

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

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **Central Platte Natural Resources District**, a political subdivision of the State of Nebraska, with its principal office located at 215 Kaufman Avenue, Grand Island, NE 68803, hereinafter referred to as "CPNRD" 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 (hereinafter the Nebraska Community Foundation and Platte River Recovery Implementation Program are collectively referred to as "Platte Program" and the Nebraska Community Foundation is referred to individually as the "Foundation"). CPNRD and the Platte Program may individually be referred to as "Party" and shall collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, CPNRD is a political subdivision of the State of Nebraska, duly authorized to acquire, hold, dispose of and lease rights and appropriations to use the waters of the State of Nebraska;

WHEREAS, Foundation is a Nebraska non-profit corporation, duly authorized to enter into lease agreements for the use of water to enhance, increase, and augment the flows of the Platte River pursuant to the Platte River Recovery Implementation Program ("Program");

WHEREAS, Foundation desires to enter into a pilot agreement with CPNRD to lease surface water;

WHEREAS, CPNRD and Central Nebraska Public Power and Irrigation District (Central) have entered into a "Water Exchange Memorandum of Understanding" dated May 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

NOW, THEREFORE, the Parties mutually agree as follows:

1. LEASING SERVICE.

- a. CPNRD has agreed to reduce diversion of surface water from the Platte River to the Cozad, Thirty-Mile, and Southside Irrigation District (also known as Orchard-Alfalfa Irrigation) canals 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 CPNRD will be 6 inches per acre, as calculated in accordance with the MOU.
- c. The total quantity of water leased shall not exceed 15,000 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 CPNRD for the leasing service provided herein as follows:
  - a. The Platte Program shall pay \$90 for each acre-foot credited to the Environmental Account.
  - b. CPNRD 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. DATA SHARING. CPNRD and the Platte Program agree to share all hydraulic and hydrologic data collected in association with this Agreement.
6. AVAILABILITY OF FUNDS. Each payment obligation of the Foundation is conditioned upon the continuation of the Platte River Recovery Implementation Program and the availability of appropriated funds for the Program. If funds are not allocated and available for the continuance of serviced provided in this Agreement, the Foundation may terminate the contract at the end of the period for which the funds are available.
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. 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 or the Foundation without the written consent of CPNRD.
10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
11. FOUNDATION. The Foundation has represented to CPNRD, and CPNRD hereby acknowledges, that the Foundation is the financial management entity providing support to the Governance Committee of the Platte Program and that the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee of the Platte Program.

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

NEBRASKA COMMUNITY FOUNDATION

Date \_\_\_\_\_

By \_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships

CENTRAL PLATTE NATURAL RESOURCES DISTRICT

Date \_\_\_\_\_

By \_\_\_\_\_  
Lyndon Vogt  
General Manager

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  
Water Exchange MOU

**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  
CENTRAL PLATTE NATURAL RESOURCES DISTRICT**

THIS MEMORANDUM made and entered into this 4<sup>th</sup> day of May, 2020, 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 **Central Platte Natural Resources District**, a political subdivision of the State of Nebraska, with its principal office located at 215 Kaufman Ave, Grand Island, NE 68803, hereinafter referred to as "CPNRD," (jointly referred to as "Parties" and individually as "Party").

WHEREAS, CPNRD's irrigation canals to which it holds an interest (Thirty Mile, Cozad, and Orchard Alfalfa, hereinafter referred to as "Affiliate 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 for the purpose of providing water to the Environmental Account, Central's appropriation A-17695 established pursuant to Central's FERC license; and

WHEREAS, the Platte River Recovery Implementation Program is interested in increasing the water available to the Environmental Account in Lake McConaughy; and

WHEREAS the Central Platte Natural Resources District has the authority to enter into water agreements for the purposes of water management under Chapter 46, Reissue Revised Statutes of Nebraska, Article 7 of the Nebraska Ground Water Management and Protection Act (46-701 – 46-756); and

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

**1. SURFACE WATER EXCHANGE SERVICE.**

- a. During the irrigation season of 2020, CPNRD agrees to not deliver water for irrigation on 12,189.4 acres under Thirty Mile, 12,929.4 acres under Cozad, and 3,026.1 acres under Orchard Alfalfa canals in exchange for Central crediting the Environmental Account with storage water from Lake McConaughy as calculated in paragraphs 1(b) and 1(c) below.
- b. The quantity of water exchanged for CPNRD prior to adjustment shall be: 6,095 acre feet for the Thirty Mile Canal (87.07 af/day), 6,465 acre feet for the Cozad Canal (92.35 af/day) and 1,513 acre feet for the Orchard Alfalfa Canal (21.61 af/day). The quantity of water exchanged for the Affiliate Canals shall be reduced 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, 2020, Central and CPNRD jointly may make other adjustments as agreed to by the parties to this Memorandum.

- d. Central and CPNRD jointly will calculate the volume of water to be exchanged using the calculation in 1 (b) and 1 (c) above by October 31, 2020.
  - e. Upon request from Central, CPNRD 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, 2020 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. CPNRD USE OF EXCHANGED WATER FOR PLATTE PROGRAM OR IMP NEEDS. It is understood that CPNRD may contract with the Platte River Recovery Implementation Program for payment for the exchanged water associated with their respective canals, or that CPNRD may request recognition from the appropriate entities that the credited water count as offsets for depletions to US Fish and Wildlife Service target flows and/or instream flow appropriations in the Platte River pursuant to the Nebraska New Depletions Plan of the Platte River Program or an integrated management plan established pursuant to Nebraska law. Nothing in this Memorandum, including any contracting for payment or recognition as depletion offsets, gives CPNRD 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 all requirements shall expire on December 31, 2020.
  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.

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

Date

5/4-20

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

By

Devin Brundage  
General Manager

CENTRAL PLATTE NATURAL RESOURCES DISTRICT,

Date

5/12/20

By

Lyndon J. Vogt  
General Manager