FINAL DRAFT

MINUTES

North Dakota State Water Commission
Audio Conference Call Meeting
Bismarck, North Dakota

April 5, 2010

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room at the State Capitol, Bismarck, North Dakota, on April 5, 2010. Governor John Hoeven, Chairman, called the meeting to order at 1:30 P.M., and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:
Governor John Hoeven, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page

STATE WATER COMMISSION MEMBER ABSENT:
Douglas Vosper, Member from Neche

OTHERS PRESENT:
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Lance Gaebe, Office of the Governor, Bismarck
Jennifer Verleger, Assistant Attorney General, Office of Attorney General, Bismarck
Dave Thompson, Prairie Public Radio, Bismarck
Pat Zavoral, City Administrator, Fargo (via telephone)
April Walker, City of Fargo (via telephone)

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

FARGO-MOORHEAD FLOOD PROTECTION PLAN - APPROVAL OF STATE COST PARTICIPATION FOR ADDITIONAL STUDY ($300,000) (SWC Project No. 1928)

The Corps of Engineers has determined the federal interest National Economic Development (NED) plan in a comprehensive Fargo-Moorhead flood protection plan should be a 20,000 cubic feet per second (cfs) diversion on the Minnesota side of the Red River of the North. A Metro Flood Study Work Group, composed of elected representatives of Fargo-Moorhead, Cass-Clay counties, and watersheds encompassing these two cities, recommended that the Locally Preferred Plan (LPP) be the North Dakota 35,000 cfs diversion plan.

The Corps of Engineers will continue to study and analyze if increasing the NED plan in Minnesota can meet the federal objectives. The $2,600,000 study effort will be done by the Corps of Engineers and the proposed funding is as follows: $1,300,000 - Corps of Engineers; $300,000 - State Water Commission; $300,000 - City of Fargo; $300,000 - Southeast Cass Water Resource District; and $400,000 - Moorhead/Minnesota.

The final NED plan approved by the Corps of Engineers includes a provision that will allow the federal funding share (65 percent) to be transferred to the eligible LPP if such plan is deemed acceptable by the Corps. In order for the LPP to be deemed acceptable, the Corps must undertake additional studies on the technical merits of intersecting a diversion with natural rivers and streams and environmental issues related to the river crossings. It is anticipated that a decision on the final NED plan could occur in May, 2010, with a decision on the North Dakota LPP recommendation in late summer or early fall, 2010.

A request from the City of Fargo was presented for the State Water Commission's consideration for state cost participation in the amount of $300,000 for the Corps of Engineers' study of the North Dakota 35,000 cfs diversion option for the Fargo-Moorhead flood protection plan ($300,000).

Pat Zavoral, Fargo City Administrator, provided an update on the federal, state, and local efforts for the Fargo-Moorhead flood protection plan, and requested the State Water Commission's favorable consideration for funding assistance for the study.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation not to exceed an allocation of $300,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B 1020), to the City of Fargo for the Corps of Engineers study on the Fargo-Moorhead flood protection plan.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve state cost participation not to exceed an allocation of $300,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B 1020), to the City of Fargo for the Corps of Engineers study on the Fargo-Moorhead flood protection plan. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

CITY OF LISBON 2010 ENGINEERING FEASIBILITY STUDY FOR IDENTIFYING FUTURE FLOOD CONTROL LEVEE ALIGNMENTS - APPROVAL OF STATE COST PARTICIPATION ($30,000) (SWC Project No. 1299)

A request from the City of Lisbon was presented for the State Water Commission's consideration for state cost participation for an engineering feasibility study to identify future flood control levee alignments. The city needs to make a decision of whether or not to utilize FEMA property buyout funds available under FEMA's Hazard Mitigation Grant program for buying several properties that were flooded in the spring of 2009. FEMA buyout properties must be held in public ownership for perpetuity, for open space, and no structures (including levees) may be placed on the property. If the city utilizes FEMA monies for buyouts, those properties will no longer be available for use for the construction of flood control levees. The city needs to determine the location of future flood control levee alignments so that it can take advantage of FEMA monies where appropriate and identify properties that will be required for future levee construction.

The Corps of Engineers completed a Section 205 report in 1987 which determined that a federally-constructed levee system for the city of Lisbon was not feasible. A Section 205 study is pending completion in 2011. If a federally-constructed project is again determined not feasible, the city would like to evaluate non-federal alternatives. The engineering feasibility study will provide the information required to determine the levee alignment concepts so that alternatives could be created. The project engineer's cost estimate for the engineering feasibility study is $60,000. The request before the State Water Commission is for a 50 percent state cost participation in the amount of $30,000.

Secretary Frink explained that the State Water Commission's cost share policy, procedure, and general requirements considers state cost participation on 60 percent of the eligible construction costs of a project. Engineering services (including soils investigations) are considered ineligible items for state cost share. The engineering feasibility study request before the Commission includes costs for the soils investigation and stability analysis ($25,000) that would not normally be considered an eligible item for cost share. However, Secretary Frink explained that engineering is required to determine the actual levee alignment. It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as an engineering feasibility study at 50 percent of the eligible costs ($35,000) not to exceed an allocation of $17,500 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020). The soils investigation and stability analysis costs of $25,000 would be considered ineligible for cost share. Secretary Frink also stated that although the project is under $20,000 allowing the State Engineer's approval, it is being presented to the Commission members for awareness purposes of the Commission's support of flood mitigation and control efforts and project land needs.

The Commission's cost share policy, procedure, and general requirements were reviewed relating to the eligible/ineligible construction costs and engineering services. The cost share request before the Commission was further addressed, and possible solutions/alternatives for a non-federal project were discussed. Governor Hoeven reminded the Commission members that although a cost share policy is in place, the policy allows the Commission to consider exceptions on an individual basis. Governor Hoeven alluded to the city of Lisbon's history of flooding, and stressed the importance that the state focus its efforts to provide financial support and long-term solutions that will result in the safety and protection to the citizens of North Dakota.

It was moved by Commissioner Thompson and seconded by Commissioner Goehring that the State Water Commission approve state cost participation as an engineering feasibility study at 50 percent of the eligible costs not to exceed an allocation of $30,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the City of Lisbon to support an engineering feasibility study to identify future flood control levee alignments. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

NORTHWEST AREA WATER SUPPLY (NAWS) PROJECT - NAWS WATER SERVICE CONTRACTS 237-4-8, WEST RIVER WATER & SEWER DISTRICT, AND 237-4-10, CITY OF BURLINGTON, AND AMENDMENT I TO CONTRACTS (SWC Project No. 237-04)

Northwest Area Water Supply Project Water Service Contract 237-4-8, West River Water & Sewer District, and Contract 237-4-10, City of Burlington, were presented for the State Water Commission's consideration. The main water service contract provides the terms of the long-term water service contract when water is available from Lake Sakakawea. The proposed amendments (Amendment I) to the contracts were also presented, which allows for an interim period during which the State Water Commission will provide water service supplied by the City of Minot. The NAWS project has construction contract 2-2E awarded to provide water service to the City of Burlington and the West River Water & Sewer District as early as June 1, 2010, which is the substantial completion date.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the Commission to finalize and execute Northwest Area Water Supply Project Contract 237-4-8, West River Water & Sewer District, and Contract 237-4-10, City of Burlington, and the proposed Amendment I to the contracts, which provides the terms for the interim water supply and initial water use.

It was moved by Commissioner Foley and seconded by Commissioner Thompson that the State Water Commission authorize the secretary to the Commission to finalize and execute Northwest Area Water Supply Project Water Service Contract 237-4-8, West River Water & Sewer District, and Water Service Contract 237-4-10, City of Burlington, and the proposed Amendment I to each contract, which provides the terms for the interim water supply and initial water use. SEE APPENDIX "A" - NAWS Water Service Contract 237-4-8, West River Water & Sewer District; and APPENDIX "B" - NAWS Water Service Contract 237-4-10, City of Burlington, and Amendment I to each contract

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

2008 FARM BILL, WETLANDS RESERVE PROGRAM IN DEVILS LAKE BASIN (SWC Project No. 416-10)

Commissioner Berg alluded to issues in the 2008 Farm Bill under the Wetlands Reserve Program allocation for North Dakota that could affect compensation to landowners on land adversely affected by high water and negate future conservation opportunities on those lands. Secretary Frink responded that a letter is being developed that will be acceptable to federal and state interests addressing sovereign land issues in the Devils Lake basin.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference call meeting at 2:20 P.M.

John Hoeven, Governor
Chairman, State Water Commission

Dale L. Frink
North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission

APPENDIX "A"
April 5, 2010

NORTHWEST AREA WATER SUPPLY PROJECT
WATER SERVICE CONTRACT

Contract No: 237-4-8
Water User Entity: West River Water District

TABLE OF CONTENTS

1. PARTIES

2. INTRODUCTION

3. DEFINITIONS

4. TERM OF CONTRACT

   4.1 Effective Date
   4.2 Renewal

5. TERMINATION

   5.1 Termination by Not Constructing
   5.2 Termination by Change of Circumstances
   5.3 Termination by Mutual Consent
   5.4 Termination for Default

6. WATER SERVICE: DELIVERY OF WATER

   6.1 Quality of Water
   6.2 Quantity of Water and Flow Rate
   6.3 Point of Delivery
   6.4 Additional Water
   6.5 Water Shortages
   6.6 Curtailment of Delivery for Maintenance Purposes
   6.7 Measurement of Water
   6.8 Responsibility for Distribution and Use of Water

7. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER

   7.1 Notice of First Delivery of Water and Beginning of Water Service Payments
   7.2 Payment for Water Service
   7.3 Minimum Annual Water Purchase: Minimum Payments for Water
   7.4 Payment for Operation, Maintenance, and Replacement
   7.5 Payment for Capital Costs
   7.6 Billing Procedure
   7.7 When Payments are Due

7.8 Delinquent Payments and Default: Suspension of Water Service
7.9 Penalty for Late Payment
7.10 Refusal of Water
7.11 Payments Dedicated to the Project

8. GENERAL PROVISIONS

8.1 Rules and Regulations
8.2 Access to and Inspection of Books and Records
8.3 Remedies not Exclusive
8.4 Amendments
8.5 Waiver of Rights
8.6 Notices
8.7 Assignment

9. ADJUSTMENT OF DESIGN

10. EXPANSION OF PROJECT

11. MERGER CLAUSE

1. PARTIES

This contract is by and between the North Dakota State Water Commission (the "Commission"), and the West River Water District (the "User").

2. INTRODUCTION

2.1 The North Dakota Legislative Assembly of 1991 (1991 N.D. Sess. Laws ch 704, §1 through §5; codified at N.D.C.C. § 61-24.6), provided that the Commission was to develop a pipeline transmission and delivery system to deliver water supplies from the Missouri River and other sources to areas and localities in northwestern North Dakota for multiple purposes, including domestic, rural water districts, and municipal users. This water pipeline and delivery system is known as the Northwest Area Water Supply Project.

2.2 As of July 1994, the Commission has developed the prefinal design for the Northwest Area Water Supply Project. Forty-one communities and nine rural water associations in northwestern North Dakota have signed agreements of intent with the Commission for the purpose of inclusion in the design of the project.

2.3 The Commission, pursuant to N.D.C.C. ch. 61-02 and N.D.C.C. § 61-24.6, may enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

2.4 The User enters into this water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Northwest Area Water Supply Project for use by the User. The User will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract for this water service. The user has authority to enter into this agreement pursuant to its home rule charter and implementing ordinance.

NOW THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

3. DEFINITIONS

3.1 "Additional water" means water purchased by the User in addition to its minimum annual water purchase.

3.2 "Capital costs" means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, costs of issuance and financing in connection with any bonds issued to finance the project, and essential legal,

administrative and financial work in connection therewith. Not included in capital costs are engineering costs incurred to date in connection with the Project.

3.3 "Estimated water rate for OM&R" means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year, plus an amount as determined in section 7.4.2.

3.4 "Maximum flow rate" means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.

3.5 "Minimum annual water purchase" means the minimum percentage of total annual water usage, which a water user entity agrees to purchase and pay for during a year. The minimum percentage for which an agreement will be offered to a User is fifty-one percent (51%).

3.6 "Operation, maintenance, and replacement costs, hereafter sometimes referred to as OM&R costs means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs and extraordinary maintenance of Project works as determined in section 7.4.2.

3.7 "Project" means the water supply and distribution system shown on the map marked "Exhibit 1" which is attached hereto and incorporated by reference into this contract.

3.8 "Qualifying water supply facilities" means water supply facilities determined by the Commission to qualify for a credit against the User's payments for water and capital costs. Qualifying water supply facilities shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the User's system to the delivery point for Project water.

3.9 "Unallocated capacity" means the capacity of the pipeline which is not allocated nor contractually committed to individual water user entities by virtue of water service contracts.

3.10 "Water rate for capital costs" means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.

3.11 "Water usage" means all water used by a User except for (a) non-potable water and (b) surface water, well water, or aquifer water, which surface water, well water, or aquifer water is not distributed through the same system as is water purchased under this contract.

3.12 "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.

3.13 "Water system" means a discrete assemblage of intakes, treatment facilities, transmission pipelines, storage facilities, and related items. The Northwest Area Water Supply Project is proposed to have three "water systems," the East system, West system, and Parshall system, each separate from the others.

3.14 "Year" means the period from January 1 through December 31, both dates inclusive.

4. TERM OF CONTRACT

4.1 Effective Date.

This contract shall remain in effect for forty (40) years after the date of the first water delivery to the User, unless terminated sooner by mutual agreement of the parties.

4.2 Renewal.

Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

5. TERMINATION

5.1 Termination by not Constructing.

If any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the User, the Commission and the User shall be relieved of all obligations under this contract.

5.2 Termination by Change of Circumstances.

The Commission may terminate this contract effective upon delivery of written notice to the User, or at such later date as may be established by the Commission, under any of the following conditions:

5.2.1 If Commission funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for water delivery to the User pursuant to this contract. The contract may be modified to accommodate a reduction in funds by mutual consent of the User and the Commission.

5.2.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the water delivery is no longer allowable nor appropriate for purchase under this contract or is no longer eligible for funding proposed by this contract.

5.2.3 If any license or certificate required by law or regulation to be held by the User to participate in this contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

5.3 Termination by Mutual Consent.

This contract may be terminated by mutual consent of both parties, in writing.

5.4 Termination for Default.

The Commission, by written notice of default (including breach of contract) to the User, may terminate the whole or any part of this agreement:

5.4.1 If the User fails to make payment as called for by this contract within the time specified herein or any extension thereof; or

5.4.2 If the User fails to perform any of the other provisions of this contract, or so fails to pursue a provision of this contract as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the Commission fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the User shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6. WATER SERVICE: DELIVERY OF WATER

The Commission and the User agree that water will be delivered to the User in accordance with the following terms and provisions:

6.1 Quality of Water.

All water delivered to the User pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Department of Health.

6.2 Quantity of Water and Flow Rate

NOTE: to be AMENDED

6.2.1 Minimum annual water purchase. **The User and the City of Burlington hereby agrees to a minimum annual water purchase and payment for not less than 119,500 gallons per day** during the entire term of this contract. The minimum payment will be charged with an equal split between the User and the City of Burlington, unless otherwise agreed to by both the User and the City of Burlington and provided in writing to the Commission.

6.2.2 Maximum flow rate. The maximum flow rate to be provided by the Commission to the Burlington-West River turnout shall not exceed 407 gallons per minute.

6.3 Point of Delivery.

The Commission will furnish water to the User at **the metering point of the NAWS-Burlington-West River turnout, NE1/4 of S13, T155N, R84W near intersection of Ward County 10 and 76th Street NW,** hereafter referred to as the point of delivery.

6.4 Additional Water

To the extent allowed by its other contractual obligations, and subject to the limitations stated hereafter, the Commission may, at its sole discretion, deliver to the User any additional water which the User desires to purchase.

6.5 Water Shortages.

6.5.1 No liability for shortages. No liability shall accrue, and the User agrees to indemnify and hold harmless, the Commission, or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries, whether or not attributable to the Commission's negligence or any other cause. The User's duties under this contract shall not be reduced or altered by reason of such shortages or interruptions.

6.5.2 Proportional sharing of water shortage.

The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on the affected water system on a proportionate basis with respect to the proportion that the annual water purchase of each water user entity for the prior calendar year bears to the total annual water purchase of all water service entities on the affected water system for the prior calendar year.

6.6 Curtailment of Delivery for Maintenance Purposes.

The Commission may temporarily discontinue or reduce the amount of water to be furnished to the User for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the facilities and works necessary for the furnishing of water to the User. To the extent possible, the Commission will give to the User reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

6.7 Measurement of Water.

The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the User. The Commission shall calibrate the metering equipment at least every other year unless the User is otherwise notified in writing.

6.7.1 Access.

The Commission and the User shall have access to the metering equipment belonging to the Commission or the User at all reasonable times for the purpose of verifying readings of both project water deliveries and total water usage. Access includes all reasonable means of access including any necessary easement. In addition, the Commission will have the same access to the point of delivery to the User's distribution system.

6.7.2 Dispute over measurement of water.

If the User believes the measurement of water delivered to the User to be in error the Commission will cause the meter to be calibrated. The User shall pay for the cost of the calibration. However, if the meter is found to over register by more than two percent (2%) of the correct volume, the User's payment for the cost of calibration will be refunded to the User.

6.7.3 Claim of error after a payment is delinquent.

A claim of error presented after a payment has become delinquent shall not prevent discontinuance of service or civil action as provided in this contract. The User agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the User's claim of error.

6.7.4 Correction of meter readings.

If the calibration of any meter establishes that the previous readings of such meter over-•registered by more than two percent (2%) the correct volume of water delivered to the User, the meter readings for that meter shall be corrected to the beginning of the year current to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the User because the meter over-registered the amount of water delivered to the User, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the User, be refunded to the User or credited upon future payments for water service by the User in the ensuing years.

6.7.5 Failure of meter.

If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the User shall agree upon a different amount.

6.8 Responsibility for Distribution and Use of Water.

The User shall be responsible for the control, distribution, and use of all water delivered to the User by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the User's distribution system.

The User shall hold the Commission, its officers, agents, employees and successors, and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance, and replacement of the User's distribution system. The User's distribution system includes all works extending from the point of delivery of water to the User.

7. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER SERVICE

The User agrees to make payments for water service in accordance with the following terms and conditions:

7.1 Notice of First Delivery of Water and Beginning of Water Service Payments.

Ninety (90) days prior to completion of the Project to the point of delivery to the User, the Commission shall notify the User, in writing, by certified mail, the date when water will be first available to the User. The User will make payment for water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the User, whichever is later in time.

7.2 Payment for Water Service.

The User's water service payment for each month shall equal the sum of the following:

7.2.1 The User's proportionate share of the OM&R costs; plus

7.2.2 The User's payment for capital costs.

7.3 Minimum Annual Water Purchase: Minimum Payment for Water.

The User will make payment for the minimum annual water purchase specified in this contract in accordance with the rates and terms for payment of water specified in this contract, regardless of whether or not the User actually takes delivery on a lesser amount.

7.4 Payment for Operation and Maintenance.

The User will make monthly payments to the Commission for its share of the OM&R costs for the Project. The payment will be determined by the Commission and based upon actual and forecasted OM&R costs and may be adjusted annually. The amount of the monthly payment will be determined as follows:

7.4.1 OM&R budget

Prior to December 1 of each year, the Commission shall establish and adopt a budget for OM&R for the Project for the next ensuing year. The Commission will then estimate the total annual water sales for the next ensuing year, and calculate the "estimated water rate for OM&R" for the Project. At the end of each year, the Commission shall prepare a statement of the actual cost for OM&R for that same year. If the actual cost exceeds the budget, an appropriate increase in User payments shall be made during the ensuing year. If the actual cost is less than the budget, an appropriate reduction will be made in the ensuing year's User payments.

7.4.2 Reserve fund.

The Commission shall have the authority to include in the OM&R budget for each year an amount per thousand gallons to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The amount shall be calculated to generate 10% of the Project costs within 15 years, but accumulation and maintenance of the fund shall extend beyond 15 years.

7.4.3 Monthly payment.

The User's monthly payment for OM&R shall be determined by multiplying the amount of water actually delivered to the User for each month by the "estimated water rate for OM&R."

7.4.4 Adjustment for under use

At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for OM&R" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

7.5 Payment for Capital Costs.

The User will pay to the Commission a water rate for costs of the Project.

7.5.1 Base water rate for capital costs.

The base water rate for capital costs shall be **$0.00** per each one thousand (1,000) gallon of water. This rate is based upon the December 1994, cost estimate of the project and is also based upon the assumption that the User and other purchasers will be financing collectively **35%** of the total cost of the Project **and the assumption that the City of Minot continues to share in the cost of the Project**.

7.5.2 Adjustment of the water rate for capital costs.

The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or decrease in total capital costs of the project. The total capital costs of the project shall be those attributable to the present scope of the project as of the execution of this contract, unless the scope is altered by mutual consent pursuant to the next paragraph. Costs for items which essentially are replacements for existing improvements shall not be considered capital costs.

When such total capital cost obligations of the project are met, payments for capital costs will cease. All interest earned by sinking fund deposits shall be credited to this computation and all amounts collected for reserves for debt shall also be taken into consideration in determining when capital cost obligations have been met.

The Commission shall also have the authority to adjust the water rate if the project is redesigned as specified in section 9 of this contract. The User and the Commission must mutually agree to any change of water rate for capital costs resulting from a redesign or to any change of the water rate for capital costs resulting from a change in the percentage of the total cost

7.5.3 Adjustment for underuse.

At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for capital costs" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

7.5.4 Credit for qualifying water supply facility debt service cost.

A credit for debt service costs of the User's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by dividing seventy-five percent (75%) of the total

annual debt service cost for "qualifying water supply facilities in the immediate ensuing year by twelve (12). However, in no event shall any credit exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the User must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits ten (10) years after first delivery of water to the User.

7.6 Billing Procedure.

The Commission will furnish to the User, at the address shown on the signature page of this contract, not later than the fifteenth day of each month, an itemized statement of the payment due from the User for water service for the preceding month. The metering equipment at the point of delivery to the User shall be read monthly by the Commission. The City of Burlington (unless otherwise agreed to by both the User and the City of Burlington and provided in writing to the Commission) will monthly read the second metering point along the 8" line leaving the point of delivery to supply the User water service, and will report that reading to the Commission. The User will be billed the NAWS rate by the Commission based on the second meter reading.

7.7 When Payments Are Due.

All payments for water service shall be made no later than 30 days following receipt of the statement from the Commission. Payments not made by such date shall be considered delinquent and in default.

7.8 Delinquent Payments and Default: Suspension of Water Service.

The User shall cause to be levied and collected all necessary taxes, assessments, and water charges, and will use all of the authority and resources available to it to pursuant to this contract on or before the date such payments become due.
In the event of any default by the User in making payments as required under this contract, the Commission, in its discretion, may suspend delivery of water to the User through the Project during the time when the User is in default, or bring a civil action against the User in a North Dakota state district court.

During any period when the User is in default, the User shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

7.9 Penalty for Late Payment.

Every payment required to be paid by the User to the Commission under this contract, which is unpaid after its due date shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable, provided that no penalty shall be chargeable against any adjustment made pursuant to section 6.7 of this contract.

7.10 Refusal of Water.

The User's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the User's obligation to make payments to the Commission as provided in this contract.

7.11 Payments Dedicated to the Project.

All payments collected by the Commission pursuant to the provisions above and the earnings thereon shall be held in a special fund and dedicated to the construction, operation, and maintenance of the Project in accordance with the laws of the State of North Dakota.

8. GENERAL PROVISIONS

8.1. Rules and Regulations.

The Commission will have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract. The User agrees to comply with all rules and regulations promulgated by the Commission.

8.2 Access to and Inspection of Books and Records.

Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

8.3 Remedies not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

8.4 Amendments.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

8.5 Waiver of Rights.

Any waiver at any time by either party of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

8.6 Notices.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be in writing. All such notices shall be deemed to have been given and delivered, if delivered personally or if delivered by registered or certified mail. All notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

8.7 Assignment.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the non-assigning party. The Commission may delegate the operation and maintenance of the Project, but shall retain the obligation to establish water rates and annual budgets.

9. ADJUSTMENT OF DESIGN

The Commission reserves the right to redesign the Project.

10. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing, signed by the parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

IN WITNESS WHEREOF, the parties execute this contract on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505
By: DALE L FRINK
Title: Secretary
Date: 4-27-2010

Approved and entered into by resolution of the State Water Commission this day of April 5, 2010

Dale L Frink
Secretary and State Engineer

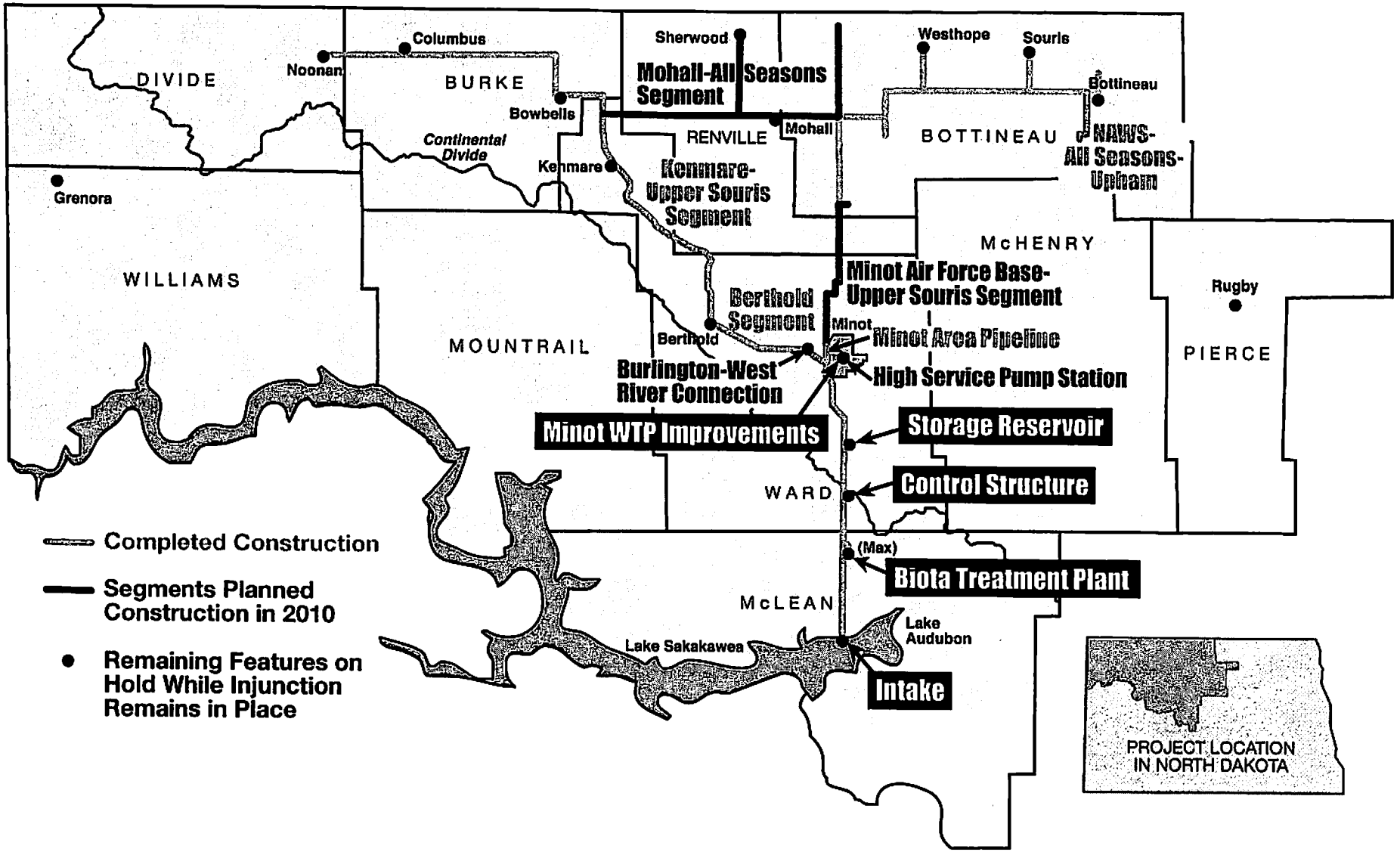
USER:
By: [illegible]

Title: President - West Fraser Water

Date: 04-29-10

Northwest Area Water Supply

February 2010



Amendment 1 to Contract 237-4-8

This amends Contract 237-4-8, Northwest Area Water Supply (NAWS) Project Water Service Contract, between the State of North Dakota, acting through the State Water Commission (Commission) and the West River Water District (User). This amendment allows for an interim period during which Commission will provide water service to User from water supplied by Minot rather than from water supplied by Lake Sakakawea.

The term of this amendment shall begin when both parties have executed this amendment and shall end when Commission sends written notice to User that water supply from Lake Sakakawea is operational.

During the term of this amendment, Sections 6.2 (Quantity of Water and Flow Rate), 6.3 (Point of Delivery), 7.1 (Notice of First Delivery of Water and Beginning of Water Service Payments), and 7.3 (Minimum Annual Water Purchase: Minimum Payment for Water) of Contract 237-4-8 are void and shall have no legal force or binding effect and the following terms shall apply:

1. The estimated usage available from the point of delivery to both the User and the City of Burlington is 179,000 gallons per day.

2. Water supply to User shall be delivered to the NAWS-Burlington-West River master meter turnout, and shall be metered and billed at the second metering point along the 8" line where the User receives water service. The City of Burlington (unless otherwise agreed to by both the User and the City of Burlington and provided in writing to the Commission) will monthly read the second metering point along the 8" line leaving the point of delivery to supply the User water service, and will report that reading to the Commission. The User will be billed the NAWS rate by the Commission based on the second meter reading.

3. Water moved through the NAWS system and delivered to User will be charged according to Section 7.4 of Contract 237-4-8.

4. For 2010, Commission set the rate at $2.20/1000 gallons. The four parts of this rate include Capital Costs at $0.00/1000 gallons, Supply and Treatment at $1.14/1000 gallons, Reserve for Replacement and Extraordinary Maintenance (REM) at $0.15/1000 gallons, and Operation and Maintenance at $0.91/1000 gallons.

5. For years after 2010, each September Commission will establish a rate that will be effective on January 1st of the following year.

IN WITNESS WHEREOF, the parties execute this amendment on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505

By: Dale L Frink

Title: Secretary

Date: 4-27-2010

Approved and entered into by resolution of the State Water Commission this 5TH, day of April, 2010.

Dale L Frink
Secretary and State Engineer

WEST RIVER WATER DISTRICT

By: [illegible]

Title: President - West River Water

Date: 04-29-10

APPENDIX "B"
April 5, 2010

NORTHWEST AREA WATER SUPPLY PROJECT
WATER SERVICE CONTRACT

Contract No: 237-4-10
Water User Entity: City of Burlington

TABLE OF CONTENTS

1. PARTIES

2. INTRODUCTION

3. DEFINITIONS

4. TERM OF CONTRACT

   4.1 Effective Date
   4.2 Renewal

5. TERMINATION

   5.1 Termination by Not Constructing
   5.2 Termination by Change of Circumstances
   5.3 Termination by Mutual Consent
   5.4 Termination for Default

6. WATER SERVICE: DELIVERY OF WATER

   6.1 Quality of Water
   6.2 Quantity of Water and Flow Rate
   6.3 Point of Delivery
   6.4 Additional Water
   6.5 Water Shortages
   6.6 Curtailment of Delivery for Maintenance Purposes
   6.7 Measurement of Water
   6.8 Responsibility for Distribution and Use of Water

7. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER

   7.1 Notice of First Delivery of Water and Beginning of Water Service Payments
   7.2 Payment for Water Service
   7.3 Minimum Annual Water Purchase: Minimum Payments for Water
   7.4 Payment for Operation, Maintenance, and Replacement
   7.5 Payment for Capital Costs
   7.6 Billing Procedure
   7.7 When Payments are Due

7.8 Delinquent Payments and Default: Suspension of Water Service
7.9 Penalty for Late Payment
7.10 Refusal of Water
7.11 Payments Dedicated to the Project

8. GENERAL PROVISIONS

8.1 Rules and Regulations
8.2 Access to and Inspection of Books and Records
8.3 Remedies not Exclusive
8.4 Amendments
8.5 Waiver of Rights
8.6 Notices
8.7 Assignment

9. ADJUSTMENT OF DESIGN

10. EXPANSION OF PROJECT

11. MERGER CLAUSE

1. PARTIES

This contract is by and between the North Dakota State Water Commission (the "Commission"), and the City of Burlington (the "User").

2. INTRODUCTION

2.1 The North Dakota Legislative Assembly of 1991 (1991 N.D. Sess. Laws ch 704, §1 through §5; codified at N.D.C.C. § 61-24.6), provided that the Commission was to develop a pipeline transmission and delivery system to deliver water supplies from the Missouri River and other sources to areas and localities in northwestern North Dakota for multiple purposes, including domestic, rural water districts, and municipal users. This water pipeline and delivery system is known as the Northwest Area Water Supply Project.

2.2 As of July 1994, the Commission has developed the prefinal design for the Northwest Area Water Supply Project. Forty-one communities and nine rural water associations in northwestern North Dakota have signed agreements of intent with the Commission for the purpose of inclusion in the design of the project.

2.3 The Commission, pursuant to N.D.C.C. ch. 61-02 and N.D.C.C. § 61-24.6, may enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

2.4 The User enters into this water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Northwest Area Water Supply Project for use by the User. The User will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract for this water service. The user has authority to enter into this agreement pursuant to its home rule charter and implementing ordinance.

NOW THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

3. DEFINITIONS

3.1 "Additional water" means water purchased by the User in addition to its minimum annual water purchase.

3.2 "Capital costs" means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, costs of issuance and financing in connection with any bonds issued to finance the project, and essential legal,

administrative and financial work in connection therewith. Not included in capital costs are engineering costs incurred to date in connection with the Project.

3.3 "Estimated water rate for OM&R" means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year, plus an amount as determined in section 7.4.2.

3.4 "Maximum flow rate" means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.

3.5 "Minimum annual water purchase" means the minimum percentage of total annual water usage, which a water user entity agrees to purchase and pay for during a year. The minimum percentage for which an agreement will be offered to a User is fifty-one percent (51%).

3.6 "Operation, maintenance, and replacement costs, hereafter sometimes referred to as OM&R costs means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs and extraordinary maintenance of Project works as determined in section 7.4.2.

3.7 "Project" means the water supply and distribution system shown on the map marked "Exhibit 1" which is attached hereto and incorporated by reference into this contract.

3.8 "Qualifying water supply facilities" means water supply facilities determined by the Commission to qualify for a credit against the User's payments for water and capital costs. Qualifying water supply facilities shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the User's system to the delivery point for Project water.

3.9 "Unallocated capacity" means the capacity of the pipeline which is not allocated nor contractually committed to individual water user entities by virtue of water service contracts.

3.10 "Water rate for capital costs" means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.

3.11 "Water usage" means all water used by a User except for (a) non-potable water and (b) surface water, well water, or aquifer water, which surface water, well water, or aquifer water is not distributed through the same system as is water purchased under this contract.

3.12 "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.

3.13 "Water system" means a discrete assemblage of intakes, treatment facilities, transmission pipelines, storage facilities, and related items. The Northwest Area Water Supply Project is proposed to have three "water systems," the East system, West system, and Parshall system, each separate from the others.

3.14 "Year" means the period from January 1 through December 31, both dates inclusive.

4. TERM OF CONTRACT

4.1 Effective Date.

This contract shall remain in effect for forty (40) years after the date of the first water delivery to the User, unless terminated sooner by mutual agreement of the parties.

4.2 Renewal.

Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

5. TERMINATION

5.1 Termination by not Constructing.

If any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the User, the Commission and the User shall be relieved of all obligations under this contract.

5.2 Termination by Change of Circumstances.

The Commission may terminate this contract effective upon delivery of written notice to the User, or at such later date as may be established by the Commission, under any of the following conditions:

5.2.1 If Commission funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for water delivery to the User pursuant to this contract. The contract may be modified to accommodate a reduction in funds by mutual consent of the User and the Commission.

5.2.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the water delivery is no longer allowable nor appropriate for purchase under this contract or is no longer eligible for funding proposed by this contract.

5.2.3 If any license or certificate required by law or regulation to be held by the User to participate in this contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

5.3 Termination by Mutual Consent.

This contract may be terminated by mutual consent of both parties, in writing.

5.4 Termination for Default.

The Commission, by written notice of default (including breach of contract) to the User, may terminate the whole or any part of this agreement:

5.4.1 If the User fails to make payment as called for by this contract within the time specified herein or any extension thereof; or

5.4.2 If the User fails to perform any of the other provisions of this contract, or so fails to pursue a provision of this contract as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the Commission fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the User shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6. WATER SERVICE: DELIVERY OF WATER

The Commission and the User agree that water will be delivered to the User in accordance with the following terms and provisions:

6.1 Quality of Water.

All water delivered to the User pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Department of Health.

6.2 Quantity of Water and Flow Rate

6.2.1 Minimum annual water purchase. **The User and West River Water District hereby agrees to a minimum annual water purchase and payment for not less than 119,500 gallons per day** during the entire term of this contract. The minimum payment will be charged with an equal split between the User and the West River Water District, unless otherwise agreed to by both the User and the West River Water District and provided in writing to the Commission.

6.2.2 Maximum flow rate. The maximum flow rate to be provided by the Commission to the Burlington-West River turnout shall not exceed 407 gallons per minute.

6.3 Point of Delivery.

The Commission will furnish water to the User at **the metering point of the NAWS-Burlington-West River turnout, NE1/4 of S13, T155N, R84W near intersection of Ward County 10 and 76th Street NW,** hereafter referred to as the point of delivery.

6.4 Additional Water

To the extent allowed by its other contractual obligations, and subject to the limitations stated hereafter, the Commission may, at its sole discretion, deliver to the User any additional water which the User desires to purchase.

6.5 Water Shortages.

6.5.1 No liability for shortages. No liability shall accrue, and the User agrees to indemnify and hold harmless, the Commission, or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries, whether or not attributable to the Commission's negligence or any other cause. The User's duties under this contract shall not be reduced or altered by reason of such shortages or interruptions.

6.5.2 Proportional sharing of water shortage.

The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on the affected water system on a proportionate basis with respect to the proportion that the annual water purchase of each water user entity for the prior calendar year bears to the total annual water purchase of all water service entities on the affected water system for the prior calendar year.

6.6 Curtailment of Delivery for Maintenance Purposes.

The Commission may temporarily discontinue or reduce the amount of water to be furnished to the User for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the facilities and works necessary for the furnishing of water to the User. To the extent possible, the Commission will give to the User reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

6.7 Measurement of Water.

The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the User. The Commission shall calibrate the metering equipment at least every other year unless the User is otherwise notified in writing.

6.7.1 Access.

The Commission and the User shall have access to the metering equipment belonging to the Commission or the User at all reasonable times for the purpose of verifying readings of both project water deliveries and total water usage. Access includes all reasonable means of access including any necessary easement. In addition, the Commission will have the same access to the point of delivery to the User's distribution system.

6.7.2 Dispute over measurement of water.

If the User believes the measurement of water delivered to the User to be in error the Commission will cause the meter to be calibrated. The User shall pay for the cost of the calibration. However, if the meter is found to over register by more than two percent (2%) of the correct volume, the User's payment for the cost of calibration will be refunded to the User.

6.7.3 Claim of error after a payment is delinquent.

A claim of error presented after a payment has become delinquent shall not prevent discontinuance of service or civil action as provided in this contract. The User agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the User's claim of error.

6.7.4 Correction of meter readings.

If the calibration of any meter establishes that the previous readings of such meter over-•registered by more than two percent (2%) the correct volume of water delivered to the User, the meter readings for that meter shall be corrected to the beginning of the year current to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the User because the meter over-registered the amount of water delivered to the User, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the User, be refunded to the User or credited upon future payments for water service by the User in the ensuing years.

6.7.5 Failure of meter.

If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the User shall agree upon a different amount.

6.8 Responsibility for Distribution and Use of Water.

The User shall be responsible for the control, distribution, and use of all water delivered to the User by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the User's distribution system.

The User shall hold the Commission, its officers, agents, employees and successors, and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance, and replacement of the User's distribution system. The User's distribution system includes all works extending from the point of delivery of water to the User.

7. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER SERVICE

The User agrees to make payments for water service in accordance with the following terms and conditions:

7.1 Notice of First Delivery of Water and Beginning of Water Service Payments.

Ninety (90) days prior to completion of the Project to the point of delivery to the User, the Commission shall notify the User, in writing, by certified mail, the date when water will be first available to the User. The User will make payment for water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the User, whichever is later in time.

7.2 Payment for Water Service.

The User's water service payment for each month shall equal the sum of the following:

7.2.1 The User's proportionate share of the OM&R costs; plus

7.2.2 The User's payment for capital costs.

7.3 Minimum Annual Water Purchase: Minimum Payment for Water.

The User will make payment for the minimum annual water purchase specified in this contract in accordance with the rates and terms for payment of water specified in this contract, regardless of whether or not the User actually takes delivery on a lesser amount.

7.4 Payment for Operation and Maintenance.

The User will make monthly payments to the Commission for its share of the OM&R costs for the Project. The payment will be determined by the Commission and based upon actual and forecasted OM&R costs and may be adjusted annually. The amount of the monthly payment will be determined as follows:

7.4.1 OM&R budget

Prior to December 1 of each year, the Commission shall establish and adopt a budget for OM&R for the Project for the next ensuing year. The Commission will then estimate the total annual water sales for the next ensuing year, and calculate the "estimated water rate for OM&R" for the Project. At the end of each year, the Commission shall prepare a statement of the actual cost for OM&R for that same year. If the actual cost exceeds the budget, an appropriate increase in User payments shall be made during the ensuing year. If the actual cost is less than the budget, an appropriate reduction will be made in the ensuing year's User payments.

7.4.2 Reserve fund.

The Commission shall have the authority to include in the OM&R budget for each year an amount per thousand gallons to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The amount shall be calculated to generate 10% of the Project costs within 15 years, but accumulation and maintenance of the fund shall extend beyond 15 years.

7.4.3 Monthly payment.

The User's monthly payment for OM&R shall be determined by multiplying the amount of water actually delivered to the User for each month by the "estimated water rate for OM&R."

7.4.4 Adjustment for under use

At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for OM&R" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

7.5 Payment for Capital Costs.

The User will pay to the Commission a water rate for costs of the Project.

7.5.1 Base water rate for capital costs.

The base water rate for capital costs shall be **$0.00** per each one thousand (1,000) gallon of water. This rate is based upon the December 1994, cost estimate of the project and is also based upon the assumption that the User and other purchasers will be financing collectively **35%** of the total cost of the Project **and the assumption that the City of Minot continues to share in the cost of the Project**.

7.5.2 Adjustment of the water rate for capital costs.

The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or decrease in total capital costs of the project. The total capital costs of the project shall be those attributable to the present scope of the project as of the execution of this contract, unless the scope is altered by mutual consent pursuant to the next paragraph. Costs for items which essentially are replacements for existing improvements shall not be considered capital costs.

When such total capital cost obligations of the project are met, payments for capital costs will cease. All interest earned by sinking fund deposits shall be credited to this computation and all amounts collected for reserves for debt shall also be taken into consideration in determining when capital cost obligations have been met.

The Commission shall also have the authority to adjust the water rate if the project is redesigned as specified in section 9 of this contract. The User and the Commission must mutually agree to any change of water rate for capital costs resulting from a redesign or to any change of the water rate for capital costs resulting from a change in the percentage of the total cost

7.5.3 Adjustment for underuse.

At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for capital costs" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

7.5.4 Credit for qualifying water supply facility debt service cost.

A credit for debt service costs of the User's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by dividing seventy-five percent (75%) of the total

annual debt service cost for "qualifying water supply facilities in the immediate ensuing year by twelve (12). However, in no event shall any credit exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the User must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits ten (10) years after first delivery of water to the User.

7.6 Billing Procedure.

The Commission will furnish to the User, at the address shown on the signature page of this contract, not later than the fifteenth day of each month, an itemized statement of the payment due from the User for water service for the preceding month. The metering equipment at the point of delivery to the User shall be read monthly by the Commission. The City of Burlington (unless otherwise agreed to by both the User and the West River Water & Sewer District and provided in writing to the Commission) will monthly read the second metering point along the 8" line leaving the point of delivery to supply West River Water & Sewer District water service, and will report that reading to the Commission. The User will be billed the NAWS rate by the Commission based on the Point of Delivery meter water use minus the second meter (West River Water & Sewer District) water use.

7.7 When Payments Are Due.

All payments for water service shall be made no later than 30 days following receipt of the statement from the Commission. Payments not made by such date shall be considered delinquent and in default.

7.8 Delinquent Payments and Default: Suspension of Water Service.

The User shall cause to be levied and collected all necessary taxes, assessments, and water charges, and will use all of the authority and resources available to it to pursuant to this contract on or before the date such payments become due.
In the event of any default by the User in making payments as required under this contract, the Commission, in its discretion, may suspend delivery of water to the User through the Project during the time when the User is in default, or bring a civil action against the User in a North Dakota state district court.

During any period when the User is in default, the User shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

7.9 Penalty for Late Payment.

Every payment required to be paid by the User to the Commission under this contract, which is unpaid after its due date shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable, provided that no penalty shall be chargeable against any adjustment made pursuant to section 6.7 of this contract.

7.10 Refusal of Water.

The User's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the User's obligation to make payments to the Commission as provided in this contract.

7.11 Payments Dedicated to the Project.

All payments collected by the Commission pursuant to the provisions above and the earnings thereon shall be held in a special fund and dedicated to the construction, operation, and maintenance of the Project in accordance with the laws of the State of North Dakota.

8. GENERAL PROVISIONS

8.1. Rules and Regulations.

The Commission will have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract. The User agrees to comply with all rules and regulations promulgated by the Commission.

8.2 Access to and Inspection of Books and Records.

Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

8.3 Remedies not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

8.4 Amendments.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

8.5 Waiver of Rights.

Any waiver at any time by either party of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

8.6 Notices.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be in writing. All such notices shall be deemed to have been given and delivered, if delivered personally or if delivered by registered or certified mail. All notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

8.7 Assignment.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the non-assigning party. The Commission may delegate the operation and maintenance of the Project, but shall retain the obligation to establish water rates and annual budgets.

9. ADJUSTMENT OF DESIGN

The Commission reserves the right to redesign the Project.

10. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing, signed by the parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

IN WITNESS WHEREOF, the parties execute this contract on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505
By: Dale L Frink
Title: Secretary
Date: 4-27-2010

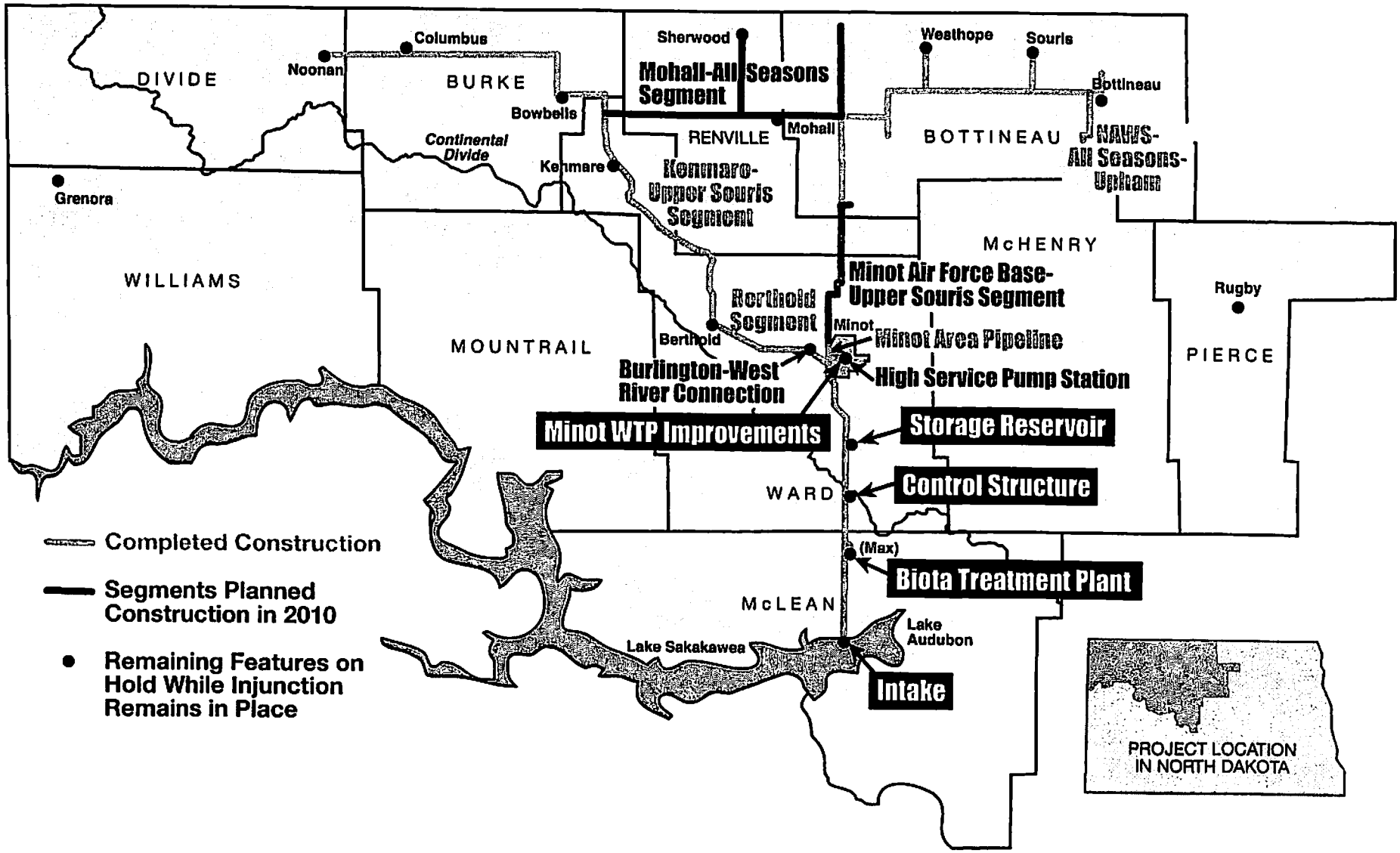
Approved and entered into by resolution of the State Water Commission this day of April 5, 2010

Dale L Frink
Secretary and State Engineer

USER:
By: Jerome Gunsbury
Title: Mayor
Date: 5-3-10

Northwest Area Water Supply

February 2010



Amendment 1 to Contract 237-4-10

This amends Contract 237-4-8, Northwest Area Water Supply (NAWS) Project Water Service Contract, between the State of North Dakota, acting through the State Water Commission (Commission) and the City of Burlington (User). This amendment allows for an interim period during which Commission will provide water service to User from water supplied by Minot rather than from water supplied by Lake Sakakawea.

The term of this amendment shall begin when both parties have executed this amendment and shall end when Commission sends written notice to User that water supply from Lake Sakakawea is operational.

During the term of this amendment, Sections 6.2 (Quantity of Water and Flow Rate), 6.3 (Point of Delivery), 7.1 (Notice of First Delivery of Water and Beginning of Water Service Payments), and 7.3 (Minimum Annual Water Purchase: Minimum Payment for Water) of Contract 237-4-8 are void and shall have no legal force or binding effect and the following terms shall apply:

1. The estimated usage available from the point of delivery to both the User and West River Water District is 179,000 gallons per day.

2. Water supply to User shall be delivered to the NAWS-Burlington-West River master meter turnout, and shall be metered by the Commission. The City of Burlington (unless otherwise agreed to by both the User and the West River Water District and provided in writing to the Commission) will monthly read the second metering point along the 8" line leaving the point of delivery to supply the User water service, and will report that reading to the Commission. The User will be billed the NAWS rate by the Commission based on the Point of Delivery meter water use minus the second meter (West River Water District) water use.

3. Water moved through the NAWS system and delivered to User will be charged according to Section 7.4 of Contract 237-4-8.

4. For 2010, Commission set the rate at $2.20/1000 gallons. The four parts of this rate include Capital Costs at $0.00/1000 gallons, Supply and Treatment at $1.14/1000 gallons, Reserve for Replacement and Extraordinary Maintenance (REM) at $0.15/1000 gallons, and Operation and Maintenance at $0.91/1000 gallons.

5. For years after 2010, each September Commission will establish a rate that will be effective on January 1st of the following year.

IN WITNESS WHEREOF, the parties execute this amendment on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505

By: Dale L Frink

Title: Secretary

Date: 4-27-2010

Approved and entered into by resolution of the State Water Commission this 5TH, day of April, 2010.

Dale L Frink
Secretary and State Engineer

CITY OF BURLINGTON

By: Jerome Grumbo

Title: Mayor

Date: 5-3-10