

COTTONWOOD RANCH LAND SPONSORSHIP AGREEMENT BETWEEN
NEBRASKA PUBLIC POWER DISTRICT
AND
PLATTE RIVER RECOVERY IMPLEMENTATION FOUNDATION

THIS Lease is made this ____ day of _____, 2019 between Nebraska Public Power District (NPPD), hereafter referred to as LANDLORD, and the PLATTE RIVER RECOVERY IMPLEMENTATION FOUNDATION, TRUSTEE (FOUNDATION) acting as the Land Interest Holding Entity of the PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PROGRAM), (hereafter, the FOUNDATION and the PROGRAM are collectively referred to as "TENANT"). LANDLORD and TENANT may, at times hereafter, be referred to collectively as "the Parties."

RECITALS:

LANDLORD enters in this Lease pursuant to provisions in Article 407 in NPPD's FERC licensing for Project 1835 and the Program Land Plan. Said Article requires that LANDLORD acquire and make available as habitat 2650 acres of land. Said Article also allows that NPPD may allow the PROGRAM to manage and maintain that habitat if they so choose.

FOUNDATION is a Nebraska Non-Profit Corporation which enters this Lease for and on behalf of the PROGRAM pursuant to a Land Interest Holding Trust Agreement dated February 12, 2008 among FOUNDATION and the United States Department of the Interior and the States of Wyoming, Colorado and Nebraska.

LANDLORD and TENANT acknowledge and agree that PROGRAM will have all rights and responsibilities of TENANT as set forth herein and this Lease is made with that understanding and agreement.

The Nebraska real estate owned by NPPD, and subject matter of this Lease, is identified on Exhibit "A" which is attached hereto and incorporated herein by reference, which real estate is hereafter referred to as the Premises.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, AND EACH OF THE PARTIES INTENDING TO BE LEGALLY BOUND HEREBY, IT IS AGREED BETWEEN THE LANDLORD AND TENANT AS FOLLOWS:

1. RATIFICATION: The Parties acknowledge the foregoing recitations and adopt the same as material parts of this Agreement.
2. TERM: This Lease shall commence on January 1, 2020 and shall expire on December 31, 2032, unless first terminated pursuant to other provisions of this Lease. The Parties agree, after the expiration of the Lease term on December 31, 2032, to use good faith in any negotiations to renew or extend the term of the Lease. It is understood by the Parties that in determining whether or not to renew or extend this Lease, LANDLORD must consider,

among other considerations, the terms and conditions of any license (existing or new) that LANDLORD receives from the Federal Energy Regulatory Commission ("FERC").

3. USE: TENANT shall have use of the Premises for habitat enhancement, development, maintenance, monitoring, research, and experiments related to the Program's Adaptive Management Plan. Whooping crane habitat is currently defined as channels having at least 650 feet of unobstructed view width and 1,150 unforested width. Least tern and piping plover habitat is created and maintained on off-channel sand and water nesting sites. Both conditions exist on the Cottonwood Ranch property and will be maintained by the TENANT. Any changes to the definition of habitat will be agreed to by both the LANDLORD and TENANT.
4. RECHARGE AGREEMENT SEPARATE: This Lease is not intended to modify or alter the rights and responsibilities of any of the Parties under the terms and conditions of the Cottonwood Ranch Recharge Agreement Between Nebraska Public Power District and Platte River Recovery Implementation Foundation, Trustee and Platte River Recovery Implementation Program dated August 30, 2018 (hereafter "Recharge Agreement"). The Recharge Agreement shall be considered a wholly separate document.
5. RIGHTS: TENANT shall have rights as follows:
 - a. Full ingress and egress of the Premises for TENANT'S use as herein set forth.
 - b. To issue and obtain permits, licenses and contracts as may be required to carry out habitat enhancement, development, maintenance, monitoring, research, and experiments related to the PROGRAM'S adaptive management objectives. Any such permit, license, or contract shall not exceed the term of this Lease, and shall have appended thereto the Notice set forth on Exhibit "B" which is attached hereto.
6. RESERVATIONS: LANDLORD reserves the following rights:
 - a. The right of the officers, directors, agents, employees, and permittees of LANDLORD at all reasonable times and places to have full ingress to and egress over and across the Premises. However, not to unreasonably interfere with TENANT'S use of the Premises.
 - b. To immediately stop all activity of TENANT deemed inconsistent with this Lease after first communicating such inconsistent use to TENANT. This right of NPPD shall include, but not be limited to, the ability of NPPD to require the TENANT to immediately cease all construction or operations under this Lease should there be any negative impacts or damage to the real or personal property of any third parties. Likewise, NPPD shall require TENANT to cease all construction or operations under this Lease should those activities cause any unanticipated damage to the real or personal property of NPPD. Such decision to require the stoppage of construction or operations pursuant to this provision shall be in the sole discretion of NPPD and shall be provided in writing.

- c. The right to use the premises for agriculture in a manner that will not unreasonably interfere with the TENANTS use of the Premises. Proceeds and expenses associated with agriculture will be handled through Farmers National Company (FNC) or a similar farm management entity, retained by LANDLORD. Such entity will collect proceeds, pay taxes, management fee, and material expense of fence maintenance. Fence maintenance labor charges will be the responsibility of the grazing lease holder. Once agricultural proceeds exceed \$50,000, FNC or the farm management entity will disperse on an annual basis any monies above \$50,000 in a 50/50 split to the LANDLORD and TENANT. If agriculture funds are insufficient to cover all annual expenses they will become the sole responsibility of the TENANT and paid through the farm management entity. Both the LANDLORD and the TENANT will be responsible for their respective costs and expenses in carrying out the provisions in this agreement.
 - d. The right to use the premises for recreation in a manner that will not unreasonably interfere with the TENANT'S use of the Premises.
 - e. The right of LANDLORD, its agents, lessees, or permittees to remove from the Premises any material such as water, sand, gravel, rock, or dirt, owned by LANDLORD as is reasonable in consideration of the purposes of PROGRAM.
 - f. Rights to all water, oil, gas, coal, and other minerals including sand and gravel now or hereafter owned by LANDLORD are accepted and reserved to the LANDLORD. TENANT shall be consulted concerning any proposals by LANDLORD regarding the exercise of such rights.
7. COMMUNICATION: LANDLORD and PROGRAM shall meet in March and September of each year of the Lease Term to clarify habitat enhancement activities, maintenance activities and integration of LANDLORD retained rights.
8. MANAGEMENT: TENANT shall implement the LMP in a manner to comply with all applicable local, state, or federal ordinances, statutes, or regulations.
- a. TENANT shall abide by provisions as set forth in the PROGRAM governing documents including the good neighbor policy and testing hypothesis related to the mechanical management actions as defined in the PROGRAM'S Adaptive Management Plan, as may be amended by the Governance Committee in the future.
9. HABITAT IMPROVEMENTS: TENANT may modify existing conditions located on the Premises for the purposes of TENANTS' use as set forth below.
- a. Any improvements constructed by TENANT shall be at TENANT'S sole cost and expense.

- b. Written approval from LANDLORD shall be required for all construction of structures, erosion control measures, water direction diversions, demolition of existing structures, and ground-disturbing activities other than in-channel discing or other channel maintenance activities and maintenance of the off-channel nesting site. Such approval shall not be unreasonably withheld.
 - c. If requested in writing by LANDLORD, TENANT shall provide a plan acceptable to LANDLORD for removal of improvements made under this Lease, at TENANT's sole cost and expense, within one (1) year from and after the termination of this Lease, and shall, also within one (1) year from and after termination of this Lease, if requested by LANDLORD, restore the surface and sub-surface of the Premises to a condition that is substantially similar to the condition that such Premises were in prior to TENANT implementing improvements under the Lease. All costs and expenses for such restoration shall be borne by TENANT. Any improvements provided for in furtherance of this Lease, and any amendment thereto, that are not removed as requested by LANDLORD shall be deemed abandoned and shall thereafter belong to LANDLORD. Should LANDLORD not desire to take over ownership of such abandoned improvements, LANDLORD, at its option, may choose to pay for the removal of such improvements and thereafter require reimbursement of such removal costs from the TENANT. As an exception to the otherwise generally applicable provisions of this paragraph, the Parties agree that TENANT shall not be responsible for the removal of improvements and/or restoration of the off-river, sand and gravel, tern and plover habitat developed by the TENANT.
 - d. Should LANDLORD desire to take ownership of any of the improvements constructed on the Premises, LANDLORD shall, within ninety (90) days of termination or expiration of this Lease, provide written notice thereof to TENANT. Upon receiving such notice, TENANT shall execute a bill of sale transferring ownership of all such improvements included in LANDLORD'S request. Said transfer of improvements shall be at no cost to LANDLORD. Transfer of the requested improvements to LANDLORD shall relieve the TENANT of the responsibility of removing those improvements from the Premises. However, such transfer shall not relieve the TENANT of the obligation for removal of improvements not included in the transfer.
 - e. The provisions of (c) and (d) shall survive the Termination of this Lease.
10. MAINTENANCE: TENANT shall maintain the Premises per all existing laws and regulations. Any new fence identified as needed by the TENANT will be paid for by the TENANT. Fence maintenance will be done by grazing leases holders, with materials paid for out of agriculture generated revenues. In areas where grazing is not allowed, fence maintenance will be the responsibility of the TENANT.

11. SUBLEASE: TENANT shall not sublet or assign any part or portion of the Premises without first obtaining the consent, in writing, of LANDLORD to so do.
12. WEEDS: TENANT shall be responsible for the control of noxious weeds.
13. AGENCY: Nothing in this Lease shall be construed or interpreted as authorizing either LANDLORD or TENANT, or its agents, or employees, to act as agents or representatives for, or on behalf of, the other Party.
14. VENTURE: This Lease shall not be construed that either LANDLORD or TENANT is a partner of or engaged in a joint venture with the other Party even though development funds may in part be supplied by one Party to the other.
15. RISK: Each Party to this Lease shall assume the risk of any liability arising from its own conduct. However, the TENANT shall indemnify and save harmless the LANDLORD, its officers, agents, or representatives from and against all losses and all claims, demands, suits, actions, payments, judgments arising from personal injury or otherwise, brought or recovered against the LANDLORD, its officers, agents, or representatives by reason of any negligent act or omission of the TENANT, its agents, servants, or employees in the performance of this Lease including any and all expense, legal or otherwise, incurred by the LANDLORD, its officers, agents, or representatives in defense of claim or suit.
16. INSURANCE: The following insurance coverages shall be kept in force during the life of this Agreement by TENANT, Contractors and Subcontractors performing work under this Agreement and shall be primary with respect to any insurance or self-insurance programs covering NPPD, its directors, officers, agents, representatives and employees with respect to activities of the TENANT.
 - a. Workers' Compensation and Employers' Liability Insurance: Workers' Compensation Insurance with statutory limits as required by the State of Nebraska, and Employers' Liability Insurance with a minimum acceptable limit of \$100,000 each accident.
 - b. General Liability Insurance: General Liability Insurance against claims for damages resulting from bodily injury, including death, personal injury, and property damage. The minimum acceptable limit of liability shall be \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, such limit shall not be less than \$3,000,000.
 - c. The insurance required herein shall not exclude the following forms of protection:
 - (1) Broad Form Property Damage
 - (2) Contractual Liability
 - (3) Products/Completed Operations

- d. Automobile Liability Insurance: Automobile Liability Insurance against claims for damages resulting from bodily injury, including death and property damage, which may arise from the operations of any owned, hired or non-owned automobiles. The minimum acceptable limits of liability shall be \$1,000,000 combined single limit for each accident.
- e. Certificate of Insurance: The TENANT shall furnish NPPD with two (2) copies of a certificate of insurance evidencing coverage required in paragraphs a, b, and c. above. Such certificate(s) shall specifically state that the insurance company or companies issuing these insurance coverages shall give NPPD at least 30 days written notice in the event of cancellation of, or material change in, any of the coverages. Upon the annual renewal of such coverages under the policies set out above, TENANT shall furnish a certificate of insurance evidencing renewal of its coverage to NPPD.
- f. Insurance Company: All insurance coverages herein required of the TENANT or its contractors and sub-contractors shall be written by an insurance company(ies) transacting business as an admitted insurer in the State of Nebraska or under the Nebraska Surplus Lines Insurance Act.

17. TERMINATION:

- a. In the event of violation of any of the terms or conditions hereof by TENANT, LANDLORD shall give written Notice of the deficiency to TENANT. TENANT shall have 90 days in which to correct any such deficiency. Unless TENANT shall have corrected such deficiency, this Agreement shall terminate on the ninety-first (91st) day following service of the Notice.
- b. In the event TENANT desires to terminate the Agreement, TENANT shall give written notice to LANDLORD, effective as of January 1, of any year during the term, delivered not less than one year in advance thereof. If termination of the Agreement is due to dissolution or non-renewal of the PROGRAM, advance notice of one full year shall not be required.
- c. Any termination of this Agreement shall not relieve TENANT of any obligations, the existence, extent and amount of which shall be outstanding at the time of termination or that may accrue after, or as a consequence of such termination as set forth in this Agreement. Tenant's obligations in this Agreement that are set out in the paragraphs entitled Habitat Improvements and Risk shall survive expiration or termination of the Agreement and remain ongoing obligations of the Tenant.

18. EXPIRATION: Upon expiration of the Lease as above set forth, or upon termination of the Lease for any reason, TENANT shall yield possession of the Premises and shall abide by the provisions of paragraph 9c. Any such expiration will be communicated to the Program Governance Committee by the TENANT.

19. SOVEREIGNTY: Landlord does not waive its sovereign immunity by entering into this Lease and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Lease.
20. NOTICES: All notices required under this Lease shall be in writing and posted in the United States Mail to the last known address of the Parties. Notices to the LANDLORD will addressed to Nebraska Public Power District, Attn: Director of Corporate Environmental and Water Resources , P.O. Box 499, Columbus, Nebraska 68602-0499, notice to the TENANT will be addressed to the Platte River Recovery Implementation Program, Executive Director, 4111 4th Ave, Suite 6, and Kearney, Nebraska 68845 and Platte River Recovery Implementation Foundation, Trustee, PO Box 83107, Lincoln, Nebraska 68847. Date of postmark shall prevail.
21. DEFAULT: In the event either Party shall be in default of any of the terms or conditions of this Lease, the other Party shall have all remedies authorized by law. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.
22. SEVERABILITY: In the event any provision of this Lease is determined to be invalid or unenforceable for any reason, such determination shall not affect the remainder of this Lease.
23. BINDER: This Lease shall be binding upon the Parties and their successors, permitted assigns and legal representatives.
24. ENTIRETY: This Lease constitutes the entire agreement between the Parties, and any other agreements between the Parties, unless reduced to writing and executed by the Parties, shall be null and void.
25. MODIFICATION: Modifications to this lease may be done with agreement of both the TENANT and LANDLORD in writing and attached herein to.

IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

LANDLORD:

TENANT:

Nebraska Public Power District

Platte River Recovery
Implementation Foundation

By _____
Joseph L. Citta, Director of Corporate
Environmental and Water Resources

By _____
Diane M. Wilson, Executive Director

Date:

Date:

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT

I hereby certify that the Governance Committee of the Platte River Recovery Implementation Program has authorized the Platte River Recovery Implementation Foundation, the land interest holding entity of the Platte River Recovery Implementation Program, to enter into this agreement.

By _____
Jason Farnsworth, Executive Director

Date:

EXHIBIT "A"

Legal Description

Government Lots 3 and 4 and the accretion land thereto and a tract of land located in Government Lots 5 and 6, all in Section 9, T8N, R19W of the 6th P.M., Phelps County, Nebraska, said tract of land located in Government Lots 5 and 6 is more particularly described as follows: beginning at a point on the west line of said Government Lot 5, which is 19 chains north of the Southwest Corner of said Government Lot 5; thence easterly on a straight line to a point on the east line of Section 9, which is also the east line of said Government Lot 6, which is 22 chains and 90 links north of the Southeast Corner of said Section 9, which is also the Southeast Corner of said Government Lot 6, thence northerly upon said line to the center of the south channel of the Platte River, according to the Government Survey; thence westerly upon the center of said south channel of the Platte River to a point thereon where the west line of said Government Lot 5 would intersect said line if the same was extended; thence southerly along said west line of said Government Lot 5 and the extension thereof to the point of beginning, and

Government Lots 6 and 7 and the accretion land thereto, Section 10, T8N, R19W of the 6th P.M., Phelps County, Nebraska, and

Government Lot 5, and the accretion land to Government Lot 5, all in Section 2, T8N, R19W of the 6th P.M., Dawson County, Nebraska, excepting therefrom Interstate Highway No. 80 right-of-way, and

That part of Government Lots 6, 7, and 8, Section 2, T8N, R19W of the 6th P.M., Dawson County, Nebraska, lying south of the Interstate Highway No. 80 right-of-way and the accretion land thereto, and

Government Lots 9, 10, 11, and 12, and the accretion land thereto, Section 2, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

Government Lots 9, 10, 11, and 12, and the accretion land thereto, Section 3, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

That part of Government Lots 5 and 6 located south of the Interstate Highway No. 80 right-of-way and the accretion land thereto and Government Lots 9 and 10 and the accretion land thereto, and the accretion land to Government Lots 7 and 8, all in Section 4, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

Government Lots 1 and 2, and the accretion land thereto, Section 9, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

Government Lots 1, 2, and 3, and the accretion land thereto, Section 10, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

Government Lots 1 and 2, and the accretion land thereto, Section 11, T8N, R19W of the 6th P.M., Dawson County, Nebraska, and

All of that portion of the accretion to Lots 3, 4, 5, and 6 in Section 11, T8N, R19W, of the 6th P.M., part in Dawson County and part in Phelps County, Nebraska, located west of a line between the southeast corner of said Section 11 and the Meander Corner on the east line of Lot 8 in Section 2, T8N, R19W and located north of a surveyed line as established by Dale W. Sall, L.S. #345 on November 16, 1983, said lines are described as follows: referring to the Southwest Corner of said Section 11; thence 1,709.00 feet bearing N 0°55'40" E (assumed bearing) on the west line of Lot 9 and a portion on the west line of Lot 3 of said Section 11; thence 2,767.05 feet bearing N 1°14'30" E on the west line of said Lot 3 to the point of beginning on said Sall survey line extended westerly; thence 5,240.19 feet bearing S 87°02'25" E on said Sall survey line and its extension to a point on said line between the Southeast Corner of Section 11 and the Meander Corner on the east line of Lot 8, said point being 4,107.94 feet north of the Southeast Corner of said Section 11; thence 930.15 feet bearing N 1°09'31" E on said line between Southeast Corner of Section 11 and the Meander Corner on the east line of Lot 8 ending on the thread of the main channel of the Platte River.

The West Half and the Northeast Quarter of Section 16, T8N, R19W of the 6th P.M., Phelps County, Nebraska.

EXHIBIT "B
Appended Notice

"This (lease, license, permit, contract, subcontract) is expressly subject to Cottonwood Land Sponsorship Agreement (Lease) dated_____, 2009, between LANDLORD and TENANT and any and all modifications and amendments thereto. PROGRAM has rights as outlined in above referenced Lease between LANDLORD and TENANT for development of habitat per the Land Management Plan (LMP).

The (lessee, licensee, permittee, contractor, subcontractor) releases LANDLORD, their successors, assigns, officers, directors, agents, and employees from any and all claims arising directly or indirectly from any acts, neglect, or the omission of LANDLORD in connection with construction, operation, and maintenance of land and any project works. The (lessee, licensee, permittee, contractor) also agrees to indemnify and hold LANDLORD, TENANT and the PROGRAM harmless from any loss, damage, or expense which may be suffered by LANDLORD, TENANT or the PROGRAM, or each of them, directly or indirectly occasioned by any act, neglect, or omission of said (lessee, licensee, permittee, contractor)."

"In the event of the termination of the Lease between LANDLORD and TENANT dated_____, 2009, NPPD shall assume this (lease, license, permit, contract) for the remainder of its; Provided, however, NPPD at *any* time within 90 days thereafter and for any reason may terminate this (lease, license, permit, contract). **A 60 day written notice of termination must be given to (lessee, licensee, permittee, and contractor).**"