

**SPRING CREEK UTILITY DISTRICT**  
**Minutes of Meeting of Board of Directors**  
**August 21, 2023**

The Board of Directors (the “Board”) of Spring Creek Utility District (the “District”) held its regular monthly meeting in accordance with the duly posted notice of meeting and the Texas Open Meetings Act. The roll was called of the duly constituted officers and members of said Board, as follows:

Claude Humbert	-	President
Mark Fusca	-	Vice President
Frederick Sunderman	-	Secretary
Leslie Gourley	-	Assistant Secretary
Melvin Willcockson	-	Director

All of said members were present, thus constituting a quorum.

Also present were Amber Hurd, Mason Muller and Rachel Broom\* of Cobb, Fendley & Associates Inc. (“C-F”); Monica Pena, who arrived later in the meeting, of Utility Tax Services, LLC (“Utility Tax”); John Montgomery of Municipal Operations & Consulting, Inc. (“MOC”); Jonathan Roach, Ray Arce, Jessica Gentry, and Jennifer Rodriguez of Roach & Associates, PLLC (“RAPLLC”); Brian Desilets of Clarity Consulting Corporation (“Clarity”); Aric Braddock of ASB Services, Inc. (“ASB”); Simon VanDyk and Calep Estes of Touchstone District Services (“Touchstone”); Joseph Ellis of McCall Gibson Swedlund Barfoot, PLLC (“MGSB”); Matthew Malmquist of Riley Fuzzel Holdings (“RFH”); Aaron Alford of Woodmere Development; Paul Cote of Montgomery County Municipal Utility District No. 89 (“MC89”), who arrived later in the meeting; Susanne McLeod,\* of Volare Partners, LP, the Fieldhouse developer (“Fieldhouse”); Lindsey Adams\* of BCS Capital Group (“BCS”); Tim Crawford and Scott Greer of HMF Americana, LLC (“HMF”); and Troy Bains from The Cottage Green. [\* Remote Attendees]

Call to Order: President Humbert called the meeting to order.

**PUBLIC COMMENTS**

There were no public comments.

**CONSENT AGENDA: MINUTES**

The Board considered for approval the minutes for the June 19, 2023, and July 17, 2023, regular meetings and the June 27, 2023, special meeting. After some discussion, Director Willcockson motioned to approve the June 19, 2023, and July 17, 2023, regular meeting minutes and the June 27, 2023, special meeting minutes. Director Gourley seconded the motion, which passed unanimously.

**CONSENT AGENDA: CONSULTANT REPORTS**

Director Gourley made a motion to approve the following consultant reports: (1) Security Report, attached hereto as Exhibit "A"; (2) Tax Assessor's Report, attached hereto as Exhibit "B"; and (3) Inspector's Report, attached hereto as Exhibit "C." Director Willcockson seconded the motion, which passed unanimously.

Director Gourley then inquired about certain rate increases when residents move out and asked Mr. Montgomery to investigate further.

### GARBAGE COLLECTION REPORT

There was nothing new to report.

### BOOKKEEPER'S REPORT

Mr. Desilets presented the Bookkeeper's Report; a copy is attached as Exhibit "D." He then explained that Clarity had not received access to TexPool yet, so they set up the bond payments to be wired to the paying agent and would then move the funds to Texas Class. Then Mr. Desilets advised that the District had received all monies owed by Montgomery County Municipal Utility District Nos. 88 ("MC88") and 89 ("MC89"), totaling \$630,000, and he is working to catch up on the joint billing.

Next, Director Gourley inquired if Clarity had received additional information from Montgomery County Precinct 3 Constable's Office ("MCC3") regarding the purchase of vehicles. Mr. Roach confirmed that a purchase request was made, but he does not believe they have received the vehicles yet. He also noted that only two vehicle options were available, which did not include the Tahoe's that MCC3 initially requested, but that MCC3 was acquiring a comparable vehicle type.

Then, Director Gourley noted he is having issues with Dropbox and asked RAPLLC for assistance.

After some discussion, Director Gourley motioned to approve the Bookkeeper's Report. Director Fusca seconded the motion, which passed unanimously.

### ANNUAL AUDIT REPORT FOR FISCAL YEAR END ("FYE") APRIL 30, 2023

Mr. Ellis presented to the Board the Annual Audit for FYE 2023. Director Sunderman inquired about the bond debt, unissued bonds, appraised value, and outstanding/proposed developers' costs. The Board then had a lengthy discussion about the District's debt. After further discussion, Director Gourley motioned to approve the Annual Audit for FYE 2023, subject to incorporation of final comments from the District's consultants. Director Fusca seconded the motion, which passed unanimously.

Ms. Pena entered the meeting during the discussion.

Mr. Ellis exited the meeting, and Director Sunderman temporarily exited the meeting.

### FINANCIAL ADVISOR'S 2023 TAX RATE RECOMMENDATION

Director Humbert noted that the tax rate recommendation was not yet available. Mr. Roach noted that he would inquire with the District's Financial Advisor for next month's meeting and also

ask about potential options for early debt defeasance, as there appears to be a number of newly callable bonds as of October 1, 2023.

Director Sunderman re-entered the meeting during the discussion, and Mr. Desilets exited the meeting.

### DISTRICT ADMINISTRATION BUILDING OPTIONS, INCLUDING PRE-QUALIFICATION PACKAGES

Mr. Mueller introduced Ms. Broom with C-F, noting she handles Requests for Qualifications (“RFQ”) for certain projects. Then, Ms. Broom discussed rankings for potential design-build candidates for the proposed District Administration Building (“Admin. Bldg.”) and pointed out that the rankings are based on the responses and references to the RFQs, with the top-ranked candidate being Grossman Design Build LLC (“Grossman”), a company C-F has had experience working with in the past.

Director Sunderman inquired if the candidates had local experience and had experience working with buildings similar in size to the planned Admin Bldg. Ms. Broom confirmed that the candidates had worked on projects within 100 miles of the Admin. Bldg. site and that Grossman had the most experience with buildings of that size. Further discussion ensued about possible interviews and touring the candidates’ work and associated costs. Director Gourley pointed out that a design with a more complex architectural look will likely cost more than the currently projected cost estimate. Ms. Broom recommended the Board interview the top two candidates or request additional information through email before holding interviews with other candidates. Director Gourley noted he would like to move forward with Ms. Broom’s recommendation of the top two candidates. Director Willcockson motioned to defer this discussion until the next special meeting. Director Gourley agreed and seconded the motion, which passed unanimously.

Ms. Adams and Mr. Cote entered the meeting during the discussion, and Ms. Broom exited the meeting after the discussion.

### FOREST VILLAGE DRAINAGE MATTERS, INCLUDING RESIDENT ISSUES AND PENDING LITIGATION

Mr. Mueller noted he had nothing new to report, and Director Humbert asked about current drainage into the Forest Village ditch that has been the subject of recent discussions. Mr. Roach confirmed that historical documentation grants the District an unconditional right to allow flow into and through the ditch, and currently, the Homeowners Association owns fee title to the land. Further discussion ensued regarding the District’s ability to drain into the ditch, and action was deferred until later in the meeting.

Mr. Alford temporarily exited the meeting during the discussion.

### ENGINEER’S REPORT

Mr. Mueller presented the Engineer’s Report, attached hereto as **Exhibit “E.”** providing the following updates:

- (1) General District Engineering: (a) Water Capacity Analysis, noting C-F has submitted the north pressure plane Alternative Capacity Request (“ACR”) renewal to TCEQ; (b) Fox Run

Drainage Analysis, noting C-F has coordinated with Montgomery County Drainage District No. 6 (“MCDD6”) on potential mitigation options, and MCDD6 had available regional detention for purchase; Mr. Mueller further noted that C-F sent the completed drainage study to MCDD6 for review; (c) Wastewater Treatment Plant (“WWTP”) Discharge Permit Renewal, noting the Notice of Application and Preliminary Decision (“NAPD”) notices were published, proofs of publication were provided to the TCEQ, and they are waiting on receipt of the final permit from the TCEQ; (d) Reclaimed Water System (‘purple pipe’), noting C-F is continuing to work on a feasibility analysis of a proposed reclaimed water system to be completed by the next Board meeting. Mr. Cote noted that MC89 performed a feasibility study a few years ago, and based on its results, he did not recommend a purple pipe project; he also suggested that the District, MC88, and MC89 collaborate at the next joint meeting on the subject along with a review of the various Drought Contingency Plans (“DCP”); and (e) Capital Improvement Plan (“CIP”), noting the updated Water CIP and Storm Sewer CIP were presented for Board approval (and would be discussed later in the meeting) and an updated Sanitary Sewer CIP which is still open for discussion.

Director Sunderman inquired about MCDD6’s meeting dates, and Ms. Hurd noted she would forward MCDD6’s agendas to the Board when she receives them going forward.

(2) District Projects (*Design*): (a) Fieldhouse Utility Extension, noting C-F is addressing the Texas Department of Transportation’s (“TxDOT”) comments on the plans for the public waterline and sanitary sewer force main extension to serve the Fieldhouse development. Mr. Mueller further noted that C-F received seven (7) bids and recommended awarding the contract to Bull-G Construction LLC (“BGC”); (2) Water Plant No. 2 Booster Pump Addition, noting C-F is proceeding with the design of the booster pump addition; and (3) Water Plant No. 3, noting C-F is proceeding with the design of the proposed Water Plant No. 3.

After further discussion, Director Fusca made a motion, seconded by Director Gourley, to award the contract for the waterline and force main extension to serve Fieldhouse to BGC for \$91,895. The motion passed unanimously.

Messrs. Cote and Bains exited the meeting.

(3) District Projects (*Construction*): (a) Fox Run Water Line Rehabilitation Phase 2, noting SKE Construction, LLC (“SKE”) has continued working on the 8-inch pipe bursting along Binefield and Raestone Streets, confirming that Sedgfield and Waltham Streets are next on the schedule. Mr. Mueller then presented Pay Application No. 2 for \$619,141.13, payable to SKE. Finally, he noted Montgomery County has still not yet approved the plans and no responses have been received from A&S with prior comments they were working on with the County. Director Sunderman then motioned to approve Pay Application No. 2 for \$619,141.13, payable to SKE. Director Fusca seconded the motion, which passed unanimously.

(4) Development Projects: (a) Riley Fuzzel, Mr. Malmquist noted an aerial easement is needed to extend the powerline across the ditch between the District and the 2121 Riley Fuzzel development. Director Humbert inquired about the trees, and Mr. Malmquist stated that the easement would be in an area without trees and advised that CenterPoint Energy would provide the description for and exhibit for the metes and bounds. Upon further discussion, Director Gourley motioned, seconded by Director Fusca, to authorize CenterPoint Energy to move forward with the design subject to subsequent review by the Board and preparation of the easement instrument by RAPLLC. The motion passed unanimously. Then, Mr. Malmquist noted that the secondary channel was significantly below capacity and could potentially flood Fox Run and surrounding properties.

He said they would build a retaining wall above their side of the bank to increase the channel's capacity and suggested opening discussions with Fox Run to build a retaining wall on their side. Further discussion ensued, and C-F noted they would get a copy of plans for the possible construction of a retaining wall on the Fox Run side of the channel if needed. (b) BCS Capital Group, LLC - Locke Tract, noting that C-F will begin design once payment from the developer has been received. Mr. Roach noted BCS had several issues regarding property acquisition and obtaining approvals from the County. Ms. Adams stated they are still working to resolve these issues with the County and will hopefully have more proposals to present at the next meeting. Ms. Adams then presented the designs for a restaurant village for the Board's review. (c) Fieldhouse Project - 2007 Riley Fuzzel Road, whereby C-F had provided no objection to the proposed Fieldhouse development plans.

Next, Mr. Crawford discussed his annexation request for the Cottage Green project, stating they had submitted \$7,500 for the District to prepare the required feasibility study. He then noted that they added four (4) additional acres to the front of their land, so the project now contains approximately 60 acres. Mr. Crawford inquired if the Board would approve C-F proceeding with the feasibility study. Director Fusca stated that he saw the recently completed similar project by the same developer in Conroe, noting it was nice and luxurious. He also expressed his opinion that the proposed development in the District is advantageous because it adds a senior living option to the community. The Board and Mr. Crawford engaged in additional questions and answers regarding the Cottage Green design plans, and Mr. Crawford advised that current plans include one-story buildings around the edges of the property with a two-story component towards Riley Fuzzel and the senior living towards the rear with three-story buildings. Mr. Crawford further explained that the extra four (4) acres acquired will be for mixed-use. Finally, he stated that the development is planned to contain about 30,000 square feet of commercial space and approximately 700 homes. Further discussion ensued regarding capacity needed, feasibility studies, etc., and Director Willcockson inquired about parking per unit. Mr. Crawford noted there are approximately two spaces planned per unit with a mixture of surface parking, carports, garages, and plenty of space for visitor parking. After further discussion, Director Sunderman motioned to approve the feasibility study. Director Gourley seconded the motion, which passed unanimously.

Director Sunderman made a motion, seconded by Director Gourley, to approve the Engineer's Report, except the CIP, which is still under review. The motion passed unanimously.

Ms. McLeod exited the meeting during the discussion. Messrs. Crawford, Greer, and Malmquist exited the meeting after the discussion, and Mr. Alford re-entered the meeting.

**DEVELOPERS' REPORT(S), INCLUDING ANNEXATION/OUT-OF-DISTRICT SERVICE/UTILITY DEVELOPMENT AGREEMENTS, CAPACITY/FEASIBILITY REQUESTS, CONVEYANCES, AND PENDING DEVELOPER REIMBURSABLE PROJECTS, AND CONVEYANCES**

Mr. Alford gave a brief update and thanked the Board for its recent developer reimbursement. The Board discussed the pre-purchase inspection, which had been completed on the District's side, and approval from the TCEQ, which is still pending for the remaining 30% reimbursement to be released.

**FOX SPRINGS PARK MATTERS, INCLUDING POSSIBLE NAME CHANGE**

The Board discussed possible new park name options to more intuitively connect Fox Springs Park to the District. After some discussion, Director Sunderman motioned to change the park's name to "Spring Creek District Park." Director Fusca seconded the motion, which passed unanimously. The Board asked its consultants to take appropriate steps to update the name accordingly.

### **CAPITAL IMPROVEMENT PLAN (CIP) PROJECT REVIEW**

Director Humbert reviewed the Water and Storm Water CIP updates, including inflation and drainage numbers. Mr. Mueller noted the numbers are high but reflect the projected amounts for the anticipated projects. Next, a lengthy discussion ensued regarding CIP numbers, bonds, budgets, and water supply issues. Director Humbert noted that for budgeting purposes, a discussion should be held next month regarding acquiring new bonds and allocating funds for the projects. Director Fusca noted his concern regarding tax rate increases to fund projects and the missed opportunity for past additional bond issues when interest rates were significantly lower. Next, Director Sunderman suggested that a purple pipe project should be required for new developers. Ms. Hurd pointed out that it might not be possible because different systems are needed for irrigation and other purposes. The Board agreed that prioritizing the installation of purple pipes early would be beneficial in the long run. Director Willcockson discussed the status of a proposed third water well. Director Fusca inquired about the CIP's phases, timelines, and how long the new water plant would take to begin operating. Ms. Hurd noted it will take approximately a year and a half. Then Mr. Muller noted that none of the CIP budget other than engineering costs would be used during the current District fiscal year. He also noted that the estimates are not exact, and he cannot guarantee the timelines will be as projected. Director Sunderman inquired about connecting the purple pipe prior to the District's receipt of any surface water and the ility of withdrawing from or at least reducing reliance on the San Jacinto River Authority ("SJRA") surface water. No action was required by the Board at this time. The Board agreed to include an initial sum of \$3,500,000 for the Reclaimed Water Project for this year's Tax Rate Analysis.

### **FUTURE REQUIREMENTS FOR LEAD AND COPPER RULES**

There was nothing new to report.

### **PREVENTATIVE MAINTENANCE PROGRAM**

There was nothing new to report.

### **FIFTH AMENDMENT TO OPERATOR CONTRACT AND POSSIBLE RATE ORDER AMENDMENTS**

Mr. Montgomery presented the Third Amendment of the MOC agreement for the Stormwater Lift Station, Retention, Drainage, and Collection System and the Fifth Amendment of the MOC service agreement. Director Gourley noted that the truck fees on the Fifth Amendment should be based on mileage, not by the hour, and that the truck costs are too high. Mr. Montgomery explained the costs and noted that the proposed truck costs are average relative to the industry standard, to which Mr. Roach concurred based on a quick review of other operating companies' rates. After a lengthy discussion, Mr. Montgomery advised that he would look into lowering the truck costs at the Board's request.

Mr. Montgomery temporarily exited the meeting.

## JOINT FACILITIES ADVISORY COMMITTEE (“JFAC”) MATTERS, INCLUDING:

Director Humbert noted the next JFAC meeting will be held on August 29, 2023, at 5:00 p.m. The Board discussed agenda items for the meeting.

Mr. Montgomery then re-entered the meeting.

## FIFTH AMENDMENT TO OPERATOR CONTRACT AND POSSIBLE RATE ORDER AMENDMENTS (CONTINUED)

Mr. Montgomery confirmed that MOC would be willing to compromise regarding their hourly costs for the trucks. Director Gourley noted he was satisfied with keeping the truck cost at \$20 an hour per the current contract. After no further discussion, Director Sunderman motioned to approve the Third and Fifth Amendment, including the discussed changes. Director Fusca seconded the motion, which passed unanimously.

Next, the Board discussed the planning for National Night Out (“NNO”), including food options, activities, costs, budget, etc.

## OPERATOR’S REPORT

Director Gourley inquired about various collectible and uncollectible customer accounts and the corresponding water and tax delinquency issues. Mr. Montgomery noted the cutoff list as presented is up to date for the water delinquencies and is being finalized with MOC, RAPLLC, and Utility Tax for the tax delinquency terminations authorized by the Board.

Mr. Montgomery then presented the Operator’s Report, attached hereto as Exhibit “F,” noting water usage has been higher, but the District has not yet initiated voluntary stage one of the DCP. After some discussion, Director Fusca motioned, seconded by Director Gourley, to approve the Operator’s Report. The motion passed unanimously.

## DIRECTOR’S REPORT

Director Humbert reviewed notes from the LSGCD meeting on August 8, 2023, and advised that LSGCD did not increase their water rates next year. Mr. Montgomery noted he has not heard back from LSGCD regarding the District’s proposal to assist with subsidence study issues. Director Humbert noted that at the recent meeting, an LSGCD representative mentioned wanting something closer to Spring Creek and that the District’s proposal was not discussed. He suggested inviting LSGCD to a future Board meeting. Director Humbert next discussed the recent SJRA meeting on July 24, 2023, during which the results of the study of the water main line on Research Forest in the vicinity of the fault line were presented. The consultant concluded that the results of his analysis were satisfactory, and no action was necessary outside of periodic inspection.

Director Sunderman then advised that he attended the recent Region 6 Flood Planning Group (“Region 6”) meeting, where they reviewed the final proposal for flooding appropriations, which will be a yearly event. He then stated the District should look into working with other districts to participate in long-term flood control issues and noted the large-scale collaboration of the “Ike Dike.”

## REVIEW INSURANCE PROPOSALS (EXPIRES SEPTEMBER 30, 2023)

Mr. Roach informed the Board that the District’s insurance policies with Arthur J. Gallagher, Inc. (“AJG”) expire on September 30, 2023. He noted that RAPLLC received the

renewal proposal, and the policies appear to align with the District's expiring policies and the proposed rates align with other industry carriers' rates.

After some discussion, Director Humbert motioned to approve AJG's 2023 insurance proposal, as presented. Director Gourley seconded the motion, which passed unanimously.

### **2023 LEGISLATIVE UPDATES**

Mr. Roach discussed House Bill No. 2816 ("HB2816") and House Bill No. 2815 ("HB2815") passed during the 2023 Texas regular legislative session relating to Notice to Purchasers ("NTP"). He advised that the new requirements include minor changes to the NTP form and require that NTPs be made available on a District-managed or alternate website. After discussion with Mr. Roach and Director Humbert regarding various real estate and water district industry issues related to the NTPs and new laws, Director Gourley made a motion, seconded by Director Fusca, to approve the amended NTP and authorize posting on the District's website prior to September 1, 2023. The motion passed unanimously.

### **COMMUNICATIONS REPORT, INCLUDING WATER CONSERVATION EDUCATION**

Mr. VanDyk presented the Communications Report, attached hereto as **Exhibit "G,"** noting the analytics showed 4,000 hits on the District's website, with most viewing the DCP. He also noted that messages were sent to residents regarding the status of utility and street construction projects. Next, Mr. VanDyk offered to provide a design to advertise the new park name and, additionally, offered to help with the communications side of the NNO planning. Director Humbert noted he did not receive a direct message regarding the DCP notice, and Mr. VanDyk confirmed he would review the matter.

Next, Director Fusca advised of a recent school board meeting where the Montgomery Central Appraisal District ("MCAD") management was drawn into and it was discussed that the new chief appraiser is looking to increase the MCAD budget by \$15 million. Director Fusca noted that the issue has led to numerous residents filing lawsuits. A lengthy discussion then ensued regarding the specifics of MCAD board members, their appointment, and voting by the taxing jurisdictions within MCAD. The Board noted no action was required at this time.

Mr. Roach introduced Ms. Rodriguez as a new legal assistant for RAPLLC.

Ms. Hurd and Messrs. Mueller, Braddock, VanDyk, and Estes exited the meeting.

### **\*EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE, SECTION 551.071, 551.074, ET. SEQ.**

The Board entered into executive session at 9:30 p.m. with the Operator and legal counsel.

Mr. Montgomery exited the meeting during the discussion.

### **RECONVENE IN OPEN SESSION AND AUTHORIZE ANY ACTION RESULTING FROM EXECUTIVE SESSION**

The Board reconvened in open session at 9:51 p.m.



Director Fusca made a motion to terminate water on the delinquent accounts presented in the Operator's Report. Director Gourley seconded the motion, which passed unanimously.

**DISCUSS PENDING BUSINESS AND MATTERS FOR FUTURE AGENDAS (AUGUST 29<sup>TH</sup> - JFAC; SEPTEMBER 18<sup>TH</sup>)**

The Board concurred to reconvene for the JFAC meeting scheduled on August 29, 2023, at 5:00 p.m. and their next regular meeting on September 18, 2023, at 5:00 p.m. There being no further business to discuss, Director Fusca motioned to adjourn the meeting. Director Gourley seconded the motion, which passed unanimously.

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Passed and approved this 16<sup>th</sup> day of October 2023.

/s/ Frederick Sunderman  
Secretary, Board of Directors

[SEAL]



### LIST OF EXHIBITS

- Exhibit A - Security Report
- Exhibit B - Tax Assessor's Report
- Exhibit C - Inspector's Report
- Exhibit D - Bookkeeper's Report
- Exhibit E - Engineer's Report
- Exhibit F - Operator's Report
- Exhibit G - Communications Report