

## SECOND AMENDMENT TO WATER USE LEASE AGREEMENT

This Second Amendment to the Water Use Lease Agreement ("Second Amendment") is made and entered into on the 8<sup>th</sup> day of October, 2018, between the Central Platte Natural Resources District, a political subdivision of the state of Nebraska (hereinafter "CPNRD"), and the Nebraska Community Foundation (representing all signatories to the Platte River Recovery Implementation Program ("Program")), a Nebraska nonprofit corporation (hereinafter "Foundation"). CPNRD and the Foundation may individually be referred to herein as a "Party" and may collectively be referred to herein as the "Parties".

### RECITALS

- A. The Parties entered into a Water Use Lease Agreement dated as of December 4, 2013 (the "Water Use Lease Agreement").
- B. The Parties entered into the Amendment to Water Use Lease Agreement dated as of January 1, 2017 (the "First Amendment").
- C. The Water Use Lease Agreement and First Amendment define the terms and conditions by which CPNRD can provide water to the Program and the compensation to which they are entitled for providing said water.
- D. The Parties desire to amend the Water Use Lease Agreement to reflect where the water shall be delivered and to acknowledge that a portion of the water may be credited to the Environmental Account held by Central Nebraska Public Power and Irrigation District pursuant to its FERC license in Lake McConaughy (the "Environmental Account").

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

- 1. Water. Section 1 of the Water Use Lease Agreement will be replaced by a revised Section 1 as follows:
  - 1. **Water**. CPNRD agrees to annually provide water to the Platte River in amounts not to exceed 20,500 acre-feet. CPNRD shall provide a portion of the water between Gothenburg, Nebraska and Lexington, Nebraska and a portion of the water shall be credited to the Environmental Account in Lake McConaughy.

**Quantification of Water.** Water may be provided to the Foundation from a variety of water-related activities, including, but not limited to: (a) transferred surface water and (b) ground water recharge. All quantifications of water provided to the Foundation shall represent the monthly net effect of the water-related activity above Lexington, Nebraska resulting in fully consumable water. CPNRD shall provide all monthly surface and ground water quantification information to the Foundation on or before November 15 of each calendar year, including the net effect to the Platte River from prior years' ground water-related activities, the volume of transferred surface water credited to the Environmental Account and a projection of the upcoming year's activities. The natural flow water under an existing water right that CPNRD does not deliver for irrigation and is subsequently transferred to the Environmental Account is considered surface water and described in Section (a) Transferred Surface Water, below. Natural flows diverted when excess to USFWS target flows into any of the Canals for the express purpose of ground water recharge under a newly permitted water right are categorized as ground water and described in the subsequent Section (b) Ground Water Recharge, below.

- a. **Transferred Surface Water.** The Canals have existing water rights for diversion of natural flow for the purpose of irrigation. Lands previously irrigated by these surface water rights will instead be irrigated by ground water pumped from existing wells. The net effect will be calculated as the volume of surface water not diverted reduced by the amount of depletions to the river resulting from the well pumping to irrigate the land previously irrigated by the relinquished surface water that accrued during the current calendar year. These depletions will consist of depletions resulting from the current year's pumping as well as depletions resulting from previous years' pumping that are impacting the river during the current calendar year. The net volume less any additional transfer-related reductions, will be credited to the Environmental Account.
- b. **Ground Water Recharge.** Ground water flowing from the Canals to the Platte River may come largely from either of these two sources: (1) ground water associated with canal seepage and deep percolation resulting from the diversion, conveyance, and application of water in accordance with the historical operation of the system,



and (2) ground water associated with the recharge of excess flows intentionally diverted during the non-irrigation season and recharged for the purpose of increasing ground water accretions to the Platte River. The return flows of type (1) are associated with historical irrigation practices and therefore must be maintained and cannot be leased. To provide return flows of type (2), new permits for diversion of excess flow must be obtained. Accomplishing this permitting of new water rights is the responsibility of CPNRD as covered in Section 3. of this document. Water provided to the Platte River by subsurface return flows (ground water discharge) shall be annually quantified by CPNRD using the ground water model referred to as the Cooperative Hydrology Study (COHYST), subject to confirmation by the Foundation also using COHYST.

2. **Reconfirm Other Terms.** All other terms and conditions of the Water Use Lease Agreement as amended by the First Amendment are hereby reconfirmed by the Parties, except to the extent they expressly conflict with the terms of this Second Amendment.
3. **Counterparts.** This Second Amendment may be executed in two or more counterparts, all of which shall, in the aggregate, be considered one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Second Amendment to be executed by their duly authorized representatives.

Central Platte Natural Resources District



Lyndon Vogt  
General Manager

Date: 10/08/2018

Nebraska Community Foundation



Diane Wilson  
Manager of Public-Private Partnerships

Date: 10/02/2018