

Agenda Item: 6.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Zach Nelson, Project Manager

SUBJECT: Review and Recommendation on the proposed Fort Calhoun Litigation Settlement Agreement and Water Supply Contract

DATE: February 5, 2016

On January 8, 2016, District Management and Legal Counsel held a mediation with the Mayor of Fort Calhoun and the City's Legal Counsel to mediate the City's four lawsuits against the District. Following the mediation, Mediator Tim Engler made a mediator's proposal that was conditionally accepted by both parties. Since then, both parties have collaborated on a Settlement Agreement and new Water Supply Contract. Both documents are attached for reference.

Below is a summary of the major provisions of the Settlement Agreement:

- A new Water Supply Contract that will supersede and replace in entirety the 1978 Agreement along with its Amendments.
- Approval by the District to allow the City to connect to the WCRWS, creating a third point of connection for the City. All costs associated with the main extension and connection shall be the responsibility of the City.
- The City shall complete the construction of the third connection or the refurbishment of its water tower within two years of the execution of this agreement.
- The District shall pay to the City a lump sum payment of \$75,000 for the settlement of the litigation. There shall be no admission of liability by either party
- The City shall dismiss, with prejudice, the litigation. The District shall dismiss, with prejudice, its counterclaim.
- Upon execution of the Settlement Agreement, the District shall rescind the notice of default provided on or about December 14, 2015.
- The parties shall bear their own costs and attorney fees associated with the Settlement Agreement and Litigation.

Below is a summary of the major provisions of the Water Supply Contract:

- The term of the contract shall be two years, with an automatic renewal unless either party gives notice of non-renewal.
- The District will continue to provide water at a rate not to exceed of 500 gallons per minute at the First Connection and Southern Heights Connection and at a rate not to exceed 200 gallons per minute at the Third Connection.
- Not less than 60 days following the City's third connection to the WCRWS, the City's rate for water shall be set following the methodology outlined in the Water Supply Contract. Until that time, the City's rate will be established by the District's rules and regulations.
- The parties shall be required to mediate any disputes prior to initiating litigation or terminating the water supply contract.
- An advisory board shall be created and consist of seven members, four which shall be appointed by the District and three which shall be appointed by the City.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Fort Calhoun Litigation Settlement Agreement and Water Supply Contract subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into this _____ day of February, 2016 (the “Effective Date”), by and between **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a governmental subdivision of the State of Nebraska (the “District”) and the **CITY OF FORT CALHOUN**, a municipal corporation of the State of Nebraska (the “City”). The District and the City are jointly referred to herein as the “Parties.”

Recitals:

WHEREAS, the District maintained two water systems in Washington County and Douglas County, Nebraska, previously designated as Washington County Rural Water No. 1 (hereinafter “WCRW 1”) and Washington County Rural Water No. 2 (hereinafter “WCRW 2”);

WHEREAS, on or about May 20, 1978, the District and the City entered into an agreement (hereinafter the “1978 Agreement”) concerning the construction of WCRW 1, the sale of water, and creation of a joint board, and thereafter amended the 1978 Agreement on or about March 8, 1979, then again on or about September 10, 1979, next on or about November 3, 1980, and then extended the 1978 Agreement by a fourth amendment executed on or about June 16, 2003 (hereinafter collectively the “Amendments”);

WHEREAS, in or about 2013, the District merged WCRW 1 and WCRW 2 to create the Washington County Rural Water System (hereinafter “WCRWS”);

WHEREAS, the City and its Mayor, Mitchell Robinson (hereinafter “Robinson”), instituted four separate proceedings in the District Court for Washington County, specifically CI 13-159, CI 13-160, CI 13-184, and CI 14-113, (hereinafter collectively the “Litigation”) challenging the merger of WCRW 1 and WCRW 2;

WHEREAS, on or about December 14, 2015, 2015, the District provided written notice to the City of the City’s alleged breach of the 1978 Agreement and the Amendments;

WHEREAS, the District filed a counterclaim in case number CI 13-160;

WHEREAS, the District denied and continues to deny the allegations asserted by the City and Robinson in the Litigation, and the City denies the allegations asserted in the District’s counterclaim;

WHEREAS, the District and the City desire to memorialize the terms of their settlement agreement as set forth below with neither Party admitting any facts or legal conclusions contained in the Litigation.

NOW, THEREFORE, based upon the mutual promises contained herein and for good and valuable consideration, it is hereby agreed by and between the Parties:

1. **Contract for the Sale of Water.** The Parties shall execute the Water Supply Contract attached hereto as Exhibit A. The Water Supply Contract shall supersede and replace entirely the 1978 Agreement along with the Amendments.

2. **Approval for City's Third Connection.** The District shall permit the City's establishment of another connection to WCRWS (hereinafter the "City's Third Connection"). The location of the City's Third Connection will be in the vicinity of the intersection of Rocky Lane and County Road P32 where a 6" water main of the WCRWS is currently located. In the event the City constructs the Third Connection, the City shall do so at its sole cost and expense, without any financial contribution from the District.

The District makes no representation that other government entities, including but not limited to MUD, City of Blair, Department of Health and Human Services, or Washington County, will provide or are required to provide approval for the City's Third Connection.

3. **City's Election.** The City shall elect to either complete the construction of the Third Connection or the refurbishment of its water tower within 2 years of the execution of this Settlement Agreement. Regardless of the City's election, the City must perform its choice in a manner that is not detrimental to the WCRWS. While the City is free to elect between the two listed options, the City agrees that it will complete its chosen option within 2 years of the execution of this Settlement Agreement. Completion of the City's chosen option shall be extended beyond 2 years without repercussion to the City by an unforeseen event reasonably contributing to a delay in completion, provided such event is outside the control of the City. In the event the City becomes aware that it will not complete its chosen option within the 2-year timeframe, the City shall promptly notify the District and provide such detail as is reasonably necessary.

4. **Settlement Payment.** The District shall pay to the City a lump sum payment of \$75,000 for the settlement of the Litigation. Said settlement payment shall occur within 30 days following the dismissal of the Litigation.

5. **Dismissal of Litigation.** The City and Robinson shall dismiss, with prejudice, the Litigation. The District shall dismiss, with prejudice, its counterclaim. Said dismissals shall occur within five (5) business days of the approval of this Settlement Agreement and the Contract for the Sale of Water (Exhibit A) by the City Council and the Board of Directors of the District.

6. **Rescission of Notice of Default.** Upon the complete execution of this Settlement Agreement, the District rescinds the notice of default provided on or about December 14, 2015.

7. **Authority.** The Parties acknowledge that each person and entity executing this Settlement Agreement on behalf of a party does hereby personally represent and warrant that he/she has the authority to execute this Settlement Agreement on behalf of, and to fully bind, said Party.

8. **Complete Agreement.** The Parties acknowledge that this Settlement Agreement contains the entire agreement between the Parties, and the terms of this Settlement Agreement are contractual in nature in all respects and not a mere recital.

9. **No Admission of Liability.** This Settlement Agreement is the result of a compromise of disputed claims and shall not be considered or construed as an admission of liability by the District or the City, which continue to deny any and all claims asserted by the other party.

10. **Attorneys' Fees.** The Parties shall bear their own costs and attorney fees associated with this Settlement Agreement and the Litigation. Neither Party shall make a claim against the other for the payment of its respective costs and attorney fees incurred in any manner associated with this Settlement Agreement or the Litigation.

11. **Severability Clause.** In the event that anyone or more of the provisions contained in this Agreement shall, for any reason, not be enforced or be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. **Mandatory Mediation.** The Parties agree that they shall attempt to mediate any and all disputes between the Parties prior to either Party filing a lawsuit related to this Settlement Agreement. The Parties shall jointly engage and share in the costs of a third-party neutral for the mandatory mediation.

City of Fort Calhoun, Nebraska

Papio-Missouri River Natural Resources District

By: _____

By: _____

Name: _____

Name: John Winkler

Title: _____

Title: General Manager

Dated: _____

Dated: _____

Mitchell Robinson, individually and as
Mayor of the City of Fort Calhoun,

Dated _____

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
CITY OF FORT CALHOUN, NEBRASKA
WATER SUPPLY CONTRACT**

THIS AGREEMENT, made and entered into this _____ day of February, 2016, by and between the City of Fort Calhoun (the “City”), a municipal corporation of the State of Nebraska, and the Papio-Missouri Natural Resources District (the “District”), a governmental subdivision of the State of Nebraska (collectively referred to as the “Parties”).

WHEREAS, the District operates a special improvement project consisting of a rural water system referred to as the Washington County Rural Water System (“WCRWS”), through which the District purchases water from either the Metropolitan Utilities District (“MUD”) or the City of Blair (“Blair”) and sells to the City at wholesale;

WHEREAS, the City desires, at present, to continue to purchase water for its municipal distribution system from the District’s WCRWS;

WHEREAS, the District can furnish 700 gallons per minute to the City through the WCRWS, except under emergency conditions; and,

WHEREAS, the District is willing to continue to deliver such water to the City for its use in its municipal system.

NOW THEREFORE, in consideration of the mutual promises of the Parties hereto, the proper authorization by duly enacted resolutions of the governing bodies of the respective Parties hereto enter into the engagements herein contained, and under the authority of Nebraska law, it is mutually agreed between the City and the District as follows:

1. **Term of Contract:** This Agreement shall remain effective for a period of two years from the execution of this Agreement. This Agreement shall automatically renew for an additional two years unless either Party gives written notice of termination at least 60 days prior to the expiration of the term. Within this 60 day period the Parties shall enter into and conduct mediation by a third-party neutral. The Parties shall jointly select and bear the costs of the mediation. Following the mediation and expiration of the notice period, the Party providing

notice of termination may terminate this Agreement. The water supply hereby contracted for shall be continuously supplied by the District and purchased by the City upon the same terms and conditions as provided by this Agreement unless the District is unable to acquire water under commercially reasonable terms for the WCRWS from both MUD and Blair.

2. **Points of Delivery:** The District agrees to furnish water to the City through three points of delivery. The first point of delivery (the “First Connection”) is the now existing point of delivery located in the Northwest quadrant of the intersection of Nebraska Highway 75 and Washington County Road P-43. The second point of delivery (the “Southern Heights Connection”) is the now existing point of delivery located in the vicinity of the intersection of County Road P43 and South 17th Street.

Within two years of this Agreement, the City may construct a third point of delivery (the “Third Connection”) which, if constructed, shall be located in the vicinity of Rocky Lane and Washington County Road P32. Should the City elect to construct the Third Connection, such construction shall be coordinated with the District.

3. **Quantities and Pressures:** The District agrees to deliver water to the discharge valves at the First Connection and Southern Heights Connection in the amount not to exceed 500 gallons per minute, at an elevation of 1120 m.s.l. and a pressure not less than 72 psi at the First Connection. The required elevation and pressure for the Southern Heights Connection and, if constructed, the Third Connection shall be established by consultation between the City’s engineer and the District’s engineer giving due consideration to the needs of the City’s municipal water system and the WCRWS’ overall capacity and contractual obligations with other entities and WCRWS customers. If constructed, the District shall deliver water to the discharge valve at the Third Connection in the amount not to exceed 200 gallons per minute.

A pressure reducing valve is installed at the First Connection and at the Southern Heights Connection, and one shall be installed at the Third Connection, if such connection is constructed, to regulate such pressures to the City. City shall have full responsibility for controlling water flow and pressures in its municipal water system, and shall be permitted to install such automatic controls for this purpose at the points of delivery as shall meet the approval of the District, such approval shall not be unreasonably withheld. The City shall at all times operate its system and

controls so as to avoid pressure surges on the WCRWS. The City shall notify the District as soon as possible in advance of any desired increase or decrease in pressure or change in operation of the automatic controls. The City will provide the District with the name or names of person authorized to request any changes in operation. The operation of valves and other equipment at the points of delivery shall be by the respective equipment owner's personnel only. The District shall set the pressure rate initially at each delivery point as required by the City and shall subsequently increase or decrease the pressure only upon written request of the City or as required by the operation of the WCRWS. Expense of adjusting pressure at City's request shall be paid by the City. The District shall not be held liable for damage resulting from failure to deliver water because of accident or breakage, or other cause beyond the reasonable control of the District or due to obligations of the District contained in its contracts with MUD and/or the City of Blair, except when the same is caused by the negligence of the District.

4. **Additional Quantities of Water:** This Agreement and the payments hereunder are limited to the delivery to the City of water at a rate not to exceed 500 gallons per minute at the First Connection and Southern Heights Connection and at a rate not to exceed 200 gallons per minute at the Third Connection, if said connection is constructed, as needed to meet the normal domestic needs of the City. Any new requirement for delivery of water over and above the stated gallons per minute quantities shall be under separate contract as to all terms and conditions.

The District acknowledges that the WCRWS currently may have excess capacity. The District shall not limit the City's use of said excess capacity without cause as determined by the District. In the event the District determines that it is necessary to restrict the City's usage of said excess capacity, the District shall notify the City of said restriction. The City acknowledges that the District's contract with MUD provides that the District shall not exceed a demand of 1,250 gallons per minute and that the District's contract with Blair requires the WCRWS to supply water from MUD to Blair for emergency use.

5. **Quality:** Water delivered will be of quality and chemical content equivalent to that provided other WCRWS customers, and in compliance with federal and state mandated levels of quality and chemical content. No change in water quality will be made to satisfy special requirements of the City. The City will not hold the District responsible for

consequences resulting from the mingling or mixing of the water supplies of the District and the City, provided the District is not responsible for the proximate cause of said damage.

6. **Approval of Department of Health and Human Services:** The City shall have the responsibility for obtaining from the Department of Health and Human Services of the State of Nebraska any approvals for the delivery of water under this Agreement which may be required, prior to delivery of any water hereunder, and shall perform at its own expense any testing or monitoring of water quality which may be required beyond the points of delivery to the City.

7. **Rates:** Beginning the first day of the month following not less than sixty (60) days after successful connection of the City's municipal water system to the Third Connection of the WCRWS, should such connection be constructed, the City's rate for the water purchased pursuant to this Agreement shall be calculated using the methodology set forth below. Prior to the use of the methodology set forth below, the City's water rate shall continue to be set pursuant to WCRWS' regulations and the District's policies and procedures.

The City's water rate shall consist of the sum of a base charge ("Base Charge"), a commodity charge ("Commodity Charge"), and a maintenance reserve charge ("Maintenance Reserve Charge"). The intent of the City's water rate is to cover the cost of providing and delivering of water to the City and shall not include expense for the District to undertake capital improvement solely related to the addition of new WCRWS customers.

a) ***Commodity Charge:*** The Commodity Charge shall be based on the total incremental units of water delivered from MUD and the City of Blair through the WCRWS to the points of delivery to the City.

The Commodity Charge for incremental units of water delivered through the First Connection and Southern Heights Connection (the "First Connection Commodity Charge") shall be calculated as the total incremental water purchase cost from MUD by the WCRWS over the prior calendar year divided by the total units of water from MUD and sold by WCRWS during that same calendar year.

The Commodity Charge for units of water delivered through the Third Connection (the "Third Connection Commodity Charge") shall be calculated as the total incremental water

purchase cost from the City of Blair by the WCRWS over the prior calendar year divided by the total units of water from the City of Blair sold by WCRWS during that same calendar year.

To combine the First Connection Commodity Charge and the Third Connection Commodity Charge into the City’s overall Commodity Charge, the following methodology shall be used. The First Connection Commodity Charge shall be multiplied by the ratio of the total water purchased by the City from the WCRWS that the City received through the First Connection and Southern Heights Connection over the total number of gallons delivered by WCRWS to the City through all three connections, which will result in the First Connection Share. The Third Connection Commodity Charge shall be multiplied by the ratio of the total water purchased by the City from the WCRWS that the City received through the Third Connection over the total number of gallons delivered by WCRWS to the City through all three connections, which shall be the Third Connection Share. The First Connection Share and the Third Connection Share are then added together to reach the Commodity Charge. The diagram below depicts the methodology to be used to calculate the Commodity Charge.

Diagram A: Calculation of the Commodity Charge

Step 1:

$$\text{First Connection Commodity Charge} = \frac{\text{Total dollar value of water purchased by WCRWS from MUD}}{\text{Total gallons of water purchased from MUD and sold by WCRWS to WCRWS' customers}}$$

(\$ per 1,000 gallons)

$$\text{Third Connection Commodity Charge} = \frac{\text{Total dollar value of water purchased by WCRWS from Blair}}{\text{Total gallons of water purchased from Blair and sold by WCRWS to WCRWS' customers}}$$

(\$ per 1,000 gallons)

Step 2:

$$\text{First Connection Commodity Charge} \times \frac{\text{Total number of gallons delivered to the City through First and Southern Heights Connection}}{\text{Total number of gallons delivered to the City by WCRWS through all three connections}} = \text{First Connection Share}$$

(\$ per 1,000 gallons)

$$\text{Third Connection Commodity Charge} \times \frac{\text{Total number of gallons delivered to the City through the Third Connection}}{\text{Total number of gallons delivered to the City by WCRWS through all three connections}} = \text{Third Connection Share}$$

(\$ per 1,000 gallons)

Step 3:

$$\text{Commodity Charge} = \text{First Connection Share} + \text{Third Connection Share}$$

b) **Base Charge:** The Base Charge shall be the sum of three parts. The first part shall be established by taking the average monthly cost of the following components identified as (i) through (iii), below, over the prior calendar year and multiplying that average cost by the ratio of the annual water purchased by the City through all three delivery points over the total annual amount of water purchased from MUD and the City of Blair for the WCRWS as a whole.

The second part shall be established by taking the prior calendar year average monthly cost of the components identified as (iv) through (vii), below, and dividing that average by the total number of users within the WCRWS.

The third part shall be established by taking the annual principal and interest debt cost of the component identified as (viii) and multiplying that cost by a debt allocation ratio of the total annual amount of water delivered through the Third Connection over 200,000,000 gallons per year, which is the annual build-out capacity of the previously identified WCRWS No. 2.

The Components of the Base Charge shall include:

- (i) Cost of the operation of the WCRWS' pump station that supplies water from MUD, including insurance, electricity, telephone, annual generator inspection, and District's staff time and salaries to inspect and maintain the pump station, but not to include capital expenditures, upgrades, or major repairs;
- (ii) The MUD base charge and infrastructure replacement charge;
- (iii) Costs for professional services for regulatory testing, locates for OneCall, hydraulic analysis, and professional engineer evaluations, but not to include costs for professional services for capital expenditures, upgrades, maintenance, or major repairs;
- (iv) Costs associated with the District's staff time and salaries to inspect and maintain the WCRWS including checking necessary gauges, routine

testing within the system, water sampling, exercising valves, rate calculations, and project management;

- (v) Annual dues and memberships to the Nebraska Rural Water Association and AWWA, licensing cost for water operators, training costs for water operators, and travel expenses to attend annual training seminars;
- (vi) Costs associated with the District's administrative time and expenses for monthly billing, distribution of backflow prevention materials, annual consumer confidence report, accounting fees for an annual audit, photocopy expenses, miscellaneous office supplies, fees, and office equipment for WCRWS staff;
- (vii) Vehicle costs for WCRWS staff, including fuel, oil, tires, maintenance, and replacement expenses;
- (viii) The annual debt payments including the principal and interest expense for the construction of the previously identified WCRWS No. 2. It is understood that any refinancing of this debt resulting in a higher yearly payment shall not create an adverse impact on the City.

(c) ***Maintenance Reserve Charge:*** A maintenance reserve fund shall be maintained for anticipated maintenance on infrastructure within the WCRWS, including but not limited to, the WCWRS' pump station that delivers water from MUD, the main transmission line that currently serves the City, the WCRWS distribution system, and the transmission line for the Southern Heights Connection and the Third Connection, if constructed. The fund shall be utilized for construction costs, repair and maintenance costs, and any fees or professional services required for the maintenance and construction of WCRWS. The amount of this maintenance reserve fund will be established through consultation with the Nebraska Rural Water Association, the American Water Works Association, or a consulting engineer retained by the WCRWS; and is expected to be maintained at a level of not less than Five Hundred Thousand Dollars (\$500,000), unless a significant maintenance or repair requires funds be expended that results in the depletion of the Maintenance Reserve Fund below that threshold. A

Maintenance Reserve Charge shall be established as 5% of the total of the monthly Commodity Charge and Base Charge, unless the Maintenance Reserve Fund is in excess of the \$500,000 threshold and also in excess of the amount recommended through consultation with the Nebraska Rural Water Association, the American Water Works Association, or a consulting engineer retained by the WCRWS. Should the Maintenance Reserve Fund be in excess of the threshold amount of \$500,000 and also the recommended amount the Maintenance Reserve Charge shall be \$0.00. The Maintenance Reserve Charge shall be the mechanism by which the City replenishes the Maintenance Reserve Fund but in consideration of contributions from the other WCRWS customers, the Maintenance Reserve Charge shall not be the sole contribution to the Maintenance Reserve Fund.

8. **Rate Adjustments:** The District may adjust the City's water rates on the occurrence of the any of the following events or dates:

- a. a change to the rates charged to the WCRWS for water supplied by either MUD or Blair;
- b. a significant maintenance or repair that depletes the WCRWS maintenance fund to less than Five Hundred Thousand Dollars (\$500,000); or
- c. on the first day of March each year.

Prior to adjusting the WCRWS water rates, the District shall provide the City notice of the adjustment and the reason for said adjustment thirty (30) days prior to the effective date of the adjusted water rate. Included in said notice, the District shall provide an itemized report of the District's expenditures over the prior year related to the items contained in the Commodity Charge and Base Charge

9. **Installation of Third Connection and Associated Equipment:** If the City elects to construct the Third Connection, the City shall select and enter into a contract with a licensed engineering consultant ("Consultant") for the design of a water line connection (the "Connection Line") between the WCWRS and the City's municipal water distribution system. The Connection Line shall connect to the WCRWS main in the vicinity of Rocky Lane and County Road P32. Said connection shall constitute the Third Connection. Consultant shall prepare necessary documents to construct the Connection Line and the Third Connection (the

“Construction Documents”). The Construction Documents shall be jointly approved by the City and the District, such approval by either party shall not be unreasonably withheld.

The City, assisted by its Consultant, shall cause the Connection Line and the Third Connection to be constructed pursuant to the Construction Documents by a qualified contractor selected by the City, and approved by the District, such approval not to be unreasonably withheld. The City shall periodically update the District concerning the construction, including material changes to the Construction Documents, estimated percent completion of construction, and estimated timing of the connection of the Connection Line to the WCRWS at the Third Connection. The City shall inform the District, at least a week in advance, of the date upon which the City’s contractor shall connect the Connection Line and the Third Connection to the WCRWS so that the District may be present for the event. The District shall have access to and the right to inspect the Connection Line and the Third Connection during construction. The City shall be responsible for providing and maintaining the master vault in which the master meter will be placed, all component parts within the master vault, and all other equipment and parts connected to the Connection Line after the master meter up to and including the City’s water distribution system.

The City shall obtain all necessary local, state, and federal permits related to construction of the Connection Line and Third Connection and the provision of potable water from the WCRWS to the City via the Third Connection. The District shall assist the City in obtaining the necessary permits.

The City shall be responsible for payment of all costs, whatsoever, associated with the construction and establishment of the Connection Line and Third Connection.

10. **Ownership:** If the City elects to construct the Third Connection, the portion of the Connection Line downstream from and including the master vault, including all components thereof except the master meter, shall be part of the City’s municipal water distribution system and owned by the City. The City shall be solely responsible for the maintenance, repair, and replacement of this portion of the Connection Line. The portion of the Connection Line upstream from the master vault to the connection to the WCRWS including the master meter and all components thereof will be part of the WCRWS and owned by the District.

11. **City’s Water Tower.** Should the City elect not to construct the Third Connection, within two years of this Agreement, the City shall, at its sole cost and expense,

rehabilitate and repair its water tower so that the water tower may safely be operated as part of the City's municipal water system.

12. **Areas of Service and Adjustment of Service Areas:**

a. The City shall be entitled to delivery of water under this Agreement for the purposes of serving water to persons inside its present corporate limits and to persons within the other areas presently served by its municipal water system.

b. The District may contract to deliver water to persons outside the present corporate limits of the City to person's not presently served by the City's municipal water system.

c. In the event the corporate limits of the City are expanded, the City may serve the person located in any such expansion after acquiring from the District by negotiation or otherwise, any of the water distribution facilities of the District used to serve such persons, provided however, the City shall not in any event acquire those mains used by the District for the transmission of water to the points of delivery described herein, nor shall the City acquire any of the District's equipment at the points of delivery or any portions of the WCRWS that are necessary for the District to meet its contractual obligations to the City of Blair. The District shall relocate the points of delivery or install additional point(s) of delivery of water to the City, and necessary equipment, at such point on the WCRWS' main, as may be negotiated by the City and the District, provided however, the City shall reimburse the District for its cost outlays in any such relocation and in the purchase and installation of any new or replacement point(s) of delivery and associated equipment thereby required.

13. **Mandatory Meditation of Disputes:** Should either the City or the District default in the performance of any of the covenants, conditions, provisions or agreements herein contained, the non-defaulting Party may demand the Parties enter into mediation with a third-party neutral. The Parties shall jointly select and share in the expense of the mediator. Said mediation shall occur within 60 days of the initial demand. Following mediation, the non-defaulting Party may terminate the contract with 30 days advance written notice. Neither Party shall file a lawsuit related to this Agreement without previously mediating the dispute between the Parties, as provided in this provision.

Any failure of either party to assert its rights because of any breach shall not constitute a waiver thereof.

14. **Emergency Pro-Ration.** In the event an emergency exists and the total water supply shall not be sufficient to meet all of the needs of the WCRWS' customers as well as those of the City, the District has the discretion to pro-rate the available water supply between the City and other customers on the WCRWS on a reasonable basis giving first consideration to domestic users. In addition to emergencies, the District may invoke this provision for pro-ration in the event either MUD or Blair pro-rates, reduces, stops, or terminates the water supply to the WCRWS for whatever reason. Emergency failures of pressure or supply due to main supply line breaks, power failures, flood, fire and use of water to fight fire, earthquake, an emergency necessitating the supply of water from MUD to Blair through the WCRWS, or unusual system demands during extreme climatic conditions, or other catastrophe shall excuse the District from the pressure and supply obligations contained in this Agreement, for such reasonable period of time as may be necessary to restore service.

15. **Record Inspection.** Each party's water supply distribution system records shall be subject to inspection by the other party upon reasonable notice.

16. **Advisory Board.** The District shall create an Advisory Board of the WCRWS (the "Advisory Board"). The Advisory Board shall consist of seven (7) members, four (4) of which shall be appointed by the District and three (3) of which shall be appointed by the City. The Advisory Board shall meet on an annual basis, or as called by the City or the District. The Advisory Board shall have the power to make proposals concerning the maintenance, operation, finances, and rates of the WCRWS for consideration by the Board of Directors of the District at a public meeting in a reasonable and timely manner. The Advisory Board's proposal shall not be binding upon the District or the WCRWS, and the District, alone, shall retain and exercise any and all rights, powers and duties related to the WCRWS and the associated improvement project area.

A meeting of the Advisory Board meeting shall be called prior to any rate adjustments provided for in Paragraph 8, above. No less than thirty (30) days prior to that meeting, the District shall provide to the Advisory Board members a report of the District's expenditures related to the items contained in the Commodity Charge and Base Charge for the prior calendar year.

In the event no rate adjustments are proposed by the District's Staff, the Advisory Board shall hold an annual meeting in March. At the annual meeting, the City shall provide the District

a report detailing the total number of water consumers connected to the City's municipal water system. Also at the annual meeting, the District shall also provide the City a report detailing the total number of water consumers connected to the WCRWS. Upon the City's request, but no more often than once every two years, the District will provide the City a report containing the hydrological calculation of the anticipated WCRWS' capacity.

17. **Incorporation:** This Agreement shall superseded and replace entirely any and all prior agreements between the Parties related to the same subject matter, including but not limited to the "Agreement for Sale of Water" entered into between the Parties on May 20, 1978 (the "1978 Agreement"), the First Amendment to the 1978 Agreement executed on March 7, 1979, the Second Amendment to the 1978 Agreement executed on September 10, 1979, the Third Amendment to the 1978 Agreement executed on November 3, 1980, and the Fourth Amendment to the 1978 Agreement executed on June 16, 2003.

18. **Counterparts:** This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature delivered by facsimile or other similar electronic transmission (including email) shall be considered an original signature. Any Person may rely on a copy or reproduction of this Agreement, and an original shall be made available upon a reasonable request.

IN WITNESS WHEREOF, the City of Fort Calhoun, Nebraska, and the Papio-Missouri River Natural Resources District have caused this Agreement to be executed by their duly authorized officers, in accordance with the attached resolutions of the governing bodies of each Party hereto.

[SIGNATURES ON FOLLOWING PAGES]

The City of Fort Calhoun, Nebraska

ATTESTED

By: _____

Title: _____

Date: _____

Papio-Missouri River Natural Resources District ATTESTED

By: John Winkler

Title: General Manager

Date: _____