

Agenda Item: 7.

## MEMORANDUM

**TO:** Programs, Projects, and Operations Subcommittee

**FROM:** Zach Nelson, Project Manager

**SUBJECT:** Review and Recommendation on the Mutual Release and Settlement Agreement of Washington County from the Washington County Rural Water Project #2 Interlocal Agreement and Third Addendum to the Interlocal Agreement

**DATE:** October 31, 2016

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In 2004, the District, City of Blair, and Washington County executed an Interlocal Agreement to build the former Washington County Rural Water #2 System. Washington County made a project contribution of \$210,412.64 to oversize water mains to allow for future growth throughout the county. The City of Blair made a project contribution of \$698,483.51 to oversize the system's primary water main to allow for the conveyance of water from MUD to the City of Blair in an emergency. Under the agreement, the District is required to provide a rebate of \$1,155 to the City of Blair and \$345 to Washington County every time a new hookup is made on the system.

On August 11, 2016, the District's Board of Directors approved the Lakeland Estates Water Company Water Supply Agreement. The agreement allows for the construction of the Lakeland Connection Project to supply the Lakeland Estates Water Company (LEWC) as a wholesale customer. LEWC supplies water to over 525 residences in central Washington County. The City of Blair views the Lakeland Connection Project as one single hookup. Washington County views the Lakeland Connection Project as 525 hookups and has requested a reimbursement for each residence that is provided water by the Lakeland Estates Water Company. Currently, there is an outstanding rebate balance of \$182,467.54 due to Washington County. The SRF Loan that the District is obtaining for the Lakeland Connection Project includes funds to pay off the outstanding rebate balance to Washington County. Prior to disbursing payment to Washington County, District staff and legal counsel are recommending that Washington County and the District sign a Mutual Release and Settlement Agreement, which mutually releases each party from responsibilities outlined in the original Interlocal Agreement. Also attached is the proposed third addendum to the PMRNRD, City Blair and Washington County Interlocal Agreement, which removes Washington County as a party to the Interlocal Agreement

**It is Staff recommendation that the PPO Subcommittee recommend to the Board of Directors, that the General Manager be authorized to execute the proposed Washington County Mutual Release and Settlement Agreement and the proposed Third Addendum to the Interlocal Cooperation Act Agreement by and among The Papio-Missouri River Natural Resources District, The City of Blair, Nebraska and The County of Washington, Nebraska for Washington County Rural Water Project No. 2 as presented to the Subcommittee, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT (“Mutual Release”) is made by and entered into this \_\_\_\_ day of September, 2016, by PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (the “NRD”), and WASHINGTON COUNTY, NEBRASKA (“COUNTY”).

### RECITALS

WHEREAS, the NRD and COUNTY are parties to the Washington County Rural Water Project Interlocal Agreement (“Agreement”);

WHEREAS, the Agreement provides for certain annual rebate payments on December 31st of each year to the COUNTY from the NRD based on hookup fees paid by new water customers during the prior year;

WHEREAS, the Agreement provides for its termination by mutual agreement or by any party upon two years written notice;

WHEREAS, the COUNTY issued a demand on June 17, 2016 for immediate termination of its participation in the Agreement and the NRD issued an objection on July 7, 2016;

WHEREAS, the NRD and COUNTY have agreed to settle any and all claims against each other with regard to the Agreement including all payments due to the COUNTY under the Agreement;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Consideration.** The NRD and COUNTY acknowledge receipt of adequate consideration for this Mutual Release.

2. **Final Rebate Payment.** The NRD shall make a final lump sum rebate payment to COUNTY in the amount of \$182,467.54 on or before December 31, 2016. This payment shall conclude all payments of any kind owed to the COUNTY under the Agreement.

3. **Mutual Release.** COUNTY hereby releases and forever discharges the NRD and its agents, officers, directors, servants, attorneys, insurers, affiliates, successors, assigns and all other persons, firms and corporations whatsoever and whomsoever, of and from any and all liability, actions, claims, causes of action, complaints and demands whatsoever which COUNTY now has or may hereafter have based upon or arising out of the Agreement.

The NRD hereby releases and forever discharges COUNTY and each of its agents, officers, directors, servants, attorneys, insurers, affiliates, successors, assigns and all other

persons, firms and corporations whatsoever and whomsoever, of and from any and all liability, actions, claims, causes of action, complaints and demands whatsoever which the NRD now has or may hereafter have based upon or arising out of the Agreement.

4. **Covenant Not to Sue.** The NRD and COUNTY covenant and agree not to institute any action or suit at law or in equity against one another or their agents, officers, directors, servants, attorneys, affiliates, successors and assigns, and agree not to institute, prosecute, or in any way aid in the institution or prosecution of any claim, demand action, bankruptcy proceeding or other cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage or loss arising out of the Agreement.

5. **Entire Agreement.** This Mutual Release contains the entire agreement between the parties as to the matters mentioned herein.

6. **Counterparts.** This Mutual Release may be executed in any number of counterparts and each of such counterparts for all purposes deemed to be an original; and all such counterparts shall together constitute one and the same Mutual Release.

7. **Facsimile.** This Mutual Release may be executed by facsimile transmission or e-mail transmission and such facsimile signatures shall be binding, of full force and effect and treated as, original signatures.

IN WITNESS WHEREOF, the parties set their hand on the day and date first written above.

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

By \_\_\_\_\_

Title: \_\_\_\_\_

WASHINGTON COUNTY

By Carl A. [Signature]

Title: Chairman

Washington Co Board

**THIRD ADDENDUM**  
**TO**  
**INTERLOCAL COOPERATION ACT AGREEMENT**  
**BY AND AMONG**  
**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,**  
**THE CITY OF BLAIR, NEBRASKA**  
**AND**  
**THE COUNTY OF WASHINGTON, NEBRASKA**  
**FOR**  
**WASHINGTON COUNTY RURAL WATER PROJECT NO. 2**

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THIS THIRD ADDENDUM (hereinafter referred to as “**THIS ADDENDUM**”) amends the INTERLOCAL COOPERATION ACT AGREEMENT (hereinafter referred to as “**THE AGREEMENT**”) relating to the WASHINGTON COUNTY RURAL WATER PROJECT NO. 2 (hereinafter referred to as “**THE PROJECT**”) that was executed in 2003 pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, *et seq.*, by and among the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a subdivision of the State of Nebraska (hereinafter referred to as the “**NRD**”); the CITY OF BLAIR, a municipal corporation of the State of Nebraska (hereinafter referred to as the “**CITY**”); and, the COUNTY OF WASHINGTON, a subdivision of the State of Nebraska (hereinafter referred to as the “**COUNTY.**” The NRD, the COUNTY and the CITY are hereinafter referred to collectively as the “**PARTIES**”.

**WHEREAS**, THE AGREEMENT provides for certain annual rebate payments on December 31st of each year to the COUNTY from the NRD based on hookup fees paid by new water customers during the prior year;

**WHEREAS**, THE AGREEMENT provides for its termination by mutual agreement or by any party upon two years written notice;

**WHEREAS**, the COUNTY issued a demand on June 17, 2016 for immediate termination of its participation in THE AGREEMENT and the NRD issued an objection on July 7, 2016;

**WHEREAS**, the NRD and COUNTY have agreed to settle all payments due to the COUNTY under THE AGREEMENT;

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing recitals and their mutual covenants, the PARTIES hereby agree as follows, to-wit:

**A.** The County's participation in THE AGREEMENT and its status as a PARTY to THE AGREEMENT are hereby terminated by mutual agreement.

**B.** That, except as so amended, THE AGREEMENT should be, and is hereby, ratified and confirmed in all other respects.

**C.** That THIS ADDENDUM shall become effective upon its execution by all PARTIES.

**IN WITNESS WHEREOF**

THIS ADDENDUM is executed by the NRD on \_\_\_\_\_, 2016.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
**General Manager**

THIS ADDENDUM is executed by the COUNTY on \_\_\_\_\_, 2016.

**COUNTY OF WASHINGTON, NEBRASKA**

By \_\_\_\_\_  
**Chairperson, County Board**

**Attest:**

\_\_\_\_\_  
**County Clerk**

THIS ADDENDUM is executed by the CITY on \_\_\_\_\_, 2016.

**CITY OF BLAIR, NEBRASKA**

By \_\_\_\_\_  
**Mayor**

**Attest:**

\_\_\_\_\_  
**City Clerk**