

## WATER SERVICE AGREEMENT

This WATER SERVICE AGREEMENT (“Agreement”) is made as of the Effective Date (as defined in Section 1.7) by and among THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter “Central”); 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 14<sup>th</sup> Street, Lincoln, Nebraska 68502 and the PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM, with its principal office located at 4111 4<sup>th</sup> 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 a “Party” and shall collectively be referred to herein as the “Parties.”

### WITNESSETH:

WHEREAS, the Parties wish to create a project for diversion of flows from the Phelps Canal to Cottonwood Ranch; and

WHEREAS, Central agrees to pursue acquisition of permits, an Appropriation (or Appropriations) and construction of facilities needed to deliver water from the Phelps Canal to Cottonwood Ranch (see Exhibits C and D); and

WHEREAS, the Platte Program either owns or has agreements/leases on Cottonwood Ranch permitting the delivery of water to the land; and

WHEREAS, the Foundation has been selected by the Program Signatories as the financial management entity providing support to the Governance Committee and Executive Director established pursuant to the Program Cooperative Agreement; and

WHEREAS, the Foundation is only authorized to enter into contracts specifically authorized by the Governance Committee; and

WHEREAS, the Foundation pays financial obligations of the Governance Committee under the contracts authorized by the Governance Committee in accordance with the terms of the contracts; and

WHEREAS, the Foundation serves as the Governance Committee’s contracting agent through Memorandum of Agreement No. R12AG60019; and

WHEREAS, Memorandum of Agreement No. R12AG60019 and the Platte River Recovery Implementation Program documents require that all contracts of the Platte River Recovery Implementation

Program are conditioned on the continuing availability of funds from the Program Signatories; and

WHEREAS, the Program Signatories provide funding to the Foundation for Platte River Recovery Implementation Program implementation, including the Diversion Project, through separate financial assistance agreements; and

WHEREAS, the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee.

**NOW, THEREFORE**, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

## **DEFINITIONS, OWNERSHIP AND TERM**

### **Section 1. Definitions**

The meanings for the capitalized terms used in this Agreement are set forth as follows or in the body of this Agreement:

1.1 “Appropriation” shall mean one or more new appropriation(s) acquired by Central which will authorize delivery of water to the Diversion Structure (as hereinafter defined) for delivery to Cottonwood Ranch (Exhibits C and D).

1.2 “Business Day” means a day on which the Federal Reserve Member Banks in New York City are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, NE.

1.3 “Cost of Construction Services” shall mean the actual costs of planning, final design, engineering, financing, acquiring, constructing, and startup of the Diversion Project (as hereinafter defined) hereafter paid or incurred by Central in accordance with this Agreement.

1.4 “Cost of Permitting” shall mean all costs needed for initial design, permitting and acquisition of the Appropriation.

1.5 “Cottonwood Ranch” means a tract or tracts of land where the outlet structure will be constructed and where water associated with this Agreement will be delivered.

1.6 “Cottonwood Ranch Diversions” shall mean all water diverted to Cottonwood Ranch through the Diversion Structure in accordance with the Appropriation.

1.7 “Day” means a calendar day.

1.8 “Diversion Project” means the Diversion Structure, pipeline, outlet structure, remote terminal unit, the Appropriation, related permits and other items needed to deliver water to Cottonwood Ranch.

1.9 “Diversion Structure” shall mean a new release structure, consisting of physical materials such as a gate, concrete, etc., constructed to divert water from the Phelps Canal to Cottonwood Ranch as shown on Exhibit D.

1.10 “Effective Date” shall mean the date upon which this Agreement shall become effective which shall be the date the last signature is affixed hereto.

1.11 “Engineer” shall mean the person(s) or firm(s) on Central staff or hired by Central to perform engineering services in connection with the Diversion Project.

1.12 “Force Majeure” means causes or events beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, which by exercise of due diligence and reasonable foresight could not reasonably have been avoided, including, without limitation, acts of God, unusual or extreme actions of the elements such as floods, earthquakes, hurricanes, landslides, droughts or tornadoes; lightning; fire; ice storms; epidemics, quarantines, icing conditions in supply canal; sabotage; vandalism beyond that which could reasonably be prevented by the Party; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any license, permit, approval, rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits or approvals required by any Governmental Authority. The term Force Majeure does not include (i) any acts or omissions of any third party (other than as identified in Section 15.1), including, without limitation, any vendor, material man, customer or supplier of a Party, unless such acts or omissions are themselves excused by reason of Force Majeure; or (ii) a Party’s inability to pay amounts due under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.13 “Governmental Authority” means any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of

competent jurisdiction, but excluding any agency department, state or other entity acting in its capacity as a Party.

1.14 “Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity.

1.15 “Phelps Canal Diversions” shall mean water diverted into the Phelps Canal that remains in or recharges within the Phelps Canal between the Mile Post (MP) 1.6 Flume and the MP 13.3 Structure minus any recharge diversions for any entity (including the Platte Program) who is receiving recharge benefits in the above described reach pursuant to a separate agreement.

1.16 “Project Accounts” shall mean one or more separate accounts opened by Central and designated solely for use by Central for construction of the Diversion Project.

1.17 “Prudent Utility Practices” shall mean any of the practices, methods and acts at a particular time, which in the exercise of reasonable judgment in light of the facts, including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In applying the standard of Prudent Utility Practices to any matter under this Agreement, equitable consideration should be given to the circumstances, requirements and obligations of each of the Parties hereto and there shall be taken into account the fact that Central is a political subdivision of the State of Nebraska with prescribed statutory and legal powers, duties and responsibilities. It is recognized that Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

1.18 “Total Amount Diverted” shall mean all water diverted into the Phelps Canal in accordance with the Appropriation as described in Section 5.2.2.

1.19 “Water Service Charges” shall mean all payments for water services as defined in Section 5 during the Operation Phase.

1.20 “Water Service Rate” shall mean the applicable rate per acre-foot of diversion associated with recharge operations as shown in Exhibit B.

## **Section 2. Ownership and Term of Agreement**

**2.1 Ownership of Diversion Project.** Central shall own all property, materials and permits, including the Appropriation, which are acquired or constructed by Central and in the name of Central, for the Diversion Project from the diversion structure to the property line of Cottonwood Ranch. All pipeline and outlet structure facilities on the Cottonwood Ranch lands shall be the property of the Platte Program or its assignee.

**2.2 Submission of Application for Appropriation.** Central shall provide the Platte Program with copies of any applications for Appropriations and any Appropriations approved by the Nebraska Department of Natural Resources.

### **2.3 Term.**

2.3.1. The term of this Agreement shall begin on the Effective Date and shall remain in effect until June 30, 2038.

2.3.2. In the event of termination under this Agreement (including the end of the term), the obligation to pay for costs that are incurred or arise under this Agreement prior to termination shall survive. At the end of the term, and after payment of all costs for the Diversion Project, the following shall occur: (i) the obligations, rights and benefits of the Platte Program under this Agreement shall terminate (except as to any obligations incurred before the end of the term that extend beyond the term); and (ii) Central and the Platte Program shall retain ownership of their respective Diversion Project assets as set forth in Section 2.1 free and clear of this Agreement. Notwithstanding the foregoing sentence, early terminations during the Construction Phase or due to default are addressed in Sections 4 and 7, respectively.

2.3.3 This Agreement may be renewed or extended with a written Amendment that is agreeable to the Parties.

## **Section 3. Approval Obligations of the Parties**

Each Party shall use its best efforts to obtain all acceptances or approvals required in order to effect the agreement of the Parties hereunder in the most expeditious manner possible and the Parties shall act in good faith to implement this Agreement fully and expeditiously without modification or condition.

## **Section 4. Permitting and Construction of the Diversion Project**

**4.1. Diversion Project Development.** Central shall permit and construct the Diversion Project utilizing Prudent Utility Practices.

**4.2. Diversion Project Costs.** The Platte Program shall be responsible and liable for the Cost of Permitting, Cost of Construction Services, and the Project Construction Fee for the Diversion Project.

**4.3. Permitting Phase.** Within sixty (60) Days of the Effective Date, the Platte Program shall issue to Central a notice to proceed with Permitting Phase for the Diversion Project and submit an initial payment of \$5,000 for acquisition of permits, initial design and acquisition of the Appropriation needed for the Diversion Project which costs are not a part of the Cost of Construction Services. If the notice to proceed and the initial payment of \$5,000 have not been issued within such period, then this Agreement shall terminate and the Parties shall have no further obligations hereunder. Within ten (10) Days of receipt of the notice to proceed and initial payment, Central shall deposit the payment into the Project Accounts, whereupon Central shall proceed with the initial activities for the Diversion Project.

**4.4. Construction Phase.** After acquisition of all needed permits, the Appropriation for the Diversion Project and the Platte Program's written authorization to proceed, Central will proceed with design and construction of the Diversion Project. All work completed in the Construction Phase of the Diversion Project shall be included in the Cost of Construction Services. A scope of work shall be provided to the Platte Program with design information. Central shall then issue an invoice for the design and construction of the Diversion Project in the amount of \$1,000,000. The Platte Program shall pay the invoice to Central in full within sixty (60) Business Days of the receipt, whereupon, Central shall deposit the payment into the Project Accounts and proceed with the Construction Phase of the Diversion Project. Central shall transfer funds from the Project Accounts to its own regular accounts as the Cost of Construction Services are incurred.

**4.5. Project Construction Fee.** In addition to paying the Cost of Permitting and the Cost of Construction Services, the Platte Program shall be responsible and liable for payment to Central of a fee (the "Project Construction Fee") in the amount of three percent (3.0%) times the Cost of Permitting and the Cost of Construction Services. The Project Construction Fee compensates Central for the administrative costs and overhead associated with the construction of the Diversion Project, and the receipt, management and disbursement of funds for the Diversion Project. The Project Construction Fee shall be paid with the funds deposited into the Project Accounts as described in Sections 4.3 and 4.4.

**4.6 Construction Responsibilities.** Central shall be responsible for the hiring, payment and oversight of contractors during the Construction Phase of the Diversion Project. Central shall require that any contractors or subcontractors working on the Diversion Project, including Central, obtain statutory workers' compensation insurance and general liability insurance in such amounts as are reasonable given the scope of the Diversion Project. The Platte Program shall be named as an additional insured on any such general liability insurance policy. Central shall be solely responsible and liable for any and all claims arising from gross negligence by Central during the Construction Phase of the Diversion Project.

**4.7 Subsequent Permitting or Construction Payments; Termination During Permitting or Construction Phase.** If, during the Permitting or Construction Phase, Central determines that the payments previously made by the Platte Program will not cover the Cost of Permitting, Cost of Construction Services, or the Project Construction Fee as described in sections 4.3, 4.4 and 4.5, Central shall issue one or more additional invoices to the Platte Program. The Platte Program shall either (a) pay the additional invoice within thirty (30) Days or (b) submit a notice of termination of the Agreement to Central, whereupon Central may cease work on the Diversion Project. In the event that the Platte Program does not pay the payments as specified herein, Central shall submit a written notice to the Platte Program requiring payment within twenty (20) Days, and Central may cease work on the Diversion Project until the required payments are made. If payment is not made within such required period, then this Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the Platte Program, the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder.

**4.8 Completion of Construction Phase.** When Central has completed construction of the Diversion Project, Central shall return any unspent monies to the Platte Program and provide an itemized list of project costs.

## **Section 5. Operation of the Diversion Project ("Operations Phase")**

### **5.1 Operation of the Diversion Project.**

5.1.1. The Operations Phase shall commence upon conclusion of the Construction Phase. During the Operations Phase, Central shall utilize Prudent Utility Practices in the operation, maintenance and replacement of the Diversion Project to deliver water from the Phelps Canal to Cottonwood Ranch in accordance with the Appropriation.

5.1.2. The Parties understand and agree that Central owns and operates other facilities within its water delivery and regulation system, located upstream and downstream of the Diversion Project facilities, that are used for hydropower production, irrigation, and other purposes, and these facilities may in the future be modified or rebuilt, and Central may build other facilities within its water delivery and regulation system. The Parties further understand and agree that the water to be delivered to the Diversion Project may be water that will pass through certain other facilities owned by Central. Notwithstanding any other provision herein, this Agreement shall not create or establish, or be construed to create or establish, by implication or otherwise, any obligation, restriction, or limitation, now or in the future, with respect to operation of other facilities owned by Central, that are used or in the future may be used for delivery of water to the Diversion Project. Without limiting the effect of the preceding sentence, and for the sake of clarity, the Parties understand and agree that Central shall not be in default of this Agreement if Central modifies Central facilities or changes its operations in a way that affects the volume, rate, frequency, or timing of water available for diversion by the Diversion Project.

5.1.3. Central makes no guarantees regarding the volume, rate, frequency, or timing of water available for diversion by the Diversion Project, and it is understood and agreed that Central does not provide a guarantee to the Platte Program or any other Person that any particular amount of diversion will be supplied by the Diversion Project. The provisions of this Agreement are subject to the rights and obligations of Central under its water appropriations, and the provisions of this Agreement shall not be construed as modifying, limiting or changing the rights and benefits of said water appropriations. Nothing in this Agreement shall interfere with or limit Central's rights to obtain new water appropriations or to amend existing water appropriations.

5.1.4. Central may also reduce or suspend diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the Phelps Canal or the pipeline as reasonably determined by Central or (b) high groundwater levels as reasonably determined by Central in accordance with the pre-determined protocol for high ground water levels as established by Central and reviewed with the Platte Program.

## **5.2 Water Service.**

5.2.1. Water Diversion. During the Operations Phase, Central will divert water into the Phelps Canal and into the Diversion Structure (as shown on Exhibit D) in accordance with the



Appropriation. The Platte Program agrees that all uses of water received under this Agreement shall be in accordance with the Appropriation.

5.2.2. Amount. The Total Amount Diverted shall be measured by Central using the Parshall Flume at MP 1.6 on the Phelps Canal. The Total Amount Diverted shall consist of Cottonwood Ranch Diversions, Phelps Canal Diversions and any recharge diversions for any entity (including the Platte Program) who is receiving recharge benefits on the Phelps Canal pursuant to a separate agreement. Cottonwood Ranch Diversions shall be measured using a flowmeter as shown on Exhibit D. Phelps Canal Diversions shall be calculated as Total Amount Diverted minus Cottonwood Ranch Diversions minus recharge diversions for any entity (including the Platte Program) who is receiving recharge benefits on the Phelps Canal pursuant to a separate agreement. It is understood by the Parties that all measurement facilities or locations may be revised from time to time as determined by Central. All measurements made through Central's measuring devices and so recorded by Central operating personnel shall be considered final. Central may make reasonable adjustments in the calculation of the Total Amount Diverted, Phelps Canal Diversions, and Cottonwood Ranch Diversions. Central shall consult with the Platte Program in making such adjustments. All data used by Central regarding the measurement or accounting of the Total Amount Diverted, Phelps Canal Diversions and Cottonwood Ranch Diversions shall be shared with the Platte Program.

5.2.3. Coordination of Delivery. Central will provide written notice to the Platte Program when Central has decided to make flows available for diversion to Cottonwood Ranch. The Platte Program shall provide written notice to Central of the date when delivery of water through the Diversion Structure may begin. Central will then begin diversion operations in accordance with this Agreement. If the Platte Program requests, in writing, that Central reduce or cease diversions, Central agrees to reduce or cease diversions as soon as practicable. Upon receipt of authorization to deliver water to the Diversion Project, Central shall begin diversions from the Phelps Canal to the Diversion Project.

**5.3 Water Service Charges.** The Platte Program shall pay Central for the Total Amount Diverted according to the following provisions (payment shall be due within 60 days of invoice):

5.3.1 Phelps Canal Diversions. The Platte Program shall pay a Water Service Rate as specified in Exhibit B for the Phelps Canal Diversions.

**Commented [A1]:** Jerry, have you concluded that we will not continue to have a separate WSA for Phelps Canal Diversions?

5.3.2 Cottonwood Ranch Diversions. The Platte Program shall pay a Water Service Rate as specified in Exhibit B for the Cottonwood Ranch Diversions.

(i) The Platte Program shall not pay for Cottonwood Ranch Diversions until the cumulative Water Service Charges that would have been due using the Water Service Rates as specified in Exhibit B for Cottonwood Ranch Diversions equal the Cost of Construction Services.

(ii) The Platte Program shall pay Water Service Rates as specified in Exhibit B for Cottonwood Ranch Diversions beginning when the cumulative Water Service Charges for Cottonwood Ranch Diversions invoiced under this Agreement exceed the Cost of Construction Services and for the remainder of the Agreement.

**Commented [A2]:** To clarify that "only" Cottonwood Ranch Diversions count towards the cumulative charges when comparing to the Cost of Construction Services.

5.3.5 The Total Amount Diverted, Phelps Canal Diversions and Cottonwood Ranch Diversions shall be determined according to provisions in paragraph 5.2.

5.3.6 Central shall invoice the Platte Program for the Water Service Charges quarterly or upon completion of the services. Invoices shall include a credit for amounts not payable by the Platte Program pursuant to paragraph 5.3.2(i).

## **Section 6. Dispute Resolution; Period for Billing Adjustments**

**6.1 Dispute Resolution.** In the event of a dispute under this Agreement, the following shall occur:

6.1.1. All disputes arising out of the performance of this Agreement, or changes therein, or work in connection therewith, shall initially be submitted to Central for decision.

6.1.2. In the event that the Platte Program disagrees with Central's decision, a senior executive of Central and a senior executive of the Platte Program shall immediately confer, discuss and review Central's decision.

6.1.3. In the event that the meeting referred to in Section 6.1.2. fails to resolve the dispute, Central's decision shall be implemented, subject to the right of the Party to pursue available remedies, and shall remain in effect unless and until otherwise determined by a Governmental Authority. Each Party may pursue all remedies available at law or in equity, except that termination shall occur only as provided in this Agreement. Pending final decision of any dispute hereunder,

the disputing Party shall proceed with its obligations and performance in accordance with the written decision of Central.

6.1.4. Central's power of initial decision is intended only as an agreed mechanism to keep the Diversion Project moving forward in the event of a dispute and does not: (1) create any presumption in favor of Central's decisions, (2) alter the Parties' substantive obligations under this Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this Agreement.

**6.2 Limitation on Time Period for Billing Adjustments.** Any claim for a billing adjustment shall be limited to expenditures incurred or revenues received in the twenty-four (24) months immediately preceding the date such claim or error is raised by such Party. Any claim for a billing adjustment not raised within such twenty-four (24) month period shall be deemed waived and shall be barred. All other claims shall be governed by the applicable provisions of Nebraska law.

## **Section 7. Default and Remedies**

**7.1 Default.** A default shall occur under this Agreement if there is a material breach of this Agreement, including but not limited to a failure to make payments as required under this Agreement, that a Party fails to cure or to make acceptable arrangements to cure as hereinafter provided. For purposes of this Section 7, a "Payment Default" shall mean a failure to make payments when due under this Agreement.

### **7.2 Effect of Termination Due to Platte Program Default**

7.2.1. In the event of termination by Central due to a default by the Platte Program during the Construction Phase, then this Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the Platte Program, the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), except that Central and the Platte Program shall continue to own their respective Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

7.2.2. In the event of termination by Central due to a default by the Platte Program during the Operations Phase, the following shall occur: (i) the Platte Program shall pay all outstanding bills and (ii) the obligations, rights and benefits of the Platte Program with respect to the Diversion

Project shall terminate and cease to exist, except that Central and the Platte Program shall continue to own their respective Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

**7.3 Late Payments.** If the Platte Program fails to make any payment when due pursuant to this Agreement, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of three percent (3%) per annum plus the prime lending rate as from time to time may be published in the Money Rates section of The Wall Street Journal (the “Interest Rate”).

#### **Section 8. Approvals**

The obligation of Central to perform under this Agreement shall be subject to Central obtaining and continuing to receive all necessary permits and the Appropriation for the Diversion Project.

#### **Section 9. Waivers**

Any waiver at any time by any Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other default or matter.

#### **Section 10. Notices**

All notices given pursuant to this Agreement by any Party to another Party shall be in writing and either personally delivered, or sent by facsimile or electronic mail, or mailed by certified or registered mail, postage prepaid, or sent by nationally recognized overnight courier, and addressed as provided in Exhibit A or at such other address or addresses as any Party may designate by notice given to the other Party(ies). With respect to all notices so delivered, the same shall be deemed effective on the day sent.

#### **Section 11. Damages**

To the fullest extent permitted by law and notwithstanding anything to the contrary herein, in no event shall any Party be liable for punitive, indirect, exemplary, consequential, or incidental damages including, without limitation, claims of third parties arising in connection with this Agreement.

#### **Section 12. Force Majeure.**

##### **12.1 Applicability of Force Majeure.**

12.1.1. No Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure or other occurrence or event become an event of

default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided that:

- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform; and
- (iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

12.1.2 Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

### **Section 13. Miscellaneous**

**13.1 Amendments.** This Agreement may be amended only by written agreement among all of the Parties.

**13.2 Entire Agreement/Order of Precedence.** This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Agreement and supersedes all other prior agreements, whether oral or written.

**13.3 Counterparts.** This Agreement may be executed in multiple counterparts to be construed as one.

**13.4 Severability.** If any part, term or provision of this Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.

**13.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

**13.6 Jurisdiction.** The Parties agree that any legal proceeding relating to this Agreement shall be filed in a state or federal court of competent jurisdiction and proper venue located within the State of Nebraska.

**13.7 No Third Party Beneficiaries.** The Parties agree that no other parties are an intended third-party beneficiary of this Agreement. In addition, neither the Platte Program nor Central shall transfer or assign this Agreement or any water diverted through the Diversion Project without agreement of all Parties.

**13.8 Independent Contractors.** Nothing in this Agreement shall be construed as creating any agency relationship between the Parties, including any partnership or joint venture, other than that of independent contractors. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a party to this Agreement. This Agreement shall not empower any Party to act as any other Party's agent or to represent to any third party that it has the ability to bind any other Party, without the express permission of the Party to be bound.

**13.9 Rules of Construction.**

13.9.1. The descriptive headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.

13.9.2. Wherever the term "including" is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

13.9.3. The terms defined in this Agreement shall include the plural as well as the singular and the singular as well as the plural.

13.9.4. Whenever a statute, code, rule or regulation is used in this Agreement, such term shall also include all successor statutes, codes and regulations.

**13.10 Damages.** The Parties agree that Central shall have no liability for any claims from seepage or erosion after the water leaves the Outlet Structure as shown on Exhibit C.

**13.11 Foundation.** The Foundation has represented to Central, and Central hereby acknowledges, that the Foundation is the financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program and that the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee of the Platte River Recovery Implementation Program.

**13.12 Foundation Assignment.** If the Platte River Recovery Implementation Program is dissolved for any reason or is not renewed, the Foundation may assign its interest in this Agreement to one or more Program Signatories, in which case the assignee(s) will assume the responsibilities of a Party. If the Foundation is no longer the financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program for any reason, subject to written consent of the other Parties, which consent shall not be unreasonably withheld, the Foundation, as the financial management entity representing the Platte River Recovery Implementation Program, may assign its responsibilities and interest under this Agreement to a successor financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program, provided that the successor assumes all obligations of a Party under this Agreement. The Foundation will provide written notice of any such assignment to the other Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

ATTEST:

THE CENTRAL NEBRASKA PUBLIC  
POWER AND IRRIGATION DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

NEBRASKA COMMUNITY FOUNDATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Revision date 08/30/17

Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

PLATTE RIVER RECOVERY  
IMPLEMENTATION PROGRAM

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT A**

**Notice Addresses**

**Diane M. Wilson, Manager of Public/Private Partnerships**  
**Nebraska Community Foundation**  
**3833 South 14<sup>th</sup> Street**  
**PO Box 83107**  
**Lincoln, Nebraska 68501**

**Jerry F. Kenny, Ph.D., Executive Director**  
**Platte River Recovery Implementation Program**  
**4111 4<sup>th</sup> Avenue, Suite 6**  
**Kearney, Nebraska 68845**

**Don D. Kraus, General Manager**  
**The Central Nebraska Public Power and Irrigation District**  
**415 Lincoln Street**  
**PO Box 740**  
**Holdrege, NE 68949**

**EXHIBIT B**  
**Water Service Charges**

	<b>Total Amount Diverted</b> <b>Water Service Rate (\$/AF)</b>	
<b>Year</b>	Phelps Canal Diversions	Cottonwood Ranch Diversions
2017	\$30.08	\$25.00
2018	\$30.98	\$25.50
2019	\$31.91	\$26.01
2020	\$32.87	\$26.53
2021	\$33.86	\$27.06
2022	\$34.87	\$27.60
2023	\$35.92	\$28.15
2024	\$36.99	\$28.72
2025	\$38.10	\$29.29
2026	\$39.25	\$29.88
2027	\$40.43	\$30.47
2028	\$41.64	\$31.08
2029	\$42.89	\$31.71
2030	\$44.17	\$32.34
2031	\$45.50	\$32.99
2032	\$46.86	\$33.65
2033	\$48.27	\$34.32
2034	\$49.72	\$35.01
2035	\$51.21	\$35.71
2036	\$52.75	\$36.42
2037	\$54.33	\$37.15
2038	\$55.96	\$37.89

EXHIBIT C

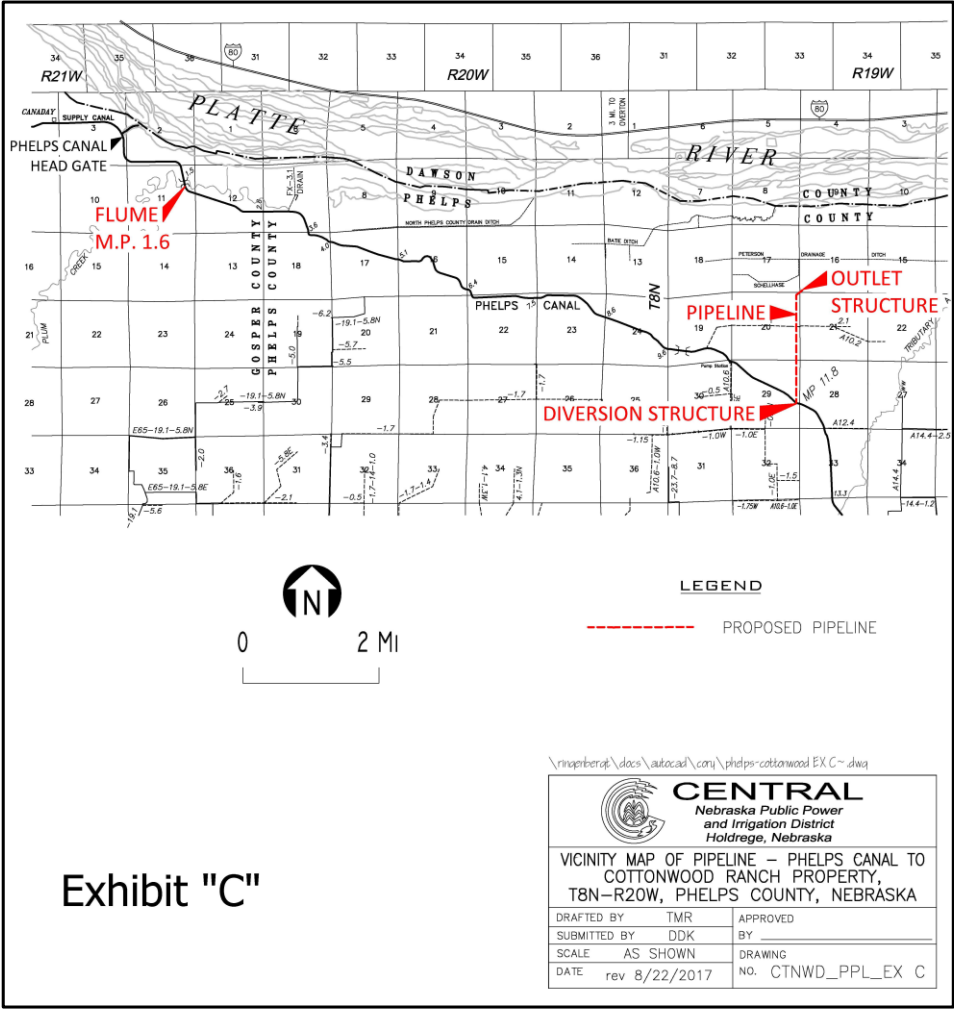


EXHIBIT D

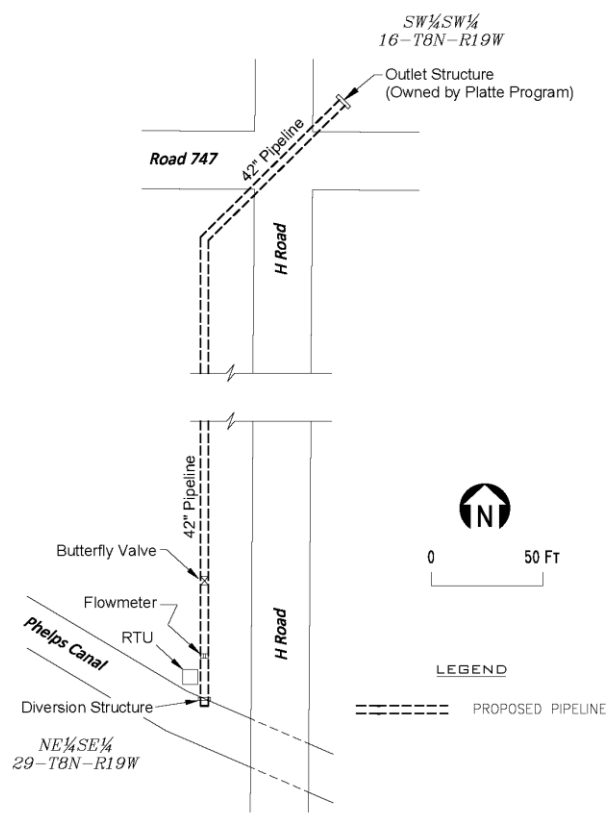



Exhibit "D"

\\risgpc001\ppl\autocad\cor\ppl\ppl-cottonwood EX D - dwg

 <b>CENTRAL</b> Nebraska Public Power and Irrigation District Holdrege, Nebraska	
PIPELINE PLAN - PHELPS CANAL TO COTTONWOOD RANCH PROPERTY, T8N-R20W, PHELPS COUNTY, NEBRASKA	
DRAFTED BY: TMR	APPROVED: _____
SUBMITTED BY: DDK	BY: _____
SCALE: AS SHOWN	DRAWING: _____
DATE: 10/27/2016	NO. CTNWD_PPL_EX D