

Agenda Item: 12.

MEMORANDUM

TO: Programs, Projects, & Operations Subcommittee

FROM: Zach Nelson

SUBJECT: Metropolitan Utilities District of Omaha Water Purchase Agreement to provide service to Washington County Rural Water System #1

DATE: May 3, 2013

The Papio-Missouri River Natural Resources District and the Metropolitan Utilities District (M.U.D.) of Omaha entered into an agreement on May 3, 1978 for M.U.D. to provide water service to Washington County Rural Water System #1. An addendum was added to the agreement in 2004 to add provisions to provide emergency water service to the City of Blair. A second addendum was added in 2011 to grant permission to extend service into Douglas County beyond the original system service territory. This agreement has a 25 year term and is set to expire.

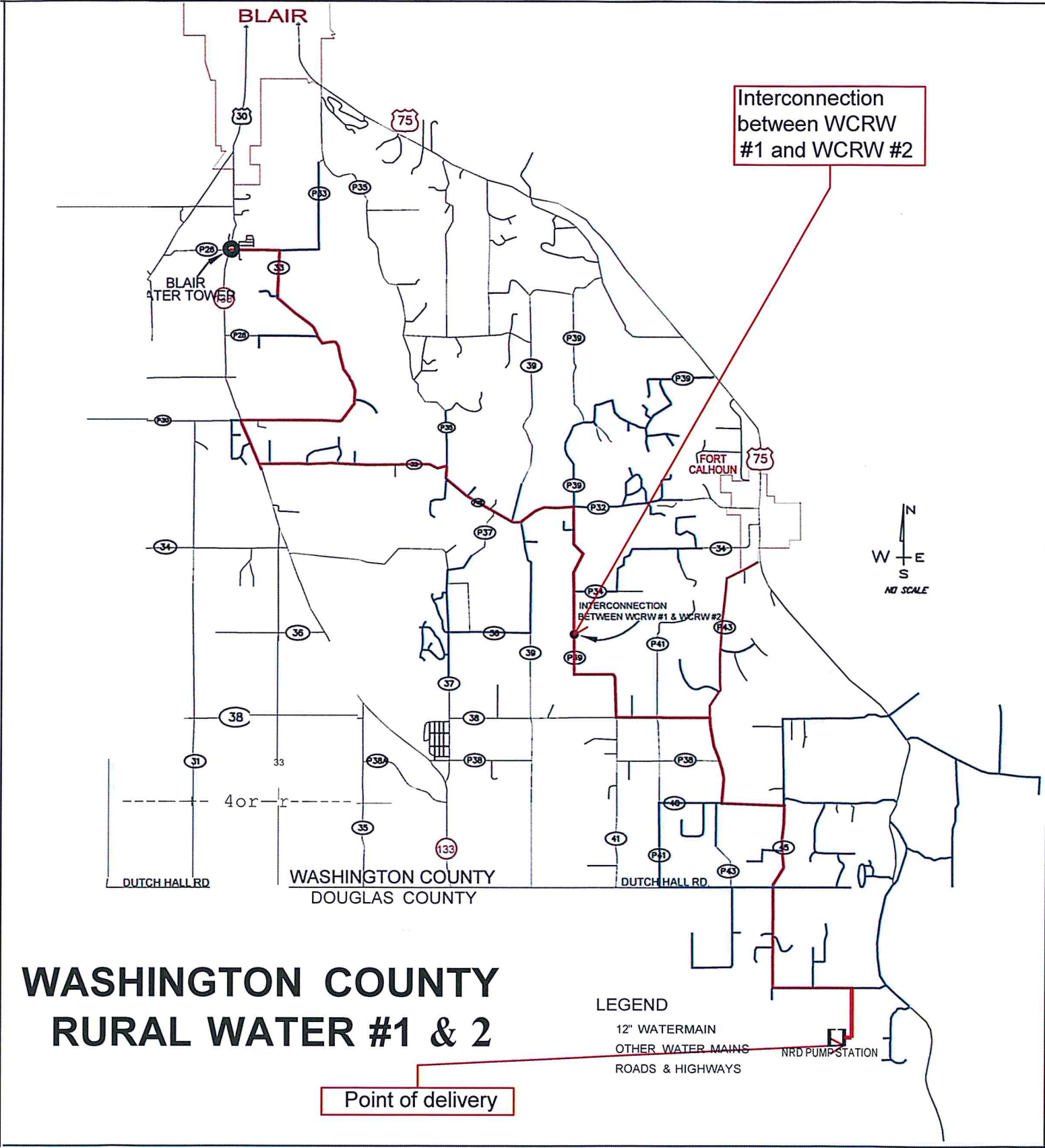
A new agreement has been drafted and reviewed by both parties, including P-MRNRD legal counsel. This agreement (as attached) was approved by the MUD Board of Directors on May 1, 2013.

Changes from the original agreement and its' amendments are as follows:

- I The new 25 year term will continue thereafter unless terminated by either party after proper notice
- II. The required termination notice was changed from two (2) to three (3) years
- III. The flow delivery capacity was increased from 950 gallons per minute "GPM" to 1250 GPM

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Agreement for the Sale of Water between Metropolitan Utilities District of Omaha and the Papio-Missouri River Natural Resources District, subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.

EXHIBIT #1



AGREEMENT FOR THE SALE OF WATER BETWEEN
METROPOLITAN UTILITIES DISTRICT OF OMAHA
AND THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

THIS AGREEMENT, is entered into this _____ day of _____, 2013, between Metropolitan Utilities District of Omaha, a municipal corporation and political subdivision of the State of Nebraska ("the District"), and the Papio-Missouri River Natural Resources District, a political subdivision of the State of Nebraska ("the NRD").

WITNESS:

WHEREAS, the NRD operates a water distribution system serving the City of Fort Calhoun, Nebraska, and rural areas in Douglas and Washington Counties; and

WHEREAS, the NRD finds it necessary and desirable to purchase wholesale water from the District for resale to the NRD's customers for domestic, commercial, industrial use, fire protection and sanitation purposes; and

WHEREAS, the District has water available for sale to the NRD and is willing to sell such water at wholesale under the terms and conditions of this Agreement; and

WHEREAS, the NRD has a second rural water system (WCRW #2) connected to the first rural water system (WCRW #1) as shown in Exhibit #1 for the purpose of providing water to the City of Blair in the case of an "emergency," as more fully set out herein.

NOW, THEREFORE, in consideration of the mutual promises of the District and the NRD contained in this Agreement, pursuant to the authority contained in resolutions of their respective governing bodies, and under the authority of Neb. Rev. Stats. §14-2101 through §14-2157, it is agreed as follows:

I. TERM OF AGREEMENT: This Agreement shall continue in force for a period of twenty-five (25) years from the date set forth above. The Agreement will continue in effect thereafter subject to termination by a three-year prior written notice of termination given by either party to the other.

II. CONNECTION AND POINT OF DELIVERY: The District shall deliver water to the NRD through the existing master meter installed in a meter building located at 11600 North 60th Street, Omaha.

III. QUANTITIES: The District shall deliver water to the NRD at the point of delivery in amounts as needed for domestic, commercial, industrial use, fire protection and sanitation purposes provided, however, such deliveries shall not exceed 1,250 gallons per minute in the aggregate. The pressure at the point of delivery will be between 69 psi and 136 psi. The NRD shall operate and maintain its water system in such manner so as to avoid undue pressure surges on the District's system, and so as to prevent contamination of the District's system. The NRD shall be responsible for operating and maintaining its water system in compliance with all applicable laws and rules of the State of Nebraska and all other agencies having jurisdiction. The District shall not be liable for damages resulting from failure to deliver water due to accident or breakage or other cause beyond the reasonable control of the District, nor shall the District be responsible for the adequacy of water for fire protection purposes.

IV. QUALITY: Water delivered to the NRD at the point of delivery shall be of the same quality and chemical content as that provided to the retail customers of the District located within its service area. No change in water quality shall be made to satisfy any additional requirements of the NRD or any of its customers. The parties acknowledge

that the water to be supplied to the NRD from the District is fluoridated in accordance with Neb. Rev. Stat. §71-3305 (Reissue 2009) and the rules and regulations of the State of Nebraska Department of Health and Human Services. The NRD assumes full responsibility for any and all consequences resulting from the mingling or mixing of the water supplies of the District and the NRD and shall indemnify the District from any and all such consequences.

V. OWNERSHIP AND MAINTENANCE: Prior to delivery of any water hereunder, the NRD shall obtain from the Nebraska Department of Health and Human Services all necessary approvals for the delivery of water under this Agreement. The NRD shall perform at its own expense any testing or monitoring of water quality which may be required beyond the point of delivery. The District shall own and maintain all meters, valves, and related equipment located upstream from and at the point of delivery. The District shall retain the right to operate all valves located at the point of delivery, whether District-owned or NRD-owned. The District shall notify the NRD if the District operates a NRD-owned valve.

VI. RATES, CHARGES, AND REBATES: The NRD shall pay the following rates and charges to the District:

1. **WHOLESALE WATER RATE (WWS):** The NRD shall pay the District for services rendered the previous month the rates and charges set forth in Schedule WWS, which is the District's schedule for wholesale water service, as such schedule may from time to time be amended by the District's Board of Directors. The NRD shall install and maintain a standard analog telephone line located next to the water meter. The analog telephone line shall be used to

telemeter daily water readings to the District and must meet the District's specifications.

2. CAPITAL FACILITIES CHARGES (CFC): The NRD shall pay to the District a Capital Facilities Charge (CFC) computed and paid quarterly for new connections and meters to the NRD water distribution system during such quarter, which charges shall be equal to the CFC applicable to new connections and meters to the District's water distribution system under District Rules and Regulations. The NRD shall report all such new connections and meters in writing to the District quarterly and make a remittance of the appropriate CFC therefor on the date payment is due for water for such quarter. Such report shall include the street address, size of meters, and names of additional customers. Charges shall be computed in conformity with the District's Rules and Regulations relating to CFCs and District procedures for assessment. The NRD's obligation to remit charges to the District shall not be dependent upon payment of such charges by the customer(s) to the NRD. The NRD's records shall be subject to an audit by the District for purposes of verifying the additional customer connections and meters and charges applicable.

3. REBATE: One year from the date of this Agreement, and annually thereafter, the NRD may submit to the District a statement of the capital expenditures made on the NRD's water distribution system for extension of mains and appurtenances and installations of reinforcing mains installed during the immediate past year for which the NRD has paid and which 1) will not be reimbursed or paid for by others, and 2) are not main extensions for the purpose

of connecting new customers. The NRD shall be entitled to a rebate of 25% of the CFC payments made by the NRD to the District. If the rebate requested is less than 25% of the CFC payments made by the NRD, the balance shall be carried over and may be requested on rebate requests in succeeding years. Rebates shall carry no interest. All claims for rebates shall be subject to audit by the District.

VII. EMERGENCY WATER: The District agrees to provide emergency water based upon the following terms:

1. **QUANTITY:** The emergency water service supplied to the City of Blair shall not exceed 1.5 million gallons per day. The District shall **NOT** be obligated to reserve capacity on its distribution system to accommodate the emergency water demand.
2. **METERING AND BILLING:** Water supplied for emergency purposes shall be metered and billed at the rate established in the District's Schedule WWS in effect at the time the water is supplied.
3. **INTERCONNECTION:** The valve between WCRW #1 and WCRW #2 (approximately 1/3 mile south of the intersection of Washington County Roads P34 and P39 – see Exhibit #1) will be the responsibility of the NRD. Unless otherwise approved by the District, this valve shall remain in the closed position. The District recommends that this valve be locked.
4. **AVAILABILITY:** Subject to the other limitations provided herein, emergency water service shall be available only if there is a major failure of the Blair Water Treatment Plant that results in pressure problems that would

jeopardize health and safety. A heavy summer usage of water and demand on the system of the WCRW #2 or the City of Blair shall be insufficient to invoke the emergency water provision of this Agreement.

5. **BEST EFFORTS OBLIGATION:** In fulfilling its obligation under this Agreement, the District shall use its "best efforts" to provide water to the NRD in an emergency situation. It will be at the sole discretion of the District to determine the feasibility of the District's ability to comply with the request for emergency water service.

6. **REQUESTS AND NOTIFICATIONS:** Requests for emergency water service shall be made by the NRD by notifying the District's Field Services Dispatch office at (402) 504-7946. The District's Senior Vice President of Operations will determine the impact on the District's system, whether an emergency exists, and whether the District can meet the request.

VIII. WATER RESTRICTIONS: The District has adopted and enforces a Water Conservation Emergency Operations Plan. The District shall have sole discretion regarding the initiation of water emergency levels under the Plan. At any time that the District initiates a water emergency level in accordance with the Plan, the NRD shall initiate water conservation requirements upon its customers which shall equal or exceed the requirements of the water emergency level initiated by the District. Notwithstanding the quantities of water for delivery identified in Paragraph III, upon the initiation of a water emergency at any level under the Plan, the District shall not be obligated to deliver any specific minimum amount of water to the NRD but shall be required to use its best efforts to deliver water in accordance with this Agreement.

IX. CONSENT OF DISTRICT: The District consents to the NRD's sale and delivery of water to the City of Fort Calhoun and to persons within the current boundaries of WCRW #1 and other persons and businesses north of the Washington-Douglas County line. The President of the District, upon request by the NRD, must give written consent prior to the NRD's installation of mains and sale of water to customers located south of the Washington-Douglas County line.

X. DEFAULT, NOTICE, AND TERMINATION OF AGREEMENT: Failure of the NRD to perform any term of this Agreement shall constitute a default. In the event of a default, the District shall provide the NRD with written notice of such default. The NRD shall have ten days after receipt of such notice to correct such default. A failure to correct such default shall be cause for termination of the Agreement at the discretion of the District. Any failure of the District to assert its rights after any default by the NRD at any time shall not constitute a waiver of the District's rights hereunder.

XI. LIMITATION ON DELIVERY: This Agreement and the payments made hereunder are limited to the delivery to the NRD of water at a rate not to exceed 1,250 gpm. Any delivery of water over and above such volume level shall be under the terms and conditions of a separate Agreement.

XII. NOTICES: Any written notices required under this Agreement shall be directed to the respective parties at the following addresses:

John Winkler
General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, NE 68138

Douglas R. Clark
President
Metropolitan Utilities District
1723 Harney Street
Omaha, NE 68102

IN WITNESS WHEREOF, Metropolitan Utilities District of Omaha and the Papio-Missouri River Natural Resources District execute this Agreement through their duly authorized officers.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

METROPOLITAN UTILITIES DISTRICT
OF OMAHA

By: _____
John Winkler, General Manager

By: _____
Douglas R. Clark, President

ATTEST:

By: _____

By: _____

APPROVED AS TO FORM:

Papio-Missouri River NRD, Attorney

Senior Vice President, General Counsel