

## SUBLEASE COMMISSION AGREEMENT

This Sublease Commission Agreement (“Agreement”), dated \_\_\_\_\_, 2011 (“Effective Date”), is between THE WOODLANDS TOWNSHIP, a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended (“Sublessor”) and \_\_\_\_\_ a \_\_\_\_\_ (“Broker”).

### *RECITALS:*

- Sublessor owns a leasehold interest in an office building located at 10001 Woodloch Forest Drive, The Woodlands, Texas (“Property”).
- Broker represents \_\_\_\_\_, a \_\_\_\_\_ (“Prospective Sublessee”), who has indicated an interest in subleasing by entering into a sublease agreement (“Sublease Agreement”) for certain space in the Property (“Sublease Premises”). Sublessor has agreed to pay a real estate commission to Broker if the Sublease Agreement is entered into in accordance with the terms and conditions provided in this Agreement.

### *AGREEMENT:*

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Sublessor and Broker, the parties agree as follows:

- 1. Conditions Precedent to Payment of Commission.** No “Commission”, as defined in Section 2, shall be earned by or payable to Broker unless:
  - (a) Sublessor receives a fully-executed Sublease Agreement and landlord consent agreement;
  - (b) Sublessor receives from the Prospective Sublessee any prepaid rentals, operating expense escalations, security deposits, construction deposits, or other sums that are due and owing by the Prospective Sublessee to Sublessor on or before the Effective Date;
  - (c) Broker provides Sublessor with a letter of representation that the Prospective Sublessee has executed, and that designates Broker as the Prospective Sublessee’s real estate broker in connection with the negotiation of the Sublease Agreement;
  - (d) at the time payment is due, the Prospective Sublessee is not in default, and no event of default has occurred, under the Sublease Agreement; and

- (e) during the period that Broker is performing its brokerage services related to the Sublease Agreement and at the time when payment is due, Broker holds a valid, active license under the Texas Real Estate License Act.

Sublease Premises shall include only the original space to be occupied immediately by the Prospective Sublessee under the Sublease Agreement and does not include any additional space subsequently added under the Sublease Agreement.

## **2. Commission.**

- (a) “Commission” means an amount equal to the product of (A) four percent (4%), *multiplied by* (B) the “Net Base Rent”, as defined in Section 2(b), accruing under the Sublease Agreement during the Sublease Term.
- (b) “Net Base Rent” means the aggregate of the amount specified in the Sublease Agreement as Base Rent to be paid by the Prospective Sublessee during the Sublease Term for the right to occupy the Sublease Premises, but excludes the following amounts:
  - (A) any free rent, abated rent, deferred rent, or rent credit (whether such rent credits are earned or unearned by the Prospective Sublessee);
  - (B) security and similar deposits paid by the Prospective Sublessee;
  - (C) escalations or increases in Base Rent over and above the stated minimum annual rental due under the Sublease Agreement, when such escalations or increases are based upon operating expense pass-throughs provided in the Sublease Agreement;
  - (D) any amounts owed by the Prospective Sublessee for pass-throughs of operating, utility, common area maintenance, taxes, insurance, or similar expenses;
  - (E) damages, penalty payments, late fees, check charges, or interest relating to a default by the Prospective Sublessee;
  - (F) payments made by the Prospective Sublessee in consideration of an early termination of the Sublease Agreement;
  - (G) additional amounts which may be designated as rentals but which relate to special charges of non-standard or off-premises services or facilities, including parking fees, utility charges, or similar charges;
  - (H) any amounts paid, assumed, or indemnified by Sublessor on behalf of the Prospective Sublessee in connection with any Sublease Agreement

covering any space occupied by the Prospective Sublessee on the date of the Prospective Sublessee's execution of the Sublease Agreement, including, but not limited to, assumptions and Sublease Agreement reimbursement amounts; and

(I) any other amounts paid by Sublessor on behalf of the Prospective Sublessee and reasonably considered by Sublessor as rent concessions, including, but not limited to, moving or relocation allowances and the value of any free parking which Sublessor may provide to the Prospective Sublessee.

(c) “Sublease Term” means the original period during which the Sublease Agreement with the Prospective Sublessee is to be in effect and does not include any extensions or renewals of the Sublease Term.

**3. Payment of Commission.** Provided that the terms of this Agreement have been met (including, without limitation, the terms of Section 1), Broker shall earn, and Sublessor shall pay to Broker,

(a) fifty percent (50%) of the Commission upon thirty (30) days following the date on which (i) Sublessor has received and accepted a copy of the Sublease and landlord's consent executed by both Sublessor and the Prospective Sublessee; and

(b) the balance of the Commission upon thirty (30) days after the later to occur of (i) the Prospective Sublessee's occupancy and full acceptance of the Sublease Premises, or (ii) the Prospective Sublessee's payment of the entire balance of any rent, construction costs, and other sums then due from the Prospective Sublessee to Sublessor under the Sublease.

**4. Relationship of Parties.** Broker represents the Prospective Sublessee with respect to the Sublease Agreement and does not represent Sublessor in any capacity. Broker shall (a) remain involved in the negotiation of the Sublease Agreement, (b) communicate any terms or comments requested by Sublessor or its designated representative to the Prospective Sublessee, and (c) relay any comments and responses requested by the Prospective Sublessee to Sublessor's designated representative. All expenses incurred by Broker in connection with the negotiation of the Sublease Agreement are the sole responsibility of Broker. If the Prospective Sublessee defaults under the Sublease Agreement, Sublessor is not obligated to pursue any legal action against the Prospective Sublessee. If, for any reason whatsoever, Sublessor and the Prospective Sublessee do not enter into the Sublease Agreement, no portion of the Commission shall be due, earned, or payable to Broker, and Sublessor shall have no liability for the payment of all real estate commissions, claims, or other charges whatsoever relative to the negotiation of the Sublease Agreement. Sublessor shall have the unqualified right, in Sublessor's sole and absolute discretion, to refuse to enter into the Sublease Agreement with the Prospective

Sublessee, or enter into a Sublease Agreement with a party other than Prospective Sublessee, for any reason whatsoever without incurring any obligation to Broker under this Agreement or otherwise. If the Sublease Agreement between Sublessor and Prospective Sublessee is executed, Sublessor shall, at all times and from time to time (without the consent of, or liability to, Broker) have the right, in any agreement with the Prospective Sublessee, to modify or terminate the Sublease Agreement.

5. **Conflicting Claims.** Sublessor's obligation to pay a real estate commission, finder's fee, or other like fee to representatives of the Prospective Sublessee relative to the negotiation of the Sublease Agreement is limited to the amount of the Commission specified in this Agreement. If there are any conflicting or additional claims for real estate commissions, finder's fees, or like fees by purported representatives of the Prospective Sublessee other than Broker related to the negotiation of the Sublease Agreement, Sublessor may tender the Commission to a court of competent jurisdiction for such court's determination as the proper recipient of the Commission without further obligation or liability to Broker. Broker shall defend, indemnify and hold Sublessor harmless from and against any and all claims and costs arising out of such conflicting or additional claims for commissions or fees, including, without limitation, any attorney fees or court costs that may be incurred by Sublessor in resolving such conflicting or additional claim.
6. **Term of Agreement.** Unless the Sublease Agreement has previously been executed by both Sublessor and the Prospective Sublessee or the term of this Agreement has been extended by Sublessor and Broker in writing, this Agreement (and Sublessor's obligation to pay the Commission) shall terminate upon the earlier to occur of (a) sixty (60) days from the Effective Date, or (b) the date on which Prospective Sublessee notifies Sublessor in writing that Broker is no longer representing Prospective Sublessee. If this Agreement terminates, then Sublessor shall not be liable to Broker for the Commission or any other amount if Sublessor and Prospective Sublessee subsequently execute a Sublease Agreement.
7. **Confidentiality.** Except with the prior written consent of Sublessor or as expressly otherwise permitted by the terms of this Section, Broker, and its agents and employees, shall keep all economic terms of the Sublease Agreement ("Confidential Information") confidential. For example, but not by way of limitation, Broker may not disclose the Confidential Information to any service that publishes lease or lease terms for buildings in particular geographic areas. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by Broker, or (ii) is required or ordered to be disclosed by any applicable law or judicial, governmental, or other authority. These confidentiality and non-disclosure obligations of Broker shall terminate upon the expiration of Sublessor's lease in the Property.
8. **Sublessor as Beneficiary.** The parties intend for the exculpations, releases, and indemnities with respect to Sublessor set forth in this Agreement to benefit Sublessor; the parties do not, however, intend for Sublessor to have any duties, obligations, or liabilities

arising out of or related to this Agreement. Broker is not a third-party beneficiary of the listing or leasing agreement between Sublessor and its designated listing representative.

- 9. Legal Construction.** This Agreement, and the rights and obligations of Sublessor and Broker under this Agreement, shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas. All obligations of the parties shall be performable in, and all legal actions to enforce or construe this Agreement shall be instituted in, the courts of Montgomery County, Texas. All rights, powers, and remedies provided in this Agreement may be exercised only to the extent that their exercise does not violate any applicable laws and are intended to be limited to the extent necessary so that such provision will not render this Agreement invalid or unenforceable under applicable law. This Agreement (together with the exhibits, if any, attached to this Agreement) constitutes the entire agreement between Sublessor and Broker relative to the subject matter of this Agreement. The terms and conditions of this Agreement shall supersede any term or condition in any prior or contemporaneous oral or written agreement between Sublessor and Broker. This Agreement may not be amended or changed, except by written instrument signed by both Sublessor and Broker.

Remainder of this page is left intentionally blank.

Executed to be effective on the Effective Date.

**SUBLESSOR:**

**THE WOODLANDS TOWNSHIP**  
a political subdivision of the State of Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BROKER:**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Broker's Texas License No. \_\_\_\_\_

Broker's Tax ID No. \_\_\_\_\_



## **THE WOODLANDS TOWNSHIP**

**The Woodlands, TX**

### **EXECUTIVE SUMMARY**

**MEETING DATE:** March 23, 2011

**SUBJECT MATTER:** **Proposed Commission Structure for 10001 Woodloch Forest Drive**

**BUDGET IMPACT:**

**FACTS/HISTORY:**

The Township currently leases the office facility located at 10001 Woodloch Forest Drive. The lease term runs through mid 2014. Per the terms of this lease, the Township pays approximately \$23,000 per month for the office space. In the fall of 2011, the Township will be moving all the administrative operations into an office facility located at 9012 New Trails. The office space at 10001 Woodloch Forest Drive will no longer be needed for operations and will be vacated at that time. With the remaining term of this lease, it is feasible to consider sub leasing this office space.

The proposal for consideration by the Board on March 23 is to retain Damon Palermo as the listing agent to assist The Township in subleasing the 10001 Woodloch Forest Drive building. Mr. Palermo would work with the Township to find a tenant to sub lease the vacated Township office space. For his services, Mr. Palermo will be paid a commission on the value of the sub lease transaction.

If a leasing client is brought forward by another broker, the commission will be as follows:

- ✓ 2% to Mr. Palermo as the listing agent / broker
- ✓ 4% to the leasing broker

If a leasing client is found by Mr. Palermo, the commission will be as follows:

- ✓ 4% to Mr. Palermo as the listing agent / broker

These agreements will be discussed by the Board of Directors in Executive Session on March 23, 2011.

**RECOMMENDED BOARD ACTION:**

Authorize the President/General Manager to execute the attached Exclusive Listing Agreement with Palermo REI, LP and also authorize the President/General Manager to execute the attached Sublease Commission Agreement with other brokers who represent clients interested in subleasing the 10001 Woodloch Forest Drive office space, as recommended by the listing agent.

**THE WOODLANDS TOWNSHIP  
BOARD OF DIRECTORS  
WORKSHOP MEETING  
FEBRUARY 17, 2011  
MINUTES**

**THE STATE OF TEXAS   §**

**COUNTIES OF HARRIS & MONTGOMERY   §**

The Board of Directors of The Woodlands Township met in regular session, open to the public, on February 17, 2011, posted to begin at 7:30 a.m. The workshop session was held in a meeting room at the Office of The Woodlands Township, Board Chambers, 10001 Woodloch Forest Drive, Suite 600, The Woodlands, Texas, within the boundaries of The Woodlands Township.

**DIRECTORS PRESENT:** Chairman Tough, Vice Chairman Lloyd Matthews, Secretary Claude Hunter, Treasurer Ed Robb, Director Nelda Blair\*\*, and Director Tom Campbell

**DIRECTORS ABSENT:** Director Peggy Hausman;

**STAFF/ADVISORS:** Don Norrell, President/General Manager, John Powers, Assistant General Manager Community Services, Monique Sharp, Assistant General Manager of Finance & Administration, Fire Chief Alan Benson, Susan Welbes, Director of Human Resources, Nick Wolda, Director of Community Relations/CVB President, Miles McKinney, Legislative Affairs & Transportation Manager, Karen Dempsey, Management Analyst, Mary Connell, Manager of Community Relations, Mike Page and Bret Strong, Legal Counsel

**CALL TO ORDER:**

Chairman Tough called the workshop session to order at 7:30 a.m. and declared that notice of this meeting was posted 72 hours in advance at the Courthouses of Montgomery and Harris Counties and inside the boundaries of The Woodlands Township at the office building located at 10001 Woodloch Forest Drive, Suite 600, The Woodlands, Texas. As there was a quorum of members present, the Board proceeded to conduct business.

The Chair then selected, by random draw, the order in which to receive presentations from three governance planning consultants. H.R. Green was selected to present first, Knudson was selected to present second and Partners for Strategic Action, Inc. was selected to present third. Chairman Tough informed the Board that the interview process would begin at 9:00 a.m.

\*\*Indicates arrived late

**Note:** Director Blair arrived at this point in the meeting.

**CONSIDER AND ACT UPON ADOPTION OF MEETING AGENDA:**

Chairman Tough called for a motion and second to adopt the agenda.

**MOTION:** Motion by Secretary Hunter; second by Vice Chairman Matthews

**MOTION:** Director Campbell moved to take Regular Agenda item #7 (resident concern regarding property tax issues) out of order and place it before the Consent Agenda; second by Secretary Hunter

**VOTE:**           **Ayes:** Chairman Tough  
                          Vice Chairman Matthews  
                          Secretary Hunter  
                          Treasurer Robb  
                          Director Blair  
                          Director Campbell  
                          **Nays:** None  
                          **Abstentions:** None  
                          **Absent:** Director Hausman

**ACTION:** Motion passed unanimously.

**RECOGNIZE PUBLIC OFFICIALS:**

There were no public officials in attendance.

**PUBLIC COMMENT:**

- Jennifer Real-TexCom project and waste disposal injection wells
- Beverly Spotswood-Grogan's Mill Bridge
- Claude Hunter-Pedestrian overpass on Grogan's Mill Road (handout material)
- Phil Ulrich- TexCom project and waste disposal injection wells
- Steve Schoger-Bicycle Friendly Community (agenda item #11-left prior to presentation of item)
- Ronald Keichline-Bicycle Friendly Community (spoke during item #11 on the Regular Agenda)

**Public Comment Rosters and handout material are attached hereto collectively as Exhibit "A".**

**Note:** The following item was taken out of order:

**Receive and discuss a resident concern regarding property tax issues:**

Chairman Tough directed Board members to information in their briefing materials regarding this item. Next, the Chair called on David Oseng, a resident of The Woodlands Township, who asked to make a presentation to the Board regarding property taxes. Mr. Oseng provided handout material to the Board and then proceeded to present his concerns. Board discussion followed. Chairman Tough then thanked Mr. Oseng for his presentation. This item was for information sharing.

**The Executive Summary and Memorandum for the above item are attached hereto collectively as Exhibit "B". Handout material from Mr. Oseng is attached hereto as Exhibit "C".**

**RECEIVE AND CONSIDER THE POTENTIAL CONSENT AGENDA:**

*(This agenda consists of non-controversial or "housekeeping" items required by law that will be placed on the Consent Agenda at the next Board Meeting and may be voted on with one motion. Items may be moved from the Consent Agenda to the Regular Agenda by any Board Member making such request.)*

**Receive and consider approval of the minutes of the January 20, 2011 Board Workshop, January 26, 2011 Regular Board Meeting and January 26, 2011 Town Hall Meeting of the Board of Directors of The Woodlands Township;**

Chairman Tough asked the Board to review the minutes in preparation of the February 23, 2011 regular Board meeting. There were no corrections or additions made to the above minutes. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**Receive and consider a recommendation from the Audit Committee to accept the Hotel Occupancy Tax Agreed-Upon Procedures Report for 2009;**

Monique Sharp provided a summary of this item with a recommendation that the Board accept the recommendation from the Audit Committee to accept the Hotel Occupancy Tax Agreed-Upon Procedures report for the year ended December 31, 2009. Ms. Sheri Bell with Karlins and Ramey was then called on to answer questions from the Board. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**Receive and consider a recommendation from the Audit Committee to accept the Convention Center Booking and Blocking Agreed-Upon Procedures Report for 2009;**

Monique Sharp provided a summary of this item with a recommendation that the Board accept the recommendation from the Audit Committee to accept the Convention Center Booking and Blocking Agreed-Upon Procedures report for the year ended December 31, 2009. Ms. Sheri Bell with Karlins and Ramey was then called on to answer questions from the Board. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**Receive and consider award of bid for Waterway Square maintenance services;**

John Powers provided a summary of this item with a recommendation that the Board award Progressive Commercial Aquatics the bid for fountain maintenance services defined in Package A, 24/7 tech support and the per-hour unit costs and material markup as presented in the Bid Tabulation for a 22-month term and authorize the President/General Manager to execute a service agreement. Board discussion followed. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**BRIEFING ITEM: The following briefing item was taken out of order.**

**Receive an update from Jim Stinson, General Manager of The Woodlands Joint Powers Agency, regarding the Texas Commission on Environmental Quality (TCEQ) decision to approve permits for the TexCom project and waste disposal injection wells;**

Jim Stinson, General Manager of The Woodlands Joint Powers Agency, provided an update to the Board regarding the TCEQ's decision and what is expected to take place in the near future. Board discussion followed. It was brought to the Board's attention that if needed, a special meeting of the Board might be called depending on the outcome of the TCEQ's final order.

**RETURN TO CONSENT AGENDA:**

**Receive and consider adoption of a resolution excluding annexed territory from the boundaries and taxing jurisdictions of overlapping Emergency Services Districts (ESD);**

Mike Page presented a summary of this item with a recommendation that the Board adopt the resolution and provide immediate notice to the ESDs. Board discussion followed. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**Receive and consider adoption of a resolution removing the annexed territory from the boundaries and taxing jurisdiction of the Metropolitan Transit Authority (Metro);**

Mike Page presented a summary of this item with a recommendation that the Board adopt the resolution and provide immediate notice to Metro. Board discussion followed. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Consent Agenda.

**Receive and consider a Request for Proposal to provide design services for the renovation of Sawmill Park;**

John Powers presented a summary of this item with a recommendation that the Board accept the proposal from LJA Engineering, Inc. to provide design services for the renovation of Sawmill Park and authorize the President/General Manager to negotiate and execute a Professional Services agreement for services. Board discussion followed. Director Blair requested that this item be removed from the Consent Agenda and placed on the February 23, 2011 Regular Agenda for consideration and action.

**Receive and consider approval of proposed dates for budget meetings in connection with the development of the 2012 Operating Budget of The Woodlands Township;**

Monique Sharp presented a summary of this item with a recommendation that the Board approve the dates for budget meetings and public hearings related to the 2010 budget and 2011 property tax rate. Board discussion followed. Changes to the proposed calendar were requested. Ms. Sharp will present a revised calendar to the Board prior to consideration and action of this item under the Consent Agenda for the February 23, 2011 regular Board meeting.

**Note: Following a five minute recess, the Board moved from the Consent Agenda to Regular Agenda item #8 to begin interviewing the governance planning consultants.**

**Receive and consider interviews concerning governance planning consulting services;**

Karen Dempsey presented a summary of this item with a recommendation that the Board interview consultants at this meeting and then make a selection at the February 23, 2011 meeting and authorize the President/General Manager to execute a service agreement in connection therewith. Following Ms. Dempsey's comments, the consultants were introduced in the order of selection: H.R. Green, Knudson, and Partners for Strategic Action. Each consultant was then given ten minutes to make a presentation to the Board. A question and answer period followed each presentation. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Regular Agenda.

**Note: Regular Agenda item #11 below was taken out of order.**

**Receive and consider a report regarding the Bicycle Friendly Community application process;**

John Powers presented introductory comments and then called on Chris Nunes, Director of Parks and Recreation for The Woodlands Township, to provide additional information. Mr. Nunes presented a

summary of this item with a recommendation that the Board determine if and when to submit an application for a Bicycle Friendly Community designation. Following Mr. Nunes' presentation, Ronald Keichline, a resident of The Woodlands, addressed the Board and expressed support of the Township applying for the Bicycle Friendly Community designation. Board discussion followed. This item will be brought forward to the February 23, 2011 regular Board meeting for consideration and action under the Regular Agenda.

**RETURN TO CONSENT AGENDA:**

**Receive and consider adoption of a supplemental election order appointing election officials and establishing compensation for same;**

Chairman Tough called on Mike Page to present this item. Mr. Page informed the Board that election officials have not yet been found. If officials are found by the February 23, 2011 regular Board meeting, a supplemental election order naming the election officials and setting their compensation will be presented to the Board for consideration and action. It was the decision of the Board to remove this item from the Consent Agenda and place it on the Regular Agenda for the February 23, 2011 regular Board meeting.

**Receive and consider a letter from Waste Management regarding proposed changes to The Woodlands Township's request for proposal process for waste collection and recycling services;**

John Powers presented a summary of this item with a recommendation from staff and RW Beck, consultant, that the Board not accept Waste Management's proposal and thus allow the normal proposal process to take place in order to determine the best outcome. Board discussion followed. This item will be brought forward to the February 23, 2011 regular Board meeting under the Consent Agenda.

**POTENTIAL REGULAR AGENDA:**

*This agenda consists of items that will be placed on the Regular Agenda at the next Board of Directors' Meeting.*

**Receive and consider a recommendation concerning law enforcement study consulting services;**

Karen Dempsey presented a summary of this item with a recommendation that the Board accept the proposal from Novak Consulting and Police Executive Research Forum (PERF)-Management Services Division for the Law Enforcement study for Phase I and Phase II to be completed in 2011 and authorize the President/General Manager to execute a Professional Services agreement in connection therewith. Board discussion followed. It was the decision of the Board to remove this item from the Regular Agenda and place it on the Consent Agenda for the February 23, 2011 regular Board meeting.

**Receive and consider a proposal from the Grogan's Mill Village Association regarding improvements to the pedestrian bridge across Grogan's Mill Road;**

John Powers presented a summary of this item with a recommendation that the Board direct staff to conduct more research on the issues involved and prepare a Request for Capital Asset for consideration during the 2011 Proposed Budget process. Board discussion followed with Director Blair offering the following revised recommendation: Direct staff to conduct more research on the issues involved, including ownership, transfer to the Township, measurement of usage, safety requirements, funding alternatives, renovation and removal. It was the decision of the Board to place this item on the Consent Agenda for the February 23, 2011 regular Board meeting.

**Receive and consider approval of an Order amending Order No. 014-10 imposing an events admission tax;**

Mike Page presented a summary of this item with a recommendation that the Board adopt the Order amending Order No. 014-10. Board discussion followed. It was the decision of the Board to place this item on the Consent Agenda for the February 23, 2011 regular Board meeting.

**Receive and consider an agreement between the Center for the Performing Arts at The Woodlands and The Woodlands Township relating to funding of cultural education events;**

Mike Page informed the Board that the agreement was not ready at the present time. Board discussion followed. It was the decision of the Board to keep this item on the Regular Agenda for the February 23, 2011 regular Board meeting for consideration and action.

**Receive and consider support of a resolution concerning legislation to mitigate the impact of the 2010 Census on state transportation funding;**

Miles McKinney presented a summary of this item with a recommendation that the Board adopt a Resolution in support of state legislation that would serve to provide necessary funding for transit services in The Woodlands Township. Board discussion followed. It was the decision of the Board to place this item on the Consent Agenda for the February 23, 2011 regular Board meeting.

**Discussion regarding changes approved by the Board in September 2010 to the committee system;**

There was no discussion of the item during this meeting. It was the decision of the Board to discuss this item at the February 23, 2011 regular Board meeting under the Regular Agenda.

**CLOSED MEETING (if applicable);**

**Recess at 11:44 a.m. to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; and to consult with The Woodlands Township's attorney concerning pending litigation pursuant to §551.071, Texas Government Code;**

**Reconvene in Public Session at 12:03 p.m.;**

Chairman Tough announced that it would be necessary to take action at this time on matters discussed in Executive Session.

**Receive and consider sale of the property located at 250 Harper's Landing Boulevard;**

There was no further discussion of this item. Chairman Tough then called for a motion and second to approve a lease and option agreement between The Woodlands Township and the Montgomery Hospital District and authorize the President/General Manager to execute the agreement on behalf of The Woodlands Township.

**MOTION:** Vice Chairman Matthews; second by Secretary Hunter

**VOTE:**           **Ayes:** Chairman Tough  
                          Vice Chairman Matthews  
                          Secretary Hunter  
                          Treasurer Robb

Director Blair  
Director Campbell

**Nays:** None

**Abstentions:** None

**Absent:** Director Hausman

**ACTION:** Motion passed unanimously.

**ADMINISTRATIVE REPORTS:**

**Community Services:** presented by John Powers

- "Watch Talk Wednesday" -February 23, 2011 guest speaker will be officer Joel Gordon who will discuss the Crime Stoppers program
- "Walk in the Woods Nature Lecture" January 27, 2011 at 7 p.m.-Learn to identify venomous snakes
- Good Neighbor Day is planned for the Village of Alden Bridge on N. Flickering Sun on Saturday, March 5 from 10-11:30 a.m.
- Spring Concert in the Park series at Northshore Park begins March 6-April 17, 2011 from 5:30-7:30 p.m.
- Integrated Forest Management Program to continue in 2011
- Clark Condon Associates has begun the sports fields, competitive swimming and parks, pools and amenities study
- Community Involvement Day planned for March 26, 2011 for the Cobble Hill neighborhood in the Village of Cochran's Crossing
- Clearing permit issued by CSC for a new office building on Technology Forest Drive
- Harvey Builders has cleared the pad site for Warmack Investments
- Clearing for the sports field expansion project of Alden Bridge Sports Park has begun
- Two replacement ½ ton pick-up trucks have been ordered for the Parks Department through the BuyBoard
- Greater Houston Pool Management received award of bid for the re-plaster and deck refurbishment of Harper's Landing pool
- Bids are being solicited for: playground equipment replacement for Chandler Creek Park; carpet replacement for the Parks, Recreation and Environmental Services offices

**Community Policing:** presented by Marian Leck

- MCSO staffing report: Sgt. Paul Cassidy-Community Policing Liaison; Deputy Mark Uber selected as the K-9 deputy
- Harris County Constable's Office-Precinct 4 Report: Deputy Constable Mike Ruby started on February 12, 2011
- Crime Status and Trends report: notable arrests; blotter information
- Equipment Status
- Police-Community Partnership update of programs and activities
- Overtime programs update

**The Woodlands Fire Department:** No report

**The Woodlands Convention & Visitors Bureau:** presented by Nick Wolda

- Update on Waterway Cruisers
- Report on retail activity
- Report on event schedule

- The Texas Travel Industry Association will be presenting an award to Texas State Representative Rob Eissler

**DISCUSS FUTURE AGENDA/ANNOUNCEMENTS:**

**Consideration of items to be placed on the agenda for next month's meeting:**

- None

**Board announcements:**

- None

**Public comment; and**

- No public comment

**Adjourn**

As there was no further business to discuss, Vice Chairman Matthews called for a motion and second to adjourn the meeting at 12:25 p.m.

**MOTION:** Motion by Treasurer Robb; second by Director Campbell

**VOTE:**       **Ayes:** Chairman Tough  
                  Vice Chairman Matthews  
                  Secretary Hunter  
                  Treasurer Robb  
                  Director Blair  
                  Director Campbell

**Nays:** None

**Abstentions:** None

**Absent:** Director Hausman

**ACTION:** Motion passed unanimously.

(SEAL)

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**Claude Hunter**  
**Secretary, Board of Directors**

**EXHIBIT OMISSIONS\***

**EXHIBIT "A"**

**EXHIBIT "B"**

**EXHIBIT "C"**

**\*To view Exhibits, please contact the Records Management Analyst at 281-210-3800.**

**THE WOODLANDS TOWNSHIP  
BOARD OF DIRECTORS  
REGULAR BOARD MEETING  
FEBRUARY 23, 2011  
MINUTES**

**THE STATE OF TEXAS   §  
COUNTIES OF HARRIS & MONTGOMERY   §**

The Board of Directors of The Woodlands Township met in regular session, open to the public, on February 23, 2011, posted to begin at 6:00 p.m. The meeting was held in a meeting room at the office of The Woodlands Township, Service Center, 2201 Lake Woodlands Drive, The Woodlands, Texas, within the boundaries of The Woodlands Township.

**DIRECTORS PRESENT:** Chairman Bruce Tough, Vice Chairman Lloyd Matthews, Secretary Claude Hunter, Treasurer Ed Robb, Director Nelda Blair, Director Tom Campbell, and Director Peggy Hausman

**DIRECTORS ABSENT:** None

**STAFF/ADVISORS:** Don Norrell, President/General Manager, John Powers, Assistant General Manager Community Services, Monique Sharp, Assistant General Manager of Finance & Administration, Fire Chief Alan Benson, Nick Wolda, Director of Community Relations/CVB President, Miles McKinney, Legislative Affairs & Transportation Manager, Karen Dempsey, Management Analyst, Mary Connell, Community Relations Manager, Mike Page and Bret Strong, Legal Counsel

**CALL TO ORDER:**

Chairman Tough called the meeting to order at 6:00 p.m. and declared that notice of this meeting was posted 72 hours in advance at the Courthouses of Montgomery and Harris Counties and inside the boundaries of The Woodlands Township at the office building located at 2201 Lake Woodlands Drive, The Woodlands, Texas. As there was a quorum of members present, the Board proceeded to conduct business regarding the following matters.

**CONSIDER AND ACT UPON ADOPTION OF MEETING AGENDA(S):**

Chairman Tough called for a motion and second to adopt the agenda.

**MOTION:** Motion by Secretary Hunter; second by Director Blair

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- Update on equipment status
- Update on Police-Community Partnership activities
- Report on overtime programs

**RECEIVE AND CONSIDER REPORTS FROM VILLAGE ASSOCIATION REPRESENTATIVES:**

Reports were provided by the following Village Association (VA) representatives:

**Alden Bridge VA**-Steve Leakey reported that Sgt. Cassidy presented a law enforcement report at the last meeting; good resident turn out at the last village meeting; Dr. Robert Rodriguez, Dean of the Lone Star College Conroe campus was guest speaker at the last meeting; a full slate of village representatives was elected during the 2011 village election; requests that online election be looked into again; Board passed a resolution in support of having staff explore the possibility of online elections for 2012

**Cochran’s Crossing VA**-Brian Duelm thanked residents who voted in the village election; VA Board expressed concerns with online voting such as voter ID and security; Sgt. Cassidy presented a law enforcement report at the last meeting; awarded \$3,000 in teacher grants; expressed that consultants for Parks and Recreation study need good demographic information; election of officers will take place at the March meeting; plan to revisit the Mission statement for the village in March

**Grogan’s Mill VA**-Deborah Sargeant reported that all incumbent Board members were re-elected; elected officers at the last meeting; Annual Planning meeting scheduled for March 5; requested that the Township help with finding ways to increase voter turnout for the village elections

**Panther Creek VA**-Everett Ison reported that the Flea Market will be held March 26; Joel Deretchin participated in a Q & A session regarding the Lake Woodlands Property Owners Association (LWPOA); Flag Day-June 11 from 10:00 a.m. to 2:00 p.m.; Woodlands baseball outing-September 20; RDRC members were re-elected; 4 incumbent Board members were re-elected and there was a tie for the VP position; discussed online voting

**Indian Springs VA**-Lloyd Matthews reported that the Board is currently in transition; voted to support online elections

**College Park VA**-No report

**Creekside Park VA**-No report

**Sterling Ridge VA**-No report

**The Village Association Representatives’ Sign In Sheet is attached hereto as Exhibit “C”.**

**CONSENT AGENDA:**

(This agenda consists of non-controversial or “housekeeping” items required by law that will be placed on the Consent Agenda at the next Board Meeting and may be voted on with one motion. Items may be moved from the Consent Agenda to the Regular Agenda by any Board Member making such request.)

**CONSIDER AND ACT UPON THE CONSENT AGENDA:**

**Note:** Director Campbell requested that item “i” under the Consent Agenda be removed and placed on the Regular Agenda.

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- (a) Approve the minutes of the January 20, 2011 Board Workshop, January 26, 2011 Regular Board meeting and January 26, 2011 Town Hall meeting of the Board of Directors of The Woodlands Township;
- (b) Accept a recommendation from the Audit Committee to accept the Hotel Occupancy Tax Agreed-Upon Procedures report for 2009;
- (c) Accept a recommendation from the Audit Committee to accept the Convention Center Booking and Blocking Agreed-Upon Procedures report for 2009;
- (d) Award Progressive Commercial Aquatics the bid for fountain maintenance services defined in Package A, 24/7 tech support and the per-hour unit costs and material markup as presented in the Bid Tabulation for a 22-month term and authorize the President/General Manager to execute a service agreement;
- (e) Adopt a resolution excluding annexed territory from the boundaries and taxing jurisdiction of overlapping Emergency Services Districts (ESD) and provide immediate notice to the ESDs;
- (f) Adopt a resolution removing the annexed territory from the boundaries and taxing jurisdiction of the Metropolitan Transit Authority (Metro) and provide immediate notice to Metro;
- (g) Approve dates for budget meetings and public hearings related to the 2012 budget and 2011 property tax rate;
- (h) Do not accept Waste Management's proposal in order to allow the normal proposal process to determine the best outcome;
- (i) Approve staff to conduct further research regarding the issues involved with improvement to the pedestrian bridge across Grogan's Mill Road including ownership, possibility of transfer to The Woodlands Township, measurement of usage, safety requirements, funding alternatives, renovation, and removal;
- (j) Approve the proposal from Novak Consulting and Police Executive Research Forum (PERF), Management Services Division for the Law Enforcement study for Phase I and Phase II to be completed in 2011, and authorize the President/General Manager to execute a Professional Services Agreement in connection therewith in the amount of \$86,993;
- (k) Approve an Order Amending Order No. 014-10 Imposing an Events Admission Tax;
- (l) Adopt a resolution in support of legislation to mitigate the impact of the 2010 Census on state transportation funding;

Chairman Tough then called for a motion and second to approve the Consent Agenda as presented with the exception that item "i" be removed and placed on the Regular Agenda.

**MOTION:** Motion by Secretary Hunter; second by Vice Chairman Matthews

**VOTE:**       **Ayes:** Chairman Tough  
                           Vice Chairman Matthews  
                           Secretary Hunter  
                           Treasurer Robb  
                           Director Blair  
                           Director Campbell  
                           Director Hausman

**Nays:** None

**Abstentions:** None

**Absent:** None

**ACTION:** Motion passed unanimously.

**Executive Summaries, resolutions and supporting materials for Consent Agenda items are attached hereto collectively as Exhibit "D".**

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**BRIEFINGS:**

There were no briefings.

**REGULAR AGENDA:**

**CONSIDER AND ACT UPON THE FINANCIAL REPORT:**

Monique Sharp presented the Financial Report and referred the Board to handout material containing the preliminary General Purpose Financial Statements as of and for the year ended December 31, 2010. After a review of the Combined Financial Statements and Monthly Investment Report, a report on the General Fund Budget vs. Actual was presented. Ms. Sharp then reported on sales tax collections, hotel occupancy tax collections, and property tax collections. Board discussion followed. Chairman Tough then called for a motion and second to approve the Financial Report.

**MOTION:** Motion by Treasurer Robb; second by Director Campbell

**VOTE:**       **Ayes:** Chairman Tough  
                  Vice Chairman Matthews  
                  Secretary Hunter  
                  Treasurer Robb  
                  Director Blair  
                  Director Campbell  
                  Director Hausman

**Nays:** None  
                  **Abstentions:** None  
                  **Absent:** None

**ACTION:** Motion passed unanimously.

**The Financial Report is attached hereto as Exhibit "E".**

**CONSIDER AND ACT UPON APPROVAL OF FURTHER RESEARCH BY STAFF REGARDING THE ISSUES INVOLVED WITH IMPROVEMENTS TO THE PEDESTRIAN BRIDGE ACROSS GROGAN'S MILL ROAD:**

Chairman Tough called on John Powers to present this item. Mr. Powers provided a summary of the item as outlined in an updated Executive Summary. Board discussion followed. Chairman Tough then called for a motion and second on the item.

**MOTION:** Motion by Director Blair to direct staff to conduct more research on the issues involved, including ownership, transfer to the Township, measurement of usage, safety requirements, funding alternatives, renovation and removal; second by Treasurer Robb

An amendment to the motion was then made by Director Campbell to direct staff to stop all research on the Grogan's Mill pedestrian bridge; second by Secretary Hunter. The amended motion was not accepted by Director Blair and Treasurer Robb.

Chairman Tough then called for a vote on the original motion.

**VOTE:**       **Ayes:** Chairman Tough  
                  Vice Chairman Matthews  
                  Secretary Hunter  
                  Treasurer Robb

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Director Blair  
Director Hausman  
**Nays:** Director Campbell  
**Abstentions:** None  
**Absent:** None

**ACTION:** Motion passed.

**A copy of the Executive Summary is attached hereto as Exhibit “F”.**

**CONSIDER AND ACT UPON A REQUEST FOR PROPOSAL TO PROVIDE DESIGN SERVICES FOR THE RENOVATION OF SAWMILL PARK;**

Chairman Tough called on John Powers to present this item. Mr. Powers provided a summary of the item as outlined in an Executive Summary. Board discussion followed. Chairman Tough then called for a motion and second to authorize the President/General Manager to negotiate and execute a professional services agreement for design services beginning with LJA Engineering with design emphasis on tree and vegetation placement. If a fair and reasonable price cannot be negotiated with LJA, the President/General Manager is authorized to negotiate with the next highest-ranked firm, and subsequent ranked firms, if necessary, until an agreement can be executed.

**MOTION:** Motion by Director Blair; second by Secretary Hunter

**VOTE:** **Ayes:** Chairman Tough  
Vice Chairman Matthews  
Secretary Hunter  
Treasurer Robb  
Director Blair  
Director Campbell  
Director Hausman

**Nays:** None  
**Abstentions:** None  
**Absent:** None

**ACTION:** Motion passed unanimously.

**A copy of the Executive Summary is attached hereto as Exhibit “G”.**

**CONSIDER AND ACT UPON ADOPTION OF A SUPPLEMENTAL ELECTION ORDER APPOINTING ELECTION OFFICIALS AND ESTABLISHING COMPENSATION FOR SAME;**

Chairman Tough called on Mike Page to present this item. Mr. Page informed the Board that no election officials had been found to date. The Board was provided handout material that addressed the efforts taken to find election officials for The Woodlands Township (Harris County) polling site. It was recommended that the Board defer this item until their next meeting in March.

**A copy of the handout material is attached hereto as Exhibit “H”.**

**CONSIDER AND ACT UPON SELECTION OF A CONSULTANT FOR THE GOVERNANCE PLANNING PROCESS AND AUTHORIZE THE PRESIDENT/GENERAL MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT IN CONNECTION THEREWITH;**

Chairman Tough and Karen Dempsey provided background information on this item. Following the presentations, the Chair called for a motion and second on the item. Board discussion followed.

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**MOTION:** Motion by Secretary Hunter to accept the proposal submitted by Partners for Strategic Action (PSA) as consultant for the governance planning process and authorize the President/General Manager to execute a Professional Services agreement in connection therewith, with the annual project budget to be based on the scope of work as determined by the Board of Directors; second by Vice Chairman Matthews

**VOTE:**           **Ayes:** Chairman Tough  
                          Vice Chairman Matthews  
                          Secretary Hunter  
                          Treasurer Robb  
                          Director Blair  
                          Director Hausman  
                  **Nays:** Director Campbell  
                  **Abstentions:** None  
                  **Absent:** None

**ACTION:** Motion passed.

**A copy of the Executive Summary is attached hereto as Exhibit "I".**

**CONSIDER AND ACT UPON A REPORT REGARDING THE BICYCLE FRIENDLY COMMUNITY APPLICATION PROCESS;**

Chairman Tough called on John Powers to present this item. Mr. Powers presented a summary of this item as outlined in an Executive Summary. Board discussion followed. Chairman Tough then called for a motion and second on the item.

**MOTION:** Motion by Director Blair to submit an application now for the July 2011 filing period at no cost to the Township; second by Vice Chairman Matthews

**VOTE:**           **Ayes:** Chairman Tough  
                          Vice Chairman Matthews  
                          Secretary Hunter  
                          Treasurer Robb  
                          Director Blair  
                          Director Campbell  
                          Director Hausman  
                  **Nays:** None  
                  **Abstentions:** None  
                  **Absent:** None

**ACTION:** Motion passed unanimously.

**A copy of the Executive Summary is attached hereto as Exhibit "J".**

**CONSIDER AND ACT UPON AN AGREEMENT BETWEEN THE CENTER FOR THE PERFORMING ARTS AT THE WOODLANDS AND THE WOODLANDS TOWNSHIP RELATING TO FUNDING OF CULTURAL EDUCATION EVENTS;**

Chairman Tough called on Mike Page to present this item. Mr. Page informed the Board of the need to defer this item until March as more time was needed to finalize the agreement.

**DISCUSSION REGARDING CHANGES APPROVED BY THE BOARD IN SEPTEMBER 2010 TO THE COMMITTEE SYSTEM;**

Chairman Tough called on Don Norrell to introduce the item. Following Mr. Norrell's comments, Director

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Hausman commented that she would like to know the mission statement for the Projects Research Committee. Further Board discussion followed. This item was for discussion purposes only. No action was taken.

**A copy of the Executive Summary is attached hereto as Exhibit "K".**

**CLOSED MEETING (IF APPLICABLE):**

**RECESS TO EXECUTIVE SESSION TO DISCUSS MATTERS RELATING TO REAL PROPERTY PURSUANT TO §551.072, TEXAS GOVERNMENT CODE; DELIBERATION OF ECONOMIC DEVELOPMENT NEGOTIATIONS PURSUANT TO §551.087, DISCUSS PERSONNEL MATTERS PURSUANT TO §551.074; TEXAS GOVERNMENT CODE' AND TO CONSULT WITH THE WOODLANDS TOWNSHIP'S ATTORNEY CONCERNING PENDING LITIGATION PURSUANT TO §551.071. TEXAS GOVERNMENT CODE;**

There was no need for Executive Session.

**DISCUSS FUTURE AGENDA/ANNOUNCEMENTS:**

**CONSIDERATION OF ITEMS TO BE PLACED ON THE AGENDA FOR NEXT MONTH'S MEETING:**

- Director Hausman asked that the Board address how to handle the property tax issue that was brought to the Board's attention.

**ANNOUNCEMENTS:**

- Secretary Hunter thanked all those in attendance for coming to the Board meeting.

**PUBLIC COMMENT:**

The following member of the public addressed the Board:

- Dana Denton-Grogan's Mill pedestrian bridge

**ADJOURNMENT:**

As there was no further business to discuss, Chairman Tough called for a motion and second to adjourn the meeting at 7:49 p.m.

**MOTION:** Motion by Secretary Hunter; second by Director Campbell

**VOTE:**       **Ayes:** Chairman Tough  
                  Vice Chairman Matthews  
                  Secretary Hunter  
                  Treasurer Robb  
                  Director Blair  
                  Director Campbell  
                  Director Hausman

**Nays:** None

**Abstentions:** None

**Absent:** None

**ACTION:** Motion passed unanimously.

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**(SEAL)**

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**Claude Hunter**  
**Secretary, Board of Directors**

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**EXHIBIT OMISSIONS\***

<b>EXHIBIT "A"</b>	<b>EXHIBIT "G"</b>
<b>EXHIBIT "B"</b>	<b>EXHIBIT "H"</b>
<b>EXHIBIT "C"</b>	<b>EXHIBIT "I"</b>
<b>EXHIBIT "D"</b>	<b>EXHIBIT "J"</b>
<b>EXHIBIT "E"</b>	<b>EXHIBIT "K"</b>
<b>EXHIBIT "F"</b>	

**\*To view Exhibits, please contact the Records Management Analyst at 281-210-3800.**



# THE WOODLANDS TOWNSHIP

The Woodlands, TX

## ADMINISTRATIVE REPORT COMMUNITY POLICING & LAW ENFORCEMENT SERVICES

March 23, 2011

### 1. MCSO Staffing

- a. Sgt. Aaron Sumrall transferred into the newly created Sergeant position from D4
- b. Senior Sgt. Ward Hammons transferred from D2
- c. Two open positions will be filled upon new hire background/polygraph completion
- d. 2011 Staffing - MCSO
  - i. 3 additional personnel in 2011 (1 Sr. Sgt, 1 Sgt, 1 Deputy)
  - ii. Total of 85 Personnel (80 through TWT)
    - 1-Captain
    - 1-Lieutenant
    - 4-Sr. Sgt.'s
    - 1-Sr. Sgt. Traffic
    - 6-Sgt.'s Patrol
    - 67-Deputies
    - 1-K9 Deputy
    - 1-Detective
    - 2-Jailers
    - 1-Secretary

### 2. Harris County Constable's Office – Precinct 4

- a. Deputy Constable Mike Ruby (introduction)

### 3. Crime Status and Trends

- a. Notable Arrests:
  - i. February 5, 2011
    1. Deputy Conklin arrested a 26-year-old male from Montgomery for Public Intoxication at 21 Waterway Avenue
  - ii. February 6, 2011
    1. Deputy Conklin arrested a 28-year-old male from Houston, for Public Intoxication on Waterway Avenue. The suspect was argumentative and very intoxicated when deputies arrived after being called to the location for a disturbance
  - iii. February 10, 2011
    1. While investigating an incident at 3040 College Park Drive, Deputy Koonce was notified of a Criminal Mischief that had just occurred in the parking lot. The complainant stated that someone had shot his car window with a BB gun. Witnesses stated that the actor, 19-year-old male from The Woodlands, had left in a white vehicle and provided Deputy Koonce with the license plate. The owner of the vehicle was contacted and asked to return to the scene. Charges of Criminal Mischief were accepted and the suspect was transported to the Montgomery County Jail
  - iv. February 12, 2011
    1. Arrest of Gabriel Cabello of Dallas, Texas – Bank Robbery (Compass Bank, 4825 Research Forest Drive)

v. February 20, 2011

1. Deputy Underwood investigated a suspicious vehicle parked on Ellwood St. Upon investigation the driver a 43-year-old female from Spring was taken into custody for two outstanding warrants, and Possession of a Controlled Substance with intent to Deliver.

b. BLOTTER

- i. Reminder the weekly blotter on our website has details of other arrests

1. Law Enforcement Advisory Page

- c. Did you know that Building Checks (1,207) and Vacation Watch (28) are not included on the stat's in the "Total Calls?" However, are a significant action by MCSO checking property and getting into the neighborhoods

**4. Equipment Status**

- a. Vehicles
- b. PIPS ALPR has been selected as the ALPR (Auto License Plate Recognition) system. Will be installed on "Woodlands Sex Offender Compliance Unit" (Tahoe)
- c. Other

**5. Police–Community Partnership**

**a. Programs – Activities – In the Zone**

- i. Village Association Meetings

1. MCSO and Harris Co. Constable's Office attended
2. Share crime statistics and other crime prevention information

- ii. Both MCSO & Harris Co. Constable's Office 4 – participated at the Touch-a-Truck event

- iii. With Neighborhood Services – The Woodlands Watch

1. February

- a. Watch Meetings (6)
- b. Watch Talk Wednesday – 2/23 - Crime Stoppers
- c. Watch Talk – Encore Presentation – 3/2 – 7 to 8 p.m.
  - i. Cyber World and Your Children
    1. Cheryl Shaffer, Victim Specialist, FBI

2. March

- a. Watch Meetings (2)
- b. Watch Talk Wednesday – Encore Presentation – March 2
  - i. Cyber World and Your Children
    1. Cheryl Shaffer, Victim Specialist, FBI
  - ii. Watch Talk Wednesday – "Gun Safety in the Home" - March 23
    1. Senior Sgt. Brice Herring, Montgomery County Sheriff's Office
- c. Good Neighbor Days (2)
- d. Community Involvement Day (1)

**6. Overtime (OT) Programs**

- a. OT was utilized for St. Patrick's Day
- b. \$688,826 budgeted (fluid)

**7. Other**

- a. Continued partnership between The Woodlands Township and MCSO. Smith Police Driving School and Skid Car training will be taking place at The Woodlands Emergency Training Center
  - i. Dates to be announced
- b. Crime Prevention, Community & Tourism Oriented Policing 40 hour course – sponsored by The Woodlands Township, taking place at The Woodlands Emergency Training Center
  - i. March 21-25, 2011 (continue until all D6 trained – includes Harris Co. Constable)

## EXCLUSIVE COMMERCIAL SUBLEASE LISTING AGREEMENT

This Exclusive Listing Agreement (“Agreement”), effective on \_\_\_\_\_, 2011 (“Effective Date”), is between THE WOODLANDS TOWNSHIP, a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended (“the Township”), and PALERMO REI, LP, a Texas limited partnership (“Broker”).

**1. Appointment of Real Estate Agent.** The Township appoints Broker, and grants to Broker during the Term (as defined below) the exclusive right to act, as the Township’s real estate agent to sublease the property described in Exhibit “A”, attached to and incorporated in this Agreement by reference for all purposes (“Property”), and Broker accepts such appointment and grant. If a legal description of the land is not attached to this Agreement on the Effective Date, then the Township shall promptly deliver a legally-sufficient description to Broker, and the parties shall attach such description to the Agreement. Any land description later received by Broker shall be deemed to be attached to and incorporated in this Agreement (even if the parties fail to attach such description). Broker is authorized to employ, in its sole and absolute discretion, one or more cooperating brokers or subagents (or both) to assist Broker in performing Broker’s services under this Agreement, provided the such cooperating brokers or subagents (or both) shall be employed at no additional cost to the Township, with compensation for such persons being paid out of the commissions otherwise due Broker pursuant to this Agreement. The Township acknowledges that Broker delivered to The Township in the first substantive dialogue with The Township the written statement required by Section 1101.558 of the Texas Real Estate License Act.

**2. Broker’s Obligations.** Broker shall:

- (a) use Broker’s reasonable efforts to assist the Township in subleasing the Property, including, but not limited to, preparing a marketing package for the Property;
- (b) reasonably assist the Township in negotiating a sublease agreement with respect to the Property;  
and
- (c) perform Broker’s other duties and obligations under this Agreement.

In the course of Broker’s activities under this Agreement, the Township authorizes Broker to disseminate information regarding the Property to prospective purchasers, tenants, and brokers and disclose any proposed sublease terms to brokers, appraisers, real estate professionals, and listing services. Broker shall have the exclusive right to place, at its own cost, “For Lease” signs on or about the Property in locations approved by the Township, and may enter the Property at any time to show the Property to prospective tenants, provided prior notice of such showing is provided to the Township. Broker shall not be responsible or liable for any vandalism, theft, or damage of sustained by the Property, whether caused by such prospective purchasers or tenants to the extent that Broker was not negligent or did not breach any duty owed to the Township, whether by law or under this Agreement.

**3. The Township’s Obligations.** The Township shall:

- (a) negotiate exclusively through Broker in leasing the Property, inform prospective tenants, and brokers with whom The Township may have contact that Broker is the Township’s exclusive agent for the purposes of the Township’s leasing of the Property, and refer all such persons to Broker;
- (b) not enter into a listing agreement with another broker for the sublease of the Property during the Term;
- (c) identify Broker in any press release or advertisement regarding The Township’s sublease of the Property;

(d) disclose to Broker and each prospective tenant in writing all material information that, to the Township's knowledge, would reasonably affect the decision of a tenant to sublease a portion of the Property; the Township shall indemnify, defend, and hold Broker harmless from all loss, damage, liability, cost and expense, including reasonable attorney's fees, sustained by Broker in connection with Broker's distribution to prospective purchasers or tenants of any false, misleading, or erroneous information regarding the Property furnished to Broker by the Township. The liability of the Township as a governmental entity is limited and this paragraph shall not create liability of potential liability on the part of the Township beyond their statutory or constitutional powers to incur said liability.

(e) pay all costs related to the marketing of the Property (or, if incurred by Broker, reimburse Broker for all such costs) within 30 days after the Township's receipt of an invoice related to such costs; and

(f) perform the Township's other duties and obligations under this Agreement.

**4. Representations.** The Township represents and warrants to Broker that (a) the Township is not a party to another listing agreement or other arrangement with another broker for the leasing of the Property; and (b) all information provided or to be provided by the Township to Broker related to the leasing of the Property is true and correct.

**5. Agency Relationship.** Broker shall exclusively represent the Township in all transactions contemplated by this Agreement, except for any prospective tenants represented by Broker on or after the Effective Date. The Township authorizes Broker to present such prospective tenants represented by Broker to The Township. To the extent Broker represents a prospective tenant to whom the Township desires to sublease the Property, then the Township authorizes Broker to act as an intermediary in the transaction. In any such transaction, The Township shall be the source of Broker's compensation. If Broker acts as an intermediary, Broker may appoint a licensed associate of Broker to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the Township and appoint another licensed associate for the same purposes to the prospective tenant. If Broker acts as an intermediary, then Broker shall:

(a) not disclose to the prospective tenant that the Township will accept a rental amount less than the asking rental amount, unless otherwise instructed in a separate writing by The Township;

(b) not disclose to the Township that the prospective tenant will pay a rental amount or rent greater than submitted in a written offer to the Township unless otherwise instructed in a separate writing by the prospective tenant;

(c) not disclose any confidential information or any information a party instructs Broker in writing not to disclose, unless (i) Broker otherwise instructed in a separate writing by the respective party, (ii) Broker is required to disclose the information by the Texas Real Estate License Act or a court order, (iii) or (iv) the information is materially related to the condition of the Property;

(d) treat all parties to the transaction honestly; or

(e) comply with the Texas Real Estate License Act.

#### **6. Broker's Commission.**

(a) Sublease of Property.

(i) New Sublease. Upon the execution of a sublease ("Sublease"), during the Term or Protection Period, for space in the Property ("Premises") by The Township and a prospective tenant, Broker shall earn a commission ("Sublease Commission") in an amount equal to the product of (A) either (I) four

percent (4%), if a cooperating broker is not involved, or (II) two percent (2%), if a cooperating broker or intermediary is involved in the transaction, as applicable, *multiplied by* (B) the aggregate of the amounts specified in the Sublease as “Base Rent” to be paid by the prospective tenant during the primary (or initial) term of the Sublease. the Township shall pay the Sublease Commission to Broker (A) one half (1/2) within 10 days after the execution of the Sublease; and (B) one half (1/2) within ten (10) days of occupancy of the Premises by the tenant under the Sublease.

(ii) Expansion. For each expansion of any Premises (or sublease or expansion or other space occupied by a prospective tenant in the Property), provided such expansion occurs during the Term or the Protection Period, Broker shall earn a commission (“Expansion Commission”) in an amount equal the product of (A) either (I) four percent (4%), if a cooperating broker is not involved, or (II) two percent (2%), if a cooperating broker or an intermediary is involved in the transaction, as applicable, *multiplied by* (B) the aggregate of the amounts specified in the Sublease as base (or fixed) rent to be paid by the prospective tenant accruing during the primary (or initial) term with respect to space the additional space. The Township shall pay the Expansion Commission (a) one half (1/2) within 10 days after the execution of the amendment for such expansion; and (b) one half (1/2) within ten (10) days of occupancy of the subject expansion Premises by the tenant.

(b) If the Township fails to pay any amount due to Broker under this Agreement within 10 days after written notice of such failure from Broker to the Township, then Broker shall have the right, in addition to all of other rights and remedies at law or in equity, to impose a late charge of 10% on any amount not paid within such 10-day period and charge interest on any amount not paid when due from the due date through the date of payment at a rate of interest equal to the lesser of 18% per annum or the highest interest rate permitted by applicable law.

## **7. Term; Protection Period.**

(a) Unless sooner terminated as provided in this Agreement, this Agreement shall commence on the Effective Date and terminate twelve (12) months after the Effective Date (“Term”) and thereafter shall automatically renew for twelve (12) successive one-month periods unless either party notifies the other in writing that the Agreement will not be renewed at least 30 days before the next succeeding renewal period.

(b) Either The Township or Broker may terminate this Agreement (except as otherwise specifically provided), with or without cause, effective on a Term renewal date, by delivering written notice to the other party at least 30 days before such Term renewal date. Upon termination of this Agreement as provided in this Section, Broker shall promptly deliver to The Township all marketing materials and keys pertaining to the Premises in Broker’s possession.

(c) If Broker breaches this Agreement, the Township shall notify Broker in writing of such breach in reasonable detail. If Broker fails to cure such breach within fifteen (15) days of its receipt of such notice, then The Township may, in addition to any other remedies that the Township may have, terminate this Agreement (except as otherwise specifically provided) by written notice to Broker.

(d) If this Agreement is terminated, Broker shall provide the Township with a list of prospective tenants with whom Broker has discussed the sublease of space in, the Property. If the Township and any party (or affiliate of parties) specified on such list execute a sublease with respect to all or any portion of the Property within 270 days after the Agreement termination (the “Protection Period”), then Broker shall be deemed to be the procuring cause and paid a fee in conjunction with such sublease according the fees and timing set forth in Section 6. Broker shall have no right to a fee if any such sale sublease is executed after such Protection Period. Notwithstanding anything in this Agreement to the contrary, Section 6 and Section 7(d) shall survive any termination of this Agreement.

**8. Liability Limitation.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE TOWNSHIP'S MAXIMUM RECOVERY OF DAMAGES, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, UNFORESEEABLE, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES FROM OR AGAINST BROKER FOR ANY LIABILITY OF BROKER ARISING OUT OR RELATED TO THIS AGREEMENT, OR BROKER'S PERFORMANCE OR FAILURE TO PERFORM ITS SERVICES UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT, EQUITY, OR OTHERWISE, SHALL BE LIMITED SOLELY TO THE AMOUNT OF THE FEES ACTUALLY PAID TO LEASING AGENT UNDER THIS AGREEMENT. This Section shall survive the termination of this Agreement.

**9. Notices.** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified below the signature blocks to this Agreement. Each party may change its address by giving written notice of such change to the other party.

**10. Other Broker Activities.** Broker and its affiliates may, without notice to, or the approval of, the Township, engage in, or possess interests in, other real estate activities, including, without limitation, the ownership, operation, management, leasing, and development of real property (including, but not limited to, real property that may be competitive with the Property) on behalf of Broker (or affiliates of Broker) or third parties; to the extent any of such activities conflicts with Broker's duties or obligations to the Township under this Agreement or otherwise, the Township waives any such conflicts. The Township shall not have any right or interest in such activities or to the income or profits derived from such activities.

**11. Governing Law; Enforceability.** Unless superseded by federal law, this Agreement shall be construed under Texas law. Venue for any action under this Agreement shall lie exclusively in Montgomery County, Texas. If any part of the Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable. The prevailing party in any legal proceeding brought as a result of a dispute under this Agreement, or any transaction related to or contemplated by this Agreement, shall be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees. This Agreement constitutes the entire agreement between Broker and the Township related to the subject matter of this Agreement. This Agreement shall supersede any prior or contemporaneous oral or written agreement between Broker and the Township. This Agreement may not be amended except by written instrument signed by both Broker and the Township.

**12. Notices to the Township.**

(a) The Township acknowledges that Broker is not (i) a property inspector, surveyor, engineer, environmental assessor, or compliance inspector, or (ii) qualified or authorized to give legal or tax advice to the Township. The Township should seek qualified experts to render such services with respect to any transaction in which the Township is involved.

(b) Broker cannot give legal advice. This is a legally binding agreement.

(c) In accordance with the procedure provided for under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an amount owed under this Agreement.

PALERMO REI, LP  
a Texas limited partnership

THE WOODLANDS TOWNSHIP  
a political subdivision of the State of Texas,

\_\_\_\_\_  
By: Damon Palermo  
Title: \_\_\_\_\_

By: Don Norrell  
Title: President

**CONTACT INFORMATION**

10200 Grogan's Mill Road, Suite 550  
The Woodlands, Texas 77380  
Attention: Mr. Damon Palermo  
Telephone: (281) 210-3401  
Fax: (281)  
E-Mail: dpalermo@palermobarr.com

**CONTACT INFORMATION**

10001 Woodloch Forest Drive, Suite 600  
The Woodlands, Texas 77380  
Attention: Mr. Don Norell  
Telephone: (281) 363-2447  
Fax: (281) 363-1666  
E-Mail: dnorrell@thewoodlandstowship-tx.gov

Broker's License No.: \_\_\_\_\_  
Tax ID No.: \_\_\_\_\_



# The Woodlands Township

The Woodlands, TX

## MEMORANDUM

DATE: March 18, 2011  
TO: The Woodlands Township Board of Directors  
FROM: Don Norrell, President/General Manager  
RE: Property Tax Levy / Question from March 17 Worksession

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At the Board meeting on March 17<sup>th</sup>, Director Hausman requested that staff review potential actions that could be taken by the Board or secured through the legislative process to clarify the assessment / tax levy issue.

- ✓ Question - Specifically, can the Township take an action to require that property taxes be allocated by title companies based on the budget year the funds are used (versus levied)?
  - Response - The Township has no statutory or regulatory authority over title companies regarding the allocation of property taxes.
  
- ✓ Question - What is the possibility of supporting a change in state law to require that property taxes be allocated by title companies (at property sale) based on the budget year in which the funds are used (versus levied)?
  - Response – The current state law regarding property taxes and the lien attachment date has been in place since 1876. Legal counsel does not feel that a change in state law to change the lien date would be possible.

Staff and legal counsel have spent a great deal of time looking at this issue and considering potential alternatives. As noted earlier, the primary issue is the manner in which the title companies determine the allocation of property tax responsibility at property closing. The property tax allocation method used by title companies allocating The Woodlands Township property tax is consistent with the property tax allocation method used throughout the State of Texas.