

## **SPRING CREEK FOREST PUBLIC UTILITY DISTRICT**

### **Order Establishing Code of Ethics, Policies and Procedures for District Financial Affairs and Management**

The Board of Directors (“Board”) of Spring Creek Forest Public Utility District (“District”) met at 1100 Louisiana St, Ste 400, Houston, Texas 77002-5211 on July 8, 2008, with a quorum of directors present, as follows:

R. W. (Rick) Kehlenbach, President  
Janet E. Frakes, Secretary  
Kenneth W. Heussner, Asst. Secretary

and the following absent:

Dave Simac, Vice President none  
Derek D. Drawhorn, Treasurer

when the following business was transacted:

The Order set out below (“Order”) was introduced for consideration of the Board. It was duly moved and seconded that said Order be adopted; and, after due discussion, said motion carried by the following vote:

Ayes: All directors present.

Noes: None

The Order thus adopted is as follows:

Any order and amendments thereto, heretofore adopted by the Board of Directors, providing for establishing a code of ethics, policies and procedures for District financial affairs and management, is hereby revoked upon the effective date of this Order.

The Order hereafter set forth shall become effective on July 8, 2008.

ORDER ESTABLISHING CODE OF ETHICS, POLICIES AND PROCEDURES FOR  
DISTRICT FINANCIAL AFFAIRS AND MANAGEMENT

ARTICLE I

CODE OF ETHICS

Section 1.1 Policy Statement

(a) It is the policy of the District that no officer, director or employee of the District shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties for the District in the public interest.

(b) To implement this policy and to strengthen the faith and confidence of the residents and property owners of the District in the District's officials and employees, the Board of the District has adopted the following standards of conduct to be observed by all District Officials in the performance of their official duties.

Section 1.2 Definitions

The following terms and phrases shall have the following meaning:

The term "District" shall mean and refer to Spring Creek Forest Public Utility District.

The term "Board" shall mean and refer to the District's governing body.

The term "Director" shall mean a person elected or appointed to serve on the District's Board of Directors.

The term "District Officials" shall mean District Directors, officers, employees, and persons and business entities engaged in handling investments for the District as representatives of the District.

The term "employee" shall mean any person employed by the District, but it does not include independent contractors or professionals hired by the District as outside consultants.

The term "substantial interest" shall mean that as defined by Local Government Code Chapter 171 which regulate conflicts of interest of the District's directors.

Section 1.3 Dual Office Holding

Directors shall not hold or exercise at the same time more than one civil office of emolument.

Section 1.4 Open Meetings Act

(a) The Board of the District shall conduct all the affairs and proceedings of the District in accordance with the requirements of the Texas Open Meetings Act.

(b) Every regular, special or called meeting of the Board of the District shall be open to the public, unless, in accordance with the Open Meetings Act, the subject matter of the meeting requires consideration by the Board in a closed meeting or executive session.

Section 1.5 Director Qualifications

(a) To be qualified to serve as a director, a person shall be at least 18 years old, a resident citizen of the State of Texas, and either own land subject to taxation in the District or be a qualified voter within the District.

(b) A director shall not serve as a member of the Board of the District if he or she is related within the third degree of affinity or consanguinity to a developer of property in the District, any other member of the Board, or the manager, engineer, attorney, or any other person providing professional services to the District.

(c) A director shall not be an employee of any developer of property in the District or any other director, manager, engineer, or attorney for the District or other person providing professional services to the District or a developer of property in the District in connection with the District or property located in the District.

(d) A director shall not be a developer of property in the District.

(e) A director shall not serve as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the District or a developer of property in the District in connection with the District or property within the District.

(f) A director shall not be a party to a contract with or along with the District except for the purchase of public services furnished by the District to the public generally.

(g) A director shall not be a party to a contract with a developer of property in the District relating to the District or to property within the District (except for contracts limited solely to purchasing or conveying real property for permanent residence, or commercial business, or qualifying as a director).

(h) A director shall be disqualified if, during the term of the director's office, the director fails to maintain the qualifications required by law to serve as a director.

(i) The Board shall replace a disqualified director within 60 days of determining that a director is disqualified with a person who would not be disqualified.

(j) Any person who willfully occupies an office as director and exercises the powers and duties of that office when disqualified under the provisions of this section is guilty of a misdemeanor under Texas law, and on conviction, shall be fined not less than \$100 nor more than \$1,000.00.

#### Section 1.6 Removal of Director for Failure to Attend Meetings

(a) The Board, by unanimous vote of its remaining members, may remove an otherwise qualified director if that director has missed one-half or more of the regular meetings scheduled during the prior twelve (12) months.

(b) Any director removed under Section 1.6(a) above may file a written appeal with the Texas Commission on Environmental Quality within thirty (30) days after receiving written notice of the Board action, pursuant to the procedure set forth by Section 49.052(6)(g), Texas Water Code.

#### Section 1.7 Vacancies

Any vacancy of the board shall be filled for the unexpired term by appointment of the Board not later than the 60<sup>th</sup> day of the vacancy occurs, in accordance with TWC §49.105.

#### Section 1.8 Conflicts of Interest

In this Section, the following terms and phrases shall have the following meanings:

"Family Member" means and includes the following relatives of a Director: mother and her husband; father and his wife; son and his wife; daughter and her husband; spouse; and spouse's mother, father, son and daughter.

(b) A director who is financially interested in any contract with the District, or a director who is an employee of a person who or firm which is financially interested in any contract with the District, shall disclose that fact to the other directors, and the disclosure shall be entered into the minutes of the meeting.

(c) An interested director may not vote on the acceptance of such contract or participate in the discussion on the contract.

(d) If a director or a Family Member has a substantial interest in a business entity or in real property that would be pecuniarily affected by an official action taken by the Board, the director shall file an affidavit with the official record keeper of the district stating the nature and extent of the interest and shall abstain from further participation in the matter. A substantial interest in a business entity exists if a director or Family Member owns 10% or more of the voting stock or shares of the business entity or \$15,000 or more of the fair market value of the entity or funds received by the person from the business entity exceed 10% of the person's gross income for the previous year. A substantial interest in real property exists if the interest owned by the director or Family Member is an equitable or legal ownership with a fair market value of \$2,500 or more.

(e) A director commits a criminal offense if the director knowingly fails to provide the affidavit as described in Subsection (d) hereof or participates in a vote or decision on a matter if (i) in the case of a business entity in which the director or a Family Member has a substantial interest, it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity that is distinguishable from the effect on the public; or (ii) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public.

(f) The Board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a director or Family Member has a substantial interest. In the event of a separate vote, the director may not participate in that separate vote, but may vote on a final budget if the director has complied with this Section.

(g) A director is prohibited from acting as a surety for a business entity that has work, business or a contract with the District. A director is prohibited from acting as a surety on any official bond required of an officer of the District. A director commits a criminal offense if the director knowingly acts as a surety in violation of this subsection.

Section 1.9 Conflicts Disclosure

(a) In this Section, the following terms and phrases shall have the following meanings:

“Agent” means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person.

“Business Relationship” means a connection between two or more parties based on commercial activity of one of the parties but does not include the following: a) a transaction that is subject to rate or fee regulation by a federal, state or local government entity; b) a transaction conducted at a price and subject to terms available to the public; or c) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

“Contract” means a written agreement for the sale or purchase of real property, Goods, or Services.

“Family Member” means and includes the following relatives of a Director: mother and her husband; father and his wife; son and his wife; daughter and her husband; spouse; and spouse’s mother, father, son and daughter.

“Gift” means any item(s) with an aggregate value of more than \$250 but does not include the following: a gift given by a Family Member of the person accepting the gift; a political contribution as defined by Title 15, Election Code; or food, lodging, transportation, or entertainment accepted as a guest.

“Goods” means personal property.

“Investment Income” means dividends, capital gains, or interest income generated from a personal or business checking or savings account, share draft or share account, or other similar account; a personal or business investment; or a personal or business loan.

“Services” means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code (Professional Services Procurement Act).

“Vendor” means any person or the person’s Agent who enters or seeks to enter into a Contract with the District.

(b) Conflicts Disclosure of Directors

A Director shall file with the District's records administrator a conflicts disclosure statement in the form prescribed by the Texas Ethics Commission ("Ethics Commission") with respect to a Vendor if:

(1) the Vendor has a Contract with the District or the District is considering entering into a Contract to do business with the Vendor; and

(2) (i) the Vendor has an employment or other Business Relationship with the Director or a Family Member of the Director that results in the Director or a Family Member of the Director receiving taxable income, other than Investment Income, that exceeds \$2,500 during the twelve month period preceding the date that the Director becomes aware that the Contract has been executed or that the District is considering entering into a Contract, or

(ii) the Vendor has given to the Director or a Family Member of the Director one or more Gifts in the twelve month period proceeding the date the Director becomes aware that the District is considering entering into a Contract or a Contract has been executed.

A Director shall file the required conflicts disclosure statement not later than 5:00 p.m. on the seventh business day after the date the Director becomes aware of facts that require the filing of the statement. A Director commits a Class C misdemeanor if he or she knowingly violates this subsection, but it is an exception to the application of the statute if the required disclosure is filed not later than the seventh business day after the date the Director receives notice from the District of the alleged violation. As of the date of adoption of this Code of Ethics, Chapter 176 of the Texas Local Government Code governs conflict of interest disclosures of Directors and Vendors.

(c) Conflicts Disclosure by District Vendors

A Vendor shall file with the District's records administrator a completed conflicts of interest questionnaire in the form prescribed by the Ethics Commission if the Vendor has a Business Relationship with the District and:

(1) has an employment or Business Relationship with a Director or a Family Member of the Director that results in the Director or Family Member of a Director receiving taxable income, other than Investment Income, that exceeds \$2,500 during the twelve-month period preceding the date that the Director or Family Member of a Director becomes aware that a Contract had been executed or that the District is considering entering into a Contract; or

(2) has given a Gift to a Director or Family Member of a Director.

The questionnaire must be filed not later than the seventh business day after the later of:

(1) the date the Vendor (a) begins discussions or negotiations to enter into a Contract with the District or (b) submits to the District an application, a response to a request for proposals or bids, correspondence or other writing related to a potential Contract with the District; or

(2) the date the Vendor becomes aware (a) of an employment or Business Relationship with a Director or Family Member of a Director; or (b) that a Gift has been given by the Vendor.

A Vendor must update the questionnaire not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. A Vendor commits a Class C misdemeanor if the Vendor knowingly violates this subsection, but it is an exception to the application of the statute that the Vendor filed the required questionnaire not later than the seventh business day after the date the Vendor received notice of the alleged violation from the District.

#### Section 1.10 Doctrine of Incompatibility

(a) A director shall not hold another office or position where one office is accountable or subordinate to the other, or where there is an overlap of powers and duties such that the director could not independently serve in both positions.

(b) A director shall not hold another office or position that represents interests in conflict with those represented by the other office.

#### Section 1.11 Nepotism

A director shall not appoint or vote for or confirm the appointment or employment of any relative of any member of the Board to any job or position paid for with public funds.

#### Section 1.12 Bribery

(a) A director shall not ask for, accept or agree to accept, money or anything of value as consideration for a decision or other exercise of discretion as a public servant.

(b) A director shall reject any benefit for his or her past official actions in favor of another person.

Section 1.13 Abuse of Office

(a) A director shall not exercise his or her official powers without authority, fail to perform a required duty, or improperly take or use any District or public property with the intent to obtain a personal benefit.

(b) A director shall not unlawfully take advantage of his or her official capacity either to mistreat or to impede an individual.

(c) A director shall not misuse information that he or she received, in advance of the public, because of the director's official capacity, and shall not engage in any business activity that might lead to the disclosure of confidential information.

(d) A director shall reject any job, favor, or other benefit that might tend, or is intended, to impair or influence his or her official conduct or independence.

Section 1.14 Registration as Lobbyist

(a) Pursuant to Chapter 305, Texas Government Code, a director must register with the Texas Ethics Commission (the "Ethics Commission") if he or she makes a total expenditure of an amount determined by Ethics Commission rule, but not less than \$200 in a calendar quarter, not including the director's own travel, food or lodging expenses or the director's own membership dues, on activities to communicate directly with one or more members of the legislative or executive branch of state government to influence legislation or administrative action. If required to register under the provisions of this section, a director shall register in accordance with Chapter 305 and the rules of the Ethics Commission.

(b) If required by Ethics Commission rule, a director who communicates directly with a member of the legislative or executive branch concerning legislative or administrative action, other than routine matters, shall file with the Ethics Commission the director's name, the name of the District, the subject matter of the communication, and other information the Ethics Commission considers relevant.

(c) District funds may not be used to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation, unless the person being compensated or reimbursed resides in the district of the member with whom the person communicates, or files a written statement with the

secretary of state that includes the person's name, the amount of compensation or reimbursement, and the name of the District. This \$50 limitation does not apply if the person is registered with the Ethics Commission, holds an elective public office, or is a full-time employee of the District.

(d) A person commits a criminal offense if the person intentionally or knowingly violates a provision of Chapter 305, Texas Government Code. A person who fails to register as required shall pay a civil penalty in an amount determined by Ethics Commission rule.

#### Section 1.15 Director Open Meetings Training

A Director shall complete a course of training as prescribed by law of not less than one and not more than two hours regarding the responsibilities of the District and its Board with regard to the Open Meetings Act (Texas Government Code Chapter 551). The Director must complete the training not later than the 90th day after the date the Director takes the oath of office. The District will maintain and make available for public inspection the record of the completion of the training by Board members. The failure of one or more members of the Board of Directors to complete the training does not affect the validity of an action taken by the District.

#### Section 1.16 Public Information Act Training

A Director shall complete a course of training as prescribed by law of not less than one and not more than two hours regarding the responsibilities of the District and its Board, its officers and employees with regard to the Public Information Act (Texas Government Code Chapter 552). A Director must complete the training not later than the 90th day after the date the Director takes the oath of office. The District will maintain and make available for public inspection the record of the completion of the training by the Board members.

## ARTICLE II

### POLICY FOR COMPENSATION AND TRAVEL EXPENSES

#### Section 2.1 Policy

Upon approval by the Board, a director may be reimbursed for travel or other reasonable expenses incurred on behalf of the District upon presentation of a verified statement showing the number of days actually spent in the service of the District and a general description of the duties performed for each day of service. Such fees of office shall not include the amount of any reimbursement for actual expenses of transportation, meals, lodging or other expenses reasonably and necessarily incurred while engaging in activities on behalf of the District.

#### Section 2.2 Fees of Office

a) A director shall receive a fee of office which shall be established by the Board in a separate resolution. In no event shall the fee of office exceed the fees of office permitted under Chapter 49 of the TWC.

(b) Expenses incurred by the spouse or children of a director shall not be reimbursable.

#### Section 2.3 Transportation

The District shall reimburse the actual transportation expenses incurred by a director while performing duties for the District, except that a director may not be reimbursed for transportation expenses on a common carrier in an amount exceeding the lowest available fare. Directors who use personal vehicles while on District business travel may be reimbursed for actual miles driven at the current rate allowed by the Internal Revenue Service. Mileage will be computed by the most direct route.

#### Section 2.4 Meals and Lodging

A director may receive reimbursement for actual and necessary expenses for meals and lodging incurred in the performance of duties for the District.

## ARTICLE III

### POLICY FOR PROFESSIONAL CONSULTANT REVIEW

#### Section 3.1 Policy Statement

It is the objective of the Board to ensure that the District is receiving the highest quality professional services from its various consultants. In that regard, the Board shall review the performance of its consultants based upon the terms of the consultants' contracts, if any, and the customs and standards of the community with respect to the profession of the consultants and the needs of the District.

#### Section 3.2 Frequency

The Board shall review the performance and contracts of the District's professional consultants, including but not limited to the attorney, engineer, tax assessor-collector, bookkeeper, operator, financial advisor and any other consultant engaged to perform services for the District at the time for consideration of renewal of a consultant's contract or at such other time and frequency as shall be determined by the Board.

#### Section 3.3 Criteria for Review

(a) The Board's review of a District consultant shall include an evaluation of the specific duties and obligations being rendered by the consultant as called for under the terms of the consultant's contract.

(b) The review shall also include an evaluation of the quality, economy, responsiveness and completeness of the consultant's performance of regular or special projects requested by the Board and as to the consultant's responses to Board requests for reports and specific information within the consultant's professional area of responsibility.

#### Section 3.4 Criteria for Selection

It is the intent of the Board when considering a change in consultants to review a minimum of two (2) proposals when selecting a new consultant for the District.

Section 3.5 Professional Contracts

(a) The Board shall engage an architect registered in the State of Texas to prepare any architectural plans and specifications for a new building intended for education, assembly, or office occupancy whose construction costs exceed One Hundred Thousand Dollars (\$100,000) and which is to be constructed by the District.

(b) In selecting an attorney, engineer, auditor, financial advisor, or other professional consultant, the Board shall follow the procedures provided in Chapter 2254, Subchapter A, Texas Government Code, the Professional Services Procurement Act. In making such a selection, the Board shall not use a competitive bidding process but instead shall award contracts and engage services of such professionals on the basis of demonstrated competence and qualifications for the type of professional services to be performed and at fair and reasonable prices, as long as professional fees do not exceed any maximum provided by law.

Section 3.6 Faithful Performance Bonds

(a) The District shall require that any officer, employee, or consultant who collects, pays or handles any funds of the District to furnish or provide a bond, payable to the District, in an amount determined by the Board to be sufficient to safeguard the District.

(b) Such bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the District. The bond shall be signed or endorsed by a surety company authorized to do business in the State of Texas.

(c) The Board may pay the premium on surety bonds required out of any available funds of the District.

## ARTICLE IV

### POLICY FOR USE OF MANAGEMENT INFORMATION

#### Section 4.1 Policy Statement

It is the objective of the Board to ensure that all appropriate financial data, statistics and reports are made available to the Board regularly and are effectively used by the Board and the District's consultants to achieve the most efficient and economical performance of all District operations and programs.

#### Section 4.2 Budgets

The Board shall adopt a detailed budget for the District's general fund for each fiscal year prior to commencement of the fiscal year, and the Board shall review the District's performance in comparison to the budget on a regular basis. The Board shall utilize accepted budgeting practices annually to determine debt service requirements for the following year prior to establishing the annual ad valorem tax rate for the District.

#### Section 4.3 Audits

(a) The Board or a committee of one or more directors appointed by the Board shall serve as an audit committee of the Board of Directors. The audit committee shall review engagement proposals from auditors for approval by the Board, and the audit committee shall perform such preliminary review of annual audit reports as may be needed prior to final Board approval to ensure that the audit process results in presentation of complete and accurate audited financial statements of the District's position.

(b) The District's books and financial statements shall be prepared and maintained according to accepted principles of municipal finance, including but not limited to "Audits of State and Local Governmental Units" and "Governmental Accounting and Financial Reporting Standards."

The president or vice president is authorized to execute and the secretary or assistant secretary to attest this Order on behalf of the Board and the District.

Passed, ordered and approved, this July 8, 2008.

R. W. KEHLENBACH

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President

ATTEST:

JANET E. FRAKES

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Secretary

I, the undersigned secretary of the Board of Directors of Spring Creek Forest Public Utility District, hereby certify that the foregoing is a true and correct copy of the Resolution for Adoption of an Order Establishing a Code of Ethics, Policies and Procedures for District Financial Affairs and Management adopted by said Board at its meeting of July 8, 2008, together with excerpts from the minutes of said Board's meeting on that date showing the adoption of said Resolution as same appear of record in the official minutes of the Board on file in the District's office.

I further certify that said meeting was open to the public, and that notice thereof was posted in compliance with the provisions of Tex. Gov't. Code Ann. § 551.001 et seq.

Witness my hand and the official seal of said District, this

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James Fraker  
Secretary

