

**AGREEMENT BETWEEN  
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT  
AND NEBRASKA COMMUNITY FOUNDATION,  
ACTING AS THE CONTRACTING AGENT OF THE GOVERNANCE COMMITTEE OF THE  
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM  
REGARDING FERC WAIVER REQUEST TO TEST CHANNEL CAPACITY AT NORTH PLATTE**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 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 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, with its principal office located at 4111 4th Avenue, Suite 6, Kearney, Nebraska 68845, hereinafter referred to as "Platte Program" (Central and Foundation are jointly referred to as "Parties" and individually as "Party.")

WITNESSETH:

WHEREAS, Central operates its hydropower system, including Kingsley Dam and Lake McConaughy, under license from the U.S. Federal Energy Regulatory Commission ("FERC"), as FERC Project No. 1417 ("FERC License"); and

WHEREAS, pursuant to the FERC License, Central has established an Environmental Account in Lake McConaughy from which water can be released at the request of an Environmental Account Manager ("EA Manager") designated by the U.S. Fish and Wildlife Service ("USFWS"); and

WHEREAS, the FERC License sets certain restrictions on releases from the Environmental Account, including as relevant to this Agreement, restrictions pursuant to Article 404 and Section II.C.2.a. of Exhibit X of the FERC License on releases from the Environmental Account when the North Platte River exceeds flood stage as designated by the National Weather Service ("NWS"); and

WHEREAS, the Platte Program has undertaken measures in the vicinity of North Platte, including reconstruction of a flood control berm and drainage improvements, for purposes of increasing the safe carrying capacity of the river; and

WHEREAS, the Platte Program desires the Environmental Account releases be made in excess of the current NWS designated flood stage at North Platte, for purposes of testing the channel capacity improvements and providing information that the NWS may use in setting a new higher flood stage; and

WHEREAS, Central is willing to seek a temporary waiver from FERC permitting such Environmental Account releases in excess of the NWS designated flood stage ("Waiver") on the condition that there are sufficient protections in place to limit the risk to life and property from flood damage, and also to limit any liability to Central as the owner of Kingsley Dam and Lake McConaughy;

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. Central will apply for a Waiver from FERC permitting Environmental Account releases in excess of NWS flood stage at North Platte for 2019. The Waiver is to include conditions requiring monitoring of potential flooding and agreement of the EA Manager, Central, Platte Program, and NWS at all times when Environmental Account releases are made in excess of NWS designated flood stage. Central will consult with USFWS, NWS, the Platte Program, and the Nebraska Public Power District prior to submitting the Waiver application to FERC. Central makes no guarantees regarding the granting of the Waiver by FERC.

2. The Platte Program shall apply its “Good Neighbor Policy” as described in Section IV of Attachment 4 of the *Platte River Recovery Implementation Program* document to any downstream affected third parties as a result of Environmental Account releases made pursuant to the Waiver, including, corrective actions or compensation as appropriate for damages that may occur as a result of releases from the Environmental Account in excess of NWS designated flood stage made pursuant to the Waiver.

3. The Foundation and Platte Program hereby unequivocally and completely indemnifies Central as against any claims of any persons based upon the negligence of Central or any other party, but only to the extent directly related to Central’s performance of its obligations under this Agreement. The Platte Program also hereby unequivocally and completely indemnifies Central against the claims of any persons based upon the intended releases made pursuant to this Agreement and the FERC Waiver. The Platte Program and any other entity or foundation created for the purpose of holding the Platte Program’s assets, to the extent such entity or foundation holds assets of the Platte Program, is solely liable for the indemnification obligation assumed under this Agreement. The Platte Program’s signatories, committee members, executive director, or staff are not liable for the indemnity obligation assumed under this Agreement.

4. The Foundation has represented to Central, and Central 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. The parties explicitly acknowledge and agree that all assets held by the Foundation that are not related to the Platte Program shall not be subject to any of the terms of this Agreement and shall not be subject to the indemnification obligation of the Platte Program.

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

[Signature Page Follows]

NEBRASKA COMMUNITY FOUNDATION,

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

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

By \_\_\_\_\_  
Devin Brundage  
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.

By \_\_\_\_\_  
Jason Farnsworth  
Executive Director

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