

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

May 16, 2012

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

A meeting of the Board of Directors of Wilbarger Creek Municipal Utility District No. 1 was held on May 16, 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, 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; 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 then stated that the Board would consider the election matters set forth on the Board's supplemental agenda and asked Mr. Bartram to summarize each item for the Board. Mr. Bartram first presented the Order Calling Director Election for November 6, 2012, a copy of which is attached as Exhibit "B". He recommended that, if the Board approved the Order calling the election, the Board also authorize his office to give notice of the election as required by law, post notice of the deadline to file an application for a place on the ballot, and to complete and file a Voting Rights Act submission with the United States Department of Justice. Mr. Bartram then directed the Board's attention to the Resolution Approving Joint Election Agreement, a copy of which is attached as Exhibit "C". He noted that, under Federal and State law, the District was required to provide electronic voting equipment accessible to disabled voters at each polling place. He stated that, due to the significant costs involved in purchasing compliant equipment, most governmental entities chose to contract with their County elections administrator to administer their elections for them under the Texas Election Code. Mr. Bartram reminded the Board that the District had previously contracted with the Travis County elections administrator to

administer the District's elections for the District. He noted that that agreement was still in effect and that, under that arrangement, Travis County would staff and conduct early and regular voting for the District's election at a cost that should be substantially lower than either purchasing or renting compliant voting equipment. He further stated that the District had the opportunity to conduct its election jointly with other jurisdictions, which would facilitate conducting the elections and enable District voters to vote a combined ballot for all applicable elections at a single polling location. At this time, Mr. Bartram reviewed the Agreement to Conduct Joint Elections attached to the Resolution. He noted that the Texas Election Code required the terms of a joint election agreement to be stated in a resolution, order, or other official action adopted by the Board and pointed out that the Resolution authorized the officers of the District to execute the Joint Election Agreement when finalized. The Board generally agreed that having the County administer the District's elections and conducting a joint election would be in the best interest of the District and its voters and, upon motion by Director Zuniga and second by Director Ragland, voted unanimously to (i) approve the Order Calling Director Election for November 6, 2012; (ii) approve the Resolution Approving Joint Election Agreement, including the form of Agreement to Conduct Joint Elections attached thereto; (iii) authorize the District's attorney to give notice of the November 6, 2012 Director election and post notice of the deadline to file an application for a place on the ballot; and (iv) authorize the filing of a Voting Rights Act submission with the United States Department of Justice.

Director Kochwelp then stated that the Board would consider approving the minutes of the March 1, 2012 Board meeting. Upon motion by Director Dalton and second by Director Zuniga, the minutes were unanimously approved.

Director Kochwelp then stated that the Board would consider taking action regarding retail utility rates. Mr. Bartram first presented the notice from Metro H2O, Ltd. attached as Exhibit "D", advising the Manor districts of the annual CPI increase in the volumetric wholesale water rate. He noted that the increase was \$0.04 per 1,000 gallons – from \$4.95/1,000 to \$4.99/1,000. He next reviewed the notice from Metro H2O, Ltd. attached as Exhibit "E", advising the Manor districts of the first year's wholesale water usage and take-or-pay adjustment. He noted that the Participant Districts had used a total of 148,835,000 gallons of water during the prior year, which was 18,835,000 gallons in excess of the initial take-or-pay minimum of 130,000,000. He stated that, based on the formula in the contract amendment, the new take-or-pay minimum for the 2012-2013 year would be 146,951,500, which would translate to an annual payment of \$733,287.99, or \$61,107.33 per month. Ms. Bott stated that the Districts were trying to ensure that they could sell at least their minimum purchase obligations; but she noted that the current trend indicated that the Districts were using/selling less than the amount purchased. Mr. Bartram stated that, in light of the wholesale cost increases and lower property values, the Board had previously discussed possible increases in the District's retail rates, and he directed the Board's attention to the rate increase scenario attached as Exhibit "F", which he explained would have the effect of increasing the average customer's water bill by ±\$12.50 per month. Mr. Bartram reported, however, that there were rumors that the residents within the District were planning to challenge the District's rates as soon as they changed, and he recommended that the Board consider engaging a rate analyst to vet the District's rate structure

fully before any modifications. He noted that this could save costs in the long run and possibly deter a rate challenge. Director Dalton stated that it may also help the residents understand the Board's responsibilities as well establish the upper limit of the rates. Director Zuniga stated that she liked the idea of a rate analysis. She stated that the District's rates would be more defensible and that the District could make the analysis available to residents on the District's website. At this time, Mr. Bartram reviewed the proposal from Jay Joyce with Expergy attached as **Exhibit "G"**. He noted that Mr. Joyce had helped the Master District in the wholesale rate dispute with Metro H2O, Ltd. and was familiar with the District and the overall system. Mr. Bartram stated that the fee for the rate analysis was estimated not to exceed \$15,000 and that there could be costs savings if one or more of the other Districts participated. Discussion of the timing of a rate change ensued. Ms. Bott stated that the District was currently running a ±\$50,000 positive budget variance and could wait until later in the year to implement a rate change. Mr. Bartram noted that a delay would also avoid a rate increase during the peak Summer usage months. After further discussion, upon motion by Director Zuniga and second by Director Sams, the Board voted unanimously to engage Expergy to analyze the District's rates and make a recommendation on retail rates - preferably in conjunction with one or more of the other Participant Districts in order to take advantage of any cost savings, but otherwise for a fee not to exceed \$15,000.

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 March. She pointed out that usage had increased from February but was the lowest March usage over the last five years. She confirmed that bacteriological and chlorine samples were satisfactory and reviewed the annual Texas Water Development Board water use survey. She next reported that water loss was excellent at approximately 2.06% for the month. Ms. Wingrove next reviewed the wastewater report and noted that the plant was in compliance 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 next reviewed the connection report for the District and the other Participant Districts. She stated that there had been 28 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 were no write-offs to present this month. Ms. Wingrove concluded by requesting approval of the annual CPI adjustment to her company's compensation under its contract with the District, as reflected in the memorandum attached as **Exhibit "H"**. She further requested an increase in the schedule of rates for additional services as reflected on **Exhibit "I"**. She explained that the CPI adjustment was a 2% increase and the rate schedule increase was about 5%. Ms. Wingrove noted that her company's operating costs had increased and that the requested adjustments were necessary to cover these rising costs. After discussion, upon motion by Director Dalton and second by Director Ragland, the Board voted unanimously to approve (i) a 2% increase in compensation per the CPI provision of the District's contract with Crossroads Utility Services; and (ii) the increases in the rate schedule for additional services as reflected in the First

Amendment to Operations Services Agreement with Crossroads Utility Services attached as Exhibit "J".

Ms. Wingrove next addressed water conservation and drought management. Mr. Bartram noted that the District was currently under Stage 2 water restrictions, which had been left in place through the winter-averaging period. He stated that the Advisory Committee was now recommending that the Participant Districts each reduce restrictions to Stage 1. Ms. Wingrove stated that she preferred going to no restrictions, but understood the logic behind a gradual change. Mr. Bartram elaborated on the history of the District's drought contingency plan and goal to be consistent with the City of Austin's standards, but he noted that the current wholesale water source was not expected to experience any supply issues. He further noted that recent rains had reduced the impact of the drought. Ms. Bott pointed out that the Districts were about 5.7 million gallons behind schedule on their take-or-pay obligations and needed to start selling water. Director Zuniga expressed a concern about eliminating restrictions and then possibly having to jump back to Stage 2 if the drought got worse. Mr. Bartram noted that this had occurred in 2009 and had been alarming to residents. After discussion, upon motion by Director Zuniga and second by Director Sams, the Board voted unanimously to implement Stage 1 restrictions effective immediately. Ms. Wingrove stated that she would prepare a notice for the website and utility bills.

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 revised action items and cash activity report attached as Exhibit "K" and recommended approval. She then reviewed the budget comparison and the financial statements as of March 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 \$49,000, and that 99% of this year's taxes had been collected, with only one account delinquent. Ms. Bott then reviewed the latest quarterly investment report and stated that the developer had been invoiced for the next quarterly installment of developer funding. Ms. Bott then concluded her report by recommending an update to the list of approved brokers to add Pioneer Bank, which was currently offering advantageous investment rates. Upon motion by Director Ragland and second by Director Dalton, the Board voted unanimously to approve (i) the bills, invoices, and transfers as presented; and (ii) the Resolution Adopting Revised List of Qualified Brokers attached as Exhibit "L".

There being no report from the developer or 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 "M". With respect to District matters, he stated that he had reviewed Crossroads Utility Services' invoice and that everything was in order. He then presented a proposal from Lomas Dirt & Excavation, a copy of which is attached as Exhibit "N", to repair erosion damage to a drainage channel in Section 15A. He noted that the proposal was in the amount of \$850, which he felt was reasonable, and he recommended approval. The Board generally agreed, and Director Zuniga moved that the Board approve the proposal from Lomas Dirt & Excavation. Upon second by Director Sams, the

motion passed unanimously. 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 March had averaged $\pm 195,000$ gpd, with a maximum day of $\pm 418,000$ gpd. He stated that the flows were elevated, possibly due to inflow issues, but were still within the expected range of flows based on the current number of connections. He anticipated that some of the recent manhole repairs addressed by Ms. Wingrove would bring the numbers down. Mr. Schroeder confirmed that all tests were satisfactory. He next reviewed the status of the approved wastewater treatment plant repairs, as reflected on the report attached as Exhibit "O". Mr. Schroeder then concluded by reporting that the Master District was working with Ovivo on proposals that involved certain performance guarantees as well as upgrades to bring the wastewater treatment plant up to current technology. He stated that one proposal covered certain equipment upgrades to increase the efficiency of the plant and reduce operating costs. He explained that the total cost of this proposal was \$103,000 with a guaranty of 30% energy savings and a pay-back period of four to five years. Mr. Schroeder indicated that the second proposal amounted to a service contract for the plant's membrane technology. He noted that the basic service component of the proposal would cost \$44,000 per year and that, for an additional \$25,000, Ovivo would assume all of the risk for membrane replacement. Director Sams noted that, if Ovivo was responsible for replacement of the membranes, perhaps there might be an incentive not to replace membranes as quickly as if the District were responsible for the membranes. Mr. Schroeder acknowledged that this could be an issue, and stated that it would boil down to a level of trust.

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. Mr. Bartram then discussed the status of a new/updated reimbursement agreement with 2010 ShadowGlen, LLC reflecting the 2009 foreclosure and 2010 restructuring. He stated that he had received comments from the developer's attorney and recommended that the Board authorize a subcommittee to work with him to finalize the agreements between Board meetings. Director Kochwelp volunteered, and the Board directed him to work with Mr. Bartram on the new/updated reimbursement agreement as necessary. Mr. Bartram next reported on the status of the Development Agreement for the ShadowGlen Subdivision. He stated that the District, as well as Wilbarger Creek MUD No. 2 and Travis County MUD No. 2, had approved a version of the agreement back in September 2011, and that the developer had since been working to finalize the exhibits, which had resulted in a few modifications to the agreement itself. Mr. Bartram indicated that it was his understanding that the developer and the City of Manor were still negotiating one last issue relating to a deadline in the agreement that had already passed, and he stated that he would bring the agreement back to the Board once it and all exhibits were finalized.

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 March 5, 2012 and April 2, 2012 joint meetings of the Board of Directors of Wilbarger Creek Municipal Utility District No. 2 and Advisory Committee, which was a

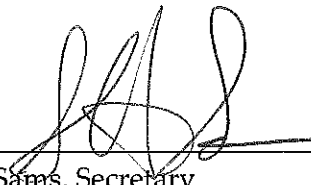
recurring agenda item so that the Board could stay informed of the activities of the Master District and Advisory Committee.

Director Kochwelp then stated that the Board would consider its future meeting schedule. After discussion, the Board rescheduled its July meeting to Thursday, July 12, 2012.

Director Kochwelp then asked if there was any further business to come before the Board. There being none, the meeting was adjourned at 1:40 p.m.

(Signature page follows.)

(SEAL)



Scott Sams, Secretary
Board of Directors

Date: July 10, 2012