

**CORBETT WATER DISTRICT
BOARD OF COMMISSIONERS
SPECIAL BOARD MEETING
February 11, 2020**

BOARD MEMBERS PRESENT: Sara Grigsby, Dan Graff, Bob Gaughan, Fred Sanchez and Jeff Hargens

BOARD MEMBERS ABSENT:

STAFF PRESENT: Assistant District Clerk Lynda Ronell and District Clerk Gail Griffith

AUDIENCE MEMBERS: Malcolm Freund, David Jacob, Jack Garrison, Linda Hargens (*with Ike*) and Chris Augustine of SCS Engineers

President Jeff Hargens called the meeting to order at 6:34 p.m.

APPROVAL OF THE AGENDA

Sara Grigsby made a motion to approve the February 11, 2020 Agenda as presented. Bob Gaughan seconded, all were in favor, motion carried. (*5 yes votes: S Grigsby, J.Hargens, B.Gaughan, F.Sanchez & D.Graff 0 no votes*)

WELL PROJECT

A. Bid Documents for Test Well Drilling - Jeff Hargens asked if it had to be a public bid opening. Chris Augustine replied it did have to be opened in a public meeting. He continued it has to be during business hours which are between 2:00 and 5:00 p.m. because they have to submit tier 2 sub-contractor forms within two hours of bid opening. The award can be done at another time.

Jeff Hargens said on the advertisement document it had the March 6 site walk from 9:00 to 11:00 a.m. but in the "Instructions to Bidder" page 2, the time listed is 8:00 a.m. to 10:00 a.m. which doesn't match. Chris Augustine said it depends on when Jeff Busto wants to do the walk through. Jeff Hargens continued, on the second page of the "Instructions to Bidders" in the "Bid Security" section it is written out as "five percent" and then the number listed is "10%". Those should match and be ten percent. Jeff Hargens continued that on the same page number 11 A.i. should be "Ten percent of the total project bid or \$15,000 whichever is larger;.." not "five percent". Jeff Hargens had no more suggested changes.

Sara Grigsby stated on page 2 of 5 "Instructions to Bidder" section the second sentence says "All answers must be "Yes" on questions #6 through #9 and all information must be provided." Number 6 is not a "yes" question so should it actually be #7 through #10? Chris Augustine said that would be corrected to #7 through #10.

There were no other changes noted by Board members.

The Board received a summary of the Feasibility Study Grant timeline. Jeff Hargen stated this part of the well project is estimated at a price of \$586,400 with a grant request for just under half that amount. We will not know if we have received the grant by the time we are ready to move forward. Jeff Hargens asked if we did not get the grant could we get a loan for that part of the project. The District Clerk, Gail Griffith, responded information from our representative at the Oregon Health Authority is if we did not include the test well in the original letter of interest we would need to submit a new letter of interest for this part of the project to be considered for a loan. The dates that letters can be submitted are either two or four times per year. The District Clerk will check into the dates. The current loan that we can get does not include the test well.

Jeff Hargens asked when the project start date is scheduled. Chris Augustine said we could issue a "notice to proceed" as late as June 30, 2020. Jeff Hargens stated so we could have three options with a June 30 start day, we have \$250,000 in budget this year we could put additional in the budget for next year for the next budget year, we will know about the grant by mid June to see if we have that money and/or we have time to re-submit for a loan. Sara Grigsby asked why we would not pursue all three options. Jeff Hargens said, we could.

Dan Graff noted the part that is “scary” to him is if we did not get the grant we are on the hook for the whole thing. Discussion of contract law, award, notice to proceed, etc..

Dan Graff asked if we can delay the start date and thus delay payments. David Jacob said the model public contract law for the state is where that information would be available. The District Clerk noted we would need someone who can actually interpret State contract law.

Jeff Hargens said, in his opinion, the District has to decide either to move forward or wait. He said he would like to move forward with this portion.

Dan Graff responded is it feasible for us to have the current \$250,000 in the budget this year and increase that by \$250,000 more for next fiscal year to cover this. Jeff Hargens said we need to look at it and maybe consider raising rates. Dan Graff said if worst case we get no money for the test well what is the plan? Can we cover it in the budget.

Sara Grigsby asked how soon would we be paying out money for the test well? Chris Augustine replied the project duration is less than two months from start to finish. We have listed that they complete the work no later than December 31, 2020 of this year. Dan Graff said they could ask for money up front for mobilization. If they start in June we would have payments in July which is into the next Budget year.

Once the bid is open in March we will know what the range of bids are and be able to consider that in the Budget meeting following the opening.

Discussion of the need for a contract that is written by the District for the test well driller including all terms and conditions. Chris Augustine noted that any contract provided by the driller would be written to favor them.

Sara Grigsby said she would feel better knowing how we could get out of the bid if we weren't able to move forward after all. What would that cost. Jeff Hargens said once you award you need to be able to proceed and pay. Discussion of delaying the bid. Chris Augustine said if we go later than we run up against not meeting the timing to apply for the production grant. David Jacob said, contractor training says if your customer wants to cancel the job after it has been awarded than the contractor has the right to get their “profits” which is about 10%.

The District will have the right to reject all bids if they come in to high.

Discussion of what happens with the water and sediments that will be produced during the drilling. Chris Augustine said it should be a limited amount. Jeff Hargens said his intention is to remove the stumps and trees in the test well area, level it out and rock it for the drill site.

Jeff Hargens made a motion to move forward with the advertisement for bid for the construction of the Corbett Water District Gordon Creek Aquifer Storage and Recovery Test well as presented tonight with modifications as discussed tonight and with a bid opening date of March 17, 2020. Dan Graff seconded, all were in favor, motion carried. *(5 yes votes: S Grigsby, J.Hargens, B.Gaughan, F.Sanchez & D.Graff 0 no votes)*

Review of where land preparation for the test well site will be completed will be included in discussion at the February 18, 2020 Board Meeting.

Jeff Hargens announced he would not vote regarding the Letter of Engagement with the Attorney since the Attorney would be representing the District in preparing documents between the District and he and his wife as the landowners of the well site. He asked Secretary Bob Gaughan to run the meeting for item B. on the Agenda.

B. Attorney Letter of Engagement with Tonkon Torp LLP- Attorney Janet Neuman

Fred Sanchez stated to the Board “During our last Corbett Water District Board meeting I was tasked with locating an attorney to study the issue of installing a well on property not owned by the District; with the goal of preparing a clear and thorough real estate agreement to protect and safeguard CWD Board, the Corbett community, ratepayers and taxpayers. I first spoke to Attorney Renee Moulon who provides legal representation for the Oregon Resources Department. I also contacted several friends and clients for their suggestions. Most helpful was Governor Ted Kulongoski who recommended Steve Shropshire or Kaylen Barter with Jordan Tamus, David Phillips with Stoll Reeves and most highly recommended Janet Neuman who taught water law at Lewis and Clark Law School and is now in private practice at Tonkon Torp. Renee, Ted and two of the other attorneys I spoke to referred me to Janet Neuman. I do not know Ms. Neuman. I have no conflict of interest in proposing that we consider hiring her. I have however worked with real estate lawyers at Tonkon Torp when they represented buyers US National Bank for the Bank headquarters at 181st near Sandy Boulevard and our company, Realty Brokers, represented sellers Hopeman Brothers and Zimmerman estates in the sale of their 250 acre farm property.” Fred continued, having said that I think it is very important that we all, with the contract looming and assuming that we do find a contractor we are satisfied with, that the attorney should take a look at issues regarding safeguards for the district. One of the things, with my very brief knowledge of contracts, is that things do go wrong, contractor problems happen and sometimes there are penalties and sometimes not. Fred said this is a good time to decide how we can have these issues favorable for the Water District.

Sara Grigsby asked how we got the letter of engagement. Fred Sanchez responded he had called Ms. Neuman and requested it be sent to the Clerk’s office. He also received a copy. Sara Grigsby said it was nice work.

Bob Gaughan asked if there was any limit or maximum amount for the legal work and if it is more they would have to come back to us? Fred Sanchez replied there is an hourly rate which has been discounted for us as a non-profit. We can discontinue the agreement at any time. Discussion of estimates needed for certain portions of the job. We could include a “not to exceed” amount.

Dan Graff said the first part would be a temporary construction easement for the test well. We would need an estimate for this portion of the project.

Sara Grigsby made a motion that we move ahead with the letter of engagement with Attorney Janet Neuman of Tonkon Torp. Secretary Bob Gaughan asked if there was a second. Fred Sanchez seconded, four were in favor, one abstained, motion carried. *(4yes votes: S Grigsby, B.Gaughan, F.Sanchez & D.Graff 1 abstenion: J.Hargens 0 no votes)*

The Board directed staff to contact Janet Neuman and ask for an estimate of costs to prepare the temporary construction easement between the District and the well site property owners. The estimate will be reviewed at the February 18, 2020 Board meeting and a decision made on whether to proceed.

PUBLIC COMMENTS

No comments

ADJOURNMENT OF THE MEETING

Jeff Hargens made a motion to adjourn the meeting at 7:39 p.m. Dan Graff seconded, all were in favor, motion carried. *(5 yes votes: S Grigsby, J.Hargens, B.Gaughan, F.Sanchez & D.Graff 0 no votes)*