

MINUTES OF THE MEETING
OF THE
BOARD OF DIRECTORS

THE STATE OF TEXAS §

COUNTY OF HAYS §

HAYS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 §

The Board of Directors (the “Board”) of Hays County Water Control and Improvement District No. 2 (sometimes referred to herein as the “District”) met in Special Session, on the 23rd day of November, 2020, via zoom video and telephonic conference. To mitigate the spread of COVID-19 and pursuant to the guidance provided by the Office of the Attorney General of the State of Texas, the meeting was open to the public by zoom and telephonic conference. The roll was called of the members of the Board of Directors, (herein referred to as the “Board”) to-wit:

Bill Harris	President
Samantha E. Bethke	Vice President
Sean McGillicuddy	Secretary
William Carroll Kelly IV	Treasurer/Assistant Secretary
Lynn J. Lee	Assistant Secretary

All members of the Board participated in the meeting via Zoom video. The record shall reflect that all directors voted on all matters that came before the Board. Additionally participating in the Zoom videoconference were Judy McAngus and Vicki Hahn, paralegals with Winstead PC, Andy Barrett of Andy Barrett & Associates, PLLC, Kristi Hester with Inframark, the District’s general management and operations contractor, Lauren Barzilla with CMA Engineering (“CMA”), the District’s engineers and Jimmy Romell of Maxwell, Locke & Ritter (“ML&R”), engaged by the Law Office of Matthew B. Kutac PLLC to review certain cash and expenditure transactions related to the misappropriation of District funds.

1. Mr. Kutac explained a few guidelines for the zoom/telephonic conference meeting and requested that each Board member confirm their name prior to making any motion or voting on such matters to insure that the public record of the meeting would be heard and accurately recorded. Notification to the public was given that the meeting was being recorded. The meeting was then called to order, and evidence was presented that public notice of such meeting had been given as required by law.

2. Mr. Kutac confirmed that no members of the public had submitted an email to sign up for public comment in advance of the meeting. He further called for public communications and comments from any person, including any persons tied into the meeting via audio. There were no comments.

3. Mr. Kutac noted that the subject of this Special Session was the misappropriation of funds by the District's former bookkeeper, a former employee of Inframark. Mr. Kutac then gave the following summary which included the: (a) history of events; (b) results of the investigation; and (c) recommended procedures and control measures to further protect against misappropriation of funds in the future.

(A). History of Events:

(i) On March 12, 2020, just as the Pandemic was becoming an issue, Ms. Hester of Inframark informed the District's attorneys that Inframark had reason to believe that Lisa Adkins was diverting certain funds held in one of the District's bank accounts into her personal bank account. Ms. Hester informed the attorneys for the District that Ms. Adkins was either deceiving authorized signatories into signing the checks, or forging their names and inserting her name as the payee on the checks. Mr. Kutac noted that, his initial step in looking into Inframark's notification of such possible theft was to contact Mr. Terry Mazurek, President of Bancorp South, the District's depository, who confirmed that the bank's staff had initially detected the irregular transactions that Ms. Hester had disclosed to both he and Mr. Barrett;

(ii) Mr. Kutac notified the Board of the possible misappropriation of funds via email on the following day of March 13, 2020. At a subsequent meeting on March 26, 2020, the Board adopted a Resolution authorizing its attorneys to obtain copies of the banking account information necessary to conduct a review. The Board also requested that the attorneys contact counsel for Inframark to discuss a proposed course of action and reimbursement of the District's costs related thereto;

(iii) Mr. Kutac contacted Matthew Hoban, General Counsel for Inframark. Mr. Hoban indicated that it appeared that the funds had been misappropriated based on their initial investigation of the matter, though he stressed that Inframark's investigation had not been completed. Mr. Kutac presented Mr. Hoban with a proposal requiring Inframark to prepare a written accounting of the subject transactions. The proposal also called for verification of Inframark's written accounting by ML&R. At the conclusion of ML&R's review, and assuming the conduct and the amounts misappropriated were verified with confidence, Inframark would then reimburse the District in the amount of the misappropriated funds, together with the costs incurred by the District in connection with such matters. Mr. Kutac confirmed that Inframark approved of such method of addressing these matters on April 23rd, and that his law firm retained ML&R to perform a review and prepare a report on April 24th; and

(iv) Mr. Kutac next explained that while the process of reviewing the questioned transactions and verifying the amounts misappropriated was getting underway, he turned his attention to contracting with a new firm to provide bookkeeping services moving forward, as the Board considered it imperative to transfer such services to an independent bookkeeping firm. He, Mr. Barrett and Ms. McAngus researched proposed replacement bookkeepers and recommended Bott & Douthitt, a very qualified and experienced local bookkeeping firm who specializes in the representations of special districts. The Board's Finance Committee interviewed Bott & Douthitt in May, and at the Board's May 21, 2020 regular meeting, Bott & Douthitt was engaged to provide bookkeeping services effective as of

June 1, 2020. Subsequently, bookkeeping services were removed from the scope of Inframark's service agreement by amendment.

(B) Summary of Results of the Investigation: In late May and early June, Jimmy Romell of ML&R, reviewed the banking information received from Bancorp South and confirmed that Ms. Adkins had been issuing checks, obtaining or forging the required signatures, replacing her name over the top of the correct payee's name and then depositing the checks into her personal bank account via a mobile banking application. Inframark had initially determined that there were 20 fraudulent check transactions between March 19, 2019 and February 24, 2020 for a total of \$30,500.00. It was noted that the transactions were taken from in-ground pool deposits paid from the manager's account and that the operations account was not involved. In addition, during ML&R's review of such matters, six additional checks in the amount of \$10,500.00 had been identified as fraudulent transactions. Overall, Mr. Kutac summarized that based on the reports from Inframark and ML&R, a total of \$41,000.00 had been misappropriated from the District manager's account through 26 fraudulent check transactions during the period of review of March 2017 to April 2020 (20 months before the first fraudulent check to the month after discovery of the activity). Mr. Kutac further stated that based on his review, he believed that the process and investigation had been thorough, that the results with respect to these inquiries were complete and accurate, and that the information before the Board was sufficient to support informed action; and

At this point Mr. Kutac asked if Mr. Romell had anything to add to the above but Mr. Romell had nothing to add. Mr. Kutac also asked whether the Board had any questions of himself or Mr. Romell regarding the reporting on such matters, and there being none, he proceeded to the next topic of discussion.

(C). Recommended Procedures and Control Measures: Mr. Kutac next discussed a series of proposed procedures and control measures that he and Mr. Romell had worked together to develop to prevent this type of fraudulent activity from occurring in the future, as set forth below:

(i). Limit the number of persons authorized to sign checks on the District's manager's account to three people. Two of the signatories would be the principals of Bott & Douthitt (Mary Bott and Allen Douthitt) and one additional employee would be authorized to sign in the event one of the principals was unavailable;

(ii). All cancelled checks should be reviewed each month when bank reconciliations are performed. The review should be conducted by a person other than the person who issues payments. A supervisor, not involved in issuing payments or performing the monthly reconciliation, should perform a secondary review of the bank reconciliations each month;

(iii). A detailed list of all payments based on cancelled checks reviewed pursuant to the previous measure should be submitted to the Board on a monthly basis;

(iv). The memo line of all checks must be completed to allow review in connection with the reconciliation and to ensure the descriptions are reasonable;

(v). Positive Pay should be implement to allow for verification of the accuracy of the check number, the date and dollar amount prior to payment being processed by the bank. If the check is suspect, it will be sent back to the issuer; and

(vi.). Non-utility deposits (i.e., pool deposits, builder deposits, etc.) should be refunded only upon written request by the depositor.

4. Mr. Kutac finished his summary and asked if the Board had any questions or suggestions. The Board did not.

5. Mr. Kutac noted that Inframark's General Counsel contacted him and assured him that Inframark stands ready to remedy this matter by reimbursing the misappropriated funds (\$41,000.00) and any related costs incurred by the District to ensure that the District is made whole. It was noted that estimated costs to date are approximately \$20,000 as of early November 2020.

6. With regard to above misappropriation of funds and 2.c. of the posted agenda related to potential legal remedies, upon motion by Director McGillicuddy, seconded by Director Kelly and unanimously carried, the Board retired, along with Matt Kutac and Andy Barrett, the District's attorneys to Executive Session at 6:11 p.m.

7. The Board concluded the Executive Session and reconvened in public session at 6:54 p.m. Mr. Kutac stated that no action was taken in the Executive Session.

8. Upon motion by Director Bethke, seconded by Director Harris and unanimously carried, the Board authorized Mr. Kutac and Mr. Barrett to seek civil remedies in connection with this matter.

There being no further business to conduct, Director Kelly moved that the meeting be adjourned, which motion was seconded by Director McGillicuddy and unanimously approved. Thereupon, the Board adjourned until further call.

APPROVED AND ADOPTED this 17th day of December, 2020 .




Sean McGillicuddy, Secretary