

DRAFT

**WATER SERVICE AGREEMENT – STORAGE WATER PURCHASE
BETWEEN
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,
NEBRASKA COMMUNITY FOUNDATION, INC. and
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

THIS AGREEMENT made and entered into this ____ day of _____, 2014, 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 3833 South 14th Street, Lincoln, Nebraska 68501-3107, hereinafter referred to as "Foundation," and 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," (jointly referred to as "Parties" and individually as "Party."

WITNESSETH:

WHEREAS, on December 2, 2013, Central offered to the Platte Program Net Controllable Conserved Water to fulfill the requirements of Article 402 of Central's FERC license; and

WHEREAS, on December 3, 2013, the Platte Program declined the offer to purchase the Net Controllable Conserved Water; and

WHEREAS, the Platte Program and Central have agreed upon terms and conditions under which storage water will be transferred to the Environmental Account in 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. DEFINITIONS. Unless otherwise defined, the capitalized terms used herein shall have the meaning set forth in Central's FERC license for Project No. 1417 (FERC License).
2. WATER SERVICE. Central shall request the Nebraska Department of Natural Resources (NDNR) to contribute storage water to the Environmental Account on or before October 1 of each year during the term of this Agreement with the amount to be contributed determined as follows:
 - a. If Central determines that storage water is available for purchase by the Platte Program, Central will notify the Platte Program in writing by May 1 of the maximum amount of water that is available.

- b. The Platte Program shall notify Central in writing by August 1 of the amount of water which the Platte Program wishes to transfer to the Environmental Account as limited by paragraph 2(a) "Storage Water Amount". If no notification is provided by the Platte Program to Central by August 1, then the quantity of water to be transferred shall be zero.
3. **PURCHASE PRICE.** The payment for water service shall be the Storage Water Amount as designated in Section 2(b) multiplied by the price shown in Attachment A for the applicable year. Payments shall be due on September 1 of each year. Past due payments shall accrue interest at 1.5% per month or the maximum legal rate, whichever is less, until paid in full.
4. **TERM.** The term of this Agreement shall commence when this Agreement is signed by the Parties and continue until June 30, 2038, unless earlier terminated as herein provided.
5. **WATER APPROPRIATIONS.** The source of supply for the water service shall be Central's storage appropriation A-2374 in Lake McConaughy. The storage use appropriation for the Environmental Account is A-17695. The water service delivered pursuant to this Agreement shall be consistent with and limited to the terms and provisions of the water appropriations held by Central. Storage water contributed to the Environmental Account pursuant to this Agreement shall be subject to all of the rules, regulations, terms and conditions applicable to the Environmental Account.
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, drought, 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). 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 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 provides progress reports to the Platte Program describing 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 shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party may cure the default within sixty (60) 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 pursue in arbitration any and all legal and equitable remedies available under Nebraska law, including termination of this Agreement.
8. **TERMINATION.** This Agreement shall terminate if the Platte Program ceases to exist for any reason or if the Platte Program is not renewed or reauthorized by the United States Congress.
9. **ARBITRATION.** If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they expressly agree that any dispute, controversy or claim

arising out of or relating to this this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (AAA), or its successors, in accordance with the Commercial Arbitration Rules of the AAA, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

10. 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.
11. AMENDMENT. No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.
12. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding on the Parties, their successors and assigns.
13. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.

THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT,

Date _____

By

Don D. Kraus
General Manager

PLATTE RIVER RECOVERY IMPLEMENTATION
PROGRAM – Office of the Executive Director

Date _____

By

Jerry F. Kenny, Ph.D.
Executive Director

NEBRASKA COMMUNITY FOUNDATION

Date _____

By

Diane M. Wilson
Chief Operating Officer/Chief Financial Officer

Exhibit A

Year	Price per Acre Foot
2014	\$250
2015	\$260
2016	\$270
2017	\$281
2018	\$292
2019	\$304
2020	\$316
2021	\$329
2022	\$342
2023	\$356
2024	\$370
2025	\$385
2026	\$400
2027	\$416
2028	\$433
2029	\$450
2030	\$468
2031	\$487
2032	\$506
2033	\$527
2034	\$548
2035	\$570
2036	\$592
2037	\$616