

# SPRING WEST MUNICIPAL UTILITY DISTRICT

## Minutes of Meeting of Board of Directors December 14, 2022

The Board of Directors ("Board") of Spring West Municipal Utility District ("District") met in regular session at 1300 Post Oak Boulevard, Suite 2500, Houston, Harris County, Texas, on December 14, 2022, in accordance with the duly posted notice of meeting. The meeting was also held via videoconference and teleconference pursuant to Texas Government Code Sections 551.125 and 551.127, as amended. The roll was called of the duly constituted officers and members of said Board, as follows:

Beverly F. O'Neal	President
Kim Stephens	Vice President
W. Eugene Norris, Sr.	Secretary
Scott Shelnett	Assistant Secretary
Jerome A. Patridge	Assistant Secretary

and all persons attended the meeting, with Director Patridge participating via videoconference, thus constituting a quorum. Director Shelnett entered after the meeting was called to order, as noted herein.

Also in attendance were: Jorge Diaz of McLennan & Associates, Inc. ("McLennan"); Brenda McLaughlin of Bob Leared Interests, Inc. ("Leared"); Eric Thiry and Bart Downum, of Environmental Development Partners, LLC ("EDP"); Justin Ring and Danielle Gonzalez of Odyssey Engineering Group, Inc. ("Odyssey"); Ahsan Daredia and Jessica Berrios of Dhanani Private Equity Group ("DPEG"); Eric Badertscher of Off Cinco, LLC ("Off Cinco"); and Abraham Rubinsky, Katie Blasio and Melanie Walsh of Schwartz, Page & Harding, L.L.P. ("SPH"). Mr. Daredia and Ms. Berrios participated in the meeting via teleconference and/or videoconference.

### **PUBLIC COMMENTS**

The Board began by opening the meeting for public comments. There being no comments from the public, the Board continued to the next item of business.

### **APPROVAL OF MINUTES**

The Board considered approval of the minutes of the Board of Directors meeting held on November 9, 2022. Upon review, Director Norris moved that the minutes of said meeting be approved as presented. Director Patridge seconded said motion, which unanimously carried.

### **BOOKKEEPER'S REPORT**

Mr. Diaz presented and reviewed with the Board the Bookkeeper's Report for the period of November 10, 2022, through December 14, 2022, a copy of which is attached hereto as **EXHIBIT A**, including the disbursements presented therein for payment from the District's various accounts. He noted that the District is in receipt of a check from Inframark in the amount of \$35,000, representing Inframark's previously agreed upon contribution toward the cost of replacement of a leaking welded steel pipe by Wright Solutions.

Director Shelnutt entered the meeting during the above discussion.

Mr. Diaz next presented and reviewed an Investment Report for the period of November 1, 2022, through November 30, 2022, a copy of which is included with the Bookkeeper's Report. Mr. Diaz then responded to various questions and comments from the Board and Mr. Rubinsky regarding items in the Bookkeeper's Report. After further discussion concerning various matters reflected in said Reports, Director Stephens moved that: (i) the Bookkeeper's Report and the disbursements presented therein for payment be approved, including additional check no. 1591 payable to NRG Energy Services, LLC ("NRG") in the total amount of \$137,500 for purchase of the existing emergency generator located at the District's Wastewater Treatment Plant ("WWTP"), subject to the District's receipt of an executed, revised Bill of Sale Agreement from NRG ("BOS"), and that the President be authorized to execute the BOS subject to SPH review; and (ii) the Investment Report be approved and the District's Investment Officer be authorized to execute same on behalf of the District. Director Shelnutt seconded said motion, which unanimously carried.

### **APPROVAL OF OPERATING BUDGET FOR FISCAL YEAR ENDING DECEMBER 31, 2023**

Mr. Diaz next presented to and reviewed with the Board Draft No. 2 of the proposed Operating Budget for the District's fiscal year ending December 31, 2023, which is attached to the Bookkeeper's Report, and noted that comments from the District's consultants had been incorporated in same. After discussion concerning the draft Operating Budget for the fiscal year ending December 31, 2023, Director Shelnutt moved that said Operating Budget be adopted by the Board. Director Patridge seconded said motion, which unanimously carried.

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

Ms. McLaughlin next presented to and reviewed with the Board the Tax Assessor/Collector's Report for the month ended November 30, 2022, which is attached hereto as **EXHIBIT B**, including the disbursements presented therein for payment from the Tax Account. Ms. McLaughlin also presented to and reviewed with the Board a Single Line Delinquent Tax Report, included with the Tax Assessor/Collector's Report, dated December 6, 2022. Ms. McLaughlin then inquired whether the Board was interested in obtaining an updated aerial photograph of the District at the beginning of next year for a cost of approximately \$1,125. Upon consideration, the Board declined to authorize a new aerial photograph, noting that the District obtained an updated aerial photograph at the beginning of this year. After discussion, Director Shelnutt moved that the Tax Assessor/Collector's Report be approved and that the disbursements identified in the Report be approved for payment from the Tax Account. Director Stephens seconded said motion, which unanimously carried.

### **DELINQUENT TAX REPORT**

The Board deferred consideration of a Delinquent Tax Report from Perdue after noting that a report was not due this month. Mr. Rubinsky stated that the next quarterly report will be provided in January 2023.

### **OPERATOR'S REPORT**

Mr. Downum presented to and reviewed with the Board the Operator's Report dated December 14, 2022, a copy of which is attached hereto as **EXHIBIT C**, and discussed various

repair and maintenance items noted therein. He reported that the District's water accountability for October 2022 is approximately 75% and discussed EDP's efforts to determine the cause, noting that he suspects the low accountability is a result of the recent fire hydrant flushing performed by EDP in connection with the annual Fire Hydrant Inspection, as well as several service line leaks which occurred during that period of time.

Mr. Downum next noted that Richard J. Lindley is delinquent on payment of the bill for his pro rata share of the cost for maintenance and operation of the Spring Plaza Regional Detention Pond and Storm Water Pump Station. He advised the Board that EDP will accrue penalties and interest to Mr. Lindley's account as appropriate in accordance with the terms of the District's Rate Order.

In connection with the District's insurance claim related to the recent structural repairs performed at the District's WWTP by Wright Solutions, LLC, ("Wright"), Mr. Downum advised the Board that EDP will coordinate transmittal of all invoices from Wright and Odyssey related to said repairs to the District's insurance company.

Mr. Downum next reported that the annual cleaning and televising of the Spring Cypress Sanitary Sewer Line constructed by R Construction Company, Inc. was not performed in May of this year, as previously planned. Upon discussion, the Board requested that EDP proceed with same as soon as possible.

Mr. Rubinsky next advised the Board that Stage 1 of North Harris County Regional Water Authority's Drought Contingency Plan ("DCP") has been lifted and recommended that the District do the same. After further discussion, it was moved by Director Shelnut that Stage 1 of the District's DCP be lifted and that EDP be authorized to remove signage relative to same within the District. Director Stephens seconded the motion, which unanimously carried.

### **IMPLEMENTATION OF PUBLIC UTILITY COMMISSION OF TEXAS RULES RELATING TO SENATE BILL 3**

Mr. Rubinsky presented to and reviewed with the Board a Memorandum prepared by SPH detailing the Public Utility Commission of Texas' (the "PUC") publication of 16 TAC, Sections 24.173 and 24.364 relating to the implementation of Senate Bill 3 ("S.B. 3"). A copy of the Memorandum is attached hereto as **EXHIBIT D**. The Board was informed that a notice containing certain required information must be provided to each of the District's retail water or sewer customers prior to January 31, 2023. After discussion, Director Shelnut moved to approve the required notice language prepared by SPH and to authorize EDP to include the approved notice as an insert into the District's next utility bill. Director Stephens seconded the motion, which carried unanimously.

### **AMENDMENT TO RATE ORDER**

The Board considered amending the District's Rate Order to address the changes in the law resulting from the PUC's implementation of S.B. 3. In connection therewith, Mr. Rubinsky presented to and reviewed with the Board SPH's recommended changes to the District's Rate Order. He advised that this Rate Order would allow sixty (60) days to refund deposits to customers and would address changes in the law resulting from the PUC's implementation of S.B. 3. Following discussion, it was moved by Director Shelnut, seconded by Director Norris and unanimously carried, that: (i) the Rate Order be amended, as discussed, (ii) the President and Secretary be authorized to execute the amended Rate Order on behalf of the Board and the

District, (iii) any and all Rate Orders heretofore adopted by the Board be revoked, and (iv) the amended Rate Order, attached hereto as **EXHIBIT E**, be passed and adopted.

**AMENDED AND RESTATED CONSTRUCTION AND MAINTENANCE AGREEMENT  
WITH HANNOVER FOREST HOMEOWNERS ASSOCIATION**

The Board deferred consideration of the proposed Amended and Restated Construction and Maintenance Agreement (the "Amended and Restated Agreement") between the District and Hannover Forest Homeowners Association (the "Hannover Forest HOA") in connection with maintenance by the District of the Hannover Forest, Section Two Detention Pond.

**ENGINEER'S REPORT**

Mr. Ring presented and reviewed in detail with the Board a written Engineer's Report dated December 14, 2022, a copy of which is attached hereto as **EXHIBIT F**, relative to the status of various engineering and construction projects within the District, and discussed the matters contained therein.

In connection with the recoating of the ground storage tank located at Water Plant No. 1 ("WP No. 1"), Mr. Ring requested that the Board approve Change Order No. 1 in the amount of \$25,200 from BRZ Coatings, Inc. ("BRZ"). Upon consideration, Director Stephens moved that the Board approve Change Order No. 1 from BRZ, as discussed above and as recommended by Odyssey. Director Shelnutt seconded the motion, which unanimously carried.

The Board next considered the acceptance of various easement conveyances for facilities constructed or to be constructed for the District. With regard to the proposed abandonment of various Water Line Easements and the dedication of certain new Water Line Easements and/or Water Meter Easements in connection with the relocation of the Public Fire Water Line to serve Spring Pines Shopping Center (the "Relocation Project"), Mr. Rubinsky reported that SPH received revised metes and bounds descriptions for the Relocation Project two days ago and is in the process of finalizing the Easements for review and execution by the appropriate landowners. After discussion, it was moved by Director Shelnutt, seconded by Director Norris and unanimously carried that the Board: (i) approve the abandonment of certain Water Line Easements and authorize the President to execute same on behalf of the Board and the District; and (ii) accept the Water Line and/or Water Meter Easements required in connection with the Relocation Project, subject to receipt of executed conveyance documents from the various Grantees, and authorize the President to execute same on behalf of the Board and the District.

Mr. Rubinsky next reported that the District is in receipt of an executed copy of the Water Meter Easement required from AM 2920 MM, LLC ("AM 2920") in connection with its development of the Saxon Pond Flats project. After discussion, Director Shelnutt moved that the Board accept the Water Meter Easement from AM 2920 and that the President be authorized to execute same on behalf of the Board and the District. Director Patridge seconded the motion, which unanimously carried.

Mr. Rubinsky next reported that SPH has prepared the 25-foot Utility Easement (Water and Sanitary Sewer Lines) required in connection with the proposed annexation of the 0.5069 acre tract located at 1731 Spring Cypress Road (the "Starbucks Tract"). He then discussed certain possible issues that may affect the Starbucks coffee shop located on the site should the landowner prevail in having the Starbucks Tract removed from Undine Texas, LLC's application to the Public Utility Commission ("PUC") to amend its water Certificate of Convenience and

Necessity ("CCN") to include the Starbucks Tract. Mr. Rubinsky recommended that the Board accept the 25-foot Utility Easement ("Easement") subject to the District's receipt of the signed Easement from the Grantor and a positive resolution of the Undine matter. After further discussion, it was moved by Director Shelnutt, seconded by Director Norris and unanimously carried, that the Board accept the Easement, subject to the conditions discussed above, and authorize Odyssey to advertise for bids subject to same.

The Board next considered the proposed construction of an emergency water interconnect between the District and Harris County Water Control and Improvement District No. 110 ("No. 110"). In connection therewith, Mr. Rubinsky reported that the Emergency Water Supply Contract between the District and No. 110 was sent to the attorney for No. 110 on December 13, 2022, for approval and execution of same by the Board of No. 110.

The Board next considered future capital improvement projects within the District. With regard to the proposed extension of the District's water line along Holzwarth Road (the "Holzwarth Extension"), Mr. Ring advised the Board that the estimated design and construction cost for the project is approximately \$579,680. Following discussion, Director Stephens moved that Odyssey be authorized to proceed with the Holzwarth Project. Director Shelnutt seconded the motion, which unanimously carried.

Mr. Ring then advised the Board Odyssey has not requested an increase in its hourly rates since becoming the District's Engineer in May of 2018 and requested that an item be added to the next agenda for the Board to consider adjustment of the Schedule of Hourly Rates pursuant to the Engineering Contract between the District and Odyssey. The Board concurred with Mr. Ring's request.

#### **NOTICE OF APPLICATION OF UNDINE TO AMEND ITS CCN**

The Board next considered the status of Undine's application to the PUC to amend its water CCN. With regard thereto, Mr. Rubinsky reminded the Board that SPH submitted a Motion for Contested Case Hearing to the PUC on October 31, 2022, as recommended by the PUC's attorney. He then summarized the history of communications with Undine regarding its application to include the Starbucks Tract and the 0.61 acre tract (Lots 26, 27 and 28) located at 20615 Sleepy Hollow Lane (the "Sleepy Hollow Tract") within its CCN. Mr. Rubinsky then reported that the Administrative Law Judge has granted a request by the PUC's staff for an extension until December 29, 2022, to file comments on whether a hearing is necessary, noting that the parties are continuing to discuss issues relevant to a protentional resolution of the matter and avoid a contested case hearing altogether. He advised the Board that, should the parties be unable to resolve the matter by the stated deadline, a procedural schedule will then be set.

Mr. Rubinsky then recommended that the Board appoint two Directors to advise SPH between meetings regarding the Undine matter, if necessary. The Board concurred to appoint Director O'Neal and Director Shelnutt to assist SPH relative to said matter.

Mr. Diaz exited the meeting during the above discussion.

#### **STATUS OF PROPOSED ANNEXATIONS**

The Board deferred consideration of the status of the proposed annexation and development of various tracts into the boundaries of the District.

## **APPROVAL OF UTILITY DEVELOPMENT AGREEMENT ("UDA") AND WAIVER AGREEMENT BETWEEN THE DISTRICT AND MILL CREEK**

The Board deferred consideration of a UDA and a Waiver Agreement between the District and Mill Creek.

### **ISSUANCE OF UTILITY COMMITMENTS**

The Board next considered a request from Turphin Ventures, LLC ("Turphin") for water and sanitary sewer capacity to serve the proposed development of a Top Soap Car Wash on property located at 2020 FM 2920. It was noted that the proposed development will require approximately 10,500 gallons per day of water and sanitary sewer capacity, or approximately 35 equivalent single-family connections. After discussion, it was moved by Director Norris, seconded by Director Shelnutt and unanimously carried, that SPH be authorized to prepare a Utility Commitment to Turphin, and that said Utility Commitment be subject to Turphin completing its purchase of said tract.

### **DEVELOPERS' REPORTS**

The Board deferred consideration of the Developers' Reports, noting that no developer representatives were in attendance at today's meeting whose matter had not already been addressed by the Board.

### **NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY ("AUTHORITY")**

The Board next considered matters related to the Authority. In that regard, Mr. Rubinsky discussed recent activities of the Authority, including the status of construction of the Northeast Water Purification Plant Expansion project.

### **HARRIS COUNTY CONSTABLE'S OFFICE ("HCCO") MONTHLY ACTIVITY REPORT**

Mr. Rubinsky noted that a security report received from the HCCO for the month of November 2022, a copy of which is attached hereto as **EXHIBIT G**, on the current status of criminal activities in the District and surrounding areas was distributed to the Board prior to today's meeting. After discussion, no action was taken by the Board relative to said matter.

### **ATTORNEY'S REPORT**

The Board next considered the Attorney's Report. In connection therewith, Mr. Rubinsky advised that he had nothing further to report of a legal nature that was not included under another agenda item.

### **CLOSED SESSION**

The Board determined that it would not be necessary to meet in Closed Session at this time.

### **OTHER MATTERS**

The Board considered items to be placed on future agendas. Except as may be reflected above, there were no additional agenda items requested other than routine, and ongoing matters.

**ADJOURNMENT**

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

  
Secretary, Board of Directors



EXHIBITS

December 14, 2022

- Exhibit A: Bookkeeper's Report; Investment Report
- Exhibit B: Tax Assessor-Collector's Report; Single Line Delinquent Tax Report
- Exhibit C: Operator's Report
- Exhibit D: Memorandum – PUC publication of 16 TAC, Sections 24.173 and 24.364 relating to the implementation of S.B. 3
- Exhibit E: Rate Order
- Exhibit F: Engineer's Report
- Exhibit G: HCCO Security Report