

March 7, 2005

The Mahaska County Board of Supervisors met in regular session on the above date in the third floor conference room of the Mahaska County courthouse at 9:00 a.m. Present were the following board members: Henry W. VanWeelden, Chairman; Greg Gordy, Vice-chairman; and Lawrence Rouw, Member. Also present were the following: Scott Dailey, KBOE Radio; Ben Hoskinson, Roadside Vegetation Manager; Eric Coop, Oskaloosa Herald, Jerome Nusbaum, Mahaska County Engineer; Kay Swanson, Mahaska County Auditor; Judy Funk and Dave Cross, Gallagher & Co.

Chairman VanWeelden opened the meeting with a moment of silence.

It was moved by Gordy seconded by Rouw to approve the agenda with the deletion of the Veterans Affairs monthly report. All present voted aye. Motion carried.

It was moved by Rouw seconded by Gordy to approve the minutes for February 4th, 7th, 8th, 14th, 15th and 22nd. All present voted aye. Motion carried.

It was moved by Rouw seconded by Gordy to approve the bills for February in the amount of \$590,832.75 and payroll in the amount of \$397,837.77. All present voted aye. Motion carried.

It was moved by Gordy seconded by Rouw to appoint Ben Hoskinson as the Weed Commissioner for 2005. All present voted aye. Motion carried.

It was moved by Rouw seconded by Gordy to approve the following resolution. All present voted aye. Motion carried.

**JOINT AGREEMENT FOR THE
ERECTION, MAINTENANCE AND OPERATION OF
PLANTS AND SYSTEMS FOR SANITARY SEWER SERVICES**

THIS AGREEMENT made and executed this _____ day of _____, 2003, by and between REGIONAL UTILITY SERVICE SYSTEMS COMMISSION, (hereinafter referred to as "RUSS) and THE CITY OF HARPER, IOWA, (hereinafter referred to as the "CITY").

WITNESSETH

WHEREAS, RUSS is organized and established under the provisions of Chapter 28E, Code of Iowa, and pursuant to Chapters 28E and 28F Code of Iowa, is authorized to erect, maintain, and operate plants and system for sanitary sewer services upon the adoption of this Agreement by the City, the RUSS Commission, and each of the public agencies participating as members of RUSS.

WHEREAS, the City does not have a plant or system for sanitary sewer services and desires to enter into an agreement with RUSS to provide such services for its citizens;

WHEREAS, the City has applied to the Iowa Department of Economic Development for financial assistance from the Community Development Block Grant Program, and RUSS has made application for loans and grants from the United States of America (hereinafter referred to as the “Government”) for the construction of plants and systems for sanitary sewer services for and on behalf of the City; and

WHEREAS, the parties understand that RUSS has or will assume certain debt obligations for this project through Rural Development, United States Department of Agriculture, and that the loan security for this project will consist, in part, of revenue bond financing pursuant to Chapters 28F and 331, Code of Iowa. The parties understand that the loan obligation assumed by RUSS shall be for a period of forty (40) years from the date of closing.

WHEREAS, by Resolutions adopted by the parties hereto, the provisions of this agreement have been approved by the City Council of the City, the RUSS Commission, and the Board of Supervisors for each county member of RUSS, and the execution of this agreement duly authorized.

NOW, THEREFORE, IT IS AGREED:

Section 1. PURPOSE. The purpose of this agreement is to set forth the terms and conditions under which the parties will obtain the necessary funding and do any and all things necessary for the erection, maintenance and operation of plants and systems necessary for sanitary sewer services and waste water collection including the collection, treatment and disposal of sewage and liquid waste (the “Project”).

Section 2. ADMINISTRATOR. No separate legal or administrative entity shall be established in order to administer this agreement or the Project. RUSS is hereby designed as administrator for the joint or cooperative undertaking as required by Section 28E.6, *Code of Iowa*.

Section 3. FINANCIAL OBLIGATIONS. Subsequent to the execution of this agreement, the City shall proceed to obtain Community Development Grant (“CDBG”) funds and RUSS shall attempt to procure loan and grant commitments from the Government for the construction of the Project. RUSS agrees to expend funds received in accordance with the terms and conditions of any such agreements and commitments. The City will enter into a subrecipient agreement with RUSS with respect to the City’s receipt of CDBG funds. RUSS shall not incur or issue any revenue bonds or other obligations until authorized by resolution duly adopted by the Board of Supervisors of each Member County participating in RUSS.

Section 4. PROFESSIONAL SERVICE AGREEMENTS. The City does hereby empower RUSS to proceed forthwith to engage the services of an architect/engineer and attorney, and to adopt plans and specifications for the construction

of the Project in accordance with all federal, state and local laws and regulations. The City shall reimburse RUSS for any project development costs, including associated legal, engineering/architectural, administrative and financing costs.

Section 5. OWNERSHIP AND OPERATION OF SYSTEM. Unless otherwise agreed, plants and systems for providing sanitary sewer services, and all easements and real estate, and all improvements thereto which are acquired, constructed, or installed for the Project shall become and remain the property of RUSS. Once constructed, it shall be the duty of RUSS to operate and maintain the entire sanitary sewer system, including the collection, treatment and disposal of sewage and liquid waste.

Section 6. PROPERTY ACQUISITION. The City and RUSS agree to acquire all real estate necessary to construct, operate and maintain the plants and systems for sanitary sewer services. It is understood and agreed that all real property and easements shall be held in the name of RUSS as authorized by Section 28E.6(2), *Code of Iowa*, and the City agrees to take such action as may be required from time to time for such purposes including the exercise of the power of eminent domain. The City does hereby empower RUSS with the right to utilize the streets, avenues, alleys, rights-of-way, and other public easements and public property for the construction, maintenance, and operation of the necessary pipes, mains, collectors, drains, and the appurtenances in, along and under the streets, avenues, alleys, and public places in the City, without the necessity of obtaining easements thereto.

Section 7. CONSTRUCTION. RUSS shall cause contracts to be let in accordance with all state, CDBG and Government requirements to construct the Project. In the event the amounts of the lowest responsible bids received for construction of the Project, plus the estimated cost of professional services and a reasonable reserve for contingencies exceed the balance of the funds committed to the construction, RUSS shall have the right and option to reject any such bids and upon agreement by all of the parties, the Project shall be redesigned so as to keep the maximum cost of the project at less than the total of the funds committed.

Section 8. USE OF SYSTEM. The City agrees to adopt and force such ordinances as may be required to regulate the use of the entire sanitary sewer system, including but not limited to the installation and connection of building sewers, the discharge of water and waste into the system, mandatory connections to the system, and to provide penalties for violation thereof.

Section 9. FEES AND CHARGES. As long as this agreement is in effect, RUSS shall establish rates or charges to consumers of the services of the sanitary sewer system sufficient in each year for the payment of the proper and reasonable expenses of the operation and maintenance of the sanitary sewer system and for the payment of principal and interest on any bonds or other obligations issued to pay for initial construction and subsequent improvements to the sanitary sewer system as the same fall due and to provide for the creation of reserves as required by said obligations. Net revenues shall be maintained at a level sufficient to satisfy sound operations and

borrowing practices and shall be determined and fixed solely in the discretion of RUSS. The City shall indemnify RUSS and reimburse RUSS for any customer sewer service, which is sixty (60) days delinquent by payment within thirty (30) days of receiving notice of the delinquency from RUSS.

Section 10. RULES. RUSS may adopt from time to time rules providing for system requirements, supervision, specifications, inspection, prohibitions and restrictions, as are reasonable and necessary for the construction, maintenance, and operation of the project. RUSS, its successors and assigns, should throughout the life of operations of this project furnish uninterrupted service twenty-four hours each day of each year while this agreement is in effect; provided, however, that any prevention of service caused by fire, act of god, or unavoidable event or accident shall not be a breach of this condition if RUSS resumes services as quickly as is reasonably possible after the happening of the act causing the interruption.

Section 11. SAFETY. In making excavations in any street, alley, avenue, boulevard, or other public place in the City, RUSS, its successors and assigns, shall protect the place while work is in progress by guards, barriers, or signals, and shall not unnecessarily obstruct the use of the streets and shall back fill all openings in such manner as to prevent settling or depressions in the surface.

Section 12. DURATION. This agreement shall become effective from and after the date on which it is recorded with the Iowa Secretary of State and County Recorder, and shall continue in effect until terminated in the manner hereinafter provided. The parties consent to and authorize RUSS to attempt to procure loan and grant commitments from the United States Department of Agriculture that may include loan security, in part, consisting of revenue bonds that may mature at times not exceeding forty (40) years from their respective dates of issuance.

Section 13. AMENDMENT AND TERMINATION. The term of this agreement granted by the parties and the rights granted thereunder shall continue indefinitely, until terminated by the parties in the manner set forth below. In no event shall this Agreement be terminated during the period of forty (40) years from and after the date of closing of any loans or obligations issued or other indebtedness by RUSS for this project, so long as said loans, obligations or other indebtedness remain outstanding and unpaid. Pursuant to Section 28F.3, *Code of Iowa*, public agencies participating in this agreement may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of RUSS, its successors or its assigns this Agreement if revenue bonds or obligations issued in anticipation of the issuance of said revenue bonds have been issued and are then outstanding and unpaid as provided for therein. Any obligations or indebtedness for the payment and discharge of which, upon maturity or upon redemption prior to maturity, provision has been made through the setting apart in a reserve fund or special trust account created pursuant to Chapter 28F, Code of Iowa, to ensure the payment thereof, of moneys sufficient for that purpose or through the irrevocable segregation for that purpose in a sinking fund or other fund or trust account of moneys sufficient therefor, shall be deemed to be no longer outstanding and unpaid

within the meaning of any provision of this chapter. In addition, RUSS shall have the right to terminate this agreement at any time prior to the award of the construction contracts by serving written notice of its intent to withdraw and terminate on the City. In the event of such termination by RUSS, each party shall be responsible for the payment of its own expenses and shall be entitled to retain the real and personal property acquired in their respective names. Termination for any other reason shall constitute a default in the performance of the terms and conditions of this agreement. Subject to the foregoing, any other amendment of the agreement shall be by the same procedures by which this agreement was approved and executed.

Section 14. DEFAULT. If either party fails to timely perform any term or condition of this agreement, the other party shall have the right and option to terminate this agreement and the defaulting party agrees to assume all outstanding indebtedness and reimburse the other for any expenses incurred in connection with the performance of this agreement, including attorney fees and costs relating to the enforcement hereof. The parties shall also be entitled to utilize any and all other remedies or actions at law or in equity available to them.

Section 15. ASSIGNMENT. The City does hereby consent to and authorize RUSS to assign and transfer its interest in this agreement, all property interests, whether real or personal, and all facilities to be constructed hereunder to any successor in interest or to the United States of America, or any other lender, as collateral security for present or future loans.

Section 16. GOVERNMENT APPROVAL. As the construction of the Project is in part being financed by a loan or loans made or insured by, and/or a grants or grants from the Government, the provisions hereof pertaining to the undertaking of RUSS are conditioned upon the approval of the Government.

Section 17. TIME IS OF THE ESSENCE. Time is of the essence in this contract.

Section 18. SEVERABILITY. If any one or more of the provisions of this agreement are declared unconstitutional or contrary to the law, the validity of the remainder thereof shall not be thereby affected.

Section 19. AUTHORIZATION. All member counties of RUSS sign this Agreement by authority of a resolution duly adopted by the respective county's Board of Supervisors; and the City signs this agreement by authority of resolution duly adopted by its city council or other governing board of such municipality. This agreement may be signed in counterparts.

Section 20. ARBITRATION. In the event that any disputes arise in the interpretation of this agreement, the parties agree that a disinterested arbitrator may be hired by agreement of the parties to issue a binding decision. It is the intent of the agreement that recourse to arbitration shall be a mandatory condition precedent to the

invocation of a judicial remedy or judgement and that such arbitration shall be final and binding upon the parties thereto save and accept only as the law requires.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

REGIONAL UTILITY SERVICE
SYSTEMS COMMISSION

CITY OF HARPER, IOWA

BY: _____
Chairperson

BY: _____
Mayor

BY: _____
Secretary

BY: _____
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF JEFFERSON)

On this _____ day of _____, 2005 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Henry (Willie) Van Weelden and Ernie Greiner, to me known, who being by me duly sworn, did say that they are the chairperson and Secretary, respectively, of Regional Utility Service System Commission executing the within and foregoing contract, that the seal affixed hereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board; and that the said Henry (Willie) VanWeelden and Ernie Greiner, as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and them voluntarily executed.

Notary Public in and for said County & State

STATE OF IOWA)
) ss:
COUNTY OF _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Harper, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority

SEIU Local #199 (Secondary Roads) for July 1, 2005-June 30, 2006. All present voted aye. Motion carried.

The board discussed bridges to be replaced or repaired within the county with the county engineer.

Chairman VanWeelden left the meeting to go to another meeting.

Vice-chair Greg Gordy took over the meeting.

Judy Funk and Dave Cross from Gallagher & Company discussed the liability insurance and property values for the county. Dave will revalue any buildings that are valued above \$100,000.

It was moved by Rouw seconded by Gordy to adjourn. All present voted aye. Motion carried.

Henry W. VanWeelden, Chairman
Mahaska County Board of Supervisors

ATTEST: _____
Kay Swanson, Mahaska County Auditor