

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Zach Nelson, Project Manager

SUBJECT: Review and Recommendation on the Agreement with Mike and Lori Walker for the Washington County Rural System – Surfside Club Water Main Extension Project

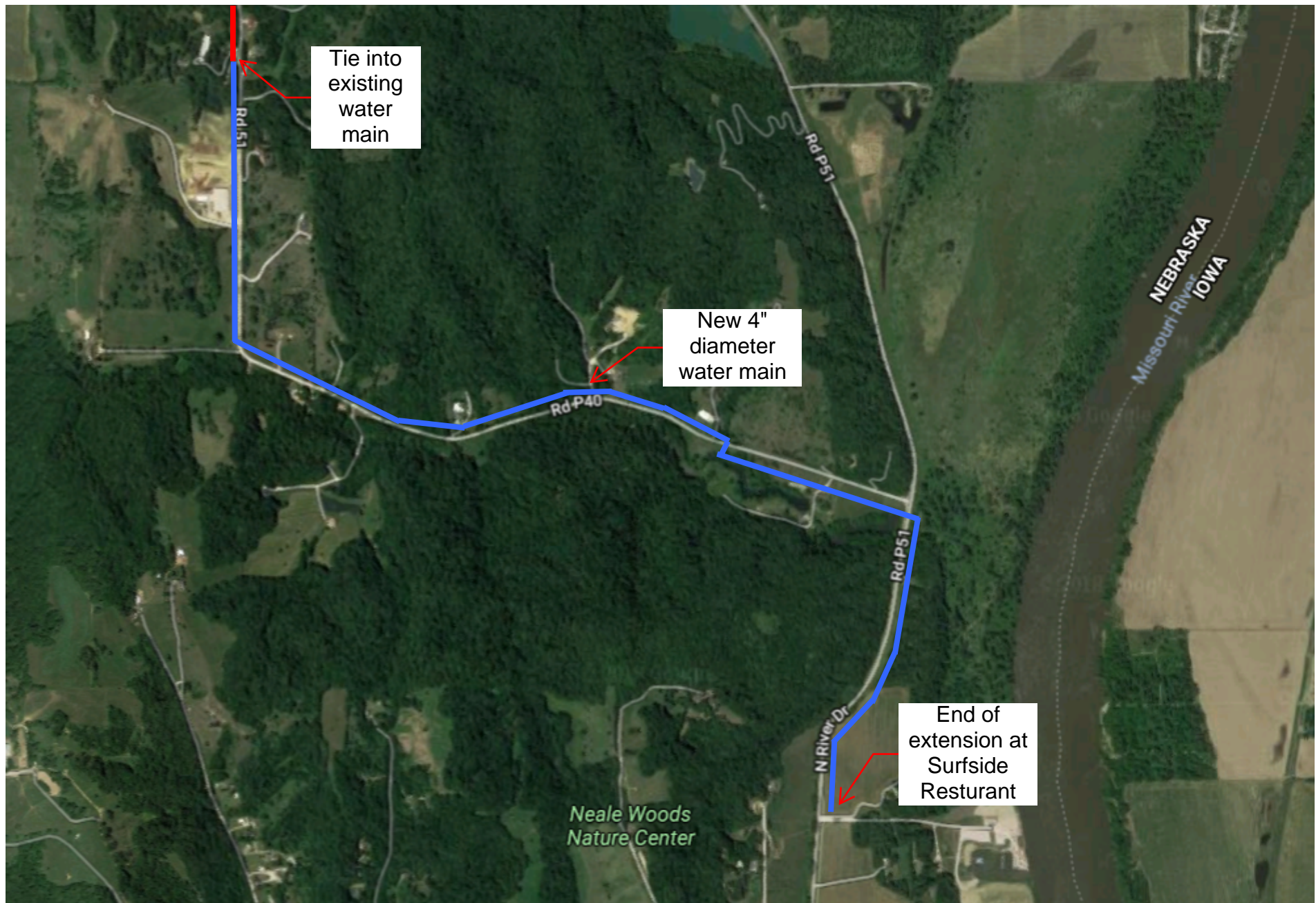
DATE: 12/3/2018

Currently, the Surfside Club Restaurant located at 14445 N River Road Drive, Omaha 68112 has no clean potable water source onsite. In order to operate their business, the owners have been trucking in water from MUD. The District was approached by Mike and Lori Walker, the owners of the Surfside Club Restaurant, in the summer of 2018 about extending a rural water main to serve the restaurant. The nearest Washington County Rural Water main is located approximately two miles away near the intersection of Acorn Lane and County Road P51. (See attached map)

Due to the cost of extending rural water mains and long payback period, property owners are required to pay 100% of all water main design and construction costs. After collecting a deposit from the Walkers, HDR was hired to design the water main extension to serve the restaurant. The project has been bid out and the apparent low bidder was the Surfside Club, Inc. Mike and Lori Walker submitted a bid through their company, Surfside Club, Inc that is based upon the use of subcontractors to perform the work. Over the past few weeks, District staff has met with the subcontractors that the Surfside Club, Inc is planning to use to verify that the work can be completed per the District's specifications. Attached is an agreement between the District and Mike and Lori Walker for the extension of a Washington County Rural Water System water main to serve their property.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed agreement with Mike and Lori Walker for the Washington County Rural Water System Surfside Water Main Extension Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Washington County Rural Water System Surfside Restaurant Water Main Extension Project Map



AGREEMENT
Between
MICHAEL AND LORI WALKER
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
A WATER LINE EXTENSION

This AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], 2018 (the “EFFECTIVE DATE”) by and between Michael and Lori Walker (hereinafter collectively referred to as “CUSTOMER”) and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as the “DISTRICT”).

WHEREAS, the DISTRICT, through an existing revenue-producing, special improvement project, operates and maintains a water distribution system (hereinafter referred to as “WATER SYSTEM”) in Washington and Douglas County, Nebraska; and,

WHEREAS, CUSTOMER own parcels of land in Douglas County, Nebraska (hereinafter referred to collectively as “CUSTOMER PARCEL”); and,

WHEREAS, CUSTOMER has requested that the DISTRICT make available to the CUSTOMER PARCEL the usual and customary water service provided to the CUSTOMER of the WATER SYSTEM, and, among other things, the DISTRICT has requested as a condition to the availability of such service that CUSTOMER pay the full cost of engineering, design, permitting and construction relating to extending the WATER SYSTEM (the “EXTENSION”) and installing a water line to CUSTOMER PARCEL to be connected to the WATER SYSTEM (hereinafter referred to as the “WATER LINES”, and collectively with the EXTENSION, the “PROJECT”); and,

WHEREAS, pursuant to Neb. Rev. Stat. § 2-3254, the Nebraska Department of Health and Human Services must review and approve the plans and specifications for the PROJECT to ensure compliance of the PROJECT with the Nebraska Safe Drinking Water Act; and,

WHEREAS, the CUSTOMER submitted a bid to perform the construction work on the PROJECT and was determined to be the lowest responsible bidder in accordance with Nebraska law and DISTRICT’s competitive bid policy.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THEIR MUTUAL COVENANTS, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The PROJECT shall connect to the WATER SYSTEM at a point or points determined by the DISTRICT, in its sole discretion. The DISTRICT shall identify the location of a meter on each CUSTOMER PARCEL, at locations determined by the DISTRICT. The location

of the meter shall constitute the “POINT(S) OF DELIVERY.” The DISTRICT shall have the right to approve, reject or request changes to the documents needed to construct the PROJECT (the “CONSTRUCTION DOCUMENTS”).

2. The meters at the POINTS OF DELIVERY shall be the terminus points for the WATER LINES. Upon completion of the PROJECT, the DISTRICT shall only be responsible for maintaining the necessary parts and equipment for the PROJECT up to the POINTS OF DELIVERY pursuant to the DISTRICT’S rules and regulations for the WATER SYSTEM. For each of its respective parcels, the CUSTOMER shall be responsible for emplacing and maintaining all other necessary parts and equipment beyond the POINTS OF DELIVERY. Such emplacement and maintenance shall be consistent with applicable laws, rules and regulations, and policies of the WATER SYSTEM.
3. The DISTRICT shall obtain the necessary permits and approvals from the Department of Health and Human Services to engineer, design, construct and maintain the PROJECT.
4. The DISTRICT shall obtain all necessary permits, licenses, consents and other third party approvals related to construction of the PROJECT.
5. The District shall acquire all easements, permits, and rights-of-way as the DISTRICT determines, in the DISTRICT’S sole discretion, are necessary for the PROJECT. All such easements, permits, and rights-of-way shall be in the name of and held by the DISTRICT.
6. CUSTOMER shall grant the DISTRICT any and all easements and permissions related to the CUSTOMER PARCEL necessary for the PROJECT as determined by the DISTRICT. All permanent easements, permits, and right-of-ways provided by CUSTOMER for the WATER LINES shall include that the DISTRICT has the permanent right to enter the lands subject thereto and to inspect, operate, maintain, repair, and replace the pipelines, valves, devices and appurtenances comprising the WATER LINES improvements located therein; and, shall further provide that the consideration recited therein shall constitute payment in full for any and all damages sustained by the applicable owner and his, her, or their successors and assigns by reason of the exercise of any of the rights or privileges therein expressly granted or reasonably implied.
7. CUSTOMER shall be responsible for all construction of the PROJECT. CUSTOMER bears all risk of the materials, equipment and supplies while the construction of the PROJECT is on-going.
8. CUSTOMER shall deliver to the DISTRICT certificates of insurance establishing that the CUSTOMER, or their contractor, has obtained and is maintaining the following insurance policies: Workers’ Compensation at the statutory required limits; Commercial General Liability with a general aggregate limit of \$2 million and each occurrence limit at \$1 million; Automobile Liability with a limit of \$2 million for bodily injury and \$1 million for property damage; Umbrella Liability with a per occurrence limit of \$5 million. CUSTOMER shall require certificates of insurance from its subcontractors to establish each subcontractor has insurance policies which satisfy the insurance requirements set forth in this paragraph. CUSTOMER shall ensure that the DISTRICT is named as an additional insured on the above-identified insurance policies.

9. The DISTRICT shall have the authority to reject any construction work that is defective and/ or not in conformity with the CONSTRUCTION DOCUMENTS. Upon determining that the construction work is defective and/ or not in conformity with the CONSTRUCTION DOCUMENTS, the DISTRICT shall provide notice to the CUSTOMER of the rejection of the work. The CUSTOMER shall have ten (10) days to remedy the defective work or provide a remedial plan to the DISTRICT. If the CUSTOMER fails to remedy the defective work or provide a suitable remedial plan, in the sole discretion of the DISTRICT, then the DISTRICT can replace, or contract to replace, the defective work and recover all costs associated with the replacement of the defective work.
10. The PROJECT and all components thereof, including, but not limited to the EXTENSION, WATER LINES, and meters at the POINTS OF DELIVERY shall become part of the WATER SYSTEM upon completion of the construction and acceptance by the DISTRICT and shall be owned by the DISTRICT. CUSTOMER shall have no claims of ownership or rights in the EXTENSION, WATER LINES, and meters following the DISTRICT'S acceptance.
11. If any work is found to be defective within five (5) years of substantial completion of the PROJECT, then the CUSTOMER shall promptly, without cost to the DISTRICT, correct or replace the defective work. If the CUSTOMER fails to remedy the defective work, in the sole discretion of the DISTRICT, then the DISTRICT can replace, or contract to replace, the defective work and recover all costs associated with the replacement of the defective work.
12. The DISTRICT, in its sole and exclusive discretion, may establish additional connections at any point along the EXTENSION for the provision of water services to current or prospective CUSTOMER of the WATER SYSTEM without informing or seeking approval from CUSTOMER.
13. For a period of twenty (20) years following execution of this AGREEMENT, in the event additional connections are established along the EXTENSION for other current or prospective CUSTOMER (each a "NEW CUSTOMER") that are not related to the delivery of water to CUSTOMER, the DISTRICT shall collect from each such NEW CUSTOMER an amount of seven-thousand and five hundred dollars (\$7,500.00) for each end user of water service from the EXTENSION ("the NEW CUSTOMER PAYMENT AMOUNT"), which shall be part of the actual cost of connecting such NEW CUSTOMER to the EXTENSION. After the DISTRICT has collected the NEW CUSTOMER PAYMENT AMOUNT from the applicable NEW CUSTOMER, the DISTRICT shall distribute such NEW CUSTOMER PAYMENT AMOUNT to the CUSTOMER.
14. The CUSTOMER shall reimburse the DISTRICT for any and all costs associated with the PROJECT, including but not limited to all costs for permitting, and necessary land rights and acquisition thereof, including attorney fees and legal costs, the cost of water required for flushing and disinfecting the WATER LINES and the cost of meters at the POINTS OF DELIVERY (collectively referred to as the "CONNECTION FEE").

The DISTRICT shall apply ESCROW FUNDS (as defined below) toward any all invoices and/or bills associated with the PROJECT. CUSTOMER shall have access to copies of all invoices and/or bills associated with the PROJECT, upon written request by the CUSTOMER to the DISTRICT. Notwithstanding the foregoing, each CUSTOMER, if more than one, shall be jointly and severally liable for the CONNECTION FEE.

15. Prior to commencing work on the PROJECT, CUSTOMER must deposit with the DISTRICT, to be held by the DISTRICT an amount of twenty-five thousand dollars (\$25,000).

These deposited monies shall constitute the "ESCROW FUNDS." Any ESCROW FUNDS remaining after the CONNECTION FEE has been paid and satisfied in full shall be returned to CUSTOMER, after completion of the PROJECT, in proportion to the amount each CUSTOMER deposited. CUSTOMER acknowledges and consents that the ESCROW FUNDS shall be held by the DISTRICT and a third-party escrow agent shall not be utilized.

16. In the event there are insufficient funds in the ESCROW FUNDS to pay all of the pending invoices related to the CONNECTION FEE or if the ESCROW FUNDS are depleted prior to completion of the PROJECT such that ten percent (10%) or less of the ESCROW FUNDS remain, the DISTRICT in its sole and exclusive discretion may demand that the CUSTOMER replenish the ESCROW FUNDS in an amount estimated by the DISTRICT necessary to pay for all remaining costs of the CONNECTION FEE to complete the PROJECT. In the event, the CUSTOMER, individually or collectively, refuse or unable to replenish the ESCROW FUNDS as demanded by the DISTRICT, the DISTRICT shall have the right, in its sole and exclusive discretion, to suspend the PROJECT until such time as the ESCROW FUND is replenished to the satisfaction of the DISTRICT. The CUSTOMER, collectively, shall be responsible for any and all costs associated with any suspension of the PROJECT due to insufficient ESCROW FUNDS.
17. CUSTOMER shall indemnify and hold the DISTRICT harmless from and against any claims, costs, losses, and damages (including but not limited to all fees and costs associated with attorneys, engineers, and other professionals, and all court or arbitration costs) arising out of or relating to obligations of CUSTOMER under this AGREEMENT and/or damage or harm to the PROJECT caused in whole or in part by CUSTOMER or their agents, except for any claims, costs, losses or damages caused by the sole negligence of the DISTRICT.
18. CUSTOMER binds itself and its successors and assigns to all covenants, agreements, and obligations contained in this AGREEMENT.
19. No CUSTOMER may assign this AGREEMENT and/or any of their rights or obligations in or under this AGREEMENT without receiving the prior, written consent of the DISTRICT. Any such assignment made without the DISTRICT'S prior written consent shall be null and void and no legal force or effect.
20. This AGREEMENT, the basic fees for the supply of water via the WATER SYSTEM to CUSTOMER, the amount of water supplied, the maintenance of the PROJECT, and the means and methods of supplying water to CUSTOMER is subject to all applicable laws and

regulations, including, but not limited to, applicable DISTRICT policies, procedures, rules and regulations for the WATER SYSTEM.

21. No delay or failure by any party hereto to exercise any right under this AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any party hereto must be in writing and executed by the waiving party.
22. Each party hereto acknowledges that this AGREEMENT contains the entire agreement between the parties hereto, and the terms of this AGREEMENT are contractual in nature in all respects and not a mere recital. Each party hereto further acknowledges that it has not made any representations or promises related to the subject matter of this AGREEMENT that have not been made part of this AGREEMENT.
23. This AGREEMENT may only be amended or modified by a writing signed by authorized representatives of all parties.
24. This AGREEMENT may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each party hereto agrees that facsimile or other electronic signatures shall be considered legal and binding with respect to this AGREEMENT.
25. In addition to depicting the CUSTOMER PARCEL, EXHIBIT A depicts the conceptual location of the EXTENSION, which is planned to be a 4 inch diameter water main. The exact location of the EXTENSION, WATER LINES, and meters at the POINTS OF DELIVERY shall be determined by the DISTRICT, in its sole discretion, with assistance from the engineer on the PROJECT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the EFFECTIVE DATE.

CUSTOMER

By: _____

Print: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this _____, day of _____, 2018, before me, a Notary Public, personally came _____, to me known to be the identical person whose name is affixed to the above and foregoing instrument, and freely and voluntarily executed the instrument.

Notary Public

CUSTOMER

By: _____

Print: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this _____, day of _____, 2018, before me, a Notary Public, personally came _____, to me known to be the identical person whose name is affixed to the above and foregoing instrument, and freely and voluntarily executed the instrument.

Notary Public

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By: _____

Name: John Winkler

Position: General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by **JOHN WINKLER**, General Manager of the Purchaser Papio-Missouri River Natural Resources District, for and on behalf of the District.

Notary Public