

**MINUTES OF MEETING OF  
THE BOARD OF DIRECTORS OF  
WILBARGER CREEK MUNICIPAL UTILITY DISTRICT NO. 1**

March 1, 2012

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

A meeting of the Board of Directors of Wilbarger Creek Municipal Utility District No. 1 was held on March 1, 2012, at the offices of Armbrust & Brown, PLLC, 100 Congress Avenue, Suite 1300, Austin, Texas. The meeting was open to the public and notice was given as required by the Texas Open Meetings Act. A copy of the Certificate of Posting of the notice is attached as Exhibit "A".

The roll was called of the members of the Board:

Bill Kochwelp	-	President
Tim Dalton	-	Vice President
Scott Sams	-	Secretary
D. Page Ragland	-	Assistant Secretary
Diana Zuniga	-	Assistant Secretary

and all of the Directors were present, except Director Zuniga, who arrived later, and Director Sams, thus constituting a quorum. Also present at the meeting were Mary Bott of Bott & Douthitt, PLLC; Margret Wingrove of Crossroads Utility Services LLC; Ken Schroeder of Schroeder Engineering Company; Pete Dwyer and Danny Burnett of 2010 ShadowGlen, LLC and Cottonwood Holdings, Ltd.; and John Bartram of Armbrust & Brown, PLLC.

Director Kochwelp called the meeting to order at 12:01 p.m., and stated that the Board would first receive citizens' communications. There being none, Director Kochwelp stated that the Board would consider approving the items on the consent agenda, consisting of: (i) the minutes of the January 5, 2012 Board meeting; and (ii) a Resolution Confirming Annual Review of Certain Financial Management Policies; Adopting Code of Ethics and Financial Investment, Travel, and Professional Services Policy; Adopting Investment Strategies; Designating Investment Officers; and Adopting List of Qualified Brokers. Director Dalton noted one correction to the minutes. Mr. Bartram then explained that it was time for the Board to conduct its annual review of the District's code of ethics and financial management policies. He reviewed the Resolution attached as Exhibit "B", which he noted consolidated all of the applicable policies back into one document after the various updates in 2011. He stated that he had no further revisions to recommend at this time. Upon motion by Director Ragland and second by Director Dalton, the Board voted unanimously to approve (i) the minutes of the January 5, 2012 Board meeting, as corrected; and (ii) the Resolution Confirming Annual Review of Certain Financial Management Policies; Adopting Code of Ethics and Financial Investment,

Travel, and Professional Services Policy; Adopting Investment Strategies; Designating Investment Officers; and Adopting List of Qualified Brokers, as presented.

Director Kochwelp then stated that the Board would consider taking action regarding wholesale water rates and water capacity charges. Mr. Bartram first presented the notice from Metro H2O, Ltd. attached as Exhibit "C", advising the Manor districts of the annual CPI increase in the volumetric wholesale water rate. Mr. Bartram noted that the increase was \$0.04 per 1,000 gallons – from \$4.95/1,000 to \$4.99/1,000 – and he asked Ms. Bott to summarize the effect of this increase on retail rates. Ms. Bott presented the analysis attached as Exhibit "D", which she noted also included the projected increase in the take-or-pay minimum quantity based on 2011-2012 usage. She noted that the increase in the volumetric wholesale rate and the projected new take-or-pay minimum were estimated to result in an unbudgeted shortfall of approximately \$88,000, of which approximately \$8,000 was the District's allocated share. Ms. Bott stated that the District was currently ahead of plan and that, therefore, she was not anticipating the need for additional developer funding to cover this amount. She then reviewed the budget analysis attached as Exhibit "E" and noted that the estimated shortfall could be covered by increasing the base rate and wastewater rate and adjusting the water rate tiers. She noted that these changes would bring the District's rates into line with the rates charged in Cottonwood Creek MUD No. 1 and be similar to the rates charged by Travis County MUD No. 2. However, she recommended postponing action on the rate adjustment until the final take-or-pay amount for the 2011-2012 year was known. At this time, Director Zuniga arrived at the meeting. Director Kochwelp stated that a rate increase appeared inevitable because the District would not be able to sustain charging less for water than it was paying for water. Mr. Dwyer stated that he felt the proposed increases were within the range of acceptability for the community. He then asked if the take-or-pay minimum would adjust downward if the District ever used less than the minimum. Mr. Bartram stated that it would not. Mr. Dwyer then asked if anyone knew anything about the City of Pflugerville's proposed condemnation of Southwest Water Company's Windermere utility. Mr. Bartram stated that he did not know anything more than what had been recently reported in the newspaper. Director Zuniga asked if the consultants would be ready with a recommendation on rate changes at the next Board meeting, and Ms. Bott confirmed that they would. Director Zuniga stressed the importance of notifying the residents ahead of time about the proposed rate changes. The Board agreed, and discussion of the substance of such notice ensued. Mr. Bartram recommended that the notice focus on the fact that the average utility bill was expected to remain essentially the same. The Board agreed and directed that the residents be notified that an adjustment to retail rates would be considered at the next Board meeting in May.

Mr. Bartram then addressed the collection of water LUE fees. He stated that, under the terms of the water rate settlement and resulting contract amendment with Metro H2O, Ltd., water LUE fees were no longer due until there were 2,610 LUEs connected to the water system serving the Districts. He stated that the District's consultants had met and were recommending (i) that all water LUE fees collected since August 9, 2011 (*i.e.*, the date of the water rate settlement) be refunded; (ii) that the collection of water LUE fees be abated until the number of LUEs actually connected to the water system exceeds 2,610; and (iii) that that a rate stabilization

fee of \$1,900 per LUE, which would be used to fund wholesale water rate expenses, be implemented in the meantime. After discussion, upon motion by Director Zuniga and second by Director Ragland, the Board voted unanimously to approve the Amended Order Establishing Rates and Charges, and Adopting Rules With Respect To District Water, Wastewater and Drainage, Including Water Quality, Systems attached as **Exhibit "F"**.

Director Kochwelp then stated that the Board would consider the bond-related items on the agenda. Mr. Bartram reported that the Master District was pursuing an opportunity to refund a portion of its outstanding bonds. He stated that Ms. Allen, the Master District's financial advisor, had determined that the net present value savings was approximately five percent (5%), which would translate into about \$300,000 in savings over the life of the bonds. Mr. Bartram stated that the Master District was required under the Master District Contract to notify the Participant Districts of its intent to issue bonds, and he reminded the Board that each Participant District had previously authorized the officers of the Board to take all action necessary in connection with the issuance of Master District refunding bonds so long as the net present value of the refunding exceeded three percent (3%). At this time, Mr. Bartram presented the letter from the Master District attached as **Exhibit "G"**, notifying the Participant Districts that the Master District intended to issue or approve bonds in accordance with the Master District Contract, and the letter executed by Director Kochwelp attached as **Exhibit "H"**, confirming receipt of such notice pursuant to the Board's prior authority. After discussion, upon motion by Director Zuniga and second by Director Ragland, the Board voted unanimously to ratify the District's confirmation of receipt of the Master District's notice to issue or approve contract tax refunding bonds.

Mr. Bartram then addressed written procedures for post-bond issuance federal tax compliance. He stated that federal law required issuers to ensure that tax exempt bonds maintained their tax exempt status after issuance. He explained that these rules included, among other things, arbitrage compliance (*i.e.*, ensuring that the interest rate earned on bond proceeds does not exceed the interest rate on the bonds themselves), private use restrictions (*i.e.*, bond proceeds must be used for a public purpose), and records retention. He stated that the District's bond counsel was seeing an increase in federal audits of bond issuers and that, effective November 1, 2011, there is a new box to check on IRS Form 8038-G that requires issuers to confirm whether or not they have "written procedures" to comply with federal tax requirements. Mr. Bartram directed the Board's attention to the memorandum prepared by the District's bond counsel attached as **Exhibit "I"** for additional details on the legal requirements for written procedures. He then reviewed the requirements of bond counsel's proposed written procedures, which he stated were consistent with the District's consultants' normal practice following the issuance of bonds. Mr. Bartram stated that, even though the District had not yet issued any bonds, the District's bond counsel was recommending approval of the written procedures at this time so that they are in place at the time bonds are issued. He noted that not having written procedures could increase the District's audit risk and that audits could be costly. Mr. Bartram stated that the proposed written procedures would likely evolve over time. After discussion, Director Ragland moved that the Board approve the Resolution Adopting

Written Procedures for Post Bond Issuance Federal Tax Compliance attached as Exhibit "J". Director Dalton seconded the motion, which then passed unanimously.

Director Kochwelp then stated that the Board would receive a report from the District's utility operator. Ms. Wingrove reviewed the utility report for the month of January. She stated that water usage was down from the previous month, but up from the same month last year. She confirmed that the bacteriological and chlorine residual tests were satisfactory, and noted that water loss was 8.35% for the month. She stated that, although water loss had increased, it was still within the range of acceptability and that she would monitor the situation for any trend. She next addressed wastewater treatment plant operations and noted that the plant was in compliance and running well and that there had been no excursions. She stated that flows did suggest a possible inflow and infiltration problem; but she reported that several manholes had been repaired, which she hoped would remedy the situation. Ms. Wingrove reported that Ovivo was working closely with the Master District's consultants on improving the performance of the plant and had several productive ideas. She then reviewed the connection report for the District and the other Participant Districts. She stated that there had been ten taps in the District already, which exceeded the budget of six for the current fiscal year. Ms. Wingrove then reviewed the District's water usage and billing reports, the wastewater report, and delinquent accounts. She stated that there had been no terminations and that there were no write-offs to present this month. She noted that Bowen Homes and Plantation Homes still had builder deposits up with the District. Mr. Burnett stated that, although Bowen Homes was not currently active in the District, it desired to leave its deposit up. Mr. Burnett stated that, going forward, Plantation Homes would be building under the name of Wilshire Homes and that its deposit should be transferred accordingly.

Ms. Wingrove next addressed water conservation and drought management. Mr. Bartram directed the Board's attention to the State Comptroller's report on the drought attached as Exhibit "K" and stated that despite the recent rains the drought persisted. He noted that the District was currently under Stage 2 water restrictions, which had been left in place through the winter-averaging period. Ms. Wingrove recommended that Stage 2 restrictions remain in effect indefinitely. She stated that, with the continuation of the drought and the coming hotter weather, most water utilities were taking this approach. The Board agreed and directed that Stage 2 water restrictions remain in effect until further notice. Mr. Bartram next recommended that the Board conduct its annual review the District's water conservation and drought contingency plan in anticipation of warmer and drier weather during the Summer months. He reviewed the District's current plan and asked if there were any questions. After discussion, upon motion by Director Dalton and second by Director Ragland, the Board voted unanimously to approve the Resolution Confirming Annual Review of Water Conservation and Drought Contingency Plan attached as Exhibit "L".

Ms. Wingrove next announced that it was time to conduct an annual review of the District's identity theft prevention program. Mr. Bartram directed the Board's attention to the Resolution Confirming Annual Review of Identity Theft Prevention Program attached as Exhibit "M". Ms. Wingrove reported that the plan had proved effective, that there had been no

significant incidents of identity theft in the District, and that she had no recommended updates to the program at this time. She then discussed a breakdown of the utility payment options utilized by the District's customers, noting that approximately one-third of utility bills were paid by the various electronic options offered by her company through the AVR system. Upon motion by Director Zuniga and second by Director Ragland, the Board voted unanimously to approve the Resolution Confirming Annual Review of Identity Theft Prevention Program, as presented.

Ms. Wingrove then concluded her report by alerting the Board to the 2012 Summer CASE Conference. Ms. Bott noted that the District had received an invoice for 2012 membership dues and asked if the Board desired to renew the District's membership in CASE. A discussion of the benefits of membership ensued, which Ms. Wingrove pointed out included the opportunity to participate in quarterly breakfast/lunch presentations as well as the annual conference. Director Zuniga noted the various budget challenges the Board was facing this year and suggested that the Board not renew the District's CASE membership this year and reevaluate next year. The other Board members concurred.

Director Kochwelp then stated that the Board would receive a report from the District's bookkeeper. Ms. Bott first reviewed the bills, invoices, and transfers set forth on the updated action items and cash activity report attached as Exhibit "N" and recommended approval with the exception of Director Sams' fee of office, which would be voided due to his absence. She noted that the list of checks included a refund of water LUE fees paid since August 9, 2011, as previously discussed. She then reviewed the budget comparison and the financial statements as of January 31, 2012, including the balance sheet, statement of revenues, and supplementary information for the District's general fund and special revenue fund. She stated that the District currently had a positive budget variance of about \$27,000, and that approximately 97% of this year's taxes had been collected. Mr. Burnett stated that Ms. Bott had been diligent about keeping his company current on its developer funding obligations. Ms. Bott then reviewed the chart reflecting water purchased from Metro H2O, Ltd. attached as Exhibit "O" and noted that total usage this year was trending toward approximately 148,000,000 gallons, which, she stated, would translate into year-end true-up payment for the District of about \$8,000. After discussion, upon motion by Director Ragland and second by Director Dalton, the Board voted unanimously to approve the bills, invoices, and transfers as presented.

Director Kochwelp then stated that the Board would receive a report from the developer. Mr. Burnett first reviewed the most recent completed home chart attached as Exhibit "P". He stated that Wal-Mart had committed to a location in Manor, which had spurred increased interest in the area, both in the commercial and residential markets. He stated that there had been nine lot closings in ShadowGlen since January 1<sup>st</sup>, six of which were in the District, and that his company was looking at ways to capitalize on the increased activity. Mr. Dwyer then reported that the ShadowGlen development partners had determined to package and market the residential portions of the project on a national basis. He stated that Land Advisors had been selected as the brokerage advisor to solicit bids for the project. He stated that bids were due by May 15<sup>th</sup> and that a minimum reserve has been established with

the right to reject all bids. Mr. Dwyer stated that he believed it was a good time to test interest in the project with the increased activity in Manor, and he stated that he hoped that his company could stay on a project managers in the event of a sale. He noted that there was also a chance that the development partnership would elect not to proceed with the sale and use the information learned during the process as a valuation exercise. He stated that he wanted to deliver this message personally and assure the Board that this marketing initiative was not a fire sale or lack of commitment to the project or the Manor area. Mr. Dwyer then concluded by reporting that his company was in the process of closing the Presidential Glen project to a new builder group that he hoped would help reinvigorate the Manor market.

There being no report from the District's financial advisor, Director Kochwelp then recognized Mr. Schroeder for purposes of receiving a report from the District's engineer. Mr. Schroeder reviewed the report attached as Exhibit "Q". With respect to District matters, he stated that he had reviewed Crossroads Utility Services' invoice and that everything was in order. Mr. Schroeder then addressed items related to the Master District, noting that the daily wastewater flows at the wastewater treatment plant for the month of January had averaged  $\pm 186,000$  gpd, with a maximum day of  $\pm 363,000$  gpd. He stated that the increased flows suggested a possible inflow problem, which the operator was investigating. He noted that several loose or open manhole covers had been found and corrected. He confirmed that all reports were satisfactory. With respect to operations expenses for the wastewater treatment plant, he stated that all invoices were generally within budget. Mr. Schroeder then concluded by reviewing the status of the approved wastewater treatment plant repairs, as reflected on the report attached as Exhibit "R". He reported that another cassette of membranes had been found to be passing solids and that the plant had been taken down for repairs. He stated that the problem had been identified as a loose coupling and that all of couplings in that half of the plant had been replaced. He stated that the other half of the plant would likely need the same repairs in the near future. Mr. Schroeder then concluded by reporting that Ovivo staff was cooperating with the Master District's consultants on the performance of the plant and that several productive discussions were ongoing.

Director Kochwelp then recognized Mr. Bartram for purposes of receiving a report from the District's attorney. Mr. Bartram first reviewed the consultant directives. He next addressed website matters and encouraged anyone with suggestions on the website to forward those to him or Mr. Burnett. He then directed the Board's attention to the Central Texas Water Conservation Symposium materials attached as Exhibit "S", which he stated had been included at Director Zuniga's request. He next reported that he had received a call from the new attorney for the golf course about moving forward with negotiations for the golf course to secure the effluent from the wastewater treatment plant to irrigate the golf course.

Director Kochwelp then stated that the Board would receive a report regarding Master District and Advisory Committee items. Mr. Bartram first reviewed the agenda and draft minutes from the January 3, 2012 and February 6, 2012 joint meetings of the Board of Directors of Wilbarger Creek Municipal Utility District No. 2 and Advisory Committee, which was a recurring agenda item so that the Board could stay informed of the activities of the Master

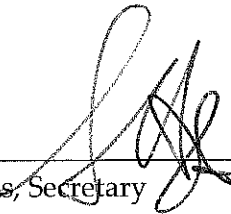
District and Advisory Committee. He then presented the Master District's audit for the fiscal year ended September 30, 2011, which he noted was a requirement under the Master District Contract. Director Kochwelp asked if the audit had identified any issues. Mr. Bartram confirmed that the auditor had been able to issue a clean, unqualified opinion.

Director Kochwelp then questioned whether there were any future agenda items or further business to come before the Board. Mr. Bartram noted that the packet had been projected electronically and asked if the Board desired to continue this practice. The Board generally agreed that it should but that one hard copy of the meeting packet and several hard copies of the agendas should be available at each meeting.

There being no further business to come before the Board, the meeting was adjourned at 1:40 p.m.

*(Signature page follows.)*

(SEAL)

  
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Scott Sams, Secretary  
Board of Directors

Date: May 16, 2012