

## THE CITY OF LINCOLN, NEBRASKA

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF LINCOLN, NEBRASKA APPROVING THE FISCAL YEAR CHANGE OF NEBRASKA UTILITY CORPORATION; AND RELATED MATTERS.****BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:**

**Section 1. Findings and Determinations.** The City Council (the "Council") of The City of Lincoln, Nebraska (the "City") hereby finds and determines as follows:

(a) Nebraska Utility Corporation (the "Corporation") is a Nebraska nonprofit corporation duly organized under and pursuant to (1) the laws of the State of Nebraska (the "State"), including, without limitation, (i) the Nebraska Nonprofit Corporation Act (Chapter 21, Article 19, Reissue Revised Statutes of Nebraska, as amended), and (ii) the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended), and (2) an Interlocal Cooperation Agreement dated May 17, 2001 (the "Interlocal Agreement") between the City acting for and on behalf of Lincoln Electric System ("LES") and The Board of Regents of the University of Nebraska (the "Regents") for the purpose of providing for purchasing, leasing, constructing and financing facilities and acquiring services in order to furnish energy requirements, utility and infrastructure facilities and related energy, utility and infrastructure services to the City and the Regents and to such other persons and entities as the City and the Regents may be authorized by law to undertake.

(b) Section VI (A) of the Interlocal Agreement provides that the Corporation shall operate on a fiscal year from January 1 to December 31 and Section 5 of Article III of the Corporation's Bylaws, dated as of May 30, 2001 (the "Bylaws"), requires a report of the audit to be submitted to each party to the Interlocal Agreement not later than May 1st immediately following such audit(s).

(c) On April 18, 2013, the Board of Directors of the Corporation (the "Corporation Board") approved a resolution authorizing the Corporation to solicit the approval by the Regents and the City of the change to the Corporation's fiscal year from January 1 to December 31 of each year to July 1 of a year to June 30 of the following year, to align the Corporation's fiscal year with the fiscal year of the Regents.

(d) For ease and efficiency of administration of the Corporation, the City, on behalf of LES, deems it desirable and in the best interests of the City to approve an Amendment to the Interlocal Agreement to reflect a fiscal year beginning July 1 of a year to June 30 of the following year, to align the Corporation's fiscal year with the fiscal year of the Regents.

(e) In order to effect the change of fiscal year as provided herein, the Corporation anticipates that its next financial statements will consist of an 18-month period beginning January 1, 2013 through June 30, 2014, followed by 12-month periods ending each June 30, beginning June 30, 2015.

(f) It is advisable to allow the approval of one or more interim periods in with respect to the Corporation's budget and financial statements in connection with such change in fiscal year.

(g) In order to provide for the Corporation's audit to be submitted to the City and the Regents in a timely manner, if the Corporation's fiscal year will end on June 30 of each year, the City deems it desirable and in the best interests of the City to approve the Amended and Restated Bylaws of the Corporation to provide that the Corporation's report of the audit must be provided to each party to the Interlocal Agreement not later than November 1st immediately following such audit(s).

(h) Any amendment to the Bylaws or the Interlocal Agreement must be approved by the City and the Regents to become effective.

(i) On June 7, 2013, the Regents approved the proposed amendments to the Bylaws and the Interlocal Agreement.

**Section 2. Approval of NU Corp Fiscal Year Change.** The City, on behalf of LES, hereby approves:

(a) The Amended and Restated Bylaws of the Corporation attached hereto as Exhibit A; and

(b) The Amendment to Interlocal Cooperation Agreement attached hereto as Exhibit B (the "Amendment").

**Section 3. Further Authority.** The President of the Corporation is hereby authorized to approve one or more interim financial periods as the President of the Corporation determines necessary or appropriate for the Corporation's budget, financial statements and other matters. The appropriate staff and officers of the City are authorized and directed to take all necessary steps and do such acts to execute, acknowledge and deliver all such documents as may in their discretion be deemed necessary or desirable in order to carry out or comply with the terms and provisions of this Resolution. The City further authorizes and directs the execution and delivery of the Amendment substantially in the form presented by the Mayor, and directs such officer to finalize and execute the same, but with such changes as such officer shall approve (whose signature thereon shall constitute conclusive evidence of such approval).

**Section 4. Effective Date.** This resolution shall take effect and be in force from and after its passage and publication according to law.

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**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, 2013.

**AYES:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**NAYS:** \_\_\_\_\_

\_\_\_\_\_

**CONFLICT OF INTEREST:**

\_\_\_\_\_

**APPROVED:** \_\_\_\_\_, 2013.

\_\_\_\_\_

**Mayor**

**ABSENT OR NOT VOTING:**

\_\_\_\_\_

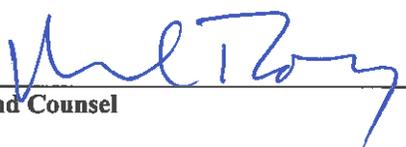
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**Approved as to Form:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Bond Counsel



**Exhibit A**

**Form of Amended and Restated Bylaws of the Corporation**

**AMENDED AND RESTATED BYLAWS  
NEBRASKA UTILITY CORPORATION**

Pursuant to the Nebraska Nonprofit Corporation Act and the Articles of Incorporation, the undersigned directors do hereby adopt the Amended and Restated Bylaws (the "Bylaws") of Nebraska Utility Corporation (the "Corporation") to provide as follows:

The Corporation is organized in accordance with law and with an Interlocal Cooperation Agreement dated May 17, 2001 (the "Agreement") between the City of Lincoln, Nebraska (the "City"), acting for and on behalf of Lincoln Electric System ("LES"), and the Board of Regents of the University of Nebraska (the "Regents"), subject to the provisions of the Corporation's Articles of Incorporation and the laws of the State of Nebraska, at a meeting of the directors of the Corporation held in Lincoln, Nebraska, on the 30th day of May, 2001 called for such purpose.

ARTICLE I- MEMBERSHIP

Section 1. The Corporation shall have no members.

ARTICLE II- PUBLIC CHARACTER OF CORPORATION;

RIGHTS AND LIABILITIES OF DIRECTORS. AND OFFICERS

Section 1. Activities. The Corporation shall engage only in activities which are essentially public in character in accordance with the provisions of its Articles of Incorporation.

Section 2. Non-profit Character. The Corporation shall not be organized for profit and shall have no capital stock. The corporate income shall not inure, nor shall any distribution be made of any of its property or assets, to its officers, or directors, or any other private person, provided, such persons may be compensated for services rendered.

Section 3. Beneficial Interests. If the Corporation incurs indebtedness to acquire property, then upon retirement of such indebtedness full legal title to the property of the Corporation with respect to which the indebtedness is incurred shall vest as provided in any contracts entered into by the Corporation with respect to such property.

Section 4. Dissolution. Upon dissolution of the Corporation, it shall transfer all of its right, title, and interest in its property and assets as provided in the Agreement.

Section 5. Liability. No member of the Board of Directors or officer of the Corporation shall be individually liable upon any indebtedness incurred by the Corporation.

#### ARTICLE III- DIRECTORS

Section 1. General Powers. The powers of the Corporation shall be exercised by a Board of Directors. The Board shall have power to adopt rules and regulations not inconsistent with the Agreement, the Articles of Incorporation, these Bylaws, or the laws of the State of Nebraska, for the management, administration, and regulation of the business affairs of the Corporation.

Section 2. Election and Tenure. The term of office of a director shall be two (2) years. The Board of Directors shall consist of five (5) members, three (3) members of which shall be the duly appointed and acting (i) Vice President for Business and Finance of the University of Nebraska, (ii) Vice Chancellor for Business and Finance, University of Nebraska-Lincoln, and (iii) Assistant Vice Chancellor for Facilities Management and Planning, University of Nebraska-Lincoln, including any individual holding any of such positions on an interim basis, and two (2) members of which shall be appointed by LES. LES shall appoint at least one member of the Board of Directors having a term ending on December 31 in even-numbered years and one member having a term ending on December 31 in odd-numbered years.

Section 3. Removal of Directors. Directors may be removed from office for cause by a two-thirds (2/3) vote of the Board, or by the appointing person or entity at any time without cause.

Section 4. Vacancies. Any vacancies in the Board shall be filled by a designee of the person or entity which originally appointed the former Board member for the unexpired portion of a term.

Section 5. Accounting and Audits. The Board shall establish and maintain an appropriate accounting system. A complete audit shall be made of the Corporation's accounts, books, and financing conditions after the close of each fiscal year, and a report thereon shall be submitted to each party to the Agreement not later than November 1st immediately following such audit(s).

Section 6. Principal Place of Business. The Board shall establish a principal place of business of the Corporation.

#### ARTICLE IV - MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held at such time and place as the Board shall determine by resolution.

Section 2. Special Meetings. Special meetings of the Board may be called by the President or by any three directors, pursuant to which the Secretary shall give written notice of the time, place, and purpose of such meetings to each director no less than three days prior thereto.

Section 3. Waiver of Notice. Any director may waive, by writing, any notice of a meeting required to be given to such director by these Bylaws. The attendance at a meeting shall constitute a waiver of notice of such meeting by such director, except where such attendance shall be for the express purpose of objecting that any such meeting has been lawfully called and convened.

Section 4. Quorum. A majority of the Board who are eligible to vote shall constitute a quorum.

Section 5. Public Notice. The Corporation shall comply with Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended, with respect to public meetings.

Section 6. Contracts and Services. The directors and officers of the Corporation may be interested directly or indirectly in any contract relating to or incidental to the operations conducted by the Corporation and may freely make contracts, enter into transactions or otherwise act for and on behalf of the Corporation, notwithstanding that they may also be acting as individuals or as trustees of trusts or as agents for other persons or corporations or may be interested in the same matters as shareholders, directors or otherwise; provided, however, that any contract, transaction or act on behalf of the Corporation in a matter in which the directors or officers are personally interested as shareholders, directors or otherwise shall be at arm's length and not violative of the proscriptions in the Articles of Incorporation against the Corporation's use or application of its funds for private benefit. In no event, however, shall any person or other entity dealing with the directors or officers be obligated to inquire into the authority of the directors and officers to enter into and consummate any contract, transaction or other action.

Section 7. Compensation. Directors shall serve without compensation, but by resolution of the Board of Directors, a fixed reasonable sum or expenses of attendance, if any, or both, may be allowed for attendance at each regular or special meeting of the Board.

#### ARTICLE V- OFFICERS AND STAFF

Section 1. Number. The officers of the Corporation shall be a President, Vice-president, and Secretary-Treasurer, and such other officers as the Board may deem appropriate from time to time, all of whom shall be members of the Board.

Section 2. Election and Tenure. At the first meeting of the Board it shall elect the officers of the Corporation, who shall serve until their successors are elected at the next annual meeting. Officers shall thereafter be elected annually to a one-year term. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

Section 3. Removal of Officers. Officers may be removed by a three-fourths (3/4) vote of the Board for cause or whenever in the Board's judgment the best interests of the Corporation will be served thereby.

Section 4. President. The President:

(a) shall be the principal executive officer of the Corporation and, unless otherwise determined by the Board, shall preside at all meetings of the Board.

(b) may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board by resolution to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or of the Corporation, or shall be required by law to be otherwise signed or executed; and

(c) shall in general perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 5. Vice-President. In the absence of the President, or in the event of his or her inability or refusal to act, the Vice- President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall also perform such other duties as from time to time may be assigned to him or her by the Board.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall:

(a) keep the minutes of the meeting of the members and of the Board in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with these Bylaws or as required by law;

(c) be custodian of the Corporation records and of the seal of the Corporation and affix the seal of the Corporation to documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws;

(d) have general charge of the books of the Corporation;

(e) keep on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Corporation containing all amendments thereto (which copy shall always be open to the inspection of any member) and, at the expense of the Corporation, forward a copy of the Bylaws and all documents thereto to each member;

(f) have charge of custody of and be responsible for all funds and securities of the Corporation;

(g) be responsible for the receipt of and the issuance of receipts for all money due and payable to the Corporation and for the deposit of all such money in the name of the Corporation in such bank or banks as shall be selected in accordance with the provisions of these Bylaws; and

(h) in general perform all the duties incident to the office of Secretary-Treasurer and such other duties as from time to time may be assigned to him or her by the Board.

Section 7. General Coordinator. The Board of Directors may appoint a general coordinator. The general coordinator shall perform such duties as the Board may require for him or her and shall have such authority as the Board may vest in him or her.

Section 8. Bonds of Officers. The Secretary-Treasurer and any other officer or agent of the Corporation charged with responsibility for the custody of any of its funds or property shall give bond in such sum and with such surety as the Board shall determine. The Board in its discretion may also require any other officer, agent or employee of the Corporation to give bond in such amount and with such surety as it shall determine.

Section 9. Compensation. The powers, duties and compensation of officers, agents and employees shall be fixed by the Board; provided, however, that directors shall serve without compensation subject to the provisions of Article IV, Section 7 hereof regarding the payment of expenses.

Section 10. Vacancies. A vacancy in office because of death, resignation, removal, disqualification or otherwise shall be filled by appointment by the party making the original appointment to the vacant position as specified in Article III, Section 2 of these Bylaws.

Section 11. Other Officers. The Board of Directors is authorized to create such other offices and appoint persons to such offices as the Board deems necessary to effectively conduct the operations of the Corporation.

#### ARTICLE VI - FINANCIAL TRANSACTIONS

Section 1. Contracts. Except as otherwise provided in these bylaws the Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents, employee or employees of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 3. Deposits. All funds of the Corporation shall be deposited and be secured in the same manner as public funds to the credit of the Corporation in such bank or banks as the Board may select.

Section 4. Debt. The Corporation may incur indebtedness from time to time upon approval of the Board for any corporate purpose; provided, however, that indebtedness incurred to pay the costs of capital projects exceeding \$250,000 in construction or acquisition costs shall be approved by the Regents.

ARTICLE VII -AMENDMENT

Section 1. Amendments. These Bylaws may be altered, amended or repealed by the affirmative vote of three-fourths (3/4) of the votes eligible to be cast at any regular or special meeting of the Board, provided that the notice of such meeting shall fully describe the proposed change and provided further that consent to such amendment is obtained as provided in the Agreement.

The foregoing Amended and Restated Bylaws shall supersede, in all respects, the Bylaws of the Corporation adopted May 30, 2001.

Approved and adopted by unanimous action of the Board of Directors of the Corporation present on \_\_\_\_\_, 2013.

NEBRASKA UTILITY CORPORATION

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**Exhibit B**

**Form of Amendment to Interlocal Cooperation Agreement**

## AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT

This AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT, dated \_\_\_\_\_, 2013 (this "Amendment"), is by and between THE CITY OF LINCOLN, NEBRASKA (the "City") and THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA (the "Regents").

### RECITALS

- A. Nebraska Utility Corporation (the "Corporation") is a Nebraska nonprofit corporation duly organized under and pursuant to (a) the laws of the State of Nebraska (the "State"), including, without limitation, (i) the Nebraska Nonprofit Corporation Act (Chapter 21, Article 19, Reissue Revised Statutes of Nebraska, as amended), and (ii) the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended), and (b) an Interlocal Cooperation Agreement dated May 17, 2001 (the "Interlocal Agreement") between the City and the Regents for the purpose of providing for purchasing, leasing, constructing and financing facilities and acquiring services in order to furnish energy requirements, utility and infrastructure facilities and related energy, utility and infrastructure services to the City and the Regents and to such other persons and entities as the City and the Regents may be authorized by law to undertake.
- B. Section VI (A) of the Interlocal Agreement provides that the Corporation shall operate on a fiscal year from January 1 to December 31 and Section 5 of Article III of the Corporation's Bylaws, dated as of May 30, 2001, requires a report of the audit to be submitted to each party to the Interlocal Agreement not later than May 1st immediately following such audit(s).
- C. For ease and efficiency of administration, the Corporation has requested that its fiscal year change from January 1 to December 31 of each year to July 1 of a year to June 30 of the following year, to align the Corporation's fiscal year with the fiscal year of the Regents.
- D. Any amendment to the Bylaws or the Interlocal Agreement must be approved by the City and the Board to become effective.
- E. The Regents and the City have approved the Amended and Restated Bylaws of the Corporation and the form of this Amendment.
- F. The Amended and Restated Bylaws will require a report of the audit to be submitted to each party to the Interlocal Agreement not later than November 1st immediately following such audit(s).
- G. The execution and delivery of this Amendment has been duly authorized by the City and the Regents, respectively.
- H. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Interlocal Agreement.

**NOW, THEREFORE**, the City and the Regents, in consideration of the mutual agreements herein, do hereby agree as follows:

**Section 1.** Section VI(A) of the Interlocal Agreement is hereby amended and restated in its entirety as follows:

The Corporation shall not be operated for private profit, but shall be operated in such manner as shall tend to enhance the financial welfare of the Parties. The Corporation shall operate on a fiscal year from July 1 to June 30 and shall establish an operating budget which shall include all revenue of every type and description and expenses of every type and description. Each Party shall pay for contracted services and shall make payments therefor as provided in such contract.

**Section 2.** All references in the Interlocal Agreement to the Agreement mean the Interlocal Agreement as amended by this Amendment. Except as expressly amended hereby, the terms of the Agreement set forth therein remain in full force and effect.

**Section 3.** This Amendment may be executed by electronic transmission and in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the City and the Regents have executed this Amendment as of the date set forth above.

THE CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
By: Chris Beutler

Its: Mayor

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA

\_\_\_\_\_  
By: David Lechner

Its: Senior Vice President | CFO