Council Bluffs Water Works

COUNCIL BLUFFS, IOWA — 51501
Office
2000 NORTH 25TH STREET
Mailing Address
P.O.BOX No. 309 — 51502

Board of Trustees:
CAITLIN A. BERESFORD, *Chairperson*
MARTIN L. BROOKS
MAUREEN R. KRUSE
MICHAEL J. WALLNER
KEITH R. JONES
CEO & General Manager & Secretary of Board
DOUGLAS P. DRUMMEY

August 24, 2021

Brandon Garrett
Director of Community Development
Community Development
209 Pearl Street
Council Bluffs, IA 51503

Re: South 35th Street Main Extension Agreement

Dear Mr. Garrett:

Enclosed are two Main Extension Agreements for the water main to serve the above referenced property. Please have the Main Extension Agreement signed in the space provided on page 7 and notarized on page 8. **THE DATE OF THE MAIN EXTENSION AGREEMENT SHOWN ON PAGE 1 OF THE AGREEMENT SHOULD BE LEFT BLANK**. Please let your notary know of this requirement. The date of the Agreement will be filled in when the Board representatives sign the document. Please return all copies back to me. A fully executed copy of the document will be sent to you for your files.

This Agreement allows you to negotiate the contract amount and employ a contractor acceptable to the Board and complete the work according to contract documents developed by the Board. You are responsible for the "Cost of the Work" as defined in paragraph 1e. Paragraph 3a calls for an "Administrative Fee" of $8,500.00 to accompany the return of the signed Agreement.

As soon as we receive the signed documents and administrative fee, we will start the project design. Please have your project engineer give us the anticipated project construction schedule so we may try to accommodate the schedule.

If you have any questions, please call me at 712 328-1006, Ext. 1039.

Very truly yours,

Brian T. Cady, PE
Director of Operations

BTC/cp

Enclosures: (2) Main Extension Agreements

COUNCIL BLUFFS CITY WATER WORKS
COUNCIL BLUFFS, IOWA
MAIN EXTENSION AGREEMENT

This AGREEMENT made and entered into this ____ day of _____, 2021, by and between the Board of Water Works Trustees of the City of Council Bluffs, Iowa, 2000 North 25th Street, Council Bluffs, Iowa ("Board") and the City of Council Bluffs, Iowa, 209 Pearl Street, Council Bluffs, Iowa 51503 ("Applicant" or "City").

RECITALS

This Agreement is made with reference to the following facts and circumstances.

A. Applicant is developing property within Pottawattamie County, Iowa, known as 35th Street and 1st Ave. (the "Project").

B. The City of Council Bluffs, Iowa, ("City") before granting building permits for construction of improvements in the Project requires a water main be located so as to provide domestic service and fire protection.

C. The parties are in agreement that in order to install the required water main it will be necessary to install approximately 210 linear feet of 6-inch ductile iron pipe together with all necessary fire hydrants and necessary appurtenances (said fire hydrants and appurtenances being collectively the "Appurtenances") within the public rights-of-way in the proposed streets in the Project, said streets being currently identified as 35th Street, and/or the portions of the Project constituting easements to be granted to the City for construction, operation, maintenance or removal of water mains and appurtenances to be constructed prior to the final platting of the Project (the "Easements"). The new main will extend from the Board's existing 6-inch water main located 35th Street. All of said installations shall be in compliance with City requirements and Board approved engineering design and locations required to enable Applicant, its grantees or assigns to provide potable water to its subdivision and to obtain necessary building permits from the City.

AGREEMENT

In consideration of the foregoing recitals which are incorporated into and are made a part of

this Agreement, and in further consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree, subject to the terms and conditions hereinafter set forth, as follows:

1. The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

   a. "OPC" shall mean the Board's opinion of the probable Cost of The Work.

   b. "Administrative Fee" shall mean that amount, computed under the Board's current Administrative Fee Schedule, required to reimburse the Board for its costs for development of the water main extension(s) contemplated in this Agreement, including, without limitation, distribution system modeling in order to determine appropriate water main size and routing, preliminary opinion of probable cost, field surveys, final plans, specifications, IDNR construction permit, final opinion of probable cost, construction staking, geotechnical services, construction observation services, lab tests, legal fees and contract administration.

   c. "Initial Administrative Fee" shall mean the Administrative Fee based upon the OPC.

   d. "Final Administrative Fee" shall mean the Administrative Fee based upon the actual Cost of The Work; provided, however, that the Final Administrative Fee shall not be less than 90% of the Initial Administrative Fee.

   e. "Cost of The Work" shall mean all expenses required to be paid in order to complete The Work including, but not limited to, all costs and expenses for labor, materials, machines and equipment and contractors' charges. Notwithstanding the foregoing, the Cost of The Work shall not include any expenses paid by Applicant through the Administrative Fee.

   f. "The Work" shall mean the construction, for turn-key operation, of a 6-inch ductile iron pipe water main with all Appurtenances constructed within the public rights-of-way of the Project and/or the Easements in order to provide domestic water service and fire protection in and to the Project.

2. To enable Applicant to develop the proposed Project, the Board, in consideration of the

agreement of Applicant to the terms and conditions hereinafter provided, agrees that at such time as Applicant completes the grading and paving of the proposed public rights-of-way located in the Project and/or the grading of the Easements, free of all encumbrances of any kind or nature, and so notifies the Secretary of the Board, in writing, the Board shall authorize Applicant, in writing, to employ contractors acceptable to the Board and Applicant, under duly executed and acknowledged Contracts, Performance, Payment and Maintenance Bonds and Certificates of Insurance naming the Board as an additional insured on all coverages, all in forms prepared by or for the Board, to construct The Work in compliance with City requirements and Board approved engineering design, plans and specifications prepared by or for the Board at locations approved by the Board in City authorized public streets and/or the Easements, so as to provide domestic water service and fire protection in the Project. The Work shall be completed during the 2021 construction season commensurate with existing weather conditions and prudent construction practices.

3. Applicant agrees:

a. To pay to the Board, concurrent with the execution of this Agreement, the Initial Administrative Fee in the amount of Eight Thousand Five Hundred and 00/100 Dollars ($8,500.00).

b. To pay to the Board the difference between the Initial Administrative Fee and the Final Administrative Fee in the event the Final Administrative Fee exceeds the Initial Administrative Fee before the Board will furnish any water service to any water customers located in the Project.

c. To pay to the Board any Duplicative Costs (defined in §4.c below).

d. To deliver to the Board duly executed copies of all Contracts, Bonds and Certificates of Insurance for The Work before commencement of The Work.

e. To complete the final platting of the Project as an addition to the City of Council Bluffs, Iowa, for recording in the Offices of the County Recorder and County Auditor, Pottawattamie County, Iowa, all in accordance with the laws of the State of Iowa and the ordinances of the City.

f. To pay all of the Cost of The Work and obtain lien waivers for all contractors, subcontractors and materialmen employed on the Project.

g. After completion and acceptance of The Work by the Board, and before any water service connections may be made by any person or entity to The Work, to execute and deliver to the Board (i) an Easement Agreement in form attached hereto as Exhibit 1 in the event Easements are required, (ii) a Bill of Sale for The Work in form attached hereto as Exhibit 2, free and clear of all encumbrances, and (iii) proof of payment of all sales and income taxes due and owing by Contractor in connection with performance of The Work.

4. IT IS MUTUALLY AGREED THAT:

a. If the Initial Administrative Fee is greater than the Final Administrative Fee, the difference shall be paid or credited to Applicant by the Board.

b. No extra work shall be added to or deleted from The Work after the letting of the contact without the Board's prior written consent, which consent shall not be unreasonably withheld. In the process of so modifying The Work, the parties hereto shall recalculate and agree upon their respective percentages of the Cost of The Work.

c. The Board is using surveys, plans, drawings and other design documents furnished to the Board by Applicant for the routing, location and design of the water main extension. The Board is wholly reliant upon the Applicant as to the accuracy and completeness of the information provided by Applicant and its engineer and surveyor and assumes no liability, stated or implied, for any errors or omissions resulting from the use of the documents provided. While reasonable care and diligence will be exercised in determining the location of buried utilities, soil conditions and depth of water table prior to letting of construction contracts, unforeseen conditions may arise that require a contract change order for extra work and a cost increase. Notwithstanding any provision in this Agreement to the contrary, it is agreed that the Applicant's engineer shall be responsible for the construction staking required for the Project in accordance with the plans and specifications.

In the event any of the information so provided by the Applicant proves to be incorrect and results in the Board duplicating any of its responsibilities under this Agreement, the cost of said duplication (the "Duplicative Cost") shall be paid by Applicant to the Board before the Board will furnish any water service to any water customers located in the Project.

d. The Work and all additions thereto and replacements thereof, as and when installed, shall be and shall remain the property of and under the exclusive control and jurisdiction of the Board and its assigns and the Board shall have the right to extend said main beyond or laterally without further consent of Applicant and without becoming liable to Applicant for any refunds.

e. Applicant, as well as any others desiring water service to be furnished by the Board from and through The Work, shall make application to the Board for the necessary tap permit and shall pay the then existing tap fee and other charges assessed by the Board for providing such water service, none of which shall be refundable to Applicant. Thereafter, the Board agrees to furnish water service to such customers so long as they timely pay for such service at the rates and charges applicable thereto and are in full compliance with all other rules and regulations of the Board pertaining to the providing of water service to its customers.

5. Applicant, its successors in interest and assigns shall be jointly and severally liable for all payments required to be paid to the Board and performance of all obligations of Applicant under the terms and conditions of this Agreement.

6. This Agreement shall not be sold, transferred or assigned by Applicant without written consent of the Board, which consent shall not be unreasonably withheld. Except as above provided, this Agreement shall be binding on and inure to the benefit of the parties, their successors in interest and assigns, the same as if they were original parties signing this Agreement.

7. This Agreement shall become effective only when duly signed and acknowledged by all parties of this Agreement.

8. All exhibits referred to in this Agreement are attached hereto and are incorporated herein by reference as if fully set forth herein.

9. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Iowa applicable to contracts made and performed in Iowa.

10. Words and phrases herein, including acknowledgements endorsed hereon shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

11. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

12. This Agreement and any amendments, waivers, consents, supplements may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopy or similar electronic medium shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopy or similar electronic medium shall also deliver a manually executed counterpart of this Agreement; provided that the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have signed this Agreement and affixed any seals required by their respective entities on the dates set opposite their respective signatures.

Board Of Water Works Trustees Of The City Of Council Bluffs, Iowa

Date Signed:_____

By:_____
Caitlin A. Beresford, Chairman

Date Signed:_____

By:_____
Douglas P. Drummey, Secretary

City of Council Bluffs, Iowa

Date Signed:_____

By:_____
Matthew J. Walsh, Mayor

Date Signed:_____

By:_____
Jodi Quakenbush, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Caitlin A. Beresford and Douglas P. Drummey to me personally known, and who, being by me duly sworn, did say that they are the Chairman and Secretary respectively, of the Board of Water Works Trustees of the City of Council Bluffs, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed and sealed on behalf of the Board of Water Works Trustees of the City of Council Bluffs, Iowa, by authority of said Board, as contained in Resolution Number 07-17-21 adopted and passed by said Board on the 20th day of July, 2021, and that Caitlin A. Beresford and Douglas P. Drummey acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of said Board, by it voluntarily executed.

_____
Notary Public in and for said State

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2021, before me, a Notary Public in and for said county, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk respectively of the City of Council Bluffs, Iowa; that the instrument was signed and sealed on behalf of the City of Council Bluffs by authority of the City Council of the City of Council Bluffs, as contained in Resolution Number_____ adopted and passed by the City Council on the _____ day of _____, 2021, and that Matthew J. Walsh and Jodi Quakenbush acknowledged the execution of said instrument to be the voluntary act and deed of said City Council, by it voluntarily executed.

_____
Notary Public in and for said State

(Seal)

Exhibit 1

EASEMENT AGREEMENT

Recorder's Cover Sheet

Preparer Information: (Name, address and phone number)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager. Reviewed and approved by legal counsel for the Board of Water Works Trustees of the City of Council Bluffs, Iowa.

Taxpayer Information: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Return Document To: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Grantors:

_____
_____
_____

Grantees:

City of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa

Legal Description: See next page.

Document or instrument number of previously recorded documents if applicable:

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, a(n) _____(State) _____(corporation/limited liability company), for good and sufficient valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey unto the City Of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa, (the "City Water Works") a permanent non-exclusive easement at least fifty (50) feet in width, over, across and through the following described real estate situated in the City of Council Bluffs, Pottawattamie County, Iowa, to-wit:

See Exhibit "A"

including the perpetual right to enter upon said real estate, at any time that it may see fit, and construct, inspect, maintain, repair, replace and operate or remove underground pipe lines and/or mains for the purpose of conveying water over, across, through and under said real estate, together with the right to excavate and refill ditches and/or trenches for the location of said pipe lines and/or mains, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction and maintenance of said pipe lines and/or mains.

The Easement herein granted shall be a servient estate which shall run with the land and be binding on the successors-in-interest to said tracts of land.

The said City Water Works shall properly and promptly refill any excavations made on said premises after the purpose of said excavation has been fulfilled and shall leave the premises in the same general condition as it was in before the said City Water Works went upon the same; further, that if any fences or existing structures are moved for the purpose of laying, maintaining, operating or replacing said main, such fences and structures shall be promptly replaced by said City Water Works upon completion of the work requiring such removal.

In further consideration for the good and sufficient valuable consideration received by the undersigned, the undersigned agrees that it will not place any permanent structures upon or over said easement without first obtaining the written consent of said City Water Works; further, the

undersigned covenants with Grantee that it is lawfully seized and possessed of the real estate above described; that it has good and lawful right to convey it, or any part thereof, that it is free from all encumbrances, and that it will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

As a part of the consideration of this grant, the undersigned does hereby release any and all claims for damages from whatsoever cause incidental to the exercise of the rights herein granted.

Words and phrases herein, including the acknowledgement, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

All provisions of this Agreement shall inure to the benefit of and be binding upon and applicable to the successors, personal representatives, heirs, and assigns of the parties hereto the same as if they were in all instances named herein.

_____(name)

Dated:_____ By:_____

_____(name and title)

_____(address)
_____(city, state and ZIP)
_____(telephone)

Individual

STATE OF _____)
) ss
COUNTY OF _____)

This instrument was acknowledged before me on (date) by (name).

_____
Notary Public in and for said State

(Seal)

All Other Entities

STATE OF _____)
) ss
COUNTY OF _____)

This instrument was acknowledged before me on (date) by (name) as (type of authority, e.g. officer, manager, member) of (name of party on behalf of whom instrument was executed, e.g. name of corporation or limited liability company).

_____
Notary Public in and for said State

(Seal)

Exhibit 2

BILL OF SALE

Recorder's Cover Sheet

Preparer Information: (Name, address and phone number)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager. Reviewed and approved by legal counsel for the Board of Water Works Trustees of the City of Council Bluffs, Iowa.

Taxpayer Information: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Return Document To: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Grantors:

City of Council Bluffs

Grantees:

City of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa

Legal Description: See next page.

Document or instrument number of previously recorded documents if applicable:

BILL OF SALE

For the consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, City of Council Bluffs, Iowa, 209 Pearl Street, Council Bluffs, Iowa 51503 (municipality) (the "Seller"), does hereby sell, assign, transfer and set over unto the City of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa (the "Buyer"), the following described personal property, to-wit:

> all water lines and appurtenances thereto lying either within a certain easement granted to the Buyer by the Seller, which easement is over, across and through the real estate situated in Pottawattamie County, Iowa, as described in the plat attached hereto as Exhibit 1 or the public rights-of-way identified in said plat

which personal property is currently in the possession of Seller.

The above named Buyer does hereby assent to becoming the owner of the above described property.

Seller hereby covenants with Buyer that Seller is the owner of said personal property, that Seller has good and lawful authority to sell, transfer, and assign the same and that the same is free and clear of all liens, security interests and encumbrances except as may be above stated; and Seller covenants to warrant and defend said personal property against the lawful claims of all persons except as may be above stated.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as the appropriate gender, according to the context.

[signature page follows]

Signed the month, day and year appearing opposite the signature block.

City of Council Bluffs, Iowa

Date Signed:_____

By:_____
Matthew J. Walsh, Mayor

Date Signed:_____

By:_____
Jodi Quakenbush, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2021, before me, a Notary Public in and for said county, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk respectively of the City of Council Bluffs, Iowa; that the instrument was signed and sealed on behalf of the City of Council Bluffs by authority of the City Council of the City of Council Bluffs, as contained in Resolution Number_____ adopted and passed by the City Council on the _____ day of _____, 2021, and that Matthew J. Walsh and Jodi Quakenbush acknowledged the execution of said instrument to be the voluntary act and deed of said City Council, by it voluntarily executed.

_____
Notary Public in and for said State

(Seal)