

**RESOLUTION NO. 2023-09**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
WESTERN HILLS WATER DISTRICT**

**DETERMINATION OF FINDINGS REGARDING STATUS OF ASSIGNMENT,  
ASSUMPTION AND RELEASE AGREEMENT DATED APRIL 30, 2020 AND RELATED  
ISSUES**

WHEREAS, since WHWD's formation in 1992, the revenues collected by WHWD in connection with its provision of water and sewer service to the Diablo Grande community have significantly failed to match the cost of providing those services. To remedy the funding discrepancies and ensure sufficient operational and capital finances for the District, the original owner of the project, Diablo Grande Limited Partnership ("DGLP") entered into the Master Agreement to Provide Water, Sewer and Storm Drainage Services dated June 4, 1998 with WHWD (the "Master Agreement"). In exchange for the developer's obligation to provide annual funding shortfalls, WHWD agreed to ensure adequate water and sewer capacity to provide for the build out of the Diablo Grande project; and

WHEREAS, ultimately, DGLP filed bankruptcy and World International, LLC ("World") purchased the Diablo Grande project and assumed DGLP's obligations to fund WHWD's revenue deficiencies by entering into an Addendum to Master Agreement to Provide Water, Sewer and Storm Drainage Services, dated May 14, 2009 (the "Amended Master Agreement"); and

WHEREAS, despite World providing funding and WHWD providing water/sewer services in accordance with the Amended Master Agreement for several years, World alleged financial difficulties beginning in or around 2018. In 2019, World indicated that it had a prospective buyer that would purchase the Diablo Grande project and fully assume World's obligations under the Amended Master Agreement. The Master Agreement, at Section 8, requires that, "[E]xcept with the written consent of the other party, the rights and obligations under this Agreement shall not be assignable by either party;" and

WHEREAS, on April 24, 2020 the WHWD Board of Directors conditionally approved the Assignment, Assumption and Release Agreement (the "Assignment"); and

WHEREAS, subsequent to World and AC entering into an Amended and Restated Purchase and Sale Agreement, dated April 30, 2020 (the "Purchase Agreement"), on or about May 7, 2020 escrow closed on certain parcels of real property in Diablo Grande. Since 2019, World has failed to contribute the revenue shortfalls to WHWD required under the Amended Master Agreement. AC has never paid any amount to WHWD, be it per the Amended Master Agreement or otherwise; and

WHEREAS, on October 6, 2023, WHWD provided a Notice of Hearing to World and AC advising them that the WHWD Board would make determination on several issues related to

World and AC's obligations under the Amended Master Agreement and WHWD's ability to enforce those obligations under the Water Code.

WHEREAS, the Board of Directors of the WHWD opened and held the public hearing, reviewed the Staff Report dated November 3, 2023, the Staff Report Attachments, the records of WHWD and received the advice of the District's counsel.

NOW THEREFORE, BE IT RESOLVED BY THE Board of Directors of the Western Hills Water District as follows:

I. The WHWD Board makes the following findings:

1. As to Issue No. 1: Did the condition precedent set forth in Section 3 of the Assignment occur, such that WHWD's consent to the Assignment was obtained? Section 3 of the Assignment states in relevant part: "[O]nly in the event that the part of the Property described in the Purchase Agreement is conveyed to Buyer from World, Western consents and accepts the assignment of World's right, title, interest, obligations and liabilities in and to the Master Agreement and the WHWD Liabilities to Buyer as set forth in this Agreement..."

Finding A. Stanislaus County A.P.N. 025-039-021 is located within the PDP Lands and was not conveyed from World to AC.

Finding B. Stanislaus County A.P.N. 025-039-014 is located within the WHWD Lands and was not conveyed from World to AC.

Finding C. The Purchase Agreement required AC to perform lot line adjustments to create and perfect the legal description for the WHWD Lands to be conveyed from World to AC, which never occurred.

Finding D. Because "that the part of the Property described in the Purchase Agreement" was not conveyed to AC from World, as required in Section 3 of the Assignment, the condition precedent to obtain WHWD's consent did not occur.

Conclusion: Based upon the foregoing because all of the property within the PDP Lands and the WHWD Lands owned by World, e.g., "the part of the Property described in the Purchase Agreement" was not conveyed to AC (Buyer) from World, the condition precedent in Section 3 of the Assignment did not occur, therefore WHWD's consent to the Assignment was not obtained.

2. As to Issue No. 2: If WHWD determines the finding to Issue No. 1 is "no", e.g., the condition precedent in the Assignment did not occur and there was no Assignment of the Master Agreement to Provide Water, Sewer and Storm Drainage Services, as amended by the Addendum to Master Agreement to Provide Water, Sewer and Storm Drainage Services (referred to herein as the "Amended Master Agreement"), then does World remain obligated to WHWD as set forth in the Amended Master Agreement?

Conclusion: Because WHWD's written consent to assignment of the Master Agreement was not obtained, as per Issue No. 1, World continues to remain obligated under the terms of the Master Agreement/Amended Master Agreement.

3. As to Issue No. 3: If World continues to be obligated to WHWD under the Amended Master Agreement, what are the delinquent amounts for which World is liable to WHWD?

Finding A. Because the Master Agreement as amended requires World to fund the shortfalls of the WHWD based upon the WHWD annual budgets, World is liable to WHWD in an amount equal to the adopted annual WHWD budgets minus the WHWD revenues therein.

Conclusion: As of November 3, 2023, World is currently liable to WHWD under the Amended Master Agreement in the amount of \$7,826,762.42. It is anticipated this amount will continue to grow with each successive year to the extent WHWD's revenues do not meet its cost of providing utility services.

4. As to Issue No. 4: Does the failure of Angel's Crossing to perform under the Assignment, e.g., failure to make any payments towards the WHWD Liabilities as defined in the Assignment, result in the Assignment being of no force or effect such that World remains liable to WHWD under the Amended Master Agreement?

Conclusion: In addition to the finding of Issue No. 1 that WHWD's consent to the Assignment was not obtained, because AC failed to make any payments to WHWD in accordance with the Master Agreement or Amended Master Agreement, World remains obligated to WHWD in accordance with the Amended Master Agreement.

5. As to Issue No. 5: Does former WHWD Director Guillermo Marrero's undisclosed financial interest in the Assignment, e.g., the agreement by Angel's Crossing to assume World's obligation to pay International Practice Group approximately \$165,085.02, result in the Assignment being void pursuant to Gov't. Code §1090, *et seq.*?

Finding A. Former WHWD President/Director G. Marrero was the owner of International Practice Group ("IPG"), which is a law firm which included World as one of its clients.

Finding B. Pursuant to the Purchase Agreement, which was contingent on WHWD approving the Assignment, AC was to assume an obligation to pay IPG \$165,085.02.

Finding C. AC's promise to pay IPG was a direct financial interest to G. Marrero, which was never disclosed and not discovered by WHWD until August 2023.

Conclusion: Because Director/President Marrero had an undisclosed direct financial interest in the approval of the Assignment, the Assignment violates Gov't. Code §1090.

6. This Resolution shall take effect immediately upon its adoption.

7. WHWD shall cause a copy of this Resolution to be provided to all affected parties.

8. WHWD staff are hereby authorized to take all actions to enforce this Resolution, including but not limited to the use of any collection remedies allowed under the Water Code.

Moved by Director, Mark Kovich, second by Director, Martin George Johnson,

that the foregoing resolution be adopted.

Upon roll call the following vote was had:

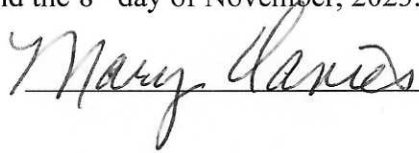
Ayes: Director's, Mark Kovick, John Frederick, Mary Davies, Martin Gene Johnson,  
Martin George Johnson

Noes: None

Abstain: None

Absent: None

I, Mary Davies, Secretary of the Board of Directors of the Western Hills Water District, do hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the said Board of Directors held the 8<sup>th</sup> day of November, 2023.

  
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