

**MINUTES OF THE JANUARY 16, 2023 MEETING OF
HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 46**

A meeting was duly called of **HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 46**, which was held on January 16, 2023, at the Atascocita Fire Department Headquarters Building, located at 18425 Timber Forest Drive, Humble, Texas 77346.

The Meeting was called to order at 7:00 p.m., by **TOM TRUVER**, Board President and Chairman of the meeting. Other Commissioners present include **BUDDY RICE**, **RON CLARKE**, **JOHN BOLLUM** and **JAMES CONE**. Chief of the Department Mike Mulligan, Assistant Chief of Operations Terry Wygal, Director of ITC & Operations Support Mike Wassell, Director of Human Resources and Finance Mary Anne Sokol, District Counsel, Mr. Ira Coveler of and Melissa Wiggins of Coveler & Peeler, P.C., Ricardo Martinez of Martinez Architects, Alberta Balderas of ESD Tax Management Services, Mark Christensen of Christensen Building Group, and members of the Fire Department and public were also present.

The Board opened the floor to receive public comment though none was forthcoming.

The Board next moved to agenda item 4, to receive the District's sales tax report from Alberta Balderas. Ms. Balderas provided reports from both November and December 2022 due to delays from the Comptroller's office. Total allocations for December 2022 totaled \$390,296.89, providing a year-end total of \$5,199,730.70. Three (3) entities which had previously failed to allocate were noted as having been recovered at this time, and one (1) entity had been removed entirely after ceasing to operate in the District. Five (5) entities posted no allocation for the month of December and are being investigated along with one (1) entity who posted a questionably low allocation. Ms. Balderas also reported that the allocation for January 2023 totaled \$508,778.91. After review, Mr. **RICE** made a Motion, seconded by Mr. **CONE** to accept the sales tax report as presented. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next discussed matters related to the Station 29 construction project and approval of pay applications presented by Martinez Architects, and to discuss the District's construction contract with Christensen Building Group. Ricardo Martinez presented an update on the project and made special note of the following matters:

1. Station 39 – Scope and programming requirements are being developed for expansion, and floor plans are being revised based upon Department comments. Elevation concepts are being developed for review.
2. Training – Layout and design has begun for the training feasibility study and site plans are being revised based upon Department comments. Martinez Architects is also coordinating efforts with the City of Humble and Humble ISD regarding a water line, and off-site detention.
3. Fleet Maintenance – Site detention has been allocated into the Humble ISD detention system, and efforts are ongoing to access the City of Humble water supply. The storm sewer outfall pipe is 90% installed though conflicts still exist regarding interference with the City of Humble waterline and efforts to resolve the issue are

ongoing. Martinez Architects is coordinating with the fencing contractor to complete site fencing. Christensen Builders will soon install new panels and modify the parking lot canopy to rectify ongoing leaks caused by improper initial installation.

4. Station 29 – Options are being reviewed to relocate the Station 29 building sign. Stud walls have been primed, and brick and stonework as well as metal duct work and duct insulation have been completed. Domestic water lines and sanitary sewer lines have been installed and are being insulated. Window framing and glazing work have also been completed. Site grading and paving remain to be completed.

Two (2) pay applications were then presented to the Board. Pay application No. 15, previously submitted in December was now certified and approved for payment in the amount of \$164,862.50. Pay application No. 16 was also submitted but was not certified for payment due to ongoing project concerns being addressed in this meeting with Mr. Christensen and a mathematical errors in the application.

Mr. Martinez noted several areas of concern regarding Station 29 including the lack of response to issues which were marked as complete, but proved deficient under examination based on site inspections from Walker Construction on December 6th, January 4th, and January 12th. Reports were submitted to Christensen, after which the project's general contractor claimed issues would be addressed for an additional cost, despite being included in the original project specifications provided by Martinez Architects.

Mr. Martinez next specifically noted flaws in the metal trim work around window openings, which created a gutter effect, pulling water inside rather than sheeting water away from the building. Other concerns were raised regarding faulty waterproofing which remained unfinished before the installation of frames and windows, creating another opportunity for leaks and showing a lack of concern for documented issues in the construction process. Mr. Martinez also stated a significant decrease in the provision of on-site photographs by the site manager and crew during the construction process, which had previously been readily available.

Mr. Christensen explained requests for additional payments occur when details or scope of a project were not present in the original documents. After continued discussion regarding the company's standard procedures and responsibilities of building to specifications, he further stated his intention to attend every upcoming construction committee meeting for the District, and to address the issues brought by Mr. Martinez and the Board. Mr. Martinez, along with Mr. Coveler and members of the Board, continued to express concerns of dependability and honesty in the process by the existing project management team after noting contradictions between verbal assurances and actual progress on the project.

Mr. Martinez next specifically noted wall stabilizers for the Station 29 which project management claimed had been properly installed to specifications, which were proven nonexistent by Martinez Architects' team upon inspection. Only after said inspection occurred did representatives from Christensen admit the lack of stabilizers.

Mr. Christensen stated his organization's perspective that project specifications had been unclear in many instances, leading to a breakdown in communication and confusion in the requirements and expectations of the construction process.

Regarding the canopy leak at the District's fleet maintenance lot, Mr. Christensen stated that the issue had been considered by other members of the team and after his intervention, a solution had been found. He further noted issues on the District's part which had, to his knowledge, not been addressed. "Tensions are high and have been since the beginning for many reasons. At this point in time the best I can do is to commit to go through these reports and give a written report back to Martinez on what has or has not been done, and I'll come to the next meeting and every meeting I can until the end of this project. We don't intend to do the wrong thing. I can intervene and put eyes on everything and I'm happy to commit to that."

President **TRUVER** then asked if work was ongoing after receipt of a certified letter stating an intent to cease construction by Christensen Builders. Mr. Christensen assured the Board that construction would continue based on the approval of pay applications. He stated the practice of withholding entire payments was not standard procedure, and the reasons given for withholding those payments should be addressed by subtracting "appropriate values" from the payment total, rather than withholding the total payment, as noted in the project's contract. The letter received by President **TRUVER** was submitted to encourage better communication and an agreement of terms moving forward in the process between the Board and Christensen.

Mr. Martinez argued that clear terms of certifications for pay applications exist in the construction contract agreed upon by both parties, and that Christensen's representatives had claimed they had no power to produce items necessary for certification of payments by Martinez Architects when asked to do so, in direct contradiction with Mr. Christensen's current claims.

Mr. Christensen again stated Martinez Architects' expectations were impractical in terms of processing project payments, and explained investigations were ongoing regarding problems of subcontractors failing to pay their suppliers. He further argued agreements had been made for terms of payment that were being disregarded by Martinez and the Board, contributing to the communication and project breakdown. When advised of concerns regarding the use of tax dollars by President **TRUVER**, Mr. Christensen stated, "if that's a problem, then hold back the dollars you think are fair while we go get evidence of your issue. It's not industry standard to withhold the whole pay app."

At the time Mr. **BOLLOM** restated the Board's issues with an experienced lack of honesty and transparency on the part of the construction team, again citing the problem of wall stabilizers and misleading information provided by the team leader. Mr. Christensen promised to investigate the matter and handle it accordingly as a personal question of integrity, stating no excuses would be made for outright lies being offered to the Board.

Regarding the issue specifically, Mr. Christensen stated after consulting with two (2) outside structural engineers, the stabilizers were not required by industry standards and lack of stabilizers did not pose a structural threat to the build. After further dissent by Board members, he stated that if an engineer certified the bracing was necessary, the work would be fixed accordingly, but that he disagreed the bracing was necessary, and that the issue had been unclear in the original specifications. Chief Mulligan then pointed out the presence of the request in the original specifications regardless of code requirements, and stated there was a value owed to the District based on Christensen's failure to follow through with those plans.

Mr. Christensen responded with a suggestion not to alter the wall if the stabilizers were unnecessary, regardless of the specifications. He stated that “if you think there’s a value owed, then we can have that discussion. I feel many of our disputes are based on the design documents. Martinez feels they’re all there and fully interpreted. We disagree.”

Chief Mulligan then asked if requests for information (“RFI”) were in place regarding specific issues in the project and when told “no”, again stated the appearance of inequity regarding responsibility expected of the District versus Christensen Builders. Mr. **CONE**, Mr. **RICE**, and Mr. **BOLLOM** agreed, questioning Mr. Christensen’s justification for the discrepancies in production. Mr. Christensen noted failures by both parties, and restated his commitment to attend upcoming construction meetings and personally investigate the Board’s concerns in the interest of solving those issues. He closed by asking the Board to reconsider its approach to withholding payment applications for the project.

At this time, President **TRUVER** thanked Mr. Christensen for his participation in the meeting, and requested he remain until after Closed Session at which time the Board would move to approve or deny the pay applications. The Board next adjourned to Closed Session at 8 p.m. pursuant to Government Code §551.071 to consult with legal counsel. The Board returned to Open Session at 8:10 p.m.

At this time Mr. Martinez stated issues with cell errors in Pay App 16 could be rectified, but concerns remained regarding construction work which was unfinished, but stated as “complete” by Christensen Builders. For example, weep holes which were stated as existing in the Station 29 masonry were found to be absent upon inspection, and were ultimately “installed” via drilling into the completed wall only after further attention was called to the matter, thus presenting concerns of a compromised structure.

Mr. Christensen stated that he would look into the specific issues mentioned in the meeting, and advised the Board that an appropriate value could be withheld from pay applications if or when questions of completion were noted by the architect, but that withholding entire payments was not standard procedure and impacted the company’s ability to pay its subcontractors, leading to the possibility of halting work altogether. Mr. Coveler then recommended to the Board that it had the option to allow the Construction Committee the power to approve an amended pay application up to a maximum amount and to allow for sums to be withheld per the committees discretion.

After review, Mr. **CLARKE** made a Motion, seconded by Mr. **CONE** to approve payment of application No. 15, and to grant the Construction Committee power to approve amended pay application No. 16. in an amount not to exceed \$162,291.74. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next received a report regarding District finances from Mary Anne Sokol who advised the Board that the District’s budgeted expenses had exceeded total revenues by approximately \$562,100.31. She further stated efforts were ongoing to clarify line items with the District’s auditor to reconcile certain report information. She next reports that the District bank balances totaled \$14,052,280.73 as of December 31, 2022. Additionally, Ms. Sokol informed the Board that total income for the year, including loan proceeds related to construction projects, totaled \$19,107,287.59 while total expenses for 2022 totaled \$19,669,387.90. After review,

Mr. **CONE** made a Motion, seconded by Mr. **RICE** to accept the financial report as presented. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next discussed payment of District bills. Ms. Sokol advised the Board that three (3) loan payments had been wired, with the next payment expected in April, and the semi-annual loan payment due in July. After review, Mr. **CLARKE** made a Motion, seconded by Mr. **CONE** to approve payment of the District's bills. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next discussed the annual review of the District's Investment Policy. Mr. Coveler advised the Board that no substantive changes had been made to the previously adopted Investment Policy. Mr. Coveler also explained that the District Board was required by law to review the District's investment policy annually. He went onto explain that the District's Investment Policy had been substantially revised and reviewed in 2020 and that no additional changes or modifications were being recommended at this time. After review, Mr. **RICE** made a Motion, seconded by Mr. **BOLLOM** to renew the District's Investment Policy as presented. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next reviewed the Minutes of the prior month's meeting. After review, Mr. **BOLLOM** made a Motion, seconded by Mr. **CLARKE** to approve the December 19, 2022 minutes. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next reviewed Department reports submitted by Chief Mike Mulligan. After review, Mr. **RICE** made a Motion, seconded by Mr. **CONE** to approve the Department report. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The Board next discussed thirty (30) day advance request(s) for necessary purchases related to the provision of emergency services in accordance with the current District Budget. Mr. Wassell advised the Board that notification had been received regarding price increases related to outfitting costs for Department apparatus through FMI and would exceed the expected budgetary allotment. No firm cost was presented at this time, and no further action was taken by the Board.

The Board next reviewed the need for the sale or disposal of obsolete surplus and/or salvage property. Mr. Wassell stated a list was being compiled and would be presented at a later date. No further action was taken by the Board at this time.

The Board next reviewed necessary repairs of equipment apparatus and facilities in service to the District. Mr. Wassell reported that no action was necessary as no repairs were necessary beyond the scope of pre-approved budget amounts. No further action was taken by the Board at this time.

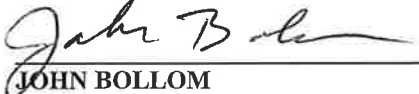
The Board did not exercise the option to re-enter Closed Session at this time.

The Board next reviewed matters discussed earlier during closed session, though no further action was taken by the Board.

The Board next discussed the regular District meeting set for February 20, 2023. The scheduled date for the upcoming meeting was confirmed and no further action was taken by the Board.

There being no further business brought before the Board, Mr. **CONE** made a Motion, seconded by Mr. **CLARKE** to adjourn the meeting at 8:27 P.M. Thereafter, President **TRUVER** called for a vote and the Motion passed 5-0.

The foregoing minutes were passed and approved by the Board of Commissioners on February 20, 2023.



JOHN BOLLOM
District Secretary of the Board