

**WATER SERVICE AGREEMENT-
ELWOOD RESERVOIR GROUNDWATER RECHARGE FROM EXCESS FLOWS BETWEEN
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,
NEBRASKA COMMUNITY FOUNDATION
AND
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

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** (representing all signatories to the Platte River Recovery Implementation Program), 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, and the **Platte River Recovery Implementation 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"). Central and the Platte Program may individually be referred to as "Party" and shall collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Central is the owner of the Elwood Reservoir as shown on Exhibit A; and

WHEREAS, in November 2018 Central was granted an Appropriation from the Nebraska Department of Natural Resources (hereinafter "DNR") for a "Temporary Permit to Appropriate Water for Groundwater Recharge via the E65 Canal, Phelps Canal, Elwood Reservoir, and Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA" (hereinafter "Appropriation"); and

WHEREAS, the Foundation and the Platte Program desire Central to provide groundwater recharge in Elwood Reservoir for purposes of enhancing Platte River stream flows; and

WHEREAS, Central desires to provide such recharge services within the red highlighted areas shown in Exhibit A; and

WHEREAS, Central also has an agreement with the Tri-Basin Natural Resources District (Tri-Basin) and the State of Nebraska (State) for recharge services using Elwood Reservoir and the E65 Canal;

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, Central will provide the Platte Program and Tri-Basin/State with groundwater recharge via seepage through the E65 Canal and Elwood Reservoir for the purposes described above. That part of the Total Amount Diverted that is pumped into Elwood Reservoir shall be divided into a 50% share to the Platte Program and a 50% share to Tri-Basin/State. The remainder of the Total Amount Diverted that is released into the E65 Canal shall be credited to Tri-Basin/State. The water billed to the Platte Program shall not exceed 30,000 acre feet per calendar year unless agreed to by the Platte Program in writing. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume located at milepost (MP) 2.8 (including water

diverted and not available for recharge because of evaporation). The portion of the Total Amount Diverted that is delivered to Elwood Reservoir will be estimated using pump performance curves developed by Central and/or annubar measurements, with all remaining diversions passing the MP 2.8 flume considered diversions for the E65 Canal. The Total Amount Diverted will be adjusted, as appropriate, by subtracting any deliveries or releases made by Central from the E65 Canal, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season.

b. Central will provide written notice to the Platte Program when flows are available for diversion into Elwood Reservoir for recharge under the Appropriation. The Platte Program shall provide written notice to Central of the date when delivery into Elwood Reservoir may begin and a maximum amount of water to be diverted into Elwood Reservoir. Central will then begin diversions in accordance with this Agreement. If the Platte Program requests, in writing, that Central not deliver, or reduce or cease diversions, Central agrees to not deliver, reduce or cease diversions as soon as practicable and the Platte Program's portion of diversions under this agreement will be made available to Tri-Basin/State.

c. Central may make reasonable adjustments in the Total Amount Diverted and Elwood Reservoir diversions as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with the Platte Program in making such adjustments. All data used by Central regarding the Total Amount Diverted and Elwood Reservoir diversion calculations shall be shared with the Platte Program.

d. Central may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the canal or Elwood Reservoir, (b) high groundwater levels, or (c) icing conditions, all as determined by Central.

e.

2. **WATER SERVICE CHARGES.** The Platte Program shall have the Foundation pay Central a Water Service Charge on a per acre-foot basis as specified in Exhibit B for the water service described above. All measurements made through Central's measuring device and pumping estimates into Elwood Reservoir, so recorded by Central operating personnel shall be considered final. Central shall invoice the Platte Program for the water service charges quarterly. Payment shall be due within 60 days of invoice.

3. **TERM.** The term of this Agreement shall commence when this Agreement is signed by the Parties (the "Commencement Date"), and shall expire on December 31, 2023.

4. **DATA SHARING.** The Parties 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 Appropriation. The water service described herein shall be consistent with and limited to the terms and provisions of the Appropriation.

6. **FORCE MAJEURE.** Central 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 Central, 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 Central could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of

Central under this Agreement shall be excused and suspended without penalty or damages, provided that Central shall give the Foundation and the Platte Program prompt written 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 Central proceeds with reasonable diligence to remedy its inability to perform and informs the Foundation and the Platte Program of the actions taken to remedy the consequences of the event or condition.

7. **DEFAULT.** If any 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 any Party, the non-defaulting Party/ies shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party/ies may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party/ies fails to cure, the non-defaulting Party/ies shall be entitled to any and all legal and equitable remedies except Central's total liability to the Foundation and the Platte Program for any loss or damage, including but not limited to special and consequential damages, arising out of or in connection with the performance of this Agreement shall not exceed either the amount of Water Service Charges paid by the Foundation and the Platte Program to Central pursuant to this Agreement or \$50,000, whichever is less.

8. **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 (including, with respect to the time period covered by this Agreement, the Water Service Agreement dated October 20, 2017 (WSA); Amendment No. 1 to the WSA dated January 8, 2018; and Amendment No. 2 to the WSA dated November 26, 2018) and understandings between the Parties with respect to such subject matter.

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

10. **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 Foundation or the Platte Program without the written consent of Central.

11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.

12. **FUNDING.** Should the Foundation or Platte Program determine that the anticipated source of funding will no longer be available, the Foundation or Platte Program will utilize the termination provisions in Section 1.d., to assure funding is available until diversions cease.

13. **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,

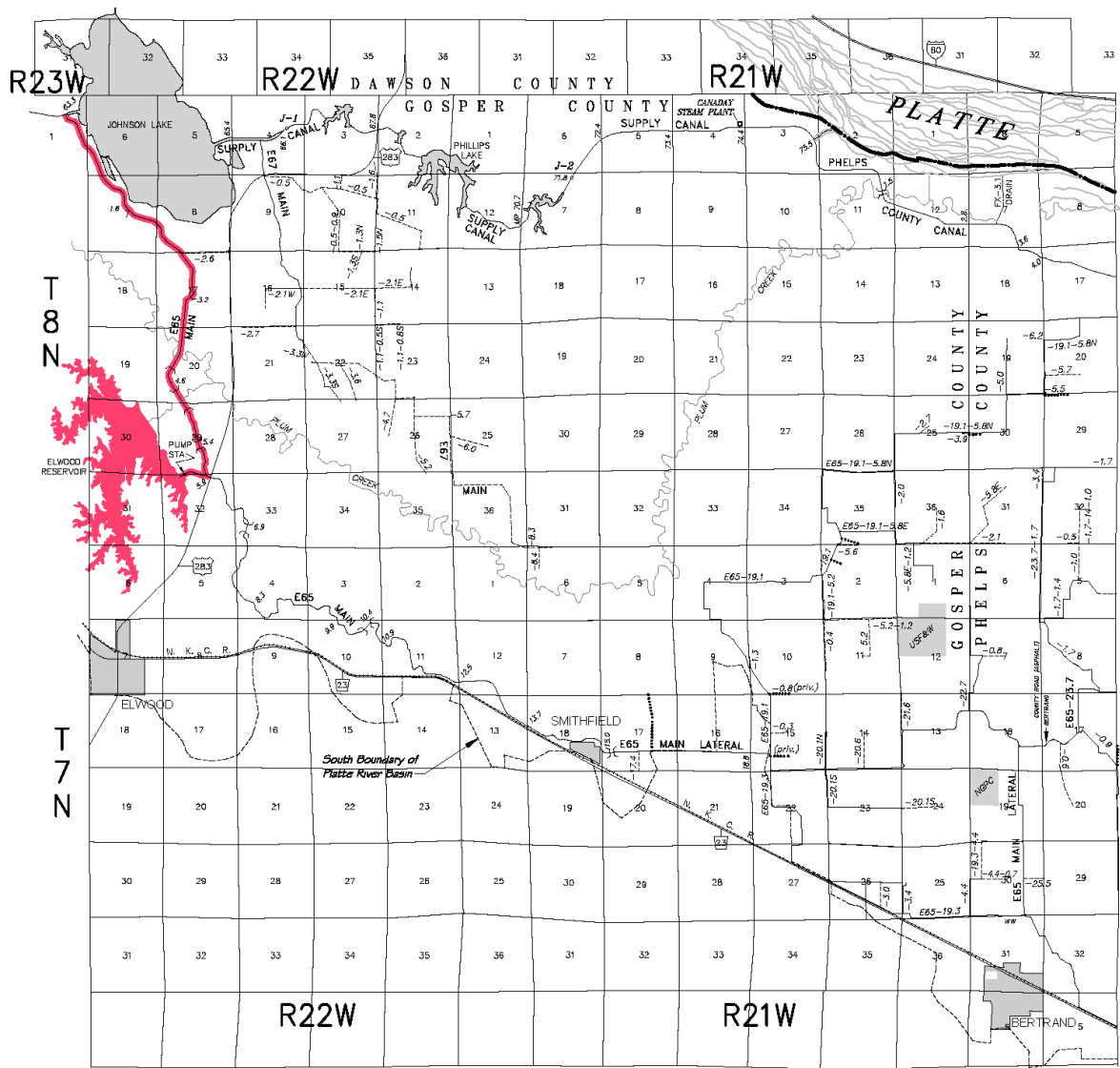
By _____
Diane M. Wilson
Manager of Public/Private Partnerships

PLATTE RIVER RECOVERY IMPLEMENTATION
PROGRAM – Office of the Executive Director

By _____
Jason Farnsworth
Executive Director

THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT,

By _____
Devin Brundage
General Manager



LEGEND

— EXCESS FLOWS RECHARGE

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CENTRAL
Nebraska Public Power
and Irrigation District
Holdrege, Nebraska

**PLATTE RIVER EXCESS FLOWS FOR RECHARGE
IN ELWOOD RESERVOIR,
GOPHER COUNTY, NEBRASKA**

DRAFTED BY	TMR	APPROVED	
SUBMITTED BY	DRF	BY	
SCALE	1" = 1.4 Mi.	DRAWING	
DATE	01/21/2015	NO.	RCHG_JAN2015

EXHIBIT B	
Water Service Charges	
Elwood Reservoir Diversions	
Year	\$ / Acre foot
2019	\$48.46
2020	\$49.92
2021	\$51.41
2022	\$52.96
2023	\$54.54