

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Zach Nelson, Project Manager

SUBJECT: Review and Recommendation on the Water Sales Agreement with the Village of Rosalie and the Thurston County Rural Water System

DATE: November 26, 2014

In recent years the Village of Rosalie has experienced water quality issues with their existing well system. In an effort to find a long term solution for clean and dependable potable water, the Village has been working with the District to connect to the Thurston County Rural Water System. Attached is the PMRNRD – Village of Rosalie, Nebraska Water Supply Purchase Agreement.

Since the Village of Rosalie will be receiving grant and loan contributions from the USDA, the Water Sales Agreement required the approval of the USDA’s General Counsel. The agreement stipulates that the Village will be responsible for all costs incurred by the District for the extension of approximately eight miles of 4” dia pvc water main. Similar to other District water purchase agreements, this agreement contains provisions for the maximum daily supply of water, designated pressure at the point of delivery, and methods for the setting of rates. The initial term of this agreement is 25 years and shall be renewed for an additional 15 years thereafter.

It is Staff recommendation that the PPO Subcommittee recommend to the Board of Directors, that the General Manager be authorized to execute the proposed Water Sales Agreement with the Village of Rosalie, as presented to the Subcommittee, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
VILLAGE OF ROSALIE, NEBRASKA
WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT (hereinafter referred to as the “AGREEMENT”) is made and entered into by and between the VILLAGE OF ROSALIE, NEBRASKA, a political subdivision of the State of Nebraska (hereinafter referred to as the “VILLAGE”), and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as the “DISTRICT”), and their successors and assigns.

WITNESSETH:

WHEREAS: the VILLAGE operates a water supply distribution system serving water users within the VILLAGE;

WHEREAS: the DISTRICT operates the Thurston County Rural Water System, an authorized special improvement project, serving the rural areas in and around Thurston County, Nebraska (hereinafter referred to as “TCRWS”);

WHEREAS: the DISTRICT purchases potable water for the TCRWS from the Village of Pender, Nebraska;

WHEREAS: the VILLAGE desires to upgrade their current water main infrastructure and connect to the TCRWS as a whole sale customer;

WHEREAS: the TCRWS is currently capable of serving its present customers and the estimated number of water users to be served by the VILLAGE;

NOW, THEREFORE, in consideration of the mutual promises of the DISTRICT and the VILLAGE contained in this AGREEMENT, pursuant to the authority contained in resolutions of the parties’ respective governing bodies, and under the parties’ respective powers and authority granted by Nebraska law, it is agreed as follows:

DISTRICT agrees to cause the designing and construction of a water line extension to connect the TCRWS and the VILLAGE'S water distribution system and the VILLAGE agrees to assume responsibility for all costs and expenses associated with the designing and construction of said extension upon the following terms and conditions:

1. DESIGN OF EXTENSION. The DISTRICT shall select and enter into a contract with a licensed engineering consultant ("CONSULTANT") for the design of a water line extension (the "EXTENSION") between the TCRWS and the VILLAGE'S water distribution system. The EXTENSION shall connect to the TCRWS main in the vicinity of the intersection of Highway 94 and County Road 22. The EXTENSION shall connect to the VILLAGE'S water distribution system on the northern side of the VILLAGE at a point near the intersection of NE-87b Spur and Linden St. as agreed upon by representatives of the DISTRICT and the VILLAGE, and said connection shall constitute the POINT OF DELIVERY. CONSULTANT shall prepare necessary documents to bid and construct the EXTENSION (the "CONSTRUCTION DOCUMENTS"). The CONSTRUCTION DOCUMENTS shall be approved by the DISTRICT, and copies of the CONSTRUCTION DOCUMENTS shall be supplied to the VILLAGE upon request.

2. BIDDING OF EXTENSION. The DISTRICT, assisted by CONSULTANT, shall bid for the construction of the EXTENSION pursuant to the DISTRICT'S sealed bid policy and procedure. The DISTRICT shall select the CONTRACTOR to construct the EXTENSION and will provide the VILLAGE with a tabulation of the bids submitted. DISTRICT shall also provide a written justification for the selection of a CONTRACTOR if they were not the lowest bid received.

3. CONSTRUCTION & MAINTENANCE OF EXTENSION. The DISTRICT, assisted by CONSULTANT, shall cause the EXTENSION to be constructed pursuant to the CONSTRUCTION DOCUMENTS by the CONTRACTOR. The DISTRICT shall periodically update VILLAGE concerning the construction, including material changes to the CONSTRUCTION DOCUMENTS, estimated percent completion of construction, and estimated timing of the connection of the EXTENSION to the VILLAGE'S water distribution system. The meter at the POINT OF DELIVERY shall be the terminus point for the EXTENSION. The DISTRICT shall be responsible for providing and maintaining the necessary parts and equipment for the EXTENSION up to the POINT OF DELIVERY. The VILLAGE shall be responsible for

providing and maintaining the master vault at the POINT OF DELIVERY in which the meter will be placed, all component parts within the master vault, and all other equipment and parts from the terminus of the EXTENSION up to and including the VILLAGE'S water distribution system. The DISTRICT shall purchase the initial meter that will be located in the master vault at the POINT OF DELIVERY for installation of the meter by the VILLAGE'S contractor. The meter shall be part of the EXTENSION, and the DISTRICT shall be responsible for maintaining, and if necessary replacing, the meter.

4. PERMITS. The DISTRICT, assisted by CONSULTANT, shall obtain all necessary local, state, and federal permits related to construction of the EXTENSION and the provision of potable water from the TCRWS to the VILLAGE.

5. RIGHT OF WAY. The DISTRICT, assisted by CONSULTANT, shall acquire all necessary easements and rights of way for the EXTENSION. All easements and rights of way for the EXTENSION will be in the name of and held by the DISTRICT.

6. COSTS OF EXTENSION. The VILLAGE shall pay the DISTRICT a connection fee not in excess of \$635,000 for any and all costs associated with the EXTENSION, including but not limited to all costs invoiced by CONSULTANT, CONTRACTOR, permitting costs, fee simple title land, the meter, easements, right of ways, and legal fees (the "CONNECTION FEE"). The DISTRICT shall forward all invoices and/or bills associated with the EXTENSION to the VILLAGE for reimbursement on a monthly basis. All billings and invoices incurred for the costs of the EXTENSION will need to be reviewed and concurred with by USDA. The VILLAGE shall be responsible for submitting billings and invoices to USDA. In the event the USDA does not concur with a particular bill or invoice, such disapproval or objection shall be provided to the DISTRICT in writing and include a reasonable justification for the disapproval or objection. In the event, USDA does not provide a written disapproval or objection of a particular bill or invoice to the DISTRICT within thirty (30) days of DISTRICT'S submission of the bill or invoice to the VILLAGE, said bill or invoice will be deemed to have been concurred with by the USDA. Costs incurred in excess of the CONNECTION FEE shall be borne by the DISTRICT unless otherwise renegotiated with the VILLAGE.

7. OWNERSHIP OF EXTENSION. The EXTENSION, including all components thereof, shall be part of the TCRWS and owned by the DISTRICT. 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 customers of TCRWS without informing or seeking approval from the VILLAGE. Any and all costs associated with connections or other developments for the purpose of serving other TCRWS customers and not related to the delivery of water to the VILLAGE shall not be the responsibility of the VILLAGE and will not be considered for reimbursement under the CONNECTION FEE.

8. USDA FINANCING. Design and construction of the EXTENSION is being financed by a loan made to the VILLAGE or insured by, and/or a grant from, the United States of America, acting through Rural Development of the United States Department of Agriculture, and the provisions hereto pertaining to the undertakings of the VILLAGE are conditioned upon the approval, in writing, of the State Director of Rural Development. This contract will be pledged to USDA-Rural Development as part of the security for this financial assistance.

In addition to designing and constructing the EXTENSION, the DISTRICT agrees to furnish and sell water to the VILLAGE, and the VILLAGE agrees to purchase water from the DISTRICT for the duration of this AGREEMENT in such amounts and upon the following terms and conditions:

9. POINT OF DELIVERY AND METERING EQUIPMENT. VILLAGE hereby grants permission to the DISTRICT to establish the POINT OF DELIVERY between TCRWS and the VILLAGE'S water distribution system in such a manner and at such a place to be agreed upon and designated in the CONSTRUCTION DOCUMENTS. The water systems of the TCRWS and the VILLAGE shall continue to be joined at the POINT OF DELIVERY by a master valve and meter. Upon installation, the meter, and associated equipment, shall be owned by and under the control of the DISTRICT. Operation, maintenance, repairs, and replacement of the meter shall occur at the discretion of the DISTRICT at its own the cost and expense.

10. METER READING. The meter at the POINT OF DELIVERY shall be read monthly on or around the last day of each month and billed as hereinafter provided. Upon request, the VILLAGE shall be granted reasonable access to the meter, for the purpose of verifying readings. If the meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding

period immediately prior to the failure, unless DISTRICT and VILLAGE shall agree upon a different amount.

11. METER TESTING. The meter shall be tested by the DISTRICT whenever requested by the VILLAGE, but not more frequently than once every twelve (12) months. Either party may request a meter test at any time. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. Readings for the three (3) months prior to any test shall be corrected in accordance with the percentage of inaccuracy found by the test when the test reflects greater than a two percent (2%) variance. Meter tests shall be conducted by the DISTRICT or DISTRICT'S agent. In the event the VILLAGE requests a test, the DISTRICT shall coordinate the requested test in a manner that allows the VILLAGE'S representative to be present at the testing. VILLAGE shall bear the costs of any meter tests it has demanded unless meter inaccuracy exceeds two percent (2%) to the detriment of the VILLAGE, in which event DISTRICT shall bear the costs of such test.

12. WATER QUALITY AND QUANTITY. DISTRICT agrees to furnish VILLAGE at the POINT OF DELIVERY potable water meeting applicable purity standards of the State of Nebraska in such quantity as may be required by the VILLAGE not to exceed 28,000 gallons per day and at a rate not to exceed forty (40) gallons per minute. The DISTRICT shall have reasonable time to repair any equipment malfunction which results in DISTRICT'S inability to furnish said water.

13. EMERGENCY PRO-RATION. In the event an emergency exists and the total water supply shall not be sufficient to meet all of the needs of the TCRWS' customers as well as those of the VILLAGE, DISTRICT has the discretion to pro-rate the available water supply between VILLAGE and other consumers on the TCRWS on a reasonable basis giving first consideration to domestic users. In addition to emergencies, the DISTRICT may invoke this provision for pro-ration in the event the Village of Pender pro-rates, reduces, stops, or terminates the water supply to the TCRWS for whatever reason.

14. MAXIMUM SUPPLY. Should VILLAGE exceed its absolute limit of 28,000 gallons during any one day, DISTRICT may, at its discretion, terminate said water supply for the remainder of such day. If the DISTRICT elects to provide the VILLAGE water in excess of 28,000 gallons during any one day, the DISTRICT may assess a penalty for such excess at no more than double the rates established under this AGREEMENT.

15. POINT OF DELIVERY PRESSURE. The DISTRICT will furnish water at the POINT OF DELIVERY at a reasonably constant pressure, not less than the standard required by the state regulatory agency or used in the design of the EXTENSION, calculated at the POINT OF DELIVERY, which as of the date of this AGREEMENT is forty (40) PSI. Emergency failures of pressure or supply due to main supply line breaks, power failures, flood, fire and use of water to fight fire, earthquake, or other catastrophe shall excuse the DISTRICT from this provision and obligations contained in Paragraph 12, above, for such reasonable period of time as may be necessary to restore service.

16. BILLING, RATES, AND PAYMENT. The DISTRICT shall furnish to VILLAGE, not later than the 15th day of each month, an itemized statement of the amount of water furnished to VILLAGE during the preceding month. The VILLAGE agrees to pay DISTRICT for all water provided by DISTRICT. VILLAGE shall pay DISTRICT within forty-five (45) days of billing. The rate charged the VILLAGE for the water will be the established rate for consumers of the TCRWS. Said rates may be adjusted by the DISTRICT pursuant to the rules and regulations applicable to the TCRWS. The rules and regulations promulgated by the DISTRICT, and as amended from time to time, for the TCRWS shall apply to the VILLAGE. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization costs that are not related to the delivery of water to the VILLAGE. The VILLAGE recognizes that the TCRWS was built and financed through the issuance of bonds, and the maintenance, refinancing, and payment of TCRWS' bonds is related to the delivery of water throughout the TCRWS including the VILLAGE. The initial monthly water rates to be charged to the VILLAGE will be as follows:

- a. a base monthly charge of \$35.00;
- b. the first 20,000 gallons shall result in a charge of \$5.50 per each 1,000 gallons of water used; and
- c. each 1,000 gallons of water used in excess of 20,000 gallons shall result in a charge of \$2.50.
- d. An additional 5.5% shall be added to each invoice for payment of Nebraska State sales tax.

17. TERM AND MODIFICATION. VILLAGE and DISTRICT agree this AGREEMENT shall run for a term of twenty-five (25) years from the date of the initial delivery of any water as shown by the first statement submitted by DISTRICT to VILLAGE and thereafter shall be renewed for an additional period of not less than fifteen (15) years. After the initial renewal period, the AGREEMENT may be renewed or extended for such term, or terms, as may be agreed by DISTRICT and VILLAGE. The provisions of this AGREEMENT may be modified at any time by the written agreement of both parties hereto. Either party desiring to terminate or forego renewing of this AGREEMENT after the initial renewal period shall give notice to the other party at least six (6) months prior to the expiration of the AGREEMENT and any agreed upon extension. In the event the Village of Pender terminates its agreement with the DISTRICT to supply water to the TCRWS or stops supplying water to the TCRWS on a permanent basis, the DISTRICT may terminate this AGREEMENT unless at that time an alternate source of water supply for the TCRWS has been established.

18. SUCCESSOR OF VILLAGE. That in the event of any occurrence rendering the VILLAGE incapable of performing under this AGREEMENT, any successor of the VILLAGE, whether the result of legal process, assignment, or otherwise shall succeed to the rights and obligations of the VILLAGE hereunder.

19. REPAIRS. Each party assumes responsibility for any repairs occurring within its own water distribution system, except as otherwise provided in this AGREEMENT. DISTRICT assumes the responsibility and costs of maintaining and upgrading the TCRWS and VILLAGE assumes the responsibility and costs of maintaining and upgrading its water distribution system. DISTRICT will, at all times, operate and maintain the TCRWS in an efficient manner that will take such action as may be necessary to furnish the VILLAGE with quantities and quality of water provided herein. DISTRICT will remedy any temporary or partial failures to deliver water with all possible dispatch. VILLAGE shall not connect, or allow to be connected, to its water distribution system any other source or supply of water, including specifically any and all wells. In the event, the VILLAGE currently has wells connected to its water distribution system, the VILLAGE shall physically and permanently disconnect said wells from its water distribution system prior to establishment of the POINT OF DELIVERY.

20. INITIAL DELIVERY OF WATER. Thirty (30) days prior to the estimated date of completion of construction of the EXTENSION, DISTRICT will notify VILLAGE in writing

of the estimated date for the initial delivery of water to the VILLAGE at the POINT OF DELIVERY.

21. REGULATORY AGENCIES. This AGREEMENT is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Nebraska, and the parties will collaborate in obtaining such permits, certificates, or the like, as may be required to comply herewith.

22. RECORD INSPECTION. Each party's water supply distribution system records shall be subject to inspection by the other party upon reasonable notice.

23. ANNUAL MEETING AND REPORT. Representative of the DISTRICT and VILLAGE may meet at an annual meeting called by either party to discuss the status and future plans of the subject matter of this AGREEMENT. On an annual basis, the VILLAGE shall provide the DISTRICT a report detailing the total number of water consumers connected to its water distribution system.

24. EFFECTIVE DATE. This AGREEMENT shall become effective upon its complete execution by both parties, and approval by the State Director of Rural Development for the USDA.

IN WITNESS WHEREOF the parties hereto, acting under authority of their respective governing bodies have caused this AGREEMENT to be duly executed.

EXECUTED by the VILLAGE on this ____ day of _____, 2014.

VILLAGE OF ROSALIE, NEBRASKA

By: _____
Chairperson

ATTEST:

VILLAGE CLERK

EXECUTED by the DISTRICT on this ____ day of _____, 2014.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By: _____
General Manager

ATTEST:

Notary

This AGREEMENT is approved on behalf of Rural Development this ____ day of _____, 201__.

By: _____
USDA Rural Development State Director