

**WATER LEASING AGREEMENT
BETWEEN
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,
NEBRASKA COMMUNITY FOUNDATION, AND
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

THIS AGREEMENT made and entered into this 12TH day of OCTOBER, 2018, by and between **The Central Nebraska Public Power and Irrigation District**, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, hereinafter referred to as "Central" and the **Nebraska Community Foundation (representing all signatories to the Platte River Recovery Implementation Program)**, a Nebraska non-profit corporation, with its principal office located at 8100 South 15th Street, Suite A, PO Box 83107, Lincoln, Nebraska 68501-3107, hereinafter referred to as "Foundation," and the **Platte River Recovery Implementation Program**, with its principal office located at 4111 4th Avenue, Suite 6, Kearney, Nebraska 68845, hereinafter referred to as "Platte Program," (jointly referred to as "Parties" and individually as "Party."

WITNESSETH:

WHEREAS, Central holds natural flow, storage and storage use appropriations permitting the delivery of surface irrigation water to more than 107,000 contracted acres in Lincoln, Dawson, Gosper, Phelps, and Kearney Counties; and

WHEREAS, Central customers have expressed an interest in continued participation in a program to lease surface water in full irrigation delivery years; and

WHEREAS, Central holds an appropriation for storage referred to herein as the "environmental account," an appropriation which permits storage in Lake McConaughy for purposes of "instream flows for fish and wildlife;" and

WHEREAS, Central holds an appropriation for storage use of water stored in the environmental account for purposes of "instream flows for fish and wildlife;" and

WHEREAS, the Platte Program is interested in continuing to lease surface water from Central customers for a term of five (5) years; and

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained and the terms and conditions hereinafter set forth, it is hereby covenanted and agreed:

1. LEASING SERVICE.

- a. During the fall of 2018 and each fall thereafter in which a Pricing Addendum (Exhibit A) has been signed by the Parties, Central will offer to lease surface water from Central customers during the next year's irrigation season, provided the customer agrees to not irrigate those lands with either groundwater or surface water and provided that Central is not reducing the allocation to less than a full delivery year water allocation. Water that is leased will be credited to the environmental account in October of 2019, and each October thereafter if leasing occurred during the prior irrigation season in accordance with this agreement.

Beginning in the fall of 2019, a Pricing Addendum must be signed by the Parties prior to October 1 of that year for leasing to be effective for the following irrigation season.

- b. Central will accept proposals from customers identifying the acres to be leased in the fall of 2018 and each year thereafter that a Pricing Addendum has been signed, ending with the 2023 irrigation season.
 - c. The quantity of water leased per acre will be based on the average of surface water only deliveries over the past ten years which is 9 acre-inches per acre. The number of acres leased will be multiplied by 9 acre-inches to provide the quantity of leased water.
 - d. The maximum acres to be leased under this water leasing program in 2019 will be 3000 acres. If proposals are received exceeding 3000 acres or the maximum amount of acres leased in accordance with the Pricing Addendum, then lands will be selected by a random drawing and the last proposal accepted will be the proposal that exceeds the acreage limit.
 - e. Notification will be provided by December 31 of each year beginning in 2018 and each following year that a Pricing Addendum has been signed to each irrigation customer submitting a proposal informing them whether their proposal was selected for lease. Central will also notify the Platte Program of the quantity of water available for leasing at the same time.
2. LEASING PAYMENTS. The Platte Program shall pay Central for the leasing service provided herein as follows for 2019 leasing and each subsequent year in which a Pricing Amendment has been signed (payment shall be due within 45 days of invoice):
- a. The Platte Program shall pay Central \$10,000 for administrative costs related to the leasing service in each year in which water is leased.
 - b. The Platte Program shall pay Central \$220 for each acre leased to Central in 2019 as provided in 2(d) below. Central will pay the irrigation customer 50% of the \$220/per acre lease rate by March 15 of each year that lands are leased as provided herein. Central will pay the final 50% of the \$220/per acre lease rate by November 1 of 2019 after verification that the lands were not irrigated with surface water or groundwater.
 - c. For subsequent years following 2019, if water is leased in accordance with the Pricing Addendum and the Platte Program had paid Central in accordance with the Pricing Addendum and this Agreement, then Central will pay the irrigation customer 50% of the Lease Payment by March 15 of each year that lands are leased as provided herein. Central will pay the final 50% of the Lease Payment by November 1 of each year in which water is leased after verification that the lands were not irrigated with surface water or groundwater.
 - d. After providing notice to the Platte Program of the quantity of water available for leasing in section 1(e), Central will invoice the Platte Program for the number of acres leased times the lease rate of \$220/acre plus the administrative fee of \$10,000 on the first business day in January and Central shall be paid by February 15. Central will hold 50% of the monies in an account for irrigator lease payments until verification that the lands were not irrigated as provided in section 2(b). If Central finds that some lands were irrigated, then a refund of lease payments for irrigated lands will be made to the Platte Program.
 - e. For subsequent years following 2019, after providing notice to the Platte Program of the quantity of water available for leasing in section 1(e), Central will invoice the Platte Program for the number of acres leased times the Lease Payment as provided in the Pricing Addendum for that year plus the administrative fee of \$10,000 on the first business day in January and Central shall be paid by February 15. Central will hold 50% of the monies in an account for irrigator lease payments until verification that the lands were not irrigated as provided in section 2(c). If Central finds that some lands were

irrigated, then a refund of lease payments for irrigated lands will be made to the Platte Program.


3. **CREDITING OF WATER TO ENVIRONMENTAL ACCOUNT.** Central will inform the Nebraska Department of Natural Resources regarding the amount of water to be credited to the environmental account to be effective on October 1 of each year in which water is leased beginning in 2019 and ending in 2023 in the same manner that other credits of water to the environmental account are handled.
4. **TERM.** The term of this Agreement shall commence when this Agreement is signed by the Parties (the "Commencement Date"), and shall expire on December 31, 2023, if not earlier terminated in accordance with the terms hereof.
5. **FORCE MAJEURE.** Central shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault or negligence of Central, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, severe cold or other weather event, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which Central could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Central under this Agreement shall be excused and suspended without penalty or damages, provided that (a) Central shall give the Platte Program notice describing the particulars of the occurrence or condition; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition; and (c) Central proceeds with reasonable diligence to remedy its inability to perform and inform the Platte Program of the actions taken to remedy the consequences of the event or condition.
6. **DEFAULT.** If any Party to this Agreement fails to perform or otherwise breaches any of the terms of this Agreement, then such failure shall constitute a default. In the event of default by any Party, the non-defaulting Party/s shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party fails to cure, the non-defaulting Party/s shall be entitled to any and all legal and equitable remedies except Central's total liability to the Platte Program for any loss or damage, including but not limited to special and consequential damages, arising out of or in connection with the performance of this Agreement shall not exceed either the amount paid by the Platte Program to Central pursuant to this Agreement or \$50,000, except that this limitation on liability shall not apply to a refund of lease payments to the Platte Program if Central determines that lands were irrigated as described in Section 2(d) and Section 2(e).

If default should occur because of failure to pay as required in section 2(d) or section 2(e), then this agreement shall terminate and all temporary agreements with irrigation customers which provide for no delivery of surface water for irrigation for the next irrigation season shall be cancelled.

7. **ASSIGNMENT.** The Foundation is the financial management entity providing support to the Governance Committee of the Platte Program and the Foundation, by executing this Agreement is acting as the contracting agent of the Governance Committee of the Platte Program. If the Foundation is no longer the financial management entity providing support to the Governance Committee of the Platte Program for any reason, the Foundation as the financial management entity representing the Platte Program, may assign its responsibilities and interest under this Agreement to a successor financial management entity providing support to the Governance Committee of the Platte Program, provided that the successor assumes all obligations of a Party under this Agreement. The Foundation will provide written notice of any such assignment to Central.

8. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the Parties hereto with respect to the water service contemplated hereby and supersedes all prior agreements and understandings between the Parties with respect to such subject matter.
9. AMENDMENT. No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.
10. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding on the Parties, their successors and assigns. This Agreement may not be assigned by the Platte Program without the written consent of Central.
11. CANCELLATION. This Agreement may be cancelled by either party providing written notice to the other party prior to October 15 of any year. The effective date of cancellation will be November 1 of the same year. If the foregoing termination right is exercised by either party, the parties acknowledge and agree that Central shall still be required to make the second half of the irrigator lease payments by November 1 in accordance with the terms of this Agreement.
12. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.
13. LAWS. In executing this Agreement, each Party shall be responsible for its compliance with all applicable state and federal laws.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date first stated above.

Date 10/09/2018 By 
NEBRASKA COMMUNITY FOUNDATION
Diane M. Wilson
Manager of Public/Private Partnerships

Date 10/12/2018 By 
PLATTE RIVER RECOVERY IMPLEMENTATION
PROGRAM – Office of the Executive Director
Jason Farnsworth
Executive Director

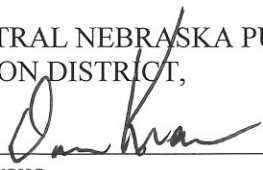
Date 10/12/18 By 
THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT,
Don Kraus
General Manager

EXHIBIT A

PRICING ADDENDUM

This pricing addendum will establish the year, price and maximum acres to be leased during 2020, 2021, 2022 and 2023 under this Water Leasing Agreement. For a Pricing Addendum to be effective in any of the above years, the following information must be included and signed by the Parties prior to October 1 of the prior year. Except for the price and maximum acres, all other terms and conditions of this agreement shall apply in any year in which this Pricing Addendum has been properly executed.

Year of Leasing _____

Maximum number of Acres to be Leased _____

Lease Payment \$_____/acre

NEBRASKA COMMUNITY FOUNDATION

Date _____ By _____
Diane M. Wilson
Manager of Public/Private Partnerships

PLATTE RIVER RECOVERY IMPLEMENTATION
PROGRAM – Office of the Executive Director

Date _____ By _____
Jason Farnsworth
Executive Director

THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT,

Date _____ By _____
General Manager