

# LAKE POINTE MUNICIPAL UTILITY DISTRICT

## MINUTES OF A MEETING OF THE BOARD OF DIRECTORS

January 13, 2022

The Board of Directors of Lake Pointe Municipal Utility District (the “District”) met in person in a regular session on January 13, 2022, at 7:00 p.m., open to the public. The District posted a copy of the notice of meeting, attached as “Exhibit A.”

Director Salgo called the meeting to order at 7:00 p.m.

### Item No. 1

Item No. 1 was to call to order and establish quorum. The following members of the Board were present:

Director Robert Salgo  
Director Penny Handsel  
Director Jody Flaws

Director Jason Rew-Hunter was absent due to illness. Also in attendance were William Swanks with TUMCO, Josiah Longbons and Blake Foree of Landscape Resources, Laura Jones from Maxwell Locke & Ritter, Andrew Berkowitz from Johnson Services Company, Seth Russell and Kenton Andrews from the Andrews Myers law firm (representing Johnson Services), Pat Sinnott, Jim Norris, Michael Scharf, and Grayson McDaniel with The Carlton Law Firm.

### Item No. 4

Item No. 4 was to discuss, consider, and take action as necessary regarding the appointment of directors. Director Salgo distributed a ballot tally sheet, explained that this was the first time the Board had three prospective appointees for one seat. He noted how important community involvement is to good self-governance and stated that the three candidates for the appointed seat were all well-qualified. Director Flaws and the director to be appointed will both be up for election in November 2022. Director Salgo noted that if not appointed at this meeting, the three candidates could run for office in November 2022.

The directors completed their first ballots and gave them to Operations Manager Swanks, who tallied and announced the votes. Because the results were not unanimous, the directors completed the second ballot and gave them to Operations Manager Swanks, who tallied and announced the votes. As a result of the second ballot, the Directors reached a unanimous consensus to appoint Terry Elam to fill the unexpired term of Steven Knuff. Director Flaws made a motion for the Board to appoint Terry Elam for the next director. Director Handsel seconded the motion, and the motion **PASSED** unanimously.

Director Salgo asked if any director would like to make a motion regarding Board offices. Director Flaws made a motion that Director Salgo be Board President, that that Director Handsel be

Board Vice President, and that Director Flaws remain Treasurer/Secretary. Director Salgo seconded the motion, and the motion **PASSED** unanimously.

Director Salgo thanked Mr. Scharf for attending and said that he would have another opportunity join the Board in November 2022. The Board took **NO FURTHER ACTION** on this item.

#### **Item No. 14**

Item No. 14 was to discuss, consider, and take action as necessary regarding the District's audit for fiscal year 2021. Laura Jones of Maxwell, Locke & Ritter, LLP, the District's independent auditor, presented the District's Independent Auditor's Report and Financial Statements and Supplemental Information for the fiscal year ending September 2021. She stated that the District is in good financial health, there had been no issues with the audit, no material adjustments needed, and TUMCO had been pleasant and efficient to work with in preparing the Audit.

Ms. Jones asked if there were any questions regarding the audit report. There were none. Since President Salgo and Ms. Jones coordinated on a revision needed to be made in the TCEQ Filing Affidavit included in the report, and Ms. Jones confirmed she would send the affidavit, once revised, to Operations Manager Swanks for President Salgo to execute and have the affidavit notarized.

The Board took **NO ACTION** on this item.

#### **Item No. 10**

Item No. 10 was to discuss, consider, and take action as necessary regarding the Boundary (Resaca) Fence project within the Lake Pointe Subdivisions. President Salgo reported that Cathy Mitchell informed him that the license agreement between the District and Travis County, regarding building in the rights-of-way, had been included on the Travis County Commissioners Court's consent agenda for January 18, 2022. After approval, a title sheet for the final plans will need to be signed by President Salgo, the City of Bee Cave, and Travis County, which Jones|Carter will coordinate. Jones|Carter will then issue the Notice to Proceed to Johnson Services Company ("Johnson"). President Salgo stated that the Board would discuss the project further in executive session.

Appearing virtually via Zoom, Johnson's counsel, Seth Russell with Andrews Myers P.C., made a presentation to the Board regarding Johnson's willingness and ability to perform their obligations as Contractor on the project. Mr. Russell introduced himself and his associate, Kenton Andrews, and Andy Berkowitz, a principal with Johnson, also appearing via Zoom. Mr. Russell explained that he has experience in working on legal issues both for and against municipal utility districts. He stated that he is very familiar with the way the District makes decisions and the sacrifices the Board makes to contribute public service.

Mr. Russell explained that he sent a letter to Ms. McDaniel and Mr. Carlton that the Board would likely discuss in executive session. He stated that Johnson has a resolve and commitment to the project, despite internal issues that they have now worked through. Johnson Services Company fully intends for the District to be a happy customer. Mr. Russell stated that he wished to retract prior negative comments that Johnson's previous attorney made to President Salgo and Ms. McDaniel in a Zoom call on December 29. He stated that Johnson hopes the District will withdraw its formal Notice of Potential Default, and that Jones|Carter will provide Johnson with drawings for the project and have a meeting with Johnson

about project requirements and questions, and kick off the pre-construction submittal process in earnest. Johnson also is concerned about whether it needs to engage with a structural engineer to provide drawings for the alternative design for which Johnson made a bid.

Mr. Russell further stated that he would like to persuade the Directors that filing a claim on the performance bond would not be in the best interest of the District. He stated that declaration of default could be seen as “wrongful” as Johnson Services Company wants to walk back its prior repudiation of the contract; that terminating Johnson for default before a Notice to Proceed is issued could be grounds for rescission; that litigation can be longer, more costly, more uncertain, and subject to appeal; and that working with a surety—which the District would do if it files a claim on the performance bond—is not a panacea, as sureties want a long list of information and will take a long time to understand it and any replacement contractor will have the same issues as Johnson.

Mr. Berkowitz delivered the remarks he had prepared. Mr. Berkowitz thanked the Board for moving the item up on the agenda. He stated that Johnson had looked into the matter since the last time he spoke to the District’s representatives on December 29 via Zoom, and that Johnson’s goal is to resolve all of the outstanding issues.

Mr. Russell asked for questions. President Salgo thanked Mr. Russell and Mr. Berkowitz for his comments for his reassurance that Johnson intends to perform under the contract. President Salgo explained that his own background is in the construction business and that he had worked closely with Jones|Carter to plan the project and the contract documents. President Salgo noted that the District had worked hard for over a year to plan the project. He stated that the alternative bid design requires a sealed set of drawings from a structural engineer, and expressed that this is clear from the bid documents. President Salgo noted that Johnson’s prior attorney did not seem to have read the bid and contract documents carefully. He suggested that if Johnson was confused about the design, Johnson speak with its representative who attended the mandatory pre-bid meeting at the offices of Jones|Carter. President Salgo stated that the District would help Johnson as needed during the project, and said that that Johnson can examine the project site.

Finally, President Salgo noted that the Board had hoped that Johnson would have brought the items to the meeting that he requested at the December 29 Zoom meeting—the list of subcontractors, materials list, and structural design. These items were supposed to have already been submitted to the District. President Salgo noted that Johnson had failed to provide the District with the requested materials or any other written assurance of their readiness and preparedness to perform the contract.

Mr. Russell stated that Johnson was confused about whether the alternative bid design needs to be completed by Johnson and, if so, when. Mr. Berkowitz added that he does not see any contract provisions about submitting a design, that Johnson has never done that before, and is not sure what was represented to the District or Jones Carter. President Salgo explained that the bid and contract documents present the single-wythe alternative option as a design-build request, and expressed surprise that Johnson had not worked harder to understand the contract and design that they paced their bid on. The District and Jones Carter designed the double-wythe design, but permitted the bidders to propose a single-wythe alternative option that might be cheaper or more efficient to construct. President Salgo suggested again that Mr. Berkowitz and Mr. Russell talk to Jones|Carter and read the contract to discover what was required, as this would not be difficult, and as the contract and project are not unusual for a

contractor. He also noted that the District would like their attorney at the meeting between Johnson and Jones Carter as a record keeper.

President Salgo asked for questions from the Directors. Mr. Russell asked Ms. McDaniel to follow up tomorrow about any action taken by the Board on this item. Mr. Russell thanked the Board for moving them up on the agenda. Mr. Russell and Mr. Berkowitz signed off from their Zoom link to the meeting.

The Board took **NO ACTION** on this item.

### **Item No. 8**

Item No. 8 was to discuss, consider, and take action as necessary regarding landscape services within the Lake Pointe subdivision. Blake Foree reported that Landscape Resources had completed the tree work along Bee Caves and the uplighting-bed work discussed at the December meeting.

Mr. Foree distributed three proposals to the directors. He explained that the first proposal, for “Bee Caves Frontage Irrigation Repair,” for \$1,156, is already completed. President Salgo confirmed that Landscape Resources will pass the cost of the metal edging work to the West Travis County PUA. Landscape Resources will pass the proposal to the West Travis County PUA.

The second proposal was for “Uplighting Fixture Beds on the Wall along Bee Cave,” for \$7,143.76. Landscape Resources proposed the removal of the damaged steel edging and overgrown plants in the existing beds, installation of 478 linear feet of new edging, installation of a weed barrier and river rock in 41 beds, and removal of all debris and old materials. Mr. Longbons advised against planting in the beds, as even lantana can grow above the lights. This proposal was tabled at the December meeting.

The third proposal was for “Holly Pruning at the Intersection of Sonoma and Bayton.” Mr. Longbons provided two options for the Board to consider—one for structural pruning with vertical pruning, for \$1,250, and one for structural pruning with vertical and horizontal pruning, for \$1,600. Mr. Foree stated that the hedges will be easier to maintain if horizontal and vertical pruning is accomplished. Director Flaws confirmed in response to Mr. Longbons that the work would be done in the spring and suggested tabling the proposal until March.

President Salgo asked if Landscape Resources will please complete and provide the mowing schedule for the February meeting. Mr. Longbons said Landscape Resources updated and tried to submit it to Operations Manager Swanks, but that there was an issue because former Director Knuff is still the author/owner of the document. Director Flaws said he would help with this issue.

Director Flaws moved to approve the proposals for “Uplighting Fixture Beds on the Wall along Bee Cave,” for \$7,143.76 and for “Bee Caves Frontage Irrigation Repair,” for \$1,156. Director Handsel seconded the motion. President Salgo asked for questions. Hearing none, President Salgo took a voice vote and the motion **PASSED** unanimously.

Regarding the irrigation and landscaping portion of the Resaca Boulevard fence project, Mr. Longbons noted that the landscape architect had proposed some plants with a propensity to fail, like

Mexican Feathergrass. President Salgo said he would send Mr. Longbons the plans and welcomes his feedback.

The Board took **NO FURTHER ACTION** on this item.

### **Item No. 12**

Item No. 12 was to discuss, consider, and take action as necessary regarding the Preserve. Mr. Norris made a presentation to the Board entitled “Lake Pointe Day Dock and Cluster Dock.” He pointed out the location of the current dock, the proposed new dock, and the proposed covered boat slips. The directors discussed the proposed location.

Mr. Norris discussed the history of his plans for the dock. In 2014, when the dock floated away, West Travis Co. MUD 5 paid a company called Moss Monsters to retrieve the dock and repair it. Mr. Norris explained that discussions regarding improving or constructing a dock began in 2017; plans were completed in 2019; Mr. Norris got a 9-1-1 address for the dock in 2020. Currently, he is working on issues regarding electricity at the dock. Austin Energy has inspected the site and made a design plan that they could be implemented in about six months. Mr. Norris described the next steps as securing permits for the swim dock and boat slips, electricity, and ownership of the dock and slips.

Mr. Norris hopes to present at the Pointe HOA meeting on Monday, but he has not asked to be included on the agenda yet.

Mr. Norris took questions. Director Handsel asked what the District’s return on the investment would be if it invested in the dock project. Mr. Norris said the dock would cost about \$1 million. President Salgo stated that the District has paid or pledged \$30,000 for permitting already, referencing the April 25, 2021 invoice from Aqua Permits. President Salgo expressed a lack of interest in funding \$45,000, or whatever amount that Mr. Norris is seeking, in excess of what the District has already invested. President Salgo stated that legal counsel may need to analyze the amount the District can legally contribute and the purpose for which the District can legally contribute before making any decisions. Director Handsel suggested that Mr. Norris include information on return on investment and financing in his presentation to the Pointe HOA. The directors thanked Mr. Norris for his presentation.

President Salgo asked for other issues regarding the Preserve. Operations Manager Swanks stated that the benches had been installed. The signs, he reported, have been ordered and Operations Manager Swanks is waiting for them to be sent to him for final approval.

The Board took **NO ACTION** on this item.

### **Item No. 11**

Item No. 11 was to discuss, consider, and take action as necessary regarding District participation in bringing Texas Gas to neighborhood. At the last meeting, Mr. Husband asked about the District being involved with installation, payment for, contribution to natural gas. Legal provided a memorandum describing that the statutory provisions governing municipal utility districts do not permit the District to contribute to, install, maintain, or pay for natural gas facilities. President Salgo stated that if Mr. Husband asks, the directors can forward him the memorandum.

The Board took **NO ACTION** on this item.

#### **Item No. 5**

Item No. 5 was to review and approve minutes of the December 9, 2021 regular meeting. President Salgo suggested revisions to the minutes. Ms. McDaniel said she would make the revisions. Director Flaws made a motion to approve the December 9, 2021 minutes, as amended. President Salgo seconded the motion, and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

#### **Item No. 6**

Item No. 6 was to discuss, consider, and take action as necessary regarding the District's financial reports and payment of the District's bills and invoices. Director Flaws made a motion to pay the District's bills, including the \$4,750 for Hutchins Engineering Services toward the dock and the \$149.48 for the commemorative gift for former Director Goff. President Salgo seconded the motion.

Director Handsel asked for a spreadsheet showing what amount was authorized for a project and how much had been spent. Operations Manager Swanks said TUMCO would generate this spreadsheet in the future and add it to the monthly Board packet with the bills. President Salgo called for a voice vote and the motion **PASSED** unanimously.

#### **Item No. 7**

Item No. 7 was to discuss, consider, and take action as necessary regarding maintenance of the District's facilities, including the ongoing Stormwater Basin Maintenance Project. Operations Manager Swanks reported that DigDug had started work on the pond near the highway and the pond on Napa. Operations Manager Swanks will walk through the sites with Doucette Engineering and DigDug on January 19, 2022.

Operations Manager Swanks reported next that over the weekend there was freezing weather, and a valve seal cracked. The seal has been ordered. Parts and labor together to repair the seal total about \$390.

The Board took **NO ACTION** on this item.

#### **Item No. 13**

Item No. 13 was to discuss, consider, and take action as necessary regarding the District's website. President Salgo asked if the District's annual audit report can be added to the website. Director Flaws said that once the audit report has been signed and notarized, it can be sent to Shay to add to the website.

Director Flaws is working with Shay on an idea for a vault on the website to store information without paper. Director Flaws also wants to determine how Tumco and how TCLF can post directly to the website.

The Board took **NO ACTION** on this item.

### **Item No. 9**

Item No. 9 was to discuss, consider, and take action as necessary regarding the ongoing activities of the West Travis County Public Utility Agency (“PUA”).

The Board took **NO ACTION** on this item.

### **Item No. 3**

Item No. 3 was to receive an update from the Lake Pointe Homeowners’ Association. No representative of the Pointe HOA attended the meeting.

The Board took **NO ACTION** on this item.

### **Item No. 15**

Item No. 15 was to review and approve quarterly investment report for 4<sup>th</sup> quarter of previous year. The Board thinks this item was erroneously included in the agenda, as there is no report to review.

The Board took **NO ACTION** on this item.

### **Item No. 16**

Item No. 16 was to discuss, consider, and take action as necessary regarding annual review of the District’s investment policy.

The resolution confirming review of the investment policy needs to be revised to reflect the new director and the directors’ new offices, so the Board tabled this item for February 2022’s meeting.

The Board took **NO ACTION** on this item.

### **Item No. 2**

Item No. 2 was to receive public comment on items not on the Agenda. No public comments were made. The Board took **NO ACTION** on this item.

## **EXECUTIVE SESSION**

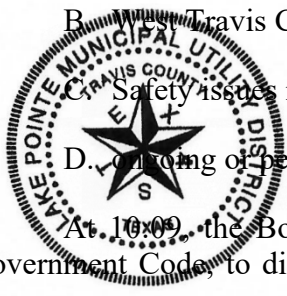
The Texas Open Meetings Act, Chapter 551 of the Texas Government Code, authorizes the Board of Directors to convene in close or executive session for certain purposes, including receiving legal advice from the District’s attorney (Sec. 551.071); discussing real property matters (Sec. 551.072); discussing gifts and donations (Sec. 551.073); discussing security personnel or devices (Sec. 551.076); and discussing information technology security practices (Sec. 551.089). If the Board of Directors goes into executive session to discuss any item on this agenda, the President Officer will announce that the Board will meet in Executive Session will be held, will note the time, and will identify the item to be discussed and the provision of the Open Meetings Act which authorizes the Executive Session. The District may meet in executive session on any agenda item or any item listed below:

A. the District's Preserve;

B. the Travis County PUA;

C. Safety issues related to COVID-19; and

D. Ongoing or pending litigation involving the District.



At 10:00, the Board retired to executive session, pursuant to Section 551.071 of the Texas Government Code, to discuss ongoing or pending litigation involving the District with the District's attorney.

At 11:05, the Board returned from executive session. The Board took no action and made no motions while in Executive Session.

**Item No. 12**

President Salgo made a motion to authorize The Carlton Law Firm to continue negotiating with the four homeowners who cut trees and to bring back resolutions for the Board's approval at the February meeting. Director Handsel seconded the motion, and the motion **PASSED** unanimously.

**Item No. 10**

President Salgo made a motion to authorize The Carlton Law Firm to continue negotiating with Johnson Service Company's attorneys and to bring bac a formal notice of default for consideration and vote of the Board at the February meeting. Director Flaws seconded the motion, and the motion **PASSED** unanimously.

**Item No. 16**

Item No. 16 was items for future agendas. The February agenda should include the resolution confirming annual review of the District's investment policy. The Board took **NO ACTION** on this item.

**Item No. 17**

Item No. 17 was adjournment. Director Flaws made a motion to adjourn. President Salgo seconded the motion and it **PASSED** unanimously.

**PASSED, APPROVED, AND ADOPTED this 10<sup>th</sup> day of February 2022.**

  
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Jody Flaws, Secretary-Treasurer

(DISTRICT SEAL)