

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF  
TARRANT REGIONAL WATER DISTRICT  
HELD ON THE 17<sup>th</sup> DAY OF MAY 2022 AT 9:00 A.M.

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The call of the roll disclosed the presence of the Directors as follows:

Present  
Leah King  
James Hill  
Mary Kelleher

Absent  
Jim Lane  
Marty Leonard

Also present were Dan Buhman, Alan Thomas, Darrell Beason, Lisa Cabrera, Linda Christie, Megan Cowan, Woody Frossard, Ellie Garcia, Jason Gehrig, Zach Hatton, Rachel Ickert, Laramie LaRue, Chad Lorange, Sandy Newby, Carol Tackel, and Stephen Tatum of the Tarrant Regional Water District (District or TRWD). Also in attendance was Katie Long of Thompson & Horton LLP.

President King convened the meeting with assurance from management that all requirements of the "open meetings" laws had been met.

1.

All present were given the opportunity to join in reciting the Pledges of Allegiance to the U.S. and Texas flags.

2.

Public comment was received from Thomas Torlincasi, who indicated he would speak regarding all agenda items. Public comment was received from Lon Burnam who indicated he would speak regarding agenda item 2. Public comment was received from Daniel J. Bennett who indicated he would speak regarding hiring former contractors and

employees. Public comment was received from Jackee Cox who indicated she would speak regarding agenda item 4.

3.

On a motion made by Director Hill and seconded by Director Kelleher, the Directors voted to approve the minutes from the Board meeting held on April 19, 2022. It was accordingly ordered that these minutes be placed in the permanent files of the District.

4.

With the recommendation of management, Director Hill moved to approve the District's application for financial assistance from the Texas Water Development Board as part of the State Water Implementation Fund for Texas low-interest loan program. The District will apply for this program on behalf of Dallas Water Utilities for the upcoming contract revenue bonds required for their portion of upcoming IPL construction. This future bond issue will be for Phase III of the Integrated Pipeline Project, which connects the core piece of the pipeline to Lake Palestine, and is funded 100% by Dallas Water Utilities. Director Kelleher seconded the motion and the vote in favor was unanimous.

5.

With the recommendation of management, Director Hill moved to approve a purchase in the amount of \$196,659 from Thompson Group for 72" E-301 pipe to replace 3 joints used due to failures on the Cedar Creek Pipeline. Funding for this item is included in the Fiscal Year 2022 Non-Budgeted Items - Allocated 100% Revenue Fund. Director Kelleher seconded the motion and the vote in favor was unanimous.

6.

With the recommendation of management, Director Kelleher moved to approve a change in the calculation of the retainage being held for Bauer Foundation Corporation

to 5% of the total contract price when the 50% completion milestone is reached. The project currently stands at 46% complete. Contract payments up to the 50% completion milestone will continue to retain 10%. Afterward, all remaining contract payments will be made in full, the Board having found that satisfactory progress is being made, and that the amount retained is in excess of the amount adequate for the protection of the District. However, any changes to the contract price by change order or alternate base bid work for the project will require adjustment to the retainage schedule. Funding for this item is included in the Bond Fund. Director Hill seconded the motion and the vote in favor was unanimous.

7.

With the recommendation of management, Director Hill moved to approve a change order for a credit amount of \$(480,000) from BAR Constructors, Inc. for the Kennedale Balancing Reservoir Yard Piping, Inlet and Outlet Modifications Project. The current contract price is \$40,779,600 and the revised contract price, including this credit change order, will be \$40,299,600. Funding for this item is included in the Bond Fund. Director Kelleher seconded the motion and the vote in favor was unanimous.

8.

With the recommendation of management, Director Hill moved to approve and adopt the following proposed Board Policy: Liability Insurance and Indemnification Policy. Director Kelleher seconded the motion and the vote in favor was unanimous.

9.

#### Staff Updates

- General Manager Update
- Board Policy Update

- Internal Audit Update
- Quarterly Financial Update
- Capital Improvement Plan Adoption Update
- Water Resources Update

The Board of Directors recessed for a break from 10:31 a.m. to 10:38 a.m.

10.

The Board next held an Executive Session commencing at 10:38 a.m. under Section 551.071 to Consult with Legal Counsel on a Matter in Which the Duty of Counsel Under the Texas Disciplinary Rules of Professional Conduct Clearly Conflicts with Chapter 551, Texas Government Code, and to Discuss Pending or Contemplated Litigation; and Section 551.072 to Deliberate the Purchase, Exchange, Lease or Value of Real Property.

Upon completion of the executive session at 10:43 a.m., the Vice President reopened the meeting.

11.

With the recommendation of counsel, Director Kelleher moved to approve the Settlement Agreement related to Mary's Creek Wastewater Treatment Plant contested case hearing, attached below. The terms of the agreement will further protect water quality in Mary's Creek and involve the District's construction of a project to divert water from the Mary's Creek channel downstream of Fort Worth's facility to the existing District water supply system. There the water will be blended with water from other District lakes. Director Hill seconded the motion and the vote in favor was unanimous.

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into by and between the **TARRANT REGIONAL WATER DISTRICT** (the “District”), a conservation and reclamation district and political subdivision of the State of Texas, created and functioning under Article 16, Section 59, of the Texas Constitution, **MARTHA LEONARD** (“Ms. Leonard”), a private landowner in Tarrant County, Texas, and the **CITY OF FORT WORTH, TEXAS** (the “City”), an incorporated home-rule municipality in the State of Texas (referred to herein, collectively, as the “Parties”).

**WITNESSETH**

**WHEREAS**, the District is a duly created political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas; and

**WHEREAS**, Ms. Leonard is a private landowner in Tarrant County, Texas with authority to enter into this Agreement; and

**WHEREAS**, the City is a duly incorporated municipality operating under the Constitution and laws of the State of Texas; and

**WHEREAS**, the District and the City are duly authorized to enter into this Agreement; and

**WHEREAS**, the City filed with the Texas Commission on Environmental Quality (“TCEQ”) an application for a new Texas Pollutant Discharge Elimination System (“TPDES”) Permit (the “Application”), styled as TPDES Permit No. WQ0015668001 (the “Permit”), which is the subject of TCEQ Docket No. 2021-1211-MWD (the “TCEQ Proceeding”); and

**WHEREAS**, the Permit, when finally issued by TCEQ, will authorize the City to construct the Mary’s Creek Water Reclamation Facility (the “MCWRF”) and to discharge up to a daily average of 15 million gallons per day (“MGD”) of treated domestic effluent from the MCWRF to Mary’s Creek in Tarrant County (“MC Return Flow”) through the outfall authorized by the Permit (the “MCWRF Outfall”).

**WHEREAS**, the District and Ms. Leonard each filed at least one request for a contested case hearing in the TCEQ Proceeding and were both granted party status in the same; and

**WHEREAS**, the Parties entered into settlement negotiations through formal mediation conducted by the TCEQ Alternative Dispute Resolution office; and

**WHEREAS**, the Parties agree that resolution of the TCEQ Proceeding by unanimous settlement agreement is in the best interest of the Parties;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree to the following provisions:

**I. INDIRECT REUSE PROJECT**

**A. The Project.** The District will pursue, in good faith, an indirect reuse project to design, permit, construct, operate, and maintain an on-channel impoundment (“Impoundment”), intake, and pump station on Mary’s Creek, downstream of the MCWRF Outfall and upstream of Interstate 30, to divert some or all of the amount of the MC Return Flows, less losses, and transfer the MC Return Flows to the Eagle Mountain Lake connection pipeline at a connection to be located north of the TRWD Eagle Mountain balancing reservoir (“Indirect Reuse Project”).

**B. Authorizations.** The District is responsible for securing all necessary local, state, federal or other permits and authorizations for the Indirect Reuse Project (“Necessary Authorizations”). The Parties acknowledge that Necessary Authorizations include but are not limited to, permits or authorizations from the U.S. Army Corps of Engineers (“Corps”) and TCEQ, a floodplain development permit, and obtaining legal title or other property interest in land for the Impoundment, intake structure, pump station, pipeline, and any other infrastructure or facilities necessary to implement the Indirect Reuse Project.

**C. City Support.** The City shall actively support the Indirect Reuse Project including the District’s efforts to obtain Necessary Authorizations and to design and construct the Indirect Reuse Project. The City’s active support shall include participating in meeting(s) with the general public and/or with specific landowners as they relate to the Indirect Reuse Project, upon reasonable advance notice, as requested by the District.

**D. Design Considerations.**

1. **Size.** The Impoundment shall be sized not larger than necessary, as determined by the District, to divert up to the maximum amount of the MC Return Flows; subject to further review and agreement among the Parties as described further below in Section (I)(D)(4).

2. **Suitable Site.** The District will reasonably consider distance downstream from the MCWRF Outfall location in selecting a suitable site for the Impoundment upstream of Interstate 30. The District acknowledges that a suitable site will require that the Indirect Reuse Project maintain water quality in the Impoundment created on Mary’s Creek consistent with applicable Texas surface water quality standards adopted by the TCEQ (“SWQS”). The City

acknowledges that topography, environmental considerations, and landowner cooperation are relevant factors in selecting a suitable site.

3. **Dissolved Oxygen Review.** The District will provide the preliminary design of the dam and Impoundment to the City as soon as practicable. The City, together with the City's water quality engineering consultant, will promptly model the Impoundment, utilizing the approved TCEQ model, to verify that numerical SWQS for dissolved oxygen ("DO") will be maintained during full permitted discharge conditions. Should modeling indicate that numerical DO standards will not be maintained in the Impoundment, the City shall share the modeling with the District for the District's review, comment, and concurrence or objection regarding such conclusion. The City will cooperate with the District and TCEQ Water Quality Division staff, as necessary, to evaluate the modeling and its conclusions. If TCEQ staff concurs, on a preliminary basis, that the model and the conclusion that numerical DO standards in the Impoundment will not be maintained are sound, the City will cooperate with the District and TCEQ Water Quality Division staff, as necessary, to evaluate changes in design and/or mitigation measures that can be implemented to maintain TCEQ's adopted SWQS for DO in the Impoundment without changes to the City's existing Permit limits.
4. **Enhanced Opportunities.** During its implementation of the Indirect Reuse Project, the District may identify opportunities for the Indirect Reuse Project to address issues beyond withdrawal of the MC Return Flows. If the District identifies any reasonable opportunity to adjust or modify the Indirect Reuse Project in a manner that would support other regional stewardship or growth objectives, all Parties will consider those opportunities in good faith. If the Parties agree that such changes are desirable but materially affect the risk of a modified Indirect Reuse Project becoming legally or practically infeasible, the Parties may discuss a modification of the Agreement to accommodate a modified Indirect Reuse Project and potential adjustment of the dates triggering the City's obligation under Section (I)(G)(3) herein.

#### **E. Implementation.**

1. After all Necessary Authorizations are secured and final (not subject to appeal), the District will implement the Indirect Reuse Project consistent with the Necessary Authorizations.
2. Once the MCWRF and the Indirect Reuse Project are operational, the City shall provide the District with real-time discharge volume data consistent with the means, methods, and accuracy required for the District to comply with all Necessary Authorizations.

**F. Future DO Monitoring.** If, at any point after the District's construction of the Impoundment, water quality monitoring data for DO in the Impoundment indicates that DO concentration as measured in the Impoundment fails to meet TCEQ's adopted numerical DO criteria for Mary's Creek, the District shall immediately begin consultation with the City to identify the cause of such failure. If the existence of the Impoundment is determined to be the primary cause of such failure, the District shall collaborate and cooperate with the City to mitigate such failure in a cost-effective manner and will take reasonable steps available at the Impoundment, as determined appropriate in cooperation with the City. In addition, the City acknowledges that it shall take reasonable steps to mitigate such failure at the MCWRF. If the cause of the DO failure is at issue and the Parties cannot identify and agree on reasonable, cost-effective set of steps to take at the Impoundment and/or at the MCWRF, either individually or together, the Parties shall engage in a Formal Dispute Resolution process as provided in in Section III herein to resolve the conflict consistent with this Section (I)(F).

**G. Infeasibility Determination.**

**1. Conference and Concurrence.**

(a) Whether the Indirect Reuse Project is legally or practically infeasible may be determined at any time by concurrence between the City and the District, confirmed in writing by the City Manager and the District General Manager. If the District has not initiated operations of the Indirect Reuse Project on or before October 31, 2028, but no later than December 31, 2028, representatives of City and the District shall meet to:

- i. discuss the status of the Indirect Reuse Project, and
- ii. make a good faith effort to jointly determine if the Indirect Reuse Project remains feasible both as a legal and a practical matter and should continue to be pursued or should be determined to be legally or practically infeasible for purposes of Section (I)(G)(3).

(b) If the Indirect Reuse Project is rendered infeasible in a manner other than as described in Section (I)(G)(2), including, for example, due to physical, environmental, financial, legal, or other constraints (*e.g.*, the SWQS or compensatory mitigation issues), the District will provide information to the City to support its determination of infeasibility and the City shall review and concur or object based on an articulated engineering, environmental, hydrological, or appropriate technical or financial basis. If, following the City's and District's respective review of information as provided in this Section I(G)(1)(b), the Parties do not agree that the Indirect Reuse Project is legally or practically infeasible for purposes of Section (I)(G)(3), the Parties shall engage in a Formal Dispute Resolution Process as described in Section III, herein.



2. **Denial of Necessary Authorizations.** Notwithstanding Section (I)(G)(1), the District, at its election, can unilaterally declare the Indirect Reuse Project legally or practically infeasible for purposes of Section (I)(G)(3), without the need for the City to concur, at the point at which any Necessary Authorization(s) is or are (a) actually denied or (b) effectively denied, meaning not issued or secured by December 31, 2028.
3. **Total Phosphorous.** If the Indirect Reuse Project is determined to be legally or practically infeasible pursuant to this Section (I)(G), the City shall promptly apply to TCEQ for a minor amendment to the Permit, requesting a 0.1 mg/L daily average limit on Total Phosphorus in all phases of the Permit.

## II. OTHER OBLIGATIONS

- A. **Total Nitrogen.** Prior to the District's and Ms. Leonard's submissions under Section II.D. herein to the State Office of Administrative Hearings and the TCEQ to withdraw their respective hearing requests, the City shall request that TCEQ's Executive Director revise the draft permit to add a 6 mg/L Total Nitrogen daily average limit to the effluent limitations therein. The requested measurement frequency for the Total Nitrogen limit shall be once per day with a composite sample type.
- B. **Temporary Flow Condition.** Prior to the earlier of (1) the date the Indirect Reuse Project is operational or (2) the date that is seven years following the TCEQ's formal issuance of the Permit,
  - (a) the City agrees to discharge no more than 3 MGD of treated effluent from the MCWRF to Mary's Creek at all times when corrected streamflow at USGS gage 08047050 (Mary's Creek near Benbrook, TX) indicates Mary's Creek base flow is less than 4.6 cubic feet per second ("cfs"). For purposes of this Section (II)(B), "corrected streamflow" shall be calculated using the 8:00 am USGS reading minus the 8:00 am MCWRF discharge flow measured on the same day.
  - (b) The City may discharge more than 3 MGD of treated effluent from the MCWRF to Mary's Creek on any day when either (1) the corrected streamflow exceeds 4.6 cfs at USGS gage 08047050 (Mary's Creek near Benbrook, TX) or (2) the 8:00 am USGS gage 0804700 (Clear Fork Trinity River near Benbrook) reading is greater than 46 cfs.
- C. If the City ever files an application with the TCEQ seeking a major amendment to the Permit increasing the permitted discharge flowrate above 15 MGD, the City shall analyze the impact of such proposed increased discharge on Mary's Creek and the Clear Fork (between the Mary's Creek confluence with the Clear Fork and the Clear Fork confluence with the West Fork), including using or providing all necessary information for the District to use the CE-QUAL-W2 or other updated and appropriate modeling

tools to assess the impacts to SWQS, including nutrients and the potential for algal growth. For any application to discharge greater than 15 MGD, the City shall share such analysis with the District, or work with the District to achieve such analysis, as early as possible in the City's planning process. The City will reasonably consider input provided by the District during this planning process. For the avoidance of doubt, the District does not waive any other public participation or hearing opportunities that may exist pursuant to TCEQ rules.

- D.** The District and Ms. Leonard will unconditionally withdraw their respective pending hearing requests and protests of the Permit within three business days of the later of (a) execution of this final Settlement Agreement by all Parties or (b) the submission of the City's formal request in writing to TCEQ to incorporate a total nitrogen limit of 6 mg/L into the Permit.

### **III. FORMAL DISPUTE RESOLUTION**

- A.** With respect to those matters set out in Section I(G)(1) and Section (I)(F) that may be referred to Dispute Resolution, should the City and the District be unable to reach agreement through the exchange of information, then the current City of Fort Worth Water Director, as representative of the City, and current District General Manager, as representative of the District, will attempt to resolve the dispute within ten business days. Should these individuals be unable to resolve the matter, either the City or the District may invoke Formal Dispute Resolution by notifying the other Party in writing.
- B.** Within three business days of either the City or the District invoking Formal Dispute Resolution:
1. the City, at the City's expense, shall designate one or more outside independent expert(s) (the "City Designated Expert") qualified to render an unbiased opinion on the issue in dispute (e.g., water quality, permitting, etc.); and
  2. the District, at the District's expense, shall designate one or more outside independent expert(s) (the "District Designated Expert") qualified to render an unbiased opinion on the issue in dispute.
- C.** The City Designated Expert and the District Designated Expert shall promptly agree on one or more independent expert(s) qualified to render an unbiased opinion on the issue in dispute (e.g., water quality, permitting, etc.) (the "Panel Designated Expert"). The Panel Designated Expert, together with the City Designated Expert and the District Designated Expert, are collectively the "Independent Expert Panel."
1. The Independent Expert Panel shall notify the City and the District of the selection of the Panel Designated Expert by email to: Rachel Ickert at [rachel.ickert@trwd.com](mailto:rachel.ickert@trwd.com) with a copy to Stephen Tatum at [stephen.tatum@trwd.com](mailto:stephen.tatum@trwd.com) for the District and Christopher Harder at

**Christopher.Harder@fortworthtexas.gov and Christopher Mullins at Christopher.Mullins@fortworthtexas.gov for the City.**

- 2. The Panel Designated Expert and the firm or organization employing such expert(s) shall not be currently engaged by the City or the District and not have done more than \$100,000 of work for either the City or the District within the last three years (unless the City and District representatives named in Section (III)(A) both waive this restriction by emailed confirmation).**
  
- D. The City and the District shall fully cooperate with the Independent Expert Panel by providing the Independent Expert Panel and the other Party with a written explanation of the dispute, specifying the nature of the dispute and specifying the outcome sought by five business days after the date notice of the selection of the Panel Designated Expert is received. If the dispute involves differing interpretations of information, modeling, or data, the City and the District shall promptly provide the Independent Expert Panel with any and all such information, including, without limitation, internal or third party consultant modeling, agency and expert data provided to and/or relied upon the City and/or the District. In response to initial submissions, the City or the District may provide supplemental information to the Independent Expert Panel within five business days. The City and the District shall make available an expert representative of such Party to provide information and answer questions to facilitate the review of the Independent Expert Panel.**
  
- E. If the Independent Expert Panel determines a joint meeting would be helpful in resolving the dispute, the Independent Expert Panel shall hold a meeting with the City, District, and/or their representatives as soon as feasible.**
  
- F. The Independent Expert Panel will resolve the dispute by written recommended outcome articulating the rationale and basis for such recommendation. The Independent Expert Panel will endeavor to issue the recommendation 30 days from receipt of the last of the written submissions.**
  
- G. If the City and the District do not elect to accept the recommended outcome of the Independent Expert Panel, the Parties agree that the Independent Expert Panel recommendation shall be admissible as an expert opinion in related litigation between the Parties, if any.**
  
- H. The City shall be solely responsible for the payment of costs for the City Designated Expert and the District shall be solely responsible for all costs for the District Designated Expert. All costs of the Panel Designated Expert shall be paid one-half (1/2) by the City and one-half (1/2) by the District.**

IN WITNESS WHEREOF, the Parties acting in their individual capacity or under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, and the effective date of this Agreement shall be the latest date identified among the three party signatures below.

**TARRANT REGIONAL WATER DISTRICT**

BY   
Dan Buhman (May 24, 2022 15:48 CDT)

DATE May 24, 2022

ATTEST:

  
James Hill (May 24, 2022 16:16 CDT)

Vice President, Board of Directors

APPROVED AS TO FORM AND LEGALITY:

  
Stephen Tatum (May 24, 2022 16:20 CDT)

Attorney for the District

(District Seal)

**MARTHA LEONARD**

BY Martha Leonard

DATE 5-23-22

**CITY OF FORT WORTH, TEXAS**

*Dana Burghdoff*  
BY Dana Burghdoff (May 25, 2022 13:30 CDT)

DATE \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

*DBlack*  
DBlack (May 25, 2022 09:12 CDT)  
Assistant City Attorney

(City Seal)

**ATTEST:**

*Jannette S. Goodall*  
Jannette S. Goodall (May 25, 2022 13:30 CDT)  
City Secretary

12.

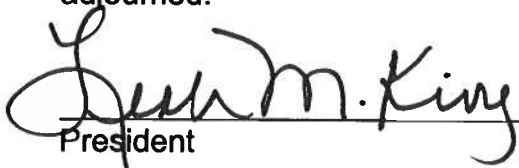
There were no future agenda items approved. Stephen Tatum advised the Board the staff update regarding open records requests received under the Public Information Act which are forwarded to the Attorney General's office requested by Director Kelleher would be provided at the June meeting.


13.

The next board meeting was scheduled for June 21, 2022 at 9:00 a.m. Director Hill inquired if meeting could be moved to June 14, 2022 at 9:00 a.m.

14.

There being no further business before the Board of Directors, the meeting was adjourned.

  
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President

  
\_\_\_\_\_  
Secretary