

# SPRING WEST MUNICIPAL UTILITY DISTRICT

## Minutes of Meeting of Board of Directors January 11, 2023

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 January 11, 2023, 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 Shelnut	Assistant Secretary
Jerome A. Patridge	Assistant Secretary

and all persons attended the meeting, with Directors O'Neal and Patridge participating via videoconference, thus constituting a quorum.

Also in attendance were: Jorge Diaz of McLennan & Associates, Inc. ("McLennan"); Brenda McLaughlin of Bob Leared Interests, Inc. ("Leared"); Bart Downum, of Environmental Development Partners, LLC ("EDP"); Robert Cardenas of Inframark, LLC ("Inframark"); Justin Ring and Danielle Gonzalez of Odyssey Engineering Group, Inc. ("Odyssey"); 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"). Ms. Berrios participated in the meeting via teleconference.

### **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 meetings held on November 23, 2022 and December 14, 2022. Upon review, Director Shelnut moved that the minutes of said meetings 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 December 15, 2022, through January 11, 2022, a copy of which is attached hereto as **EXHIBIT A**, including the disbursements presented therein for payment from the District's various accounts. Mr. Diaz next presented and reviewed an Investment Report for the period of December 1, 2022, through December 31, 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 Mr. Rubinsky noted an apparent miscalculation of the current balance reflected in the General Fund, Mr. Diaz

advised that McLennan will revise the report, accordingly. Upon further discussion concerning various matters reflected in said Reports, Director Shelnutt moved that: (i) the Bookkeeper's Report and the disbursements presented therein for payment be approved, subject to revision as discussed above; and (ii) the Investment Report for December 2022 be approved and the District's Investment Officer be authorized to execute same on behalf of the District. Director Stephens seconded said motion, which unanimously carried.

A discussion next ensued regarding the status of Starbucks' negative balance of \$10,927.26, as reflected on the "Starbucks" spreadsheet, and Mario and Dora Otto's negative balance of \$11,572.79, as reflected on the "20615 Sleepy Hollow Lane, .61 Acres (Lots 26, 27, and 28" spreadsheet, both of which are attached to the Bookkeeper's Report. With regard thereto, Mr. Rubinsky reported that he recently contacted the representatives for Starbucks and the Ottos on behalf of the District to request additional \$20,000 deposits from each and notified them that SPH will not provide further professional services in connection with the proposed annexation of either tract until such deposits are received by the District.

Mr. Rubinsky next noted that construction of West Extension of Water Line and Sanitary Sewer Lines along Spring Cypress Road (the "West Extension Project") is complete and recommended that the "Water & Sewer Extension – Spring Cypress" spreadsheet be removed from the Bookkeeper's Report going forward. The Board concurred with Mr. Rubinsky's recommendation.

#### **RESOLUTION ADOPTING LIST OF QUALIFIED BROKERS**

The Board next considered adopting a list of qualified brokers authorized to engage in investment transactions with the District. Mr. Rubinsky advised that, pursuant to the Public Funds Investment Act and the terms of the District's Investment Policy, the Board is required to review such list at least annually and to amend and update it if necessary. He then presented to and reviewed with the Board a proposed Resolution Adopting List of Qualified Brokers Authorized to Engage in Investment Transactions with the District, and a list of financial institutions, brokers and dealers attached thereto, together with a comparison of the list submitted and the list previously adopted by the Board, copies of which are attached hereto as **EXHIBIT B**. Mr. Rubinsky explained that the broker list presented is a list of potential institutions with which the District may engage in investment transactions compiled with the input of the District's Investment Officer, but that it is ultimately the Board's decision as to where the District's funds are actually placed. After discussion, Director Shelnutt moved that: (i) the Resolution Adopting List of Qualified Brokers Authorized to Engage in Investment Transactions with the District be approved by the Board and the District, and (ii) that the President and Secretary be authorized to execute same. Director Norris seconded said motion, which unanimously carried.

#### **TEXAS COMPTROLLER OF PUBLIC ACCOUNTS SPECIAL PURPOSE DISTRICT PUBLIC INFORMATION DATABASE**

Mr. Rubinsky next reminded the Board that, pursuant to provisions of Chapter 403, Government Code, and Chapter 203, Local Government Code, the District is required to submit certain information annually to the Texas Comptroller of Public Accounts (the "Comptroller") for inclusion in the Special Purpose District Public Information Database. Following discussion, it was moved by Director Shelnutt, seconded by Director Stephens, and unanimously carried that the District's auditor, Mark C. Eyring, CPA, PLLC, be authorized to prepare the required

information and submit same to the Comptroller for inclusion in the Special Purpose District Public Information Database prior to the April 1, 2023 deadline.

**REVIEW OF FIFTH YEAR ARBITRAGE REBATE REPORT PREPARED BY ARBITRAGE COMPLIANCE SPECIALISTS, INC. IN CONNECTION WITH THE DISTRICT'S \$6,685,000 UNLIMITED TAX BONDS, SERIES 2017**

Mr. Rubinsky next reviewed with the Board an Arbitrage Rebate Calculations Report prepared by Arbitrage Compliance Specialists, Inc., a copy of which is attached hereto as **EXHIBIT C**, for the 5<sup>th</sup> year rebate installment computation period in connection with the District's \$6,685,000 Unlimited Tax Bonds, Series 2017 (the "Series 2017 Bonds"). Mr. Rubinsky advised the Board that the Report indicates that there is no rebatable arbitrage payment due to the Internal Revenue Service for such computation period for the District's Series 2017 Bonds.

**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 December 31, 2022, which is attached hereto as **EXHIBIT D**, 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 January 9, 2023. After discussion, Director Stephens 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 Norris seconded said motion, which unanimously carried.

**DELINQUENT TAX REPORT**

The Board considered a Delinquent Tax Report from Perdue, Brandon, Fielder, Collins & Mott, L.L.P., the District's Delinquent Tax Collections Attorneys, a copy of which is attached hereto as **EXHIBIT E**. Mr. Rubinsky reviewed the Report with the Board. Following review, the Board concurred that no action was necessary on its part at this time.

**RESOLUTION AUTHORIZING ADDITIONAL PENALTY ON DELINQUENT PERSONAL PROPERTY TAXES**

Mr. Rubinsky next advised the Board that it is authorized pursuant to Section 33.07 of the Property Tax Code to impose, under certain conditions, an additional penalty not to exceed twenty percent (20%) of the total taxes, penalty and interest due the District on personal property that becomes delinquent after February 1 of each year and that remains delinquent sixty (60) days after said date, to defray the costs of collection of said delinquent taxes, in accordance with Section 33.11 of the Property Tax Code, as amended. The Board considered the adoption of a Resolution authorizing such additional penalty. After discussion, it was moved by Director Stephens, seconded by Director Shelnut and unanimously carried, that the Resolution Authorizing an Additional Penalty on Delinquent Personal Property Taxes, attached hereto as **EXHIBIT F**, be passed and adopted.

**RESOLUTION CONCERNING EXEMPTIONS FROM TAXATION**

Mr. Rubinsky outlined for the Board the various tax exemptions available for the District, including the exemptions provided for by Article VIII, Section 1-b of the Texas Constitution, and

Section 11.13 of the Tax Code, as amended. He advised that under said provisions, the District may provide for the exemption of up to 20% (but not less than \$5,000, if granted) of the market value of residential homestead improvements for the year 2023, and the District may also exempt residential homesteads of persons who are under a disability for purposes of payment of disability insurance benefits under the Federal Old Age, Survivors and Disability Insurance Act, or its successor, or persons sixty-five years of age or older from ad valorem taxes levied by the District during the calendar year 2023, and, if any such exemptions are granted, they must be for not less than \$3,000 of the market value of such homesteads. After discussion, Director Shelnutt moved that the District (a) grant a residential homestead exemption of 20%, but not less than \$5,000, for 2023, and (b) grant an exemption for persons under a disability or sixty-five years of age or older in the amount of \$60,000 from ad valorem taxes levied by the District during the calendar year 2023, and that the Resolution attached hereto as **EXHIBIT G** relative to same be passed and adopted by the Board and District. Director Stephens seconded said motion, which carried unanimously.

### **STRATEGIC PARTNERSHIP AGREEMENT**

In connection with the District's Strategic Partnership Agreement ("SPA") with the City of Houston, Mr. Rubinsky reported to the Board that the City has provided a list of businesses located within the District's SPA boundaries and has requested same be updated and returned to the City by January 30<sup>th</sup>. He advised that the list has been provided to Leared for review and revision, as needed. After discussion, Director Stephens moved that Leared be authorized to respond to the City of Houston on behalf of the District by the requested deadline of January 30, 2023. Director Shelnutt seconded the motion, which unanimously carried.

### **OPERATOR'S REPORT**

Mr. Downum presented to and reviewed with the Board the Operator's Report dated January 11, 2023, a copy of which is attached hereto as **EXHIBIT H**, and discussed various repair and maintenance items noted therein. He reported that the District's water accountability for November 2022 was extremely low at approximately 58.8%. With regard thereto, Mr. Downum advised the Board that EDP has determined that the main cause of the recent low water accountability was a water main break, which EDP initially believed to be on the customer's side of the distribution line. He reported that the break has now been repaired, but that next month's water accountability is likely to continue to be low because the aforementioned water main break affected three billing cycles and also because, during the recent freeze event, a sensor line at one of the District's water plants malfunctioned, causing a ground storage tank to overflow.

Mr. Downum next reported that the District is in receipt of two appeals from District customers for adjustment of their water bills. He advised the Board that the first customer ("Customer No. 1") disputes the meter readings for the account and reported that, upon inspection, EDP found the meter for said account to be in proper working order. Mr. Downum then advised the Board that the second customer ("Customer No. 2") has requested an adjustment due to a leak, which leak has since been repaired. After discussion regarding the facts and circumstances surrounding both requests, it was moved by Director Shelnutt, seconded by Director Stephens and unanimously carried, that the request for adjustment of Customer No. 1's water bill be denied, but that EDP be authorized to engage a third party to perform an independent inspection of the meter for Customer No.1's account. It was then moved by Director Stephens, seconded by Director Norris and unanimously carried that the request of Customer No. 2 also be denied.

Ms. McLaughlin left the meeting during the above discussion.

### **CONSUMER CONFIDENCE REPORT**

Mr. Rubinsky advised the Board that, pursuant to the Consumer Confidence Report requirements promulgated by the United States Environmental Protection Agency, the District is required to provide various information regarding the District's water supply to any other water supplier which received water from the District during the prior year by April 1st of this year. After discussion on the matter, Director Shelnutt moved that EDP be authorized to provide such information to any other water supplier, as necessary, prior to April 1, 2023. Director Stephens seconded said motion, which unanimously carried.

### **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 January 11, 2023, a copy of which is attached hereto as **EXHIBIT I**, relative to the status of various engineering and construction projects within the District, and discussed the matters contained therein. Mr. Ring then responded to various inquiries from the Board. With regard to the Capacity Allocation Chart, the Board concurred with Mr. Ring's recommendation that the Patel Motel Development be removed from said chart, noting that a formal request for service has not yet been received. After discussion, it was moved by Director Shelnutt, seconded by Director Norris and unanimously carried that the Engineer's Report be approved, including approval of Pay Request No. 1 in the amount of \$196,110 from BRZ Coatings, Inc. in connection with the 500,000 Gallon Ground Storage Tank Rehabilitation at Water Plant No. 1.

### **REVIEW OF ODYSSEY'S REVISED SCHEDULE OF HOURLY RATES**

Mr. Ring next reminded the Board Odyssey has not requested an increase in its hourly rates since becoming the District's Engineer in May 2018. In connection therewith, he presented to and reviewed with the Board Odyssey's revised Schedule of Hourly Rates, a copy of which is attached hereto as **EXHIBIT J**, pursuant to the Engineering Contract between the District and Odyssey, to be effective as of February 6, 2023, the beginning of Odyssey's March billing cycle for the District. Mr. Ring then responded to various questions from the Board. After discussion, the Board requested that Odyssey prepare an analysis of the proposed percentage increase over the services provided to the District in 2022 for review and discussion at the Board meeting later this month.

### **NOTICE OF APPLICATION OF UNDINE TEXAS LLC ("UNDINE") TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY ("CCN")**

The Board next considered the status of Undine's application to the PUC to amend its water CCN. With regard thereto, Mr. Rubinsky reviewed 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 (collectively, the "Contested Tracts"), effectively preventing the District from being able to annex and provide services to such properties. Mr. Rubinsky then reported that, on December 23, 2022, John Carlton of The Carlton Law Firm, P.L.L.C. was engaged by the District to represent the landowners and/or developers of the Contested Tracts. He then summarized the events which have transpired since Mr. Carlton's engagement and his recommendations regarding the matter. Mr. Rubinsky reported that he has advised the landowners and/or developers of the Contested Tracts of Mr. Carlton's assessment of the matter and, as noted previously in the meeting, requested additional deposits from each. Mr. Rubinsky also advised that the PUC extended the deadline for providing comments regarding whether a contested case hearing will be necessary from December 29, 2022 to January 12, 2023.

### **STATUS OF PROPOSED ANNEXATIONS**

The Board next considered the status of the proposed annexation and development of various tracts into the boundaries of the District. With regard thereto, Mr. Rubinsky summarized the status of each of the pending annexations for the Board.

### **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 requests for Utility Commitments. With regard to the Utility Commitment to MR Newton Spring, Ltd. ("MRNS") for 37 equivalent single-family residential connections in connection with the proposed development of a wholesale nursery on an approximate 5.72 acre tract located at 21119 Interstate 45 (the "Nursery Tract"), within the boundaries of the District, Mr. Ring reminded the Board that MRNS recently inquired whether the Board would approve the construction of a private water well on the Nursery Tract for irrigation purposes only. He reported that Odyssey has determined that irrigation wells for nurseries are exempt from certain requirements of the Houston Galveston Subsidence District and the North Harris County Regional Water Authority. Mr. Rubinsky then noted that, should the Board decide to allow MRNS to construct a private water well on its tract, MRNS will need to provide the Board with a formal request for a revised Utility Commitment. Following discussion, the Board indicated that it would allow MRNS to construct a private water well on the Nursery Tract for irrigation purposes only, subject to receipt of a formal request for a revised Utility Commitment from MRNS relative to same.

### **DEVELOPERS' REPORTS**

The Board next considered the Developers' Reports. With regard to the relocation of the Public Fire Water Line to serve Spring Pines Shopping Center (the "Relocation Project), Mr. Rubinsky advised the Board that SPH is working on acquiring signatures on the various new Water Line Easements and/or Water Meter Easements, which the Board accepted at its meeting held on December 14, 2022, subject to receipt of executed conveyance documents from the various Grantees.

Noting that the 15-foot by 25-foot Water Meter Easement required in connection with the

proposed development of Saxon Pond Flats at 2953 F.M. 2920 by AM 2920, LLC has been obtained by the District, the Board requested that the item relative to Saxon Pond Flats development be removed from its meeting agendas going forward.

### **INSURANCE PROPOSALS**

The Board next considered authorizing the solicitation of proposals for renewal of the District's insurance coverages. Mr. Rubinsky advised the Board that the District's current coverage is with Arthur J. Gallagher ("AJG"), and will expire on March 31, 2023. He inquired whether the Board wished to renew its coverage through AJG, or solicit proposals from additional agencies. After discussion on the matter, Director Shelnut moved that SPH be authorized to solicit a term renewal proposal from AJG for the Board's consideration at its meeting scheduled for February 8, 2023. Director Stephens seconded said motion, which unanimously carried.

### **ATTORNEY'S REPORT**

The Board next considered the Attorney's Report. In connection with the proposed construction of an emergency water interconnect between the District and Harris County Water Control and Improvement District No. 110 ("No. 110"), Mr. Rubinsky reported that the District is in receipt of the fully executed Emergency Water Supply Contract from No. 110.

With regard to the purchase of the existing emergency generator located at the District's Wastewater Treatment Plant, Mr. Rubinsky reported that the District is in receipt of the fully executed Bill of Sale Agreement from NRG Energy Services, LLC, and that NRG has confirmed receipt of the District's check for payment of same.

Mr. Rubinsky next advised the Board that Rathmann and Associates, L.P., the District's Financial Advisor, has provided SPH, on behalf of the District, with Rathmann's MSRB Rule G-10 Annual Disclosure, a copy of which is attached as **EXHIBIT K**.

### **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 Patridge moved that the meeting be adjourned. Director Shelnut seconded said motion, which unanimously carried.



  
Secretary, Board of Directors

## EXHIBITS

January 11, 2023

- Exhibit A: Bookkeeper's Report; Investment Report; Operating Budget – FYE December 31, 2023
- Exhibit B: Resolution Adopting List of Qualified Brokers
- Exhibit C: 5<sup>th</sup> Year Arbitrage Rebate Calculations Report for the District's Series 2017 Unlimited Tax Bonds
- Exhibit D: Tax Assessor-Collector's Report; Single Line Delinquent Tax Report
- Exhibit E: Delinquent Tax Report
- Exhibit F: Resolution Authorizing an Additional Penalty on Delinquent Personal Property Taxes
- Exhibit G: Resolution Concerning Exemptions from Taxation
- Exhibit H: Operator's Report
- Exhibit I: Engineer's Report
- Exhibit J: Odyssey's Revised Schedule of Hourly Rates
- Exhibit K: Rathmann – MSRB Rule G-10 Annual Disclosure