WATER SERVICE AGREEMENT – RECHARGE FROM EXCESS FLOWS
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."

WHEREAS, Central is the owner of the Phelps Canal as shown on Exhibit A; and

WHEREAS, Central filed in September of 2012 with the Nebraska Department of Natural Resources (hereinafter "DNR") a "Petition for Leave to File an Application for a Permit to Appropriate Water for Groundwater Recharge on the E65 and Phelps Canal in Gosper, Phelps and Kearney Counties (hereinafter "Appropriation"); and

WHEREAS, the Platte Program desires Central to augment Platte River stream flows via groundwater recharge; and

WHEREAS, Central desires to provide such recharge services.

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 with groundwater recharge via seepage through the Phelps Canal for the purposes described above equal to seventy five percent (75%) of the Total Amount Diverted, as hereinafter defined, in the non-irrigation season subject to reservation as provided in paragraph 6. The Total Amount Diverted shall be measured by Central using the Phelps Canal measuring flume located at milepost 1.6 on the Phelps Canal (including water diverted and not available for recharge because of evaporation). The Total Amount Diverted will be adjusted by subtracting any deliveries or releases made by Central from the Phelps Canal and for the difference in storage in the canal at the end of the irrigation season, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season. The non-irrigation season will begin when Central stops releasing water into sections of the Phelps Canal for irrigation and end when Central begins releasing water into sections of the Phelps Canal for irrigation, as determined by Central.

b. Central may make reasonable adjustments in the Total Amount Diverted 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 calculations shall be shared with the Platte Program.

c. Central may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to maintenance on the canal, construction on the canal, or if high groundwater levels are observed, as determined by Central. The Platte Program may also set an annual limit on the Total Amount Diverted under this Agreement. If an annual limit is desired, the limit shall be provided in writing to Central prior to January 1st of each year.

2. WATER SERVICE CHARGES. The Foundation shall pay Central for the water service described above as follows:

a. A Water Service Charge specified in Exhibit B is applicable for the Platte Program's share of the Total Amount Diverted, adjusted according to provisions in paragraph 1 above. All measurements made through Central's measuring device and so recorded by Central operating personnel shall be considered final. Central shall invoice the Foundation for the water service charges quarterly if diversions pursuant to this agreement are made within that quarter. 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 Foundation, the Platte Program, and Central (the "Commencement Date"), and shall expire on December 31, 2019.

4. DATA SHARING. Central and the Platte Program 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 subject to the DNR approving such Appropriation. The water delivered pursuant to this Agreement shall be consistent with and limited to the terms and provisions of the Appropriation.

6. RESERVATION NOTICE – The Nebraska Department of Natural Resources (State) and the Tri-Basin Natural Resources District (Tri-Basin) have also signed water service agreements with Central for groundwater recharge service using the Phelps Canal. These agreements provide that a reservation notice will be provided to Central by December 1 of each year if either Tri-Basin or the State wishes to reserve a part of the Total Amount Diverted. If either Tri-Basin or the State makes a reservation, then the Platte Program's share will be 75% of the Total Amount Diverted. If no reservation is provided by Tri-Basin or the State, then the Platte Program's share of the Total Amount Diverted will be 100%. Central will provide the Platte Program with notice by December 15th of each year regarding any reservation made by Tri-Basin or the State.

7. 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 Platte Program 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 Platte Program of the actions taken to remedy the consequences of the event or condition.

8. 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/s shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party fails to cure, the non-defaulting Party/s shall be entitled to any and all legal and equitable remedies except Central's total liability to the Platte Program and Foundation 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 to Central pursuant to this Agreement or $50,000, whichever is less.

9. 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.

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

11. 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 Platte Program or the Foundation without the written consent of Central.

12. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

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

NEBRASKA COMMUNITY FOUNDATION

Date _____ By _____
Diane M. Wilson
Chief Operating Officer/Chief Financial Officer

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM – Office of the Executive Director

Date _____ By _____
Jerry F. Kenny, Ph.D.
Executive Director

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,

Date _____ By _____
Don D. Kraus
General Manager

Water Service Agreement – Recharge from Excess Flows
Between Central and Foundation/Platte River Program

Exhibit "A"

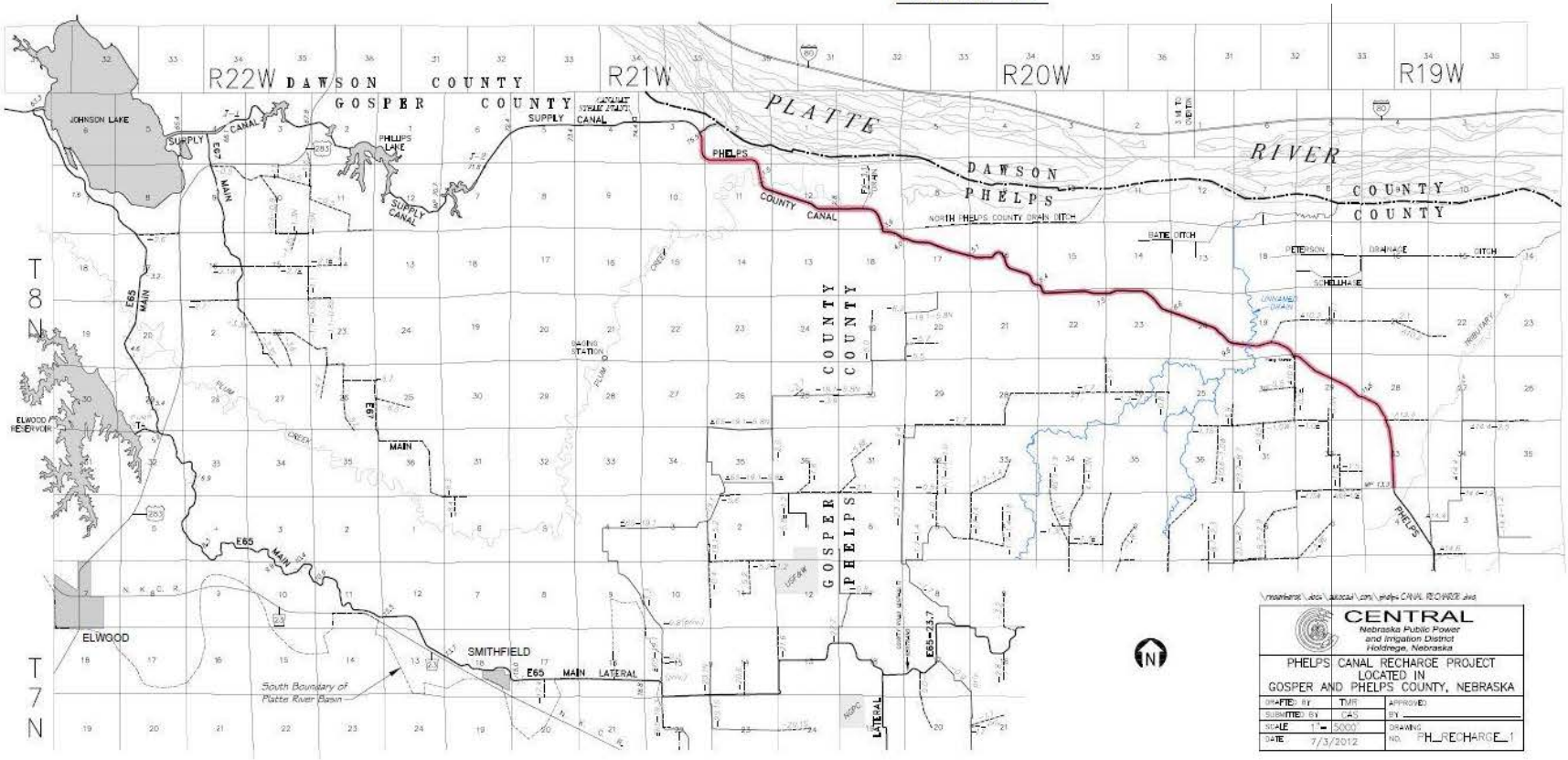

Exhibit B

Water Service Agreement Pricing

Year	Price per Acre Foot
2014	$27.00
2015	$28.08
2016	$29.20
2017	$30.37
2018	$31.59
2019	$32.85