

AGREEMENT TO AMEND SECTION 2.3.2(a) OF ARCA

THIS AGREEMENT TO AMEND SECTION 2.3.2(a) OF ARCA (“Agreement”) is made and entered into effective as of the ____ day of _____, 2016, by and among Lewis and Clark Rural Water System, Inc. (“Lewis & Clark”), and the following Lewis & Clark members: City of Beresford, City of Centerville, City of Harrisburg, City of Hull, City of Lennox, City of Luverne, City of Madison, City of Parker, City of Sheldon, City of Sibley, City of Sioux Center, City of Sioux Falls, City of Tea, City of Worthington, Lincoln County Rural Water System, Inc., Lincoln Pipestone Rural Water System, Minnehaha Community Water, Corp., Rock County Rural Water District, Rock Rapids Municipal Utilities, South Lincoln Rural Water System, Inc. (collectively the “Members”).

WHEREAS, Lewis & Clark and the Members have each entered into a separate Amended and Restated Commitment Agreement (“ARCA”) pursuant to which Lewis & Clark and each of the Members agreed to the same, or very similar, terms and conditions regarding the obligations and rights of both Lewis & Clark and the Members related to the construction and operation of the Lewis & Clark Regional Water System (“System”); and

WHEREAS, Section 2.3.2 of the ARCA of each Member provides for the establishment of a Capital Improvement Fund (“CIF”) which is to be used solely (i) for the purposes of replacing components of the System, and (ii) for improvements to the System, other than to add additional capacity or to complete the original construction of the System, whether to enhance the reliability or the functioning of the System, or to address changes in applicable federal or state laws or regulations with respect to water quality, or otherwise; and

WHEREAS, the first sentence of Section 2.3.2(a) of the ARCA currently states as follows: “Lewis & Clark shall establish a Capital Improvement Fund for purposes of maintaining a reasonable reserve for capital improvements and replacements of and to the System (other than operating machinery and equipment) *after completion of the construction of the System*” (emphasis added); and

WHEREAS, Lewis & Clark and the Members believe it is possible that expenditure of funds in the CIF will be required for the purposes established under Section 2.3.2 of the ARCA prior to the completion of the construction of the System; and

WHEREAS, Lewis & Clark and the Members desire to enter into this Agreement for purposes of amending Section 2.3.2(a) of the ARCA of each Member to make it clear that, when otherwise proper under Section 2.3.2 of the ARCA, the funds in the CIF shall be available for use by Lewis & Clark prior to the completion of the construction of the System.

NOW, THEREFORE, for and in consideration of the premises set forth above, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree to amend Section 2.3.2(a) of the ARCA of each Member as follows:

1. Amendment of Section 2.3.2(a). The parties hereto agree to amend Section 2.3.2(a) of the ARCA of each Member by deleting the first sentence thereof and replacing such sentence with the following language:

Lewis & Clark shall establish a Capital Improvement Fund for purposes of maintaining a reasonable reserve for capital improvements and replacements of and to the System (other than operating machinery and equipment).

2. Effect of ARCA. Except as specifically amended in Section 1 of this Agreement, all other terms and provisions of the ARCA of each Member, including any prior amendments to the ARCA of any Member, shall remain unchanged and in full force and effect and are hereby ratified in their entirety.

3. Due Authorization. The parties hereto represent that this Agreement, and execution hereof, has been duly authorized by all appropriate governmental and/or corporate action.

4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first set forth above.

LEWIS AND CLARK RURAL WATER SYSTEM,
INC.

By _____
Its _____

CITY OF BERESFORD

By _____
Its _____

CITY OF CENTERVILLE

By _____
Its _____

CITY OF HARRISBURG

By _____
Its _____

CITY OF HULL

By _____
Its _____

CITY OF LENNOX

By _____
Its _____

CITY OF LUVERNE

By _____
Its _____

CITY OF MADISON

By _____
Its _____

CITY OF PARKER

By _____
Its _____

CITY OF SHELDON

By _____
Its _____

CITY OF SIBLEY

By _____
Its _____

CITY OF SIOUX CENTER

By _____
Its _____

CITY OF SIOUX FALLS

By _____
Its _____

CITY OF TEA

By _____
Its _____

CITY OF WORTHINGTON

By _____
Its _____

LINCOLN COUNTY RURAL WATER SYSTEM,
INC.

By _____
Its _____

LINCOLN PIPESTONE RURAL WATER
SYSTEM

By _____
Its _____

MINNEHAHA COMMUNITY WATER, CORP.

By _____
Its _____

ROCK COUNTY RURAL WATER DISTRICT

By _____
Its _____

ROCK RAPIDS MUNICIPAL UTILITIES

By _____
Its _____

SOUTH LINCOLN RURAL WATER SYSTEM,
INC.

By _____
Its _____