

# RECORD OF PROCEEDINGS

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## MINUTES OF THE SPECIAL MEETING OF WATERFALL METROPOLITAN DISTRICT NO. 1

HELD  
June 22, 2011

A Special Meeting of the Board of Directors of Waterfall Metropolitan District No. 1 was held at the offices of McWhinney, 2725 Rocky Mountain Ave, Suite 200, Loveland, Colorado 80538 on June 22, 2011, at 2:00 p.m.

### ATTENDANCE

#### Directors in Attendance Were:

Mike Bergerson  
Cole Evans  
Tammi Lau  
Troy McWhinney  
Steve Schroyer

#### Also in Attendance Were:

Alan Pogue, Icenogle, Seaver & Pogue, P.C.  
Teresa Adler, Pinnacle Consulting Group Inc.  
Carla Hawkins, Pinnacle Consulting Group Inc.  
Josh Magden, George K. Baum Company  
Kim Casey, Kutak Rock (via phone)  
Tom Engel, Urology Center of the Rockies

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### CALL TO ORDER

The meeting was called to order at 2:05 pm by Director McWhinney as Chairman, noting that a quorum was present. The Directors confirmed their qualifications to serve on the Board.

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### MEETING NOTICE

Ms. Carla Hawkins reported that Notice of the Meetings had been properly posted within the District's boundaries, and that Notice was sent to the Larimer County and Loveland Clerk and Recorders for posting. The notice also included agenda items.

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### CONFLICT OF INTEREST DISCLOSURE

Mr. Pogue, legal counsel, noted that notices of potential conflicts of interest for the Board Members were filed with the Colorado Secretary of

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State's Office, disclosing potential conflicts. Mr. Pogue advised the Board that pursuant to Colorado law, certain disclosures by the Board Members might be required prior to taking official action at a meeting. The Board reviewed the agenda for the meeting, following which each Board Member present confirmed the contents of the written disclosures previously made stating the fact and summary nature of any matters as required under Colorado law to permit official action to be taken at the meeting. Additionally, the Board determined that the participation of the members present was necessary to obtain a quorum or otherwise enable the Board to act.

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### APPROVAL OF AGENDA

Upon motion duly made by Director Bergerson and seconded by Director Schroyer, it was unanimously

**RESOLVED** to approve the agenda with changes to the order of business.

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### APPROVAL OF MINUTES

The minutes of the May 12, 2011 Special Meeting were presented and reviewed. Upon motion duly made by Director Lau and seconded by Director Evans, it was unanimously

**RESOLVED** to approve the Minutes of the May12, 2011 Waterfall Metropolitan District No. 1 Special Meeting, as presented.

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### APPROVAL OF PAYABLES

Ms. Adler presented the Schedule of Payables as of June 10, 2011 including checks 1134 through 1137 totaling \$5,600.19 for May 2011 invoices. Upon motion duly made by Director Bergerson and seconded by Director Evans, it was unanimously

**RESOLVED** to approve the June 10, 2011 Schedule of Payables in the amounts and check numbers as noted above.

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### SUBORDINATE PROMISSORY NOTE

Mr. Pogue presented for the Board's consideration a Subordinate Promissory Note with respect to the advancement and reimbursement of Capital Costs for 15<sup>th</sup> Street Streetscape of which were accepted by the District from JMC Real Estate Company, LLP on May 20, 2010, in the amount of \$12,904; plus a rate of prime plus 2; simple interest effective

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June 22, 2011. Upon motion duly made by Director Lau and seconded by Director Evans, with Director Bergerson abstaining from the vote, it was

**RESOLVED** to approve the Subordinate Promissory Notes for the advancement and reimbursement of Capital Costs by JMC Real Estate Company, LLP of \$12,904.

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1<sup>ST</sup> AMENDMENT  
TO COVENANT  
ENFORCEMENT  
AGREEMENT WITH  
BOYD LAKE VILLAGE  
OWNER'S ASSN

Mr. Pogue presented the First Amendment to the Covenant Enforcement Agreement between the District and Boyd Lake Village Owners Association those changes the term to a perpetual agreement with a sixty day notice to terminate. Upon motion duly made by Director Lau, seconded by Director Evans, the Board unanimously

**RESOLVED** to Approve the First Amendment to the Covenant Enforcement Agreement with Boyd Lake Village Owners Association

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UPDATE 2011  
FINANCING WITH  
US BANK

Mr. Magden summarized the non-rated, tax exempt, bank qualified loan arrangement with US Bank noting the loan amount is for \$1.73 million. He noted that interest rates have recently trended down. The District will pledge up to 45 mills and the specific ownership tax revenue to repay the 5 year term loan with a balloon payment at the end of the term. The District can also prepay the loan, with advance prepayment costs. Ms. Casey, legal counsel, summarized the Parameters Resolutions authorizing the direct loan in an amount not to exceed \$1.9 million. The Resolution also approves the Loan Agreement and Note, the Custodial Agreement and the 1st Addendum to the Reimbursement Subordinate Loan. The \$1.73 million loan is scheduled to close on Tuesday, July 28, 2011.

1<sup>st</sup> Addendum & Amended Improvement Acquisition Agreement

Mr. Pogue presented the First Addendum to Amended and Restated Improvement Acquisition and Reimbursement Agreement for the District to acquire public improvements. Upon motion duly made by Director Evans, seconded by Director Lau, the Board unanimously

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**RESOLVED** to Approve the First Addendum to Amended and Restated Improvement Acquisition and Reimbursement Agreement  
Resolution Authorizing Direct Loan with US Bank

Mr. Pogue requested that the Board consider approving the Authorizing Parameters Resolution authorizing a Direct Loan with U.S. Bank in an amount not to exceed \$1,900,000 and approving the documents incidental to the loan, with the interest not to exceed 5%. Upon motion duly made by Director Evans and seconded by Director Schroyer, it was unanimously

**RESOLVED** to approve and affirm the Authorizing Resolution and the Loan Agreements noted above including the Custodial Agreement appointing US Bank as the custodian and to direct Ms. Dowswell to have money wired per the Loan closing instructions as part of the loan transaction and to authorize Director McWhinney to sign additional documents related to loan at the closing if necessary.

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PUBLIC COMMENT

The Board opened the meeting to further public comments. Upon receiving no further comments, this portion of the meeting was closed.

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ADJOURNMENT

There being no further business to come before the Board at this time, the meeting was adjourned at 2:35 pm.

Respectfully submitted,



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Carla Hawkins  
Secretary for the Meeting