

**METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT
BOARD OF DIRECTORS MEETING**

February 8, 1999

*****Wilson Room***
Tohono Chul Park
7366 North Paseo del Norte
Tucson, Arizona 85704**

MINUTES

Board Members Present:	Jim Doyle, Chair Herb Johnson, Member Sam Ray, Member Marlene Wright, Member
Board Member Not Present:	Pete Schlegel, Member
District Staff:	Mark R. Stratton, General Manager Joyce E. Osborne, Recording Secretary Phil Higdon, Legal Counsel

Regular Session

I. Call To Order and Roll Call

Mr. Doyle, Chair of the Board of Directors of Metropolitan Domestic Water Improvement District (District), called the regular Board meeting to order at 6:00 p.m.. Mr. Herb Johnson, Mr. Sam Ray, and Ms. Marlene Wright were present. Mr. Schlegel was not present.

II. Comments from the Public

There were no comments from the public.

III. Consent Agenda

- A. Approval of Minutes – January 11, 1999 Board Meeting.
- B. Ratification of Billing Adjustments.
- C. Approval to Purchase Alarm System from Central Alarm of Tucson.
- D. Ratification of Water Service Agreement for Riverside Crossing.

Mr. Ray made a motion to approve the consent agenda. Ms. Wright seconded the motion and it passed unanimously.

IV. General Business – Items for Discussion and Possible Action

A. Financial Report.

Mr. Land said the budget summary report is for January 1999 and that the current report will be available for the February 11, 1999 Board meeting. He said that revenues are running 1 to 1-1/2% over budget.

B. Approval to Purchase New Meter Reading Handhelds.

Mr. Ray made a motion to approve the purchase of a new Itron hand held meter reading system from Mountain States Pipe & Supply for an amount not to exceed \$27,570. Mr. Johnson seconded the motion and it passed unanimously

C. Letter of Support for ADEQ Nomination of Shannon Road-Rillito Creek Site on the WQARF Registry.

Mr. Ray made a motion to approve the issuance of a letter to the Arizona Department of Environmental Quality to endorse the ADEQ nomination of Shannon Road – Rillito Creek site for the WQARF Site Registry and acknowledge that Metropolitan Domestic Water Improvement District's Board of Directors is interested in recommending individuals to ADEQ for the Community Selection Board and Community Advisory Board memberships.

Ms. Wright seconded the motion and it passed unanimously.

Mr. Ray requested that agenda item #9 E be discussed before agenda item #8D. The Board unanimously agreed.

E. Approval of Amendment No. 3 to Architectural Services Agreement with Terry Armstrong, Architect for New District Office and Maintenance Buildings.

Mr. Ray made a motion to approve Amendment #3 to the Architectural Services Agreement with Terry L. Armstrong, Architect, not to exceed \$7,500 and establish a new completion date of May 31, 1999. Ms. Wright seconded the motion.

Mr. Ray asked if the District has discussed the bill with the Architect. He was concerned that the Architect is asking for \$920.00/month in fees and how can he justify those fees when there were 95 days when the project was on hold. Mr. Maish, District Engineer, said the Architect's monthly fee covers meetings, coordination with in-house staff, site visits, shop drawing review, contractor updates, etc.

Ms. Wright wanted to know if the Architect gives an accounting of his time on a monthly basis and if he does not, have we ever used architects that provide that type of accounting. Mr. Maish said the Architect does not provide a record of his time on an hourly basis. He is paid a monthly fee for the

construction phase of this project. Mr. Maish said a good portion of the \$920 goes to cover the additional liability insurance. Mr. Maish explained that normally an architect is not required to account for their time to justify monthly billings. This particular contract was on a not to exceed amount. Mr. Ray said that the Board is now being asked to exceed that amount. Mr. Ray thinks that it is in the best interest of the Architect to prolong the project as much as possible if he is billing us monthly for his services. Mr. Maish explained that this particular architect is a one man business and he does not have accounting people keeping track of time.

Mr. Doyle felt that the Architect had done some work but not the amount to justify the full month's compensation.

Mr. Doyle called the question to approve of Amendment #3 to the Architectural Services Agreement with Terry L. Armstrong, not to exceed \$7,500.00 and establish a new completion date of May 31, 1999. The motion did not pass with Mr. Doyle, Mr. Ray and Ms. Wright voting against the motion and Mr. Johnson abstaining.

Mr. Ray made a motion to have staff meet with the architect, Terry L. Armstrong, and negotiate a better deal during the slack period less the standard \$920 monthly fee. Ms. Wright seconded the motion and it passed unanimously.

D. Approval of Change Order No. 1 to the Martin C. Lang General Contractor, Inc. Contract for the New District Office and Maintenance Buildings.

Mr. Ray made a motion to accept Change Order #1 with Martin C. Lang General Contractor, Inc., that establishes a new contract completion date of March 30, 1999. This extension is granted upon receipt of funds in the amount of \$19,375 from Martin C. Lang General Contractors. Ms. Wright seconded the motion.

Mr. Ray said that the District rate payers should not be responsible for the extra fees incurred by the Architect and that Mr. Lang should be responsible for those expenses and 50% of the penalty fees for the 95 day extension. Ms. Wright said that no changes were made after the first bid and that Fast Fab did not submit their contract until September and if they had submitted in a timely manner, there would not be a delay in construction. Mr. Maish said those dates were dates between Lang Construction and Fast Fab and American Steel (supplier) and that Fast Fab (sub-contractor) did attend the pre-construction meeting for a notice to proceed and it was just a matter of formalizing those agreements. Ms. Wright said that item #21 of the contract states that the Construction Company can go back and talk and communicate their concerns to pay those fees, which give them a course of retribution. Mr. Maish said that the construction company cannot be held responsible for this delay. Mr. Ray stated that unfortunately this was not the first steel building that Lang Construction had contracted for and that they have dealt with these types of sub-contractors before. Reasonable contracting is the ability to control the contractors and if a delay is foreseen they need to accept the penalty. Mr. Maish said Lang Construction told the District that their understanding with the sub-contractor is that they would meet the requirements of the contract with Fast Fab. If

the sub-contractor had indicated that they could not meet the contract, Lang Construction would have gone to someone else.

Mr. Johnson asked if anyone in the Engineering Division had checked this contract against the original bid. Mr. Maish said that parts of the contract were applicable and that materially it was checked very carefully by both the architect and the structural engineer after the shop drawings were submitted.

Mr. Stratton made a point of clarification that if in fact the amended contract is less than the \$7,500, he assumes that Mr. Ray's intent is to lower this change order by the same amount. Mr. Ray confirmed that this was his intent.

Mr. Johnson expressed concern that not passing this change order would delay the project even more and add more costs. Mr. Ray stated that the general contractor is under a fine of \$250/day for every day that he is late and that should be enough incentive to see that the project is finished in a timely manner.

Mr. Doyle called the question to move to accept Change Order #1 with Martin C. Lang General Contractor, Inc. establishing a new contract completion date of March 30, 1999. This extension is granted upon receipt of funds in the amount of \$19,375 from Martin C. Lang General Contractors. The motion passed with Mr. Doyle, Mr. Ray and Ms. Wright voting for the motion and Mr. Johnson abstaining.

F. Legislative Update.

Mr. Stratton said he would be going to Phoenix February 11, 1999 for a scheduled committee hearing where he will be testifying to encourage passage of the District's legislation, Senate Bill 1230. He said no negative issues have arisen and that the support from rural counties has been positive.

Mr. Higdon, Legal Counsel from Brown & Bain, discussed the new legislative movement afoot to clarify the open meetings laws. Mr. Higdon said this bill is an attempt to clarify the open meetings laws and the impact of the public's ability to get information. Mr. Higdon is concerned about this particular legislation because one requirement will be to tape executive sessions. He is concerned that although these tapes will not be made public like the actual minutes of a Board session, they will be on file. Mr. Higdon feels that this legislation should be watched closely and that the District should talk to our lobbyist about our concerns because conversations in executive sessions may be less productive because the people in the executive session know they are being recorded. Mr. Higdon cited a case in Maricopa County where School District Board members were fired for contacting each individual Board member. Mr. Stratton said that besides just phone calls, faxes and e-mail can be construed as the same set of circumstances.

Mr. Higdon clarified that the theory behind taping executive session is that things are discussed that should not be and without any kind of recording or no public attendance, the people involved can

deny that it happened. Mr. Ray said that even though the tapes are considered unofficial they can be subpoenaed if needed. Mr. Higdon said that if someone files a lawsuit based on executive session, then they subpoena the tapes and maybe only a judge will hear them, but they become evidence.

V. General Manager's Report

Mr. Stratton said that Oro Valley Water Improvement District (OV#1) staff is continuing to work with District staff to finalize the termination with OV#1. There is a meeting scheduled Wednesday with Oro Valley staff to go over numbers and infrastructure so that separation can happen before July 1, 1999.

Mr. Stratton said that there was to be a public hearing with the Arizona Corporation Commission (ACC) based on additional comments from customers of the Hub Water District. He was not sure when that hearing will be but will notify the Board as soon as he knows. Mr. Stratton has also been asked to speak at the Sabino Vista Homeowners' Association regarding the eventual HUB Acquisition. Mr. Stratton was e-mailed by Mr. McNulty today that comments on the deed of trust and other documents regarding the HUB acquisition is being finalized and should be completed in a short fashion.

Mr. Stratton said that staff is starting to generalize numbers for the annual 1999-2000 budget. With the Oro Valley separation, the District no longer needs to present a budget to Oro Valley. Mr. Stratton said the Board will have a chance to review and adopt the budget at the May, 1999 meeting.

Mr. Stratton said the District is always trying to enhance its overall capabilities and with continuing growth and not wanting to add more meter readers, the District is implementing a meter replacement program for a majority of the residential meters. Mr. Hill explained that most meters have a useful life of about 10 years and when residential meters start to go they usually always read low and never high. Mr. Hill's recommendation is to focus on the meter replacement and he will submit a report at a future Board meeting showing the financial impact and overall benefit financially to the District.

Mr. Ray wanted to know if the District re-builds old meters. Mr. Hill said the District does but they do not rebuild well. Mr. Stratton said that in the past we have never had the facility to do the volume of meter repairs and replacements that we needed to do but perhaps our new office space will allow that.

Mr. Tenney, Assistant to the General Manager, passed out a proposed insert announcing the public hearing regarding rates on March 23, 1999 at Casas Adobes Church at 7:00 p.m. The insert will be sent to customers to inform them of the rate hearing and the items that will be discussed. Mr. Tenney asked for any and all comments to be in his hands by February 11, 1999 of this week so the printer can do the insert on time.

VI. Legal Counsel Reports

Mr. Higdon said his firm is finalizing and storing all documents related to the City settlement and that all documents that have needed to be returned have been. He requested that if anyone still thought that Brown & Bain had documents that belonged to them to please contact the firm immediately.

Mr. Stratton said that the bond issuance will start tomorrow and the bonds are being issued with a A3 rating which puts the District in a very good category for insurance and interest rates.

VII. Future Meeting Dates; Future Agenda Items

The Board will have a study session scheduled for Thursday, February 11, 1999 at 5:00 p.m. at the District conference room to discuss the bond issuance.

VIII. Adjournment

The Board adjourned at 6:50 p.m.



Vice Chair of the Board

ATTEST:



Clerk of the Board