

**WATER SERVICE AGREEMENT – RECHARGE FROM EXCESS FLOWS
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 effective as of the 1st day of January, 2020, 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, P.O. Box 499, Columbus, NE 68602-0499, 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 Governance Committee 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 NPPD and Foundation jointly referred to as "Parties" and individually as "Party".)

WHEREAS, NPPD is the owner of the Gothenburg Canal and Dawson County Canal as shown on Exhibit A; and

WHEREAS, NPPD has applications for permanent appropriations for the purpose of groundwater recharge using the Gothenburg Canal and Dawson County Canal on file with the Nebraska Department of Natural Resources (hereinafter referred to as "DNR") and NPPD has temporary appropriations for the stated purpose, which expire August 15, 2019 (A-19607 and A-19608); and

WHEREAS, NPPD delivers water via the Gothenburg Canal to the B-1 Reservoir for Central Platte Natural Resources District in accordance with its appropriation; and

WHEREAS, the Platte Program desires NPPD to augment Platte River stream flows via groundwater recharge; and

WHEREAS, NPPD desires to provide such recharge services.

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. WATER SERVICE.

a. During the term of this Agreement, NPPD will provide the Platte Program with groundwater recharge via seepage through the Gothenburg Canal and Dawson County Canal for the purposes described above equal to the Net Amount Diverted, in accordance with the appropriations, during the non-irrigation season (NPPD's temporary appropriations have a maximum rate of 100 cubic feet per second per canal). The Net Amount Diverted shall be defined as the flow measured by NPPD using the Gothenburg Canal and Dawson County Canal measuring flumes located near the river headgates on the Gothenburg Canal and Dawson County Canal and subtracting each canal's river returns as measured by NPPD. The measurement will be adjusted, as appropriate, for any deliveries made by NPPD from the Gothenburg Canal to the B-1 Reservoir. The irrigation season will begin when NPPD starts normal operation of the Gothenburg Canal and Dawson County Canal for irrigation and end when NPPD ends diverting water into the Gothenburg Canal and Dawson County Canal for irrigation, as determined by NPPD.

b. NPPD may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to maintenance on the canals, construction on the canals, icing, or other operational considerations, as determined by NPPD. The Platte Program may also set an annual limit on the Net Amount Diverted for each year under this Agreement. If an annual limit is desired, the limit shall be provided in writing to NPPD prior to March 31 for pre-irrigation season diversions and August 15 for post-irrigation season diversions.

c. NPPD will be responsible for obtaining the necessary permits or approvals (hereinafter “Appropriations”) for this project from the DNR which will allow NPPD to perform all actions herein required by the relevant Statutes of Nebraska.

2. WATER SERVICE CHARGES. The Foundation shall pay NPPD for the water service described above as follows:

A Water Service Charge of thirty-two dollars and eighty-seven cents (\$32.87) per acre-foot for the Net Amount Diverted shall be paid to NPPD for diversions made in 2020. The water service charge paid to NPPD shall increase 3% for each subsequent year the Agreement is in effect. All measurements made through NPPD's measuring devices shall be considered final. NPPD shall invoice the Platte Program the water service charges quarterly for the Net Amount Diverted if diversions pursuant to this agreement are made within that quarter. Payment shall be due within 60 days of invoice.

3. TERM. The term of this Agreement shall commence on the 1st day of January, 2020, (the “Commencement Date”) and shall expire on December 31, 2025.

4. DATA SHARING. NPPD and the Platte Program agree to share all hydraulic and hydrologic data collected in association with this Agreement.

5. WATER APPROPRIATIONS. The source of supply shall be water which is available pursuant to the Appropriations. The water service described herein shall be subject to the DNR approving such Appropriations. The water diverted pursuant to this Agreement shall be consistent with and limited to the terms and provisions of the Appropriations.

6. AVAILABILITY OF FUNDS. Each payment obligation of the Platte Program is conditioned upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If funds are not allocated and available for the continuance of the services performed by NPPD, the contract may be terminated by NPPD or the Platte Program at the end of the period for which the funds are available. The Platte Program shall notify NPPD at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Platte Program in the event this provision is exercised, and the Platte Program shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. However, nothing contained in this Agreement shall act to relieve the Platte Program of the responsibility for any and all payments and damages associated with services that have already been provided by NPPD. This provision shall not be construed to permit the Platte Program to terminate this Contract to acquire similar services from another party.

7. 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 NPPD shall give the Platte

Program notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and NPPD proceeds with reasonable diligence to remedy its inability to perform and informs the Platte Program of the actions taken to remedy the consequences of the event or condition.

8. **DEFAULT.** If either 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 either 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 shall be entitled to any and all legal and equitable remedies.

9. **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.

10. **AMENDMENT.** No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

11. **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.

12. **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 NPPD, except as set forth in Section 11.

13. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska and venue for any claim or dispute shall be in the state district courts of the State of Nebraska.

14. **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.

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

Exhibit A

