

**Finance, Expenditure & Legal
Subcommittee Meeting
November 14, 2006
7:00 p.m.
Agenda**

Finance, Expenditure & Legal Subcommittee Members:

Dick Connealy, Chairperson
Tim Fowler, Vice-Chairperson
John Conley
Dorothy Lanphier
Richard Patterson

Alternate Members: John Schwope
Rich Tesar

Staff Liaison: Jim Becic
Jerry Herbster
Jack Lawless *
Trent Heiser

1. Meeting Called to Order – Chairperson Connealy
2. Notification of Open Meetings Act Posting and Announcement of Meeting Procedure – Chairperson Connealy
3. Quorum Call
4. Adoption of Agenda
5. Proof of Publication of Meeting Notice
6. Review and Recommendation on City of Blair Request Regarding Compensation for Damages from Pospichal Construction, Inc., for Washington County Rural Water #2 – Dick Sklenar
7. Review and Recommendation on Mopac Trail (Hwy 50 to Lied Bridge) Right-of Way Acquisition [*Executive Session, if needed*] – Gerry Bowen and Chris Pawloski, Midwest Right of Way
 - ❖ Heisner Tract
 - ❖ Smith Tract
 - ❖ Lehan Tract
8. Review and Recommendation on Purchase Agreements for Floodway Properties – Lot 32, and Part of Lot 38, Q Street Acres, Omaha, NE [*Executive Session, if needed*] – Paul Woodward
9. Discussion of Audit Committee for Review of FY 2006 Audit – Director Lanphier
10. Adjourn

MEMORANDUM

TO: Program, Projects and Operations Subcommittee

FROM: Dick Sklenar, Project Manager

SUBJECT: City of Blair Request Regarding Compensation for Damages
From Pospichal Construction Inc. For Washington County
Rural Water #2

DATE: November 8, 2006

Last year, the District hired Pospichal Construction, Inc. to build a pump station and two pressure reducing vaults within the City of Blair as part of the development of the District's Washington County Rural Water #2 system now in operation. As per an agreement, the City is to compensate the District 100% for such work. The project was completed in July 2005.

On January 5, 2006, a water main break occurred at one of the pressure reducing vaults along Hwy. 30. Pospichal Construction was called to make the needed repairs under the project warranty. After 5 days, repairs were completed. The repairs immediately did not hold up once service was restored. However, the City, needing to have water service restored, immediately called in another contractor to correct the situation.

The District engineer, HGM Associates, claimed expenses of \$5,500 for inspection services during the repair effort. District staff approached Pospichal Construction to pay these claims under the warranty provisions of their construction contract. The City filed a claim with the District for damages suffered from the incident which amounted to \$17,540.94 that had been paid to their alternate contractor. In June 2006, the City of Blair indicated that they would settle for a \$5,000.00 payment from Pospichal Construction to solve the matter. Pospichal Construction declined to do so because they did not believe they were totally liable for the problems encountered.

The Blair City Council took action in August to request the District to make the City's offer of a \$5,000.00 settlement once again in writing to Pospichal Construction, Inc., with a response deadline from that firm no later than August 15, 2006 (see attached letter). Furthermore, should the contractor not be willing to accept the City's settlement offer, that the District pursue legal means of recovering all damages accrued by the City for the incident.

Subsequently, the District submitted a letter to Pospichal Construction, Inc., emphasizing again the City's offer and deadline for response. Pospichal Construction has responded with a counter-offer (attached) of \$3,290.00.

It is believed that the City will accept this counter-offer, with the understanding that \$1,710.00 be remitted by the District to HGM Associates for their claims against the District regarding this issue.

A proposed draft settlement agreement has been developed (attached), to address claims by all parties against all parties. The agreement calls for Pospichal Construction to pay \$3,290.00 to the City, the District to pay HGM Associates \$1,710.00 and all parties to release the others from future liability on the repair.

It is recommended that the Subcommittee recommend to the Board of Directors that the Acting General Manager be authorized to execute the proposed Settlement Agreement pertaining to a portion of the Washington County Rural Water #2 Project, approved as to form by the District's Legal Counsel.

Memo(s) for the following agenda items are posted under
“Confidential”

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