

**WATER LEASING AGREEMENT
BETWEEN
NEBRASKA PUBLIC POWER DISTRICT AND NEBRASKA COMMUNITY
FOUNDATION ACTING AS CONTRACTING AGENT OF THE
GOVERNANCE COMMITTEE OF THE PLATTE RIVER RECOVERY
IMPLEMENTATION PROGRAM**

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between **Nebraska Public Power District**, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 1414 15th Street, P.O. Box 499, Columbus, Nebraska 68602 hereinafter referred to as "NPPD" and the **Nebraska Community Foundation**, a Nebraska non-profit corporation, with its principal office located at 8100 South 15th Street, Suite A, P.O. Box 83107, Lincoln, Nebraska 68501-3107, hereinafter referred to as "Foundation," acting as the contracting agent of the Platte River Recovery Implementation Program hereinafter referred to as "Program", with its principal office located at 4111 4th Avenue, Suite 6, Kearney, Nebraska 68845, (the Foundation and Program are collectively referred to herein as the "Platte Program," with the three parties jointly referred to as "Parties" and individually as "Party").

WITNESSETH:

WHEREAS, NPPD is the owner of the Gothenburg Canal and Dawson County Canal; and

WHEREAS, NPPD has over 43,000 acres of permitted water rights in south central Nebraska; and

WHEREAS, NPPD has expressed an interest in participating in a pilot program to lease surface water; and

WHEREAS, NPPD and Central Nebraska Public Power and Irrigation District (Central) have entered into a "Water Exchange Memorandum of Understanding" dated **June xx, 2021** that will allow Central to credit water withheld from irrigation to the Lake McConaughy Environmental Account under Central's appropriation A-17695 (herein after referred to as the "Environmental Account") under certain conditions; and

WHEREAS, the Platte Program is interested in leasing surface water from NPPD; 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. NPPD has agreed to curtail its diversion of surface water from the Platte River at its Gothenburg Canal and Dawson County Canal during the 2021 irrigation season pursuant to the terms and conditions of the Water Exchange MOU (MOU) attached to and made part of this agreement as Attachment A.
- b. The quantity of water leased to the Platte Program by NPPD will be 6 inches per acre, as calculated in accordance with the MOU.
- c. The total quantity of water leased shall not exceed 3,306 acre-feet.
- d. Water that is leased will be credited to the Environmental Account in October of 2021.

2. LEASE PAYMENTS. The Platte Program shall pay NPPD for the leasing service provided herein as follows:

- a. The Platte Program shall pay \$ \$90.00 for each acre-foot credited to the Environmental Account.
 - b. NPPD shall invoice the Platte Program on October 31, 2021 for the actual quantity of water credited to the Environmental Account, with payment due within 60 days of invoice.
3. CREDITING OF WATER TO ENVIRONMENTAL ACCOUNT. Central, pursuant to the terms and conditions of the MOU, 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, 2021 in the same manner that other credits of water to the Environmental Account are handled.
4. TERM. The term of this Agreement shall commence on the date of execution by the Parties (the "Commencement Date") and shall expire on December 31, 2021.
5. FORCE MAJEURE. NPPD 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 NPPD, 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 NPPD could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of NPPD under this Agreement shall be excused and suspended without penalty or damages, provided that (a) NPPD 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, in the sole discretion of NPPD, by the event or condition; and (c) NPPD 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.
7. 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.
8. AMENDMENT. No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.
9. FOUNDATION. The Foundation has represented to NPPD, and NPPD hereby acknowledges, that the Foundation is the financial management entity providing support to the Governance Committee of the Program and that the Foundation, by executing this Contract, is acting as the contracting agent of the Governance Committee of the Program. If the Foundation is no longer the financial management entity providing support to the Program for any reason, the Foundation may assign its responsibilities and interest under this Agreement to a successor financial management entity providing support to the Governance Committee of the Program, provided that the successor assumes all obligations of the Foundation applicable hereunder. The Foundation shall provide written notice of any such assignment to NPPD.

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 NPPD with the exception of assignment to a successor financial management entity as described in Section 9.
11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska and venue for any claim or dispute shall be in the state district courts of the State of Nebraska.
12. **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 as of the date first stated above.

NEBRASKA COMMUNITY FOUNDATION

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

NEBRASKA PUBLIC POWER DISTRICT

Date _____ By _____
Joe L. Citta Jr.
Director of Corporate Environmental and Water Resources

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
ACKNOWLEDGEMENT

I hereby certify that the Governance Committee of the Platte Program has authorized the Nebraska Community Foundation, acting as contracting agent of the Governance Committee of the Platte Program, to enter into this agreement.

Date _____ By _____
Jason M. Farnsworth
Executive Director

Attachment A-This will be replaced by the new MOU, with the only changes being dates, acres, and af/day.

**WATER EXCHANGE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
AND
NEBRASKA PUBLIC POWER DISTRICT**

THIS MEMORANDUM made and entered into this 21st day of MAY, 2019, 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 Public Power District**, a political subdivision of the State of Nebraska, with its principal office located at 1414 15th Street, P.O. Box 499, Columbus, NE 68602, hereinafter referred to as "NPPD," (jointly referred to as "Parties" and individually as "Party").

WHEREAS, NPPD's Gothenburg and Dawson County irrigation canals (hereinafter referred to as "Canals") deliver surface water to lands in south central Nebraska; and

WHEREAS, the Parties have expressed an interest in participating in a pilot program to exchange surface water by which NPPD agrees to withhold certain irrigation water deliveries, and for Central to credit amounts of water withheld to Central's appropriation A-17695, established pursuant to Central's FERC license (hereafter "Environmental Account") using the crediting methodology described herein; and

WHEREAS, the Platte River Recovery Implementation Program ("Platte Program") has indicated interest in increasing the water available to the Environmental Account in Lake McConaughy in exchange for compensating NPPD for water credited to the Environmental Account pursuant to this Agreement; and

WHEREAS, Central is willing to facilitate such a surface water exchange service;

1. SURFACE WATER EXCHANGE SERVICE.

- a. During the irrigation season of 2019, NPPD agrees to withhold delivery of water for irrigation on 2,144.7 acres typically irrigated by and through the Gothenburg Canal and 4,098.5 acres typically irrigated by and through the Dawson County Canal in return for Central crediting additional water to the Environmental Account with storage water from Lake McConaughy. The amount to be credited will be calculated as outlined in paragraphs 1(b) and 1(c) below.
- b. The quantity of water to be credited to the Environmental Account on behalf of NPPD for NPPD prior to adjustment shall be six (6) inches per every non-irrigated acre over a 70-day period June 25 – September 2, 2019, specifically: 1,072 acre feet for the Gothenburg Canal (15.31 af/day) and 2,049 acre feet for the Dawson County Canal (29.27 af/day). The quantities of water outlined in the preceding sentence shall be reduced by the daily value above, on Non-Exchange Days. A Non-Exchange Day is defined as each day between June 25 and September 2 (70 days) in which one of the following occurs:
 - The average flow of the South Platte River at North Platte exceeds 2,500 cfs, or
 - Lake McConaughy is effectively at capacity, or
 - The canal is not diverting water, or
 - The canal has no storage water remaining and there is insufficient natural flow to fully supply the canal needs.
- c. Upon review of hydrologic data and any other data deemed relevant by the Parties after September 2, 2019, Central and NPPD may jointly make other adjustments as agreed to by the Parties to this Memorandum. If there is no mutual agreement for other adjustments, the calculations in 1(b) above shall stand.

- d. Central and NPPD jointly will calculate the volumes of water using the calculation in 1 (b) and 1 (c) above by October 31, 2019.
- e. Upon request from Central, NPPD will provide documentation that surface water was withheld from the acres referenced in (a).
2. CREDITING OF WATER TO ENVIRONMENTAL ACCOUNT. Central agrees to 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, 2019 in the same manner that other credits of water to the Environmental Account are handled pursuant to paragraph 9 in Central's A-17695 application attachment.
3. NPPD USE OF EXCHANGED WATER FOR PLATTE PROGRAM NEEDS. It is understood that NPPD may contract with the Platte Program for payment for the exchanged water associated with their respective canals, or that NPPD may request recognition from the appropriate entities that the credited water count as offsets for depletions to US Fish and Wildlife Service target flows. Nothing in this Memorandum, including any contracting for payment or recognition as depletion offsets, gives NPPD any control of, or interest in, the timing or amount of releases from the Environmental Account.
4. TERM. The term of this Memorandum shall commence when this Memorandum is signed by the Parties (the "Commencement Date"), and shall expire on December 31, 2019.
5. PRECEDENT. The Parties to this Memorandum agree that this water exchange is a pilot program and the conditions herein will not set any future precedents; no Party is making admissions; no Party is waiving any statutory requirements; and the Parties recognize that there may be details that are discovered in the pilot program that would need to be addressed in any future water exchange. The Parties agree that the terms in this Memorandum will not be used for future arbitration or litigation purposes (including under the Parties' Water Storage Contract dated May 21, 1954, the Environmental Account Section 5 document from Central's FERC license for FERC Project 1817, or any proceedings related to transfers of appropriations) other than to enforce the Parties rights under the terms of this Agreement.


We, the undersigned have read and agree with this MOU.

Date

5/9/19

THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT

By



Devin Brundage
General Manager

Date

5/21/19

NEBRASKA PUBLIC POWER DISTRICT,

By



Joe L. Citta Jr.
Director of Corporate Environmental and Water
Resources