

COTTONWOOD RANCH RECHARGE AGREEMENT BETWEEN
NEBRASKA PUBLIC POWER DISTRICT
AND
PLATTE RIVER RECOVERY IMPLEMENTATION FOUNDATION, TRUSTEE
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

This Agreement is made this _____ day of _____, 2018 between NEBRASKA PUBLIC POWER DISTRICT, (hereafter referred to as "NPPD"), and the PLATTE RIVER RECOVERY IMPLEMENTATION FOUNDATION, TRUSTEE, (FOUNDATION) and the PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM, (hereafter referred to as PROGRAM), (hereafter the FOUNDATION and PROGRAM are collectively referred to as "TENANT"), NPPD and TENANT at times may be collectively referred to as "the Parties" herein.

RECITALS:

WHEREAS, the FOUNDATION is a Nebraska Non-Profit Corporation which enters into this Agreement 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; and

WHEREAS, the Nebraska Community Foundation is the financial management entity providing support to the Governance Committee of the PROGRAM and the Nebraska Community Foundation enters into agreements as the contracting agent of the Governance Committee of the PROGRAM and the Nebraska Community Foundation only has authority to enter into agreements specifically authorized by the Governance Committee of the Program; and

WHEREAS, NPPD and TENANT acknowledge and agree that the PROGRAM will have all rights and responsibilities of TENANT as set forth herein and this Agreement is made with the understanding that the PROGRAM shall take all actions required or permitted to be taken by the TENANT hereunder; and

WHEREAS, the Nebraska real estate owned by NPPD, being the subject matter of this Agreement, 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 NPPD 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 Agreement shall commence on the date of execution hereof and shall terminate on December 31, 2032, unless sooner terminated pursuant to the termination provisions of this Agreement. The Parties understand that the effectiveness of the Project, and the useful life of the improvements made by TENANT, may extend beyond the initial Lease Term referenced above. As such, the Parties agree to use good faith in any negotiations to renew or extend this Agreement after expiration of the initial Lease Term for up to an additional 36 years. It is understood by the Parties that in determining whether or not to renew or extend this Agreement, NPPD must consider, among other considerations, the terms and conditions of any license (existing or new) that NPPD receives from the Federal Energy Regulatory Commission ("FERC").
3. USE: In addition to the rights conferred to the FOUNDATION under the Cottonwood Ranch Land Sponsorship Agreement Between NPPD and the FOUNDATION, hereafter referred to as "Sponsorship Agreement", dated May 4, 2009, TENANT shall have use of the Premises to establish a Broad Scale Recharge Project, hereafter referred to as "Project," for which the scope, design, engineering, specifications and methods of construction are fully set out and specified in the "Contract Plan" attached hereto as Exhibit "B" and incorporated herein by reference, with said Project having the primary goal of re-timing, groundwater charging and providing flow back to the Platte River to help accomplish PROGRAM water-related goals. In addition, the Project will provide an increase in suitable whooping crane habitat by creating shallow areas of ponded water. After all activities as set out in the Contract Plan are complete, TENANT shall operate the Broad Scale Recharge Project in compliance with the Cottonwood Ranch Broad-Scale Recharge Preliminary Operations Plan and Analysis (hereafter "Operations Plan") attached hereto as Exhibit "C" and incorporated herein by reference. All aspects of the scope, design, engineering, specifications, installation, construction and operation of the Project are set out in the Contract Plan and the Operations Plan along with any subsequent approved Annual Operations Plan (as defined below herein). Any additional recharge, construction, activities, operations or scopes of work that are outside the scope, design, engineering, specifications, installation, construction and methods of operation contained in the Contract Plan, the Operations Plan or any approved Annual Operations Plan shall not be undertaken by TENANT without first receiving, in writing, the prior approval of NPPD. It is expected that water delivery for the Project could occur year-round, whenever divertible excess flows in the Platte River are available.
4. SPONSORSHIP AGREEMENT SEPARATE: This Agreement is not intended to modify or alter the rights and responsibilities of any of the Parties under the terms and conditions of the Sponsorship Agreement and said Sponsorship Agreement shall be considered a wholly separate agreement.

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 obtain necessary permits, licenses, approvals and enter into contracts as may be required to carry out the scope, design, engineering, specifications, installation, construction and operations as set out in the Contract Plan, Operations Plan and any approved Annual Operations Plan. Any such permit, license, or contract shall not exceed the term of this Agreement.
6. **RESERVATIONS:** NPPD reserves the following rights:
- a. The right of the officers, directors, agents, employees, and permittees of NPPD, at all reasonable times and places, to have full rights of ingress to and egress from the Premises. However, NPPD shall not unreasonably interfere with TENANT's use of the Premises under this Agreement.
 - b. To immediately stop all activity of TENANT deemed inconsistent with this Agreement, Contract Plan, Operations Plan and/or any Annual Operations Plan 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 Agreement 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 Agreement 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 provided in writing.
 - c. The right of NPPD, its employees, agents, lessees, or permittees to remove from the Premises any material such as water, sand, gravel, rock, or dirt, owned by NPPD as is reasonable in consideration of the Land Management Plan for Nebraska Public Power District Cottonwood Ranch Property, Sponsorship Agreement, and the purposes of the Project.
 - d. Rights to all water, oil, gas, coal, and other minerals, including sand and gravel, now or hereafter owned by NPPD are reserved to NPPD. TENANT shall be consulted concerning any proposals by NPPD regarding the exercise of such rights.
7. **COMMUNICATION:** NPPD and TENANT shall meet annually, in November of each year during the term of this Agreement, to discuss the status of recharge

operations, maintenance activities, and the integration of the Project related to NPPD's retained rights. At least thirty (30) days prior to the annual meeting, TENANT shall provide NPPD with a copy of a proposed Annual Operations Plan (the "Annual Operations Plan") for the upcoming year. The proposed Annual Operations Plan for the upcoming year will be discussed at the annual meeting. NPPD must approve each upcoming years' Annual Operations Plan before such plan may be implemented by the TENANT. Should the Annual Operations Plan for the upcoming year not meet the approval of NPPD, NPPD may, at its reasonable discretion, require the TENANT to cease all operations under this Agreement that have not been previously approved by NPPD until such time that the TENANT submits an Annual Operations Plan that meets NPPD's approval. The parties agree that the TENANT may continue to operate under the terms of the prior years' Annual Operations Plan, as previously approved by NPPD, for a maximum period of six (6) months while the Parties work to reach an agreement on a new Annual Operations Plan that is acceptable to NPPD. If the new Annual Operations Plans submitted by TENANT does not meet the approval of NPPD, NPPD agrees to provide the TENANT with written notice of the deficiencies noted in the prospective Annual Operations Plan. If no prospective Annual Operations Plan is approved by NPPD within six (6) months after the date of the annual meeting, NPPD may, at its discretion, require that the TENANT cease all operations on the Premises until such time that NPPD approves a new Annual Operations Plan, or until such time that this Agreement is terminated, whichever occurs first. NPPD and TENANT agree to reasonably work together to address any items noted by NPPD as deficiencies in the Operations Plan.

8. MANAGEMENT: TENANT shall implement the Contract Plan, Operations Plan and any approved Annual Operations Plan in a manner to comply with all applicable local, state, or federal ordinances, statutes, or regulations. TENANT shall abide by all provisions as set forth by the PROGRAM's guidance documents, and the attachments thereto, entitled Platte River Recovery Implementation Program, as may be amended from time to time, as established on October 24, 2006, including the good neighbor policy.
9. IMPROVEMENTS TO PREMISES: TENANT may modify existing conditions located on the Premises for the purposes of TENANT's use as set forth in the Contract Plan.
 - a. Any improvements constructed by TENANT pursuant to design, engineering and specifications contained in the Contract Plan, or otherwise made under the terms of this Agreement, shall be at TENANT's sole cost and expense. Likewise, all costs incurred for the operations under the Operations Plan and all subsequent Annual Operation Plans, or in the implementation or furtherance of this Agreement shall be at the sole cost and expense of TENANT.

- b. Written approval from NPPD shall be required for all modifications to the Premises, including but not limited to, construction of structures, erosion control measures, water direction diversions, demolition of existing structures, and ground disturbing activities that are not included in the Contract Plan, Operations Plan or any Annual Operations Plan, whether such modifications occur during implementation of the Project or after completion of the same.
- c. No individual dike and/or berm shall be constructed on the Premises until the final design plans for such dike and/or berm are submitted to the Nebraska Department of Natural Resources, or the successor agency thereto, ("NDNR") for review. Upon receipt of written notice from NDNR, with copies provided to NPPD, that the proposed dike and/or berm either: (1) do not constitute a "dam" or a "high hazard potential dam" under applicable law; or (2) are otherwise exempt from such regulation, the TENANT shall be entitled to proceed with construction of the proposed dike and/or berm in accordance with the submitted design Contract Plan.
- d. If requested in writing by NPPD, TENANT shall provide a plan acceptable to NPPD for removal of improvements, at TENANT's sole cost and expense, within one (1) year from and after the termination of this Agreement, and shall, also within one (1) year from and after termination of this Agreement, if requested by NPPD, 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 the Project. All costs and expenses for such restoration shall be borne by TENANT. Any improvements provided for in furtherance of this Agreement, and any amendment thereto, that are not removed as requested by NPPD shall be deemed abandoned and shall thereafter belong to NPPD. Should NPPD not desire to take over ownership of such abandoned improvements, NPPD, at its option, may choose to pay for the removal of such improvements and thereafter require reimbursement of such removal costs from the TENANT.
- e. Should NPPD desire to take ownership of any of the improvements constructed on the Premises, NPPD shall, within ninety (90) days of termination or expiration of this Agreement, 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 NPPD'S request. Said transfer of improvements shall be at no cost to NPPD. Transfer of the requested improvements to NPPD 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.
- f. The provisions of (d) and (e) shall survive the Termination of this Agreement.

10. MAINTENANCE: TENANT shall maintain the Project and Premises per all existing laws and as stated in the Contract Plan, Operations Plan and any Annual Operations Plan. Any new fence identified for the Project by TENANT or NPPD will be paid for by TENANT. TENANT, at TENANT'S expense shall install new fencing around TENANT'S Project. The location and type/grade of fencing shall be pre-approved by NPPD prior to installation. Any fencing installed for, or as a consequence of, the Project will be maintained by NPPD, except that TENANT shall be responsible for the repair of any damages caused by TENANT.
11. INCREASE IN COSTS OF MAINTENANCE OR LOSS OF REVENUE TO NPPD: NPPD, its employees, agents, lessees and permittees currently use the Premises for agricultural, grazing and recreational purposes. TENANT is expected to use its best efforts to ensure that its activities and operations under this Agreement will not unreasonably interfere with such uses of the Premises. The agricultural and grazing leases provide a source of proceeds that are used by NPPD to pay taxes, management fees and the costs of maintenance. However, the Parties recognize that there may be potential negative impacts that implementation of the Project could have on existing and future agriculture and grazing practices which have the potential to negatively impact farm and ranching revenues of NPPD. In addition, the parties recognize that the TENANT'S activities and operations on the Premises could cause an increase in maintenance costs to NPPD. If in the reasonable judgment of NPPD, the activities or operations of the TENANT on the Premises do cause such a loss of revenues to the extent that any of the costs of taxes, management fees and costs of maintenance are no longer covered by the revenues received from the agricultural and grazing practices/leases, the TENANT shall, within thirty (30) days of receipt of written notice of such costs, reimburse NPPD for all such costs that are no longer covered by the revenues cited above. TENANT shall likewise, within thirty (30) days of receiving similar written notice, reimburse NPPD for all increases in maintenance costs incurred by NPPD due to TENANT'S operations and activities. If any such written notice is provided to TENANT hereunder, TENANT shall be entitled to receive a copy of the documentation demonstrating either the loss of revenues or the increase in maintenance costs attributable to TENANT's operations and activities.
12. ASSIGNMENT OF THIS AGREEMENT: TENANT shall not sublet or assign any part or portion of the Premises, or this Agreement, without first obtaining the consent, in writing, of NPPD to so do. Such consent shall be at the sole discretion of NPPD. If the PROGRAM is dissolved for any reason, is not renewed, or should the PROGRAM default hereunder, the TENANT may assign its interest in this Agreement to one or more PROGRAM signatories after first receiving the consent of NPPD. Should NPPD decline the request of an assignment to Program signatories, NPPD is willing to work with one or more Program signatories to develop a follow up agreement with mutually acceptable terms and conditions. . If any assignment occurs, the assignee(s) shall assume all past, current and future obligations and responsibilities of the TENANT as provided herein.

If the FOUNDATION is no longer the Trustee under the Land Interest Holding Trust Agreement for any reason, the FOUNDATION may assign its responsibilities and interest under this Agreement to the successor Trustee of the Land Interest Holding Trust Agreement without the requirement of written consent from NPPD, provided that the successor assumes all past, current, and future obligations and responsibilities of the FOUNDATION as provided herein.

13. ASSIGNMENT OF WATER SERVICES AGREEMENT: In connection with the implementation of the Project, the Nebraska Community Foundation, a Nebraska non-profit corporation (representing all signatories to the Program) and the PROGRAM will enter into a Water Service Agreement with The Central Nebraska Public Power and Irrigation District (hereafter "Central") for the construction and operation of a water diversion system/program that will obligate Central to supply the necessary water resources for the implementation and operation of the Project. Pursuant to the terms of the Water Service Agreement with Central, should the PROGRAM be dissolved, not renewed, no longer wish to operate the Project on the Premises or should the PROGRAM be declared in default under the terms and conditions of said Water Service Agreement, the Nebraska Community Foundation may assign its interest in the Water Service Agreement to one or more PROGRAM Signatories (consisting of the Department of Interior, State of Nebraska, State of Wyoming or the State of Colorado). The Water Service Agreement further states that in the case that no PROGRAM Signatory wishes to accept such assignment, then the Agreement shall terminate. Provided, however, the Water Services Agreement also states that Central is willing to develop a follow up agreement with NPPD, on mutually acceptable terms and conditions.
14. WEEDS: TENANT shall be responsible for the control of noxious weeds.
15. AGENCY: Nothing in this Agreement shall be construed or interpreted as authorizing either NPPD or TENANT, or its agents, or employees, to act as agents or representatives for, or on behalf of, any of the other Parties.
16. VENTURE: This Agreement shall not be construed so that either NPPD or TENANT is a partner of or engaged in a joint venture with the other Party to the Agreement.
17. RISK: Each party to this Agreement shall assume the risk of any liability arising from its own conduct. However, TENANT shall indemnify and save harmless NPPD, its officers, agents, or representatives from and against all losses and all claims, damages, demands, suits, actions, payments, and judgments arising out of any actions taken by TENANT, its directors, agents, contractors, their subcontractors, servants, or employees in the conduct of TENANT's operations in furtherance of this Agreement and/or the implementation of the Project and the Contract Plan, Operations Plan and any approved Annual Operations Plan, including any and all expenses, legal or otherwise, incurred by NPPD, its officers,

agents, or representatives in defense of claim or suit. The act of NPPD providing approval, pursuant to the terms of this Agreement, of any plans, scope, design, engineering, specifications, methods of construction or methods of operations hereunder shall not be deemed to impute any liability on NPPD for providing such approvals. Should any liability be attributed to NPPD by third parties for providing such approvals, TENANT agrees to fully indemnify and save harmless NPPD for all such losses, claims, damages, demands, suits, actions, payments, and judgments associated therewith, as set out in this paragraph.

This Paragraph shall survive the Termination of this Agreement.

18. 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.

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.

19. TERMINATION:

- a. In the event of violation of any of the terms or conditions hereof by TENANT, NPPD 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 NPPD, 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 Improvements to the Premises, Assignment of this Agreement, Assignment of Water Services Agreement and Risk shall survive expiration or termination of the Agreement and remain ongoing obligations of the Tenant.

20. EXPIRATION: Upon expiration of the Agreement as above set forth, or upon termination of the Agreement for any reason, TENANT shall yield possession of the Premises.
21. SOVEREIGNTY: NPPD does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
22. NOTICES: All notices required under this Agreement shall be in writing and posted in the United States Mail to the last known address of the Parties. Notices to NPPD will be addressed to Nebraska Public Power District, Water Resources Manager, P.O. Box 499, Columbus, Nebraska 68602-0499, notice to the PROGRAM will be addressed to the PROGRAM, Land Manager, 4111 4th Avenue, Suite 6, Kearney, Nebraska 68845, and notice to TENANT will be addressed to the Platte River Recovery Implementation Foundation, Executive Director, PO Box 83107, Lincoln, Nebraska 68501-3107. Date of postmark shall prevail.
23. DEFAULT: In the event either Party shall be in default of any of the terms or conditions of this Agreement, the other Party shall have all remedies authorized by law, except as stated otherwise herein. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.
24. SEVERABILITY: In the event any provision of this Agreement is determined to be invalid or unenforceable for any reason, such determination shall not affect the remainder of this Agreement.
25. BINDER: This Agreement shall be binding upon the Parties and their successors, permitted assigns and legal representatives.
26. ENTIRETY: With the exception of the Sponsorship Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any other agreements between the Parties, unless reduced to writing and executed by the Parties, shall be null and void.
27. MODIFICATION: Modifications to this Agreement may be done with written agreement of both TENANT and NPPD, and attached hereto.

(Signature Page Follows)

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

NEBRASKA PUBLIC POWER DISTRICT

PLATTE RIVER RECOVERY
IMPLEMENTATION FOUNDATION,
TRUSTEE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

By: _____

Title: _____

Date: _____

CONSENT

The Nebraska Community Foundation is signing this Agreement below to provide its consent and agreement to the provisions of Paragraph 13 hereof relating to the assignment of the Water Service Agreement by the Nebraska Community Foundation as the contracting agent of the Governance Committee of the PROGRAM and to acknowledge that the Nebraska Community Foundation holds contributions to the PROGRAM provided by the PROGRAM signatories in separate accounts and that the Nebraska Community Foundation, as the financial management entity providing support to the Governance Committee of the PROGRAM and at the authorization of the Governance Committee of the PROGRAM, agrees to utilize such contributions of the PROGRAM signatories as necessary to fulfill the requirements of the TENANT hereunder. No other accounts or funds held by the Nebraska Community Foundation shall be utilized to fulfill the obligations of the PROGRAM hereunder.

NEBRASKA COMMUNITY FOUNDATION

By: _____

Title: _____

Date: _____

Exhibit "A"

Insert Legal Description

Exhibit “B”

[Contract Plan]

Exhibit "C"

[Operations Plan]

Cottonwood Ranch Broad-Scale Recharge Preliminary Operations Plan and Analysis

4833-2666-4044, v. 2