial to the District.

The Board also considered approving a Maintenance Agreement for Marvida Section 24 and Section 22.

Following review and discussion, Director Molina moved to (1) approve the engineering report; (2) based upon the recommendation of Jones & Carter, Inc. ("J&C"), BGE, Inc. ("BGE") and DAC, authorize advertisement for bids for construction of the projects listed above; (3) based upon the recommendation of J&C, BGE and DAC, approve pay estimates listed above; (4) approve the change orders listed above based

upon the Board's finding that the change orders are beneficial to the District and BGE's, J&C's and DAC's recommendations; (5) based upon the recommendation of J&C, BGE, and DAC, award the contracts for construction of projects listed above, based upon the recommendations of J&C, BGE and DAC, and subject to approval of the payment and performance bonds and review of the certificate(s) of insurance and endorsements, if any, provided by the contractor; and (6) approve maintenance agreements for Marvida, Sections 22 and 24. Director Barr seconded the motion, which passed by unanimous vote.

#### DEEDS, EASEMENTS, ENCROACHMENTS AND OTHER RIGHT-OF-WAY CROSSINGS

The Board considered accepting the following conveyances:

1. Special Warranty Deed for multiple reserves in Marvida, Sections Sec 1, 2, 3 and 4 (Restricted to Detention, Landscape, and Open Space);
2. Special Warranty Deed for 29.55-acre north Marvida drainage pond;
3. utility easements to CenterPoint Energy to serve wastewater treatment plant no. 2;
4. offsite sanitary sewer easement to serve Marvida, Section 24; and
5. transition fill easement in Marvida.

Following review and discussion, Director Molina moved to accept the conveyances listed above. Director Barr seconded the motion, which passed unanimously.

#### DEVELOPMENT IN THE DISTRICT

Mr. Colunga discussed development in the District.

Ms. Holoubek reported that Starwood Capital Group acquired a majority interest in the assets of Land Tejas. She said that at the closing of the transaction the Development Financing Agreement by and between Cypress 856, Ltd. and the District, the Development Financing Agreement by and between Marvida POD A, LLC and the District (the "Reimbursement Agreements") were assigned to Astro Marvida, LP. Ms. Holoubek said that the terms and conditions of the Reimbursement Agreements require that the District consent to the assignment of the Reimbursement Agreements. Following review and discussion, Director Molina moved to consent to assignment of the Reimbursement Agreements. Director Barr seconded the motion, which passed unanimously.

#### GARBAGE/RECYCLING COLLECTION SERVICES

There was no discussion for this agenda item.

DISTRICT WEBSITE

There was no discussion nor action taken on this agenda item.

WEST HARRIS COUNTY REGIONAL WATER AUTHORITY

Ms. Holoubek said that Michael Owens is not running for a seat on the Board of Directors of WHCRWA. The Board discussed inviting WHCRWA candidates to the District’s April or May 2022 Board meeting to meet with the Board.

Ms. Holoubek said that Fry Road Residential Partners (“FRRP”) proposes to construct an 8” water line and an 8 sanitary sewer line that will encroach onto an easement that WHCRWA is working to acquire. She reviewed a proposed Consent to Encroachment by and among FRRP, WHCRWA and the District. Following review and discussion, Director Molina moved to authorize execution of the proposed Consent to Encroachment and a related conflicts waiver letter. Director Barr seconded the motion, which passed unanimously.

EXECUTIVE SESSION PURSUANT TO SECTION 551.071 TEXAS GOVERNMENT CODE

At 8:05 p.m., Director Bentson announced the Board would convene in executive session to conduct a private consultation with attorney to discuss pending or contemplated litigation, or a settlement offer. Ms. Holoubek, Ms. Milbauer and Ms. Miller were also present during executive session.

RECONVENE IN OPEN SESSION

The Board reconvened in open session at 8:10 p.m. No action was taken.

There being no additional business to consider, the meeting was adjourned.



  
Secretary, Board of Directors

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