

**Minutes of Meeting**  
**Souris River Joint Water Resource Board**  
**Monday, February 27, 2023**

A special meeting of the board of directors of the Souris River Joint Water Resource District was called to order by Chairman David Ashley at 11:00 a.m. on Monday, February 27, 2023. The meeting was held via Microsoft Teams/Teleconference. Joint Board members attending the meeting were Chairman David Ashley, Dan Steinberger, Dan Jonasson, Clif Issendorf and Tom Klein. Chairman David Ashley called the meeting to order and announced that a quorum was present.

Ryan Ackerman advised the Joint Board that a Park Construction dispute on Phase MI-1 has been ongoing for approximately two years and the various issues were collectively negotiated and an agreement has been reached with Park Construction and its attorneys on how to move forward. Ryan Ackerman then turned the matter over to Jerry Bents to present further details on the negotiated settlement.

Jerry Bents provided the Joint Board with additional details/specifics to break down the Park Construction settlement agreement. Jerry Bents indicated the one piece of this agreement that had not been resolvable in the past had to do with issues with settlement on the discharge lines between the pump station and discharge chamber. Because that issue was unresolved, other corrective measures were not being fixed. Coming to an agreement on that item aided reaching resolution on other aspects.

Jerry Bents indicated that the contract changes include Park Construction agreeing to remove and reset the discharge chamber lines in exchange for SRJB providing cost share for that in the amount of \$200,000. As a result, Park asked to complete that work prior to June 1, 2024, so another contract change was to move the completion date out to June of 2024. Because the completion date was moved and Park was no longer being assessed liquidated damages, the liquidated damages that had been held are being released. In addition, 2% of the contract amount was being held (around \$800,000) because of uncertainty on how these matters would be resolved, but that was reduced to 1% as part of the settlement. The contract had allowed to hold back for defective work via issuance of defective work notices and payment set offs. The settlement agreement provides that upon correcting the defective work, the retainage/set-off would be released. Finally, Park requested that when things are down to only having to reset the pipes, they want to further reduce the retainer and that has been agreed to. Additionally, all quantities and dates were clarified and balanced which show up in Change Order No. 48, which would be authorized parallel to the settlement agreement.

Jack Dwyer informed the Joint Board with respect to liability and warranty language in the settlement agreement. Park Construction had requested that SRJB stand behind the performance of the project for third parties. As part of the agreement, the SRJB would provide indemnification following the closeout of this contract. As a result, if there are any third-party claims relating to the performance of the project, the SRJB would defend any lawsuit. As far as warranties, all of the existing workmanship and manufacturer warranties are staying intact except the workmanship warranties relating to pipe repairs. The rationale for waiving that warranty was the difficulty finding a third-party bidder to clean up the issues created by another contractor and provide a warranty if this contract was to be terminated.

Ryan Ackerman further advised that mediation was conducted with Park Construction and the settlement agreement is a result of that mediation and following dispute resolution channels.

Jerry Bents further advised on logistics of the settlement agreement. Logistically, there is a net deduct in the project costs of \$450,973.79. Parallel to that, Change Order No. 49 essentially allows the settlement agreement to be incorporated into the contract (a net increase of \$200,000). Assuming the settlement agreement is signed and the two change orders are agreed to, the next step is to issue payment based on those contract changes. The payment listed in the Board Packet is \$743,574.15.

**Clif Issendorf moved to approval of the settlement agreement with Park Construction and authorize the Chairman to sign Change Order Nos. 48, 49 and 56, contingent on Park Construction's approval of the settlement agreement. Dan Jonasson seconded the motion. A roll call vote was cast. The motion passed without opposition.**

Dan Steinberger inquired whether Jerry Bents is comfortable with the settlement, to which Jerry Bents indicated he was.

The meeting was adjourned.

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Jack Dwyer  
Legal Counsel