

**ACTION SUMMARY MINUTES**  
**MINUTES OF THE REGULAR MEETING OF**  
**THE BOARD OF DIRECTORS OF THE**  
**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**  
**HELD WEDNESDAY, NOVEMBER 14, 2012**

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, November 14, 2012 at 6:00 p.m. in the Board Chambers of the Fresno Metropolitan Flood Control District at 5469 East Olive Avenue; Fresno, California.

**DIRECTORS PRESENT:** Roy Spina, Chairman  
Jennette Williams, Vice-Chairman  
Kendall Groom  
Mike Rastegar  
Barbara Goodwin  
Frank Fowler  
Buzz Burleson

**DIRECTORS ABSENT:** None

**STAFF, CONSULTANTS,**  
**OTHERS PRESENT:** Bob Van Wyk, General Manager  
Jerry Lakeman, District Engineer  
Alan Hofmann, Assistant District Engineer/Design  
Peter Sanchez, Operations Engineer  
Paul Merrill, Accounting Manager  
Paul Allen, Facilities Manager  
Esther Schwandt, Clerk to the Board

Ken Price, Assistant General Counsel;  
Baker, Manock & Jensen  
Robert Wilkinson, Assistant General Counsel;  
Baker, Manock & Jensen

Michael McKinney, Chief Executive Officer, Mow-N-Edge  
Jamie Rust, Clean Cut Landscape  
Jeff Roberts, Granville Homes  
Goldie Lewis, Granville Homes

**PRESIDING:** Director Spina, presiding as Chairman called the meeting to order at 6:00 p.m. and Mr. Hofmann led the Pledge of Allegiance.

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**2. REPORT OF THE GENERAL MANAGER:**

Mr. Van Wyk reported on the following: (1) with respect to staffing issues, Mr. Van Wyk stated the District is down 6 positions largely due as a result of attrition over approximately a two year period and represents over 9% of the District's salaries; he stated at this point he is not proposing to fill any of those positions and thus, the Board will see a salary savings in the Budget; (2) he reminded the Board that only one Board Meeting has been scheduled for November and one for December; (3) he distributed copies of the LWA Fresno Storm Water Precipitation Forecast, noting the District relies heavily on this report and finds it to be a good source of information; (4) he distributed copies of the Fresno Bee article dated Saturday, October 27, 2012 entitled "The Buzz Word is Sustainability"; the articles reports the Fresno County Master Gardeners UCCE is joining with the cities of Fresno and Clovis, the District and the Clovis Botanical Garden in recognizing homeowners who have installed sustainable landscapes and who follow sustainable gardening practices; (5) he distributed copies of the Fresno Business Journal featuring one of our Legal Counsel members, Ken Price; and (6) he distributed a flyer regarding an upcoming seminar on "How to be an Effective Board Member"; he requested Board Members who are in interested in attending the seminar, let the Clerk to the Board know so that arrangements can be made for their attendance.

**3. APPROVAL OF MINUTES: Meeting of October 24, 2012**

Due to their absence at the October 24, 2012 Board Meeting, Directors Williams and Goodwin abstained.

**Approved as Recommended**

**Motion by: Burleson      Second by: Fowler**  
**Ayes: Spina, Groom, Rastegar, Fowler, Burleson**  
**Noes: None**  
**Abstentions: Williams, Goodwin**  
**Absentees: None**

**4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:**

There was no Business or Presentations from the Floor

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**5. ADDITIONS TO THE AGENDA:**

There were no Additions to the Agenda.

**6. POTENTIAL CONFLICTS OF INTEREST:**

There were no Conflicts of Interest.

**7. PUBLIC HEARING:**

There were no Public Hearings scheduled.

**8. CONSENT CALENDAR:**

d. Award of Contracts:

(2) "CW-31", Electrical Facilities

e. Engineer's Report of Construction, October 2012

f. Engineer's Report of Developer Agreements, October 2012

g. Quarterly Real Estate Report, October 2012

h. Ratification of Expenditures, October 2012

i. Report of Changes in Uniform Cost Accounting Act Limits

j. Report of Pollutant Discharge Incidents, October 2012

k. Report of Public Concerns, October 2012

Staff requested the Board pull items 8c and 8d(1); Director Burleson requested 8b be pulled; Director Goodwin requested 8a be pulled; and Director Groom requested 8l be pulled.

**Approved as Recommended with the exception of items that were pulled, 8a; 8b; 8c; 8d(1); and 8l.**

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**Motion by: Rastegar      Second by: Williams**  
**Ayes: Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

**a. Acceptance of Quarterly Investment Report, Third Quarter**

No action is required of the Board of Directors unless specific direction is to be given to staff.

Responding to Director Goodwin's question regarding page 3 of the Investment Report which states "The Investment Portfolio is not compliant with the California Government Codes 53601 and 53635", Mr. Price stated he personally is uncertain as to what the remedy for the violation would be, noting he has researched similar issues in which there is no statutory remedy for a permit violation. He stated Legal Counsel can take a quick look at it though. Director Williams stated she believed the Auditor was probably required to state that they were out of compliance with that in this statement, but believed there is probably a much better explanation in the actual audit.

**Approved as Recommended**

**Motion by: Goodwin      Second by: Rastegar**  
**Ayes: Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

**b. Authorization to Exercise Option Year of Master Maintenance Service Contracts**

Recommend the Board of Directors authorize staff to execute the option year extension of the Master Maintenance Contracts as outlined in the Board Memorandum.

Responding to Director Burleson's question regarding page 3 entitled "Exhibit 'B'" regarding Agreement No. 2012-02 and 2012-07 as to the dollar exposure to these two companies, Mr. Allen stated with respect to 2012-07 Central Valley Lawnscares, they are doing very little work for the District possibly \$10,000 to \$15,000 per year. Responding to Director Burleson's subsequent question, Mr. Allen stated staff evaluates the project on a

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case by case basis, and then assigns it to a particular contractor. With respect to the 2012-02 Cerutti & Sons Transportation, Mr. Allen stated it is similar with the exception they do the work in excess of \$200,000 for heavy equipment to clean basins.

**Approved as Recommended**

**Motion by: Burleson      Second by: Williams**  
**Ayes:                      Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes:                        None**  
**Abstentions:              None**  
**Absentees:                 None**

- c.      Authorization to Schedule Public Hearing to Adopt Resolution Amending the Storm Drainage and Flood Control Master Plan and Amending the Schedule of Drainage Fees, Surcharges and Costs for Local Drainage Areas (2013 Rate Schedule)**

Recommend the Board of Directors authorize the noticing of a Public Hearing for amendment of the Schedule of Drainage Fees and Costs in accordance with the Drainage Fee Ordinance.

Mr. Van Wyk stated this is a request to schedule a Public Hearing on Drainage Fees. He stated while staff supports going ahead and proceeding with the Public Hearing, as part of his discussion with the Board during the General Manager's evaluation, it was noted that while we call it a full cost drainage fee, it is not that. He stated at one time the General Fund had to make up an 8% deficiency, resulting in a 4% increase being implemented several years ago. He stated staff is going to take a look at the deficiency to determine the amount the General Fund is having to make-up, noting the General Fund will be severely burdened if it continues this subsidy. He stated later on this year, staff will bring a report to the Board identifying what the deficiency is, what is causing it and see if remedies can be identified.

**Approved as Recommended**

**Motion by: Groom              Second by: Fowler**  
**Ayes:                        Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes:                        None**  
**Abstentions:              None**  
**Absentees:                 None**

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**d. Award of Contracts:**

**(1) Developed Basin Maintenance Contract, Clean Cut and Elite Maintenance and Tree Service**

Recommend the Board of Directors authorize staff to enter into contracts with Clean Cut Landscape for Units I and II and Elite Landscape and Tree Service for Units III and IV for services as specified in the RFP. Said contracts are to include an initial term of one-year with two one-year extension options.

Mr. Allen distributed a letter to the Board of Directors dated November 13, 2012 from Michael McKinney, Chief Executive Officer of Mow-N-Edge, regarding their concerns with respect to this item.

Mr. McKinney, 4397 N. Valentine Avenue Fresno, CA 93722, addressed the Board requesting the Board table this item until staff has had time to re-evaluate their bid. He noted there was a numerical error in the preparation of their bid which resulted in their bid being higher than what it should have been. He explained how his staff had made the error in misinterpreting the RFP's specific number of mowings. He requested in the future the RFP be changed to specifically state that the mowing service begins on March 15<sup>th</sup> and ends on October 15<sup>th</sup> to eliminate the possibility of others misinterpreting the specific number of mowings. However, he stated that he has been informed by staff that even if staff re-evaluated their bid, it would still be staff's recommendation to award the contract to Clean Cut Landscape as they are the lowest responsible bidder. Mr. McKinney requested the Board reconsider awarding the contract to Clean Cut as they will be 14% less than what the District is currently paying, noting his belief that the Board should award the contract to Mow-N-Edge although higher than Clean Cut but he believes their work is superior and by undercutting the bids he believes Clean Cut would not do as good of a job as Mow-N-Edge does, and thus this would not be in the best interest of the District.

Responding to Director Burluson's question as to what percentage of their 2012 work revenue was from the District, Mr. McKinney stated more than 50%.

Responding to Director Goodwin's question as to whether Mow-N-Edge was present at the pre-proposal meeting, Mr. Allen stated they were in attendance. Responding to Director Goodwin's follow up question, Mr. Allen stated Mow-N-Edge informed staff of Mow-N-Edge's typographical error verbally.

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Responding to Director Burleson's question as to whether staff has any concerns with respect to Clean Cut Landscape being able to perform the work, Mr. Allen stated he did not, based upon Clean Cut Landscape's past performance.

Responding to Director Fowler's question as to protection for the District should the contractor not live up to his end of the agreement, Mr. Allen responded that there are performance and payment bonds provided by the contractors to protect the District.

Mr. Jamie Rust, representing Clean Cut Landscape, Clovis California, addressed the Board stating they are more than capable of doing the work, noting the District would be approximately 5% of their current total workload, which they perform up and down the State of California, and the company is financially sound.

**Approved as Recommended**

**Motion by: Rastegar      Second by: Burleson**  
**Ayes:            Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes:            None**  
**Abstentions:    None**  
**Absentees:        None**

**I.      Report on Other Post Employment Benefit (OPEB) Investment Returns**

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

Responding to Director Groom's question regarding whether the District has any funds in CalPERS, Mr. Merrill stated the District does not; however, staff was requested by the Board to do a Comparative Rates of Return with CalPERS in each report.

**As the report was submitted for informational purposes only, no further action was taken.**

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**9. Preliminary Report and Guidance on Master Plan for Local Drainage Areas “CD” (Garfield, Gettysburg, Bryan, Dakota) and “CG” (McKinley, Garfield, Dakota, Bryan)**

Recommend the Board of Directors:

1. Provide direction whether to retain 300 acres westerly of Garfield Avenue with the Drainage Area “CD” Master Plan, and then,
2. Provide direction as to the extent of mitigation required of Granville Homes based upon the revised systems and the direction regarding the 300 acres westerly of Garfield Avenue.

Director Fowler stated it would be his preference to take out the 300 acres westerly of Garfield Avenue from the Drainage Area “CD”. Director Burleson concurred.

Mr. Jeff Roberts representing Granville Homes, 1396 W. Herndon Fresno California, introduced Goldie Lewis also from Granville. Mr. Roberts addressed the Board stating the reason this item has been brought to the Board this evening is that the Westlake Project’s draft EIR should be out in the middle of December and they would like to include any conceptual changes proposed this evening in the draft EIR documents which would eliminate the need for additional CEQA processing by the District. He stated approximately 4 years ago, Granville pointed out eliminating the 300 acres westerly of Garfield Avenue with the Drainage Area “CD” Master Plan, as it was not in the current sphere, and the City has indicated they do not plan expansion of the sphere up to year 2060. Mr. Roberts stated Granville has agreed to pay staff to look at the additional changes.

Mr. Lakeman noted what is presented this evening is preliminary in nature, and staff plans to meet with Granville to review the work and then it is anticipated staff will bring the item back to the Board at the December Board Meeting.

Mr. Hofmann noted in taking the 300 acres out, there is one property owner that has paid fees through a time payment so staff will need to refund this property owner should this proposed change be made.

Mr. Lakeman confirmed Director Goodwin’s statement that this item will come back to the December Board Meeting as a formal Public Hearing presenting the 300 acres as part of the Drainage Area “CD” and requesting the Board remove it.



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It was the consensus of the Board Members to proceed as proposed and discussed this evening, specifically bringing this item back to the Board at the December Board Meeting with a formal recommended action, and that recommendation will be that the 300 acres westerly of Garfield Avenue be taken out of the Drainage Area "CD".

Responding to Directors Rastegar's and Spina's concern, Mr. Van Wyk stated staff will prepare a special mailing to the approximately 10 property owners located in the 300 acres westerly of Garfield Avenue which this issue will impact.

**10. Adoption of Resolution Approving Amendment of Kings Basin Authority Joint Powers Authority**

Recommend the Board of Directors adopt the Resolution attached to the Board Memorandum amending the Joint Powers Authority Agreement regarding attendance by a majority of member agencies as a quorum of the Advisory Committee.

**Approved as Recommended, Adopting Resolution No. 2012-755**

**Motion by: Goodwin      Second by: Rastegar**  
**Ayes:                      Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes:                        None**  
**Abstentions:              None**  
**Absentees:                 None**

**12. Board Reports, Workshops, Correspondence and Requests for Future Agenda Items**

There were no items reported.

**REPORT OF GENERAL COUNSEL**

Mr. Price reported on Legislative items of interest to the District.

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**CLOSED SESSION**

The Board then convened in Closed Session at 7:17 pm to consider the following litigation:

13. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:  
Pursuant to subdivision (a) of Section 54956.9:

**Fresno Metropolitan Flood Control District v. Gary Charles and Elaine June Simonian Trust; Case No. 12CECG01857 DSB; Basin “BL” (Church & Armstrong)**

The Board then convened in regular session at 7:32 pm. Mr. Price stated no reportable action was taken in Closed Session.

**ADJOURNMENT**

**Adjourned Board Meeting at 7:33 pm.**

**Motion by: Williams      Second by: Rastegar**  
**Ayes: Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

  
\_\_\_\_\_  
BOB VAN WYK  
GENERAL MANAGER-SECRETARY

  
\_\_\_\_\_  
DATE