

INTERLOCAL COOPERATION AGREEMENT

This Agreement is entered into by and between the following natural resources districts ("NRDs" or "Parties"):

Upper Republican Natural Resources District
Middle Republican Natural Resources District
Lower Republican Natural Resources District
Twin Platte Natural Resources District

Each of these NRDs is a political subdivision of, and is situated in, the State of Nebraska.

IT IS AGREED by and between the Parties hereto, each acknowledging the receipt of good, adequate, and valuable consideration, as follows:

1. AUTHORITY: This Agreement is made and entered into by the Parties pursuant to the authority conferred upon each under the Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801 through 13-827 (the "Interlocal Act").

2. NEBRASKA COOPERATIVE REPUBLICAN PLATTE ENHANCEMENT PROJECT: The Parties hereby create the Nebraska Cooperative Republican Platte Enhancement Project (the "N-CORPE"). The N-CORPE shall be governed by the terms of this Agreement and shall be the instrument through which and by which the Parties pursue the purposes described herein. The N-CORPE shall be an entity separate and distinct from the respective Parties hereto, and no Party hereto is the agent, employee or representative of the N-CORPE or any other Party. The Parties hereto agree that contracts entered into, obligations undertaken, and liabilities incurred by the N-CORPE shall be the separate contracts, obligations and liabilities of the N-CORPE, and not the contracts, obligations or liabilities of the respective Parties. The N-CORPE shall constitute a separate body corporate and politic of the State of Nebraska exercising public powers and acting on behalf of the Parties hereto.

3. PURPOSE: The N-CORPE shall provide the authority, resources, services, studies, and facilities needed for the representation of the interests of the Parties in proceedings before all agencies, tribunals, courts, and any administrative, legislative, executive, or judicial bodies concerning or affecting the NRDs' actions, decisions, and policies to regulate/manage water to assist the State of Nebraska with compliance with the Republican River Compact, 2A NEB. REV. STAT. APP. § 1-106 (1995); and to assist with implementation of Twin Platte NRD's Integrated Management Plan and the State of Nebraska's responsibilities under the Platte River Recovery Implementation Program; and other state laws. The N-CORPE shall specifically act within authority so granted by the Nebraska Unicameral and laws of Nebraska. This Agreement shall provide the organizational and administrative structure, and enumeration of the powers, privileges and authority of the financial cooperative effort and the N-CORPE. The powers, privileges and authorities of the N-CORPE shall not exceed those powers, privileges or authorities exercised, or capable of being exercised, by each of the Parties, and as may be otherwise provided for in the Interlocal Act, nor shall they be used in a manner that is in violation of any of the Parties' public purposes.

4. BOARD OF DIRECTORS: The affairs, actions and conduct of the business of the N-CORPE shall be by a Board of Directors ("Board"). Each member of the Board shall be entitled to one vote, and the majority of the votes cast on any issue shall determine the issue, except where a unanimous vote shall be specifically required by this Agreement or by-laws adopted by the Board. A unanimous vote shall be required before the issuance of any bonds for the acquisition of water rights. The Board shall be composed of a voting member from each Party (designated herein as a "Member") and one other person if so desired by each Party. Only a Member shall be allowed to cast a vote and each Party shall have but one vote. Each Member and any designated alternate shall be duly and properly appointed by the respective governing bodies of each of the separate and individual Parties, but it shall not be required that any Member of the N-CORPE so appointed, be a publicly elected member of the governing body of any Party. Each Member shall serve at the pleasure of his or her respective organization. Any vacancy which occurs in the Board shall be filled within 60 days through the appointment of a replacement by the represented Party. The Board shall select from their membership a Chairman, Vice Chairman, and Secretary/Treasurer. The Board shall exercise authority over the N-CORPE in accordance with applicable laws and shall set the policy, delegating executive, supervisory and organizational authority to its officers and committees. Meetings of the Board shall be conducted at least annually and at such other frequent times as may be required by the business of the N-CORPE. A majority, *i.e.*, three (3) Members, shall constitute a quorum for the transaction of business.

5. CHAIRMAN, VICE CHAIRMAN, AND SECRETARY/TREASURER: The Chairman shall preside at all the meetings of the Board, shall decide all questions of order, with advice of the Board appoint the members to all committees except the executive committee, be an ex-officio member of all committees, and have such general powers and duties of supervision and management as shall be necessary and germane or required for the execution and prosecution of the affairs of the N-CORPE. The Vice Chairman shall serve in the absence of the Chairman and, in the Chairman's absence, shall have all of the powers and duties of the Chairman, and shall have such other powers and duties as the Chairman or Members shall from time to time delegate to the Vice Chairman. The Secretary/Treasurer to the Board shall keep minutes of all meetings conducted by the N-CORPE, and shall be the keeper of the records of the N-CORPE. The Secretary/Treasurer shall prepare and submit in writing a monthly report of the state of the finances of the N-CORPE and pay N-CORPE money only upon authorization signed by the Chairman or, in the absence of the Chairman, by the Vice Chairman. Payment of all accounts after authorization shall be made on check signed by the Secretary/Treasurer. The Secretary/Treasurer shall serve without bond. In addition to the foregoing, the officers shall have such other and additional duties, powers, privileges and authority as the Board may, in by-laws or otherwise, determine appropriate or necessary, and by Board action delegate or direct.

6. COMMITTEES: The Board or the Chairman shall have the power to establish such committees as may be necessary, appropriate or beneficial to the conduct of the affairs of the N-CORPE. Such committees shall have such powers, duties and authorities as shall be delegated to it by the Board, which powers, duties, and authorities shall not be inconsistent with or exceed those powers and duties granted to the N-CORPE under this Agreement. The Board and the Chairman are authorized to designate from its members an executive committee which shall consist of the N-CORPE'S Chairman, Vice Chairman, Secretary/Treasurer and the Chairmen of the various committees established by the Board, which executive committee shall

have and may exercise only such powers and authorities as are delegated to it by the Board. The designation of any committees and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed by this Agreement, nor shall the Board delegate to any committee the authority to set policy or to make expenditures on behalf of the N-CORPE. Any committee established by the Chairman shall be approved by the Board at its next meeting.

7. POWERS: The N-CORPE shall have all the powers, privileges and authority exercised or capable of being exercised by each of the individual and separate Parties to achieve the purposes of the N-CORPE as set forth in this Agreement and as may be otherwise provided for in the Interlocal Act. Such powers, privileges and authority shall include, but not be limited to, the power, privilege and authority to:

- (a) Acquire and sell real property.
- (b) Sue and be sued.
- (c) Have a seal and alter the same at pleasure or to dispense with the necessity thereof.
- (d) Receive and accept donations, gifts, grants, bequests, appropriations or other contributions or assistance in monies, services, materials or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any persons, and to use or expend all such contributions in carrying out its operations.
- (e) Establish advisory groups by appointing individuals from among the Parties and pay necessary and proper expenses of such groups as the Board shall determine, and dissolve such groups.
- (f) Employ such persons as are necessary to carry out the purposes of the N-CORPE and this Agreement and to pay the necessary and proper expenses of said persons.
- (g) Adopt and promulgate rules and regulations to carry out the purposes of the N-CORPE and this Agreement.
- (h) Establish such committees as are necessary to carry out the purposes of the N-CORPE and this Agreement and to pay the necessary and proper expenses of such committees.
- (i) Make and execute contracts, leases, easements and other instruments necessary or convenient to the exercise of its powers.
- (j) Make, amend and repeal by-laws, rules and regulations to carry out and effectuate its powers and purposes, which by-laws, rules and regulations shall not be inconsistent with the Interlocal Cooperation Act or this Agreement.

- (k) Borrow money, make and issue negotiable bonds, bond anticipation notes, refunding bonds and notes (collectively, the "Indebtedness"), all in accordance with the Interlocal Act and LB 701 (as enacted by the One Hundredth Legislature First Session (2007) and specifically Sections 2-3226.01 through 2-3226.06, R.R.S. Neb. 2007, as amended) and any amendments to either of said acts, and to secure the payment of such Indebtedness or any part thereof by a pledge and/or mortgage of and grant of a security interest in any or all of the N-CORPE's assets (including but not limited to (i) any and all real estate, improvements to real estate, fixtures and equipment and (ii) any and all bonds and payments of principal and interest on such bonds issued to the N-CORPE by any of the Parties) or net revenues and any other funds or property which the N-CORPE has a right to, or may hereafter have the right to pledge for such purposes.
- (l) Provide in the proceedings authorizing such Indebtedness for remedies upon default in the payment of principal and interest on any Indebtedness, including, but not limited to, the appointment of a trustee to represent the holders of such Indebtedness and the appointment of a receiver to the N-CORPE's property, such trustee and receiver to have the powers and duties provided for in the proceedings authorizing such obligations.
- (m) Allocate funds raised by the N-CORPE from the proceeds of any Indebtedness to the Parties or to the N-CORPE for the purposes of effecting river-flow enhancement projects.
- (n) Contract for the improvement, operation and management of any and all property of the N-CORPE with any persons, including any of the Parties.

8. FINANCES AND BUDGET: Annually or at such other frequent intervals as the Board may determine, each of the Parties hereto shall contribute such funds as are necessary to conduct the day-to-day operations of the N-CORPE. Each NRD shall make an initial contribution of \$ _____. This initial contribution shall be deposited in an account in the name of the N-CORPE, at a bank insured by the FDIC, and selected by the Board.

If Indebtedness is issued by the N-CORPE, each of the NRDs shall levy and collect such taxes or other charges as are necessary to ensure timely repayment of such N-CORPE Indebtedness, including but not limited to taxes and charges, specifically including but not limited to the occupation tax provided for in Section 2-3226.05, R.R.S. Neb. 2007, as amended, needed to make payments of principal and interest on any bonds issued by such NRD to the N-CORPE to support such N-CORPE Indebtedness. Each NRD shall be responsible on a proportional basis relative to the total amount required for Indebtedness repayment according to the following percentages: The Upper Republican Natural Resources District shall be responsible for 25% of the total revenue needs; Middle Republican Natural Resources District shall be responsible for 25% of the total revenue needs; the Lower Republican Natural Resources District shall be responsible for 25% of the total revenue needs; and Twin Platte Natural Resources District shall be responsible for 25% of the total revenue needs. Funds collected by the

N-CORPE for repayment of any Indebtedness may be deposited in a trust account or such other account, different from that identified in the first paragraph of this section, as may be required by agreement or permitted by law.

Annually, beginning no more than 30 days after the formation of the N-CORPE and commencement of business, and continuing each year thereafter during the existence of the N-CORPE, the Board shall establish and adopt a budget for the prosecution and completion of the work undertaken by the N-CORPE.

Concurrently with the establishment of the budget each year, the Board of the N-CORPE shall consult with each Party regarding their ability to contribute such funds as are necessary to conduct the operations and to pursue the purposes of the N-CORPE. Upon completion of the budget, the Board shall determine the assessment to be submitted by each Party and shall thereafter assess each of such Parties for said amount. Each Party shall have 60 days after receipt of notice from the N-CORPE that an assessment is due to contribute its share of the funds required under the terms of the assessment.

9. WITHDRAWAL: No Party may withdraw while the N-CORPE has any outstanding Indebtedness. Any Party may withdraw from this Agreement and from representation on the N-CORPE, at any time while no Indebtedness of the N-CORPE is outstanding, upon written notification to the Chairman of the N-CORPE. Such withdrawal shall be effective upon receipt of the written notification. Any Party withdrawing from the Agreement and from representation shall be entitled to immediately secure its own representation. Following withdrawal, the withdrawn NRD shall no longer be a Party, and the withdrawn NRD shall not be bound by this Agreement, except that (a) the withdrawn NRD shall not be entitled to any refund of any contribution or assessment previously paid to the efforts of the N-CORPE, and (b) the withdrawn NRD shall remain liable for its share of any costs properly approved and incurred by the N-CORPE through the effective date and time of withdrawal. Such share shall be determined in accordance with the allocation for the assessment of Parties outlined in Section 8 above as of the date of the withdrawal notice. The Parties agree that a withdrawn NRD shall not be liable or responsible for any costs, obligations or liabilities incurred by the N-CORPE after such NRD's withdrawal. In the event of such withdrawal, the N-CORPE shall make such adjustments as are necessary to the composition of its Board, and its future budgets and finances as are necessary to accommodate and continue the operation of the N-CORPE in the absence of such withdrawing NRD.

10. PARTIAL AND COMPLETE TERMINATION: This Agreement may not be terminated while any Indebtedness is outstanding. If and when there is no Indebtedness of the N-CORPE outstanding, this Agreement and the N-CORPE created hereby, shall be terminated upon the earlier of the completion of its purposes and objects described herein or upon the vote of three-fourths ($\frac{3}{4}$) of the then constituted Board for the complete or partial termination of the N-CORPE and this Agreement. At such time as three-fourths ($\frac{3}{4}$) of the Board shall vote to terminate the N-CORPE and the Agreement in accordance with the terms of this Section 10, all outstanding obligations of the N-CORPE shall be paid, all property acquired by the N-CORPE shall be disposed of by distribution of the same to the remaining Parties as represented on the Board and all unused funds and appropriations shall be returned to the then-remaining Parties as represented on the Board in such proportion as represented by the proportionate share payable by

each NRD under the second paragraph of Section 8 of this Agreement (including as such proportionate shares may have been modified in the event of the withdrawal of a Party under the terms of Section 9 of this Agreement or a change in membership under Section 12 of this Agreement).

11. AMENDMENT AND MODIFICATION: As and to the extent that any Indebtedness is outstanding, the prohibitions of Sections 9 and 10 of this Agreement on withdrawal of any Party and on partial or complete termination of this Agreement may not be amended or modified. For all other matters this Agreement may be amended or modified upon the approval of modifications by all Parties.

12. CHANGE IN MEMBERSHIP: This Agreement may be amended or modified to increase its membership upon approval by three-fourths (¾) vote of the members of the Board. Any new members shall be required to have the written approval of its governing body, and shall have admission to membership in the N-CORPE as a Party hereto, approved by a duly adopted resolution of its governing body. In the event of any increase in the membership, the proportionate shares set forth in the second paragraph of Section 8 of this Agreement shall be modified, provided, that no such modification shall alter the obligations of any Party on any bonds issued by such party to the N-CORPE to support Indebtedness incurred by the N-CORPE and outstanding as of the time of the increase in membership.

13. APPROVAL: This Agreement shall be effective and the N-CORPE established hereby shall come into existence as soon as the governing bodies of the respective Parties hereto shall have adopted resolutions approving and authorizing the execution of this Agreement and the establishment of the N-CORPE described herein at a duly called public meeting. Counterparts of this Agreement shall be executed and delivered by each of the Parties to all of the other Parties. Executed originals shall be placed on file at an office designated by the Board.

14. ADDITIONAL AND FURTHER CONTRACTS FOR SUPPORT AND MUTUAL ASSISTANCE: The N-CORPE is authorized and empowered to seek and obtain contracts, agreements and other arrangements whereby the N-CORPE shall receive support and assistance for the purpose of pursuing its objects and purposes from such other entities as N-CORPE from time to time shall determine necessary or appropriate, including, but not limited to, for-profit and non-profit organizations, and all other persons as defined by NEB. REV. STAT. § 49-801(16), provided, however, such contract shall not exceed any authority or powers delegated to the N-CORPE by the Parties and such contract shall not give rise to, nor create any ability of any such third parties to participate in the management or operation of the N-CORPE, and provided further that upon a majority vote of the Board, any person or entity providing support and mutual assistance may be allowed to appoint, for such period of time as the Board shall determine, a representative to the Board, which representative shall be a non-voting, ex-officio member of the Board, but which representative shall be entitled to attend all meetings of the Board and to be appointed to such committees and attend such committee meetings as the Board shall determine.

15. INTEGRATION: This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any party other than those expressly set forth herein. All prior and contemporaneous negotiations, discussions, memos and other writing are

merged and incorporated herein, it being the intention of the Parties that this be a final and full expression of their agreement. No agent, employee or other representative of any Party hereto is empowered to alter any of the terms herein unless such alteration is done in writing and signed by all Parties hereto.

16. ASSIGNMENT: No Party hereto may assign its rights under this Agreement.

17. NOT FOR PROFIT: It is expressly acknowledged and agreed that the N-CORPE is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual.

18. SEVERABILITY: If any provision, term, or clause in the Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have signed and executed this agreement on the dates shown next to their respective signatures as follows.

Upper Republican Natural Resources District

By 

Date October 19 2012

Middle Republican Natural Resources District

By 


Date 23 Oct 2012

Lower Republican Natural Resources District

By 

Date Oct 19, 2012

Twin Platte Natural Resources District

By 

Date October 18, 2012

**FIRST AMENDMENT
TO INTERLOCAL COOPERATION AGREEMENT FOR ACQUIRING REAL
PROPERTY**

THIS FIRST AMENDMENT ("Amendment") to the Interlocal Cooperation Agreement for Acquiring Real Property ("Interlocal Agreement") by and between Upper Republican Natural Resources District, Middle Republican Natural Resources District, Lower Republican Natural Resources District, and Twin Platte Natural Resources District, individually referred to as "Each NRD" and collectively referred to herein as the "Parties."

The Parties agree that paragraph 4 of the Interlocal Cooperation Agreement for Acquiring Real Property, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, shall be amended as follows:

4. Agreement.

4.1 Each NRD is responsible for 25% of the costs associated with the land acquisition of NCORPE initiated by the Upper Republican Natural Resources District as described in 4.2 below.

4.2 Upper Republican Natural Resources District has entered into a Real Estate Purchase Agreement with Lincoln Farm, LLC, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, the title to which will be transferred to N-CORPE at the time of closing.

4.3 The Parties to this Amendment agree to be responsible for contributing 25% each toward the earnest money deposit of \$8,300,000.00 toward the purchase of said real estate; however, the Upper Republican and the Middle Republican do not have sufficient funds on hand at this time to pay their 25% share. In order to raise sufficient funds for the earnest money deposit, Each NRD agrees initially to contribute the following amounts:

- 4.3.1 Lower Republican NRD- \$3,000,000.00
- 4.3.2 Twin Platte NRD - \$3,000,000.00
- 4.3.3 Upper Republican NRD - \$1,300,000.00
- 4.3.4 Middle Republican NRD - \$1,000,000.00

4.4 Each NRD, which did not have sufficient cash on hand to pay its 25% share of the earnest money deposit, agrees to reimburse the NRDs who paid more than their 25% share as follows:

4.4.1 The Middle Republican NRD shall pay the Lower Republican NRD \$925,000.00, together with interest at the rate of 1% per annum, on or before June 1, 2013.

4.4.2 The Middle Republican NRD shall pay the Twin Platte NRD \$150,000.00, together with interest at the rate of 1% per annum, on or before June 1, 2013.

4.4.3 The Upper Republican NRD shall pay the Twin Platte NRD \$775,000.00, together with interest at the rate of 1% per annum, on or before June 1, 2013.

To the extent that this Amendment and paragraph 4 of the Interlocal Agreement, Exhibit "A," are conflicting or inconsistent, this Amendment shall control.

In all other respects, the Interlocal Agreement, Exhibit "A," is hereby reaffirmed.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their authorized representatives on the date opposite their signature.

UPPER REPUBLICAN NATURAL RESOURCES DISTRICT,

BY: Jasper Fanning November 13 2012 (Date)
Jasper Fanning (Print Name)
Council Manager (Title)

MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT,

BY: Daniel L. Smith 13 Nov 2012 (Date)
Daniel L. Smith (Print Name)
Manager (Title)

LOWER REPUBLICAN NATURAL RESOURCES DISTRICT,

BY: Michael Clements Nov 15, 2012 (Date)
Michael Clements (Print Name)
Manager (Title)

TWIN PLATTE NATURAL RESOURCES DISTRICT,

BY: Kent O. Miller Oct 18, 2012 (Date)
Kent O. Miller (Print Name)
General Manager (Title)