

**WATER LEASING AGREEMENT
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 _____, 2016, 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 68502, 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, Central delivers surface water to over 108,000 acres in south central Nebraska; and

WHEREAS, Central customers have expressed an interest in participating in a pilot program to lease surface water in full irrigation delivery years; and

WHEREAS, the Platte Program is interested in leasing surface water from Central customers; and

WHEREAS, Central has determined that 2017 is a full irrigation year and is willing to facilitate such leasing 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. LEASING SERVICE.

- a. During the fall of 2016, Central will offer to lease surface water from Central customers during the 2017 irrigation season provided the customer agrees to not irrigate those lands with either groundwater or surface water. Water that is leased will be credited to the environmental account in October of 2017.
- b. Central will accept proposals from customers identifying the acres to be leased in the fall of 2016.
- c. The quantity of water leased per acre will be based on the average of surface water only deliveries over the past ten years which is 9 acre-inches/acre.

The number of acres leased will be multiplied by 9 acre-inches to provide the quantity of leased water. If Central's board of directors would reduce the irrigation allocation for 2017 to less than a full delivery water allocation, the amount of water leased per acre would be based on the lower allocation.

- d. The maximum acres to be leased under this pilot program will be 2000 acres. If proposals are received exceeding 2000 acres, then lands will be selected by a random drawing and the last proposal accepted will be the proposal that exceeds 2000 acres.
- e. Notification will be provided by December 31, 2016 to each irrigation customer submitting a proposal

informing them whether their proposal was selected for lease. Central will also notify the Platte Program of the quantity of water available for leasing at the same time.

2. **LEASING PAYMENTS.** The Platte Program shall pay Central for the leasing service provided herein as follows (payment shall be due within 60 days of invoice):
 - a. The Platte Program shall pay Central \$10,000 for administrative costs related to the leasing service.
 - b. The Platte Program shall pay \$220 for each acre leased to Central. Central will pay the irrigation customer \$220 per acre for each acre leased by November 1, 2017 after verification that the lands were not irrigated with surface water or groundwater.
3. **CREDITING OF WATER TO ENVIRONMENTAL ACCOUNT.** Central will inform the Nebraska Department of Natural Resources regarding the amount of water to be credited to the environmental account to be effective on October 1, 2017 in the same manner that other credits of water to the environmental account are handled.
4. **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, 2017.
5. **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 (a) Central shall give the Platte Program notice describing the particulars of the occurrence or condition; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition; and (c) Central proceeds with reasonable diligence to remedy its inability to perform and inform the Platte Program of the actions taken to remedy the consequences of the event or condition.
6. **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 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 paid by the Platte Program to Central pursuant to this Agreement or \$50,000, whichever is less.
7. **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.
8. **AMENDMENT.** No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

9. **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 without the written consent of Central.
10. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.
11. **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

Date _____

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

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