

**AGREEMENT**

**BETWEEN**

**CITY OF LINCOLN, NEBRASKA,**  
**a municipal corporation**

**AND**

**LOWER PLATTE SOUTH**  
**NATURAL RESOURCES DISTRICT**

**Effective \_\_\_\_\_**

**AGREEMENT**  
**FOR**  
**ANTELOPE VALLEY WELLS AND RESERVOIR**

THIS AGREEMENT (this "Agreement") is executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the Lower Platte South Natural Resources District hereinafter referred to as "NRD", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

**RECITALS**

A. The City owns certain real property located in the vicinity of 30<sup>th</sup> Street and Capitol Parkway in Lincoln, Lancaster County, Nebraska and certain production ground water wells, monitoring wells, reservoir and related equipment and facilities which are located on such property.

B. NRD desires to purchase the personal property consisting of the wells, reservoir and all related equipment and facilities including but not limited to the piping and acquire a license for the use the real property.

C. The City proposes to grant a license to the NRD for use of the real property and to sell to NRD the personal property as herein provided.

**NOW, THEREFORE**, it is mutually agreed between the parties as follows:

1. **Premises Subject to License.**

City, in consideration of the amounts to be paid by NRD as hereinafter set forth, and of the covenants and agreements hereinafter stipulated to be mutually kept and performed by

the parties hereto, does hereby license unto NRD the real estate and all fixtures situated thereon located in the general vicinity of 30<sup>th</sup> Street and Capitol Parkway in Lincoln, Nebraska, to-wit:

The production wells designated as 90-1 and 90-2, the monitoring wells designated as M89-2, M90-101a, M90-101b, M90-102R, M90-105R, M90-106R, M90-107, M90-108R, M90-109 and M90-110, Reservoir #7 as described and shown on the attached Exhibit "A", and the associated underground piping connecting the production wells and the piping to Reservoir #7 as shown on Exhibit "B"

(hereinafter referred to as the "Premises") together with the improvements and appurtenances thereunto belonging or in any way appertaining, including the right of ingress and egress thereto and therefrom at all times. While specific paths of ingress and egress are not indicated on Exhibit A, the City shall work with the NRD to guarantee adequate access to all wells and the reservoir during the term of this Agreement.

2. **Term.**

NRD shall have and hold the Premises beginning with the execution of this Agreement and extending for a term of One Hundred (100) years (the "Term"), unless terminated sooner pursuant to Paragraph 7 below

3. **Consideration.**

NRD and City agree that the Premises shall be licensed to NRD for the aforementioned Term and all personal property listed on Exhibit "C" sold to the NRD for a total of Forty Thousand dollars (\$40,000).

4. **Premises Restoration Upon Expiration.**

NRD shall, upon the expiration of this License, and at NRD's sole expense, remove all piping, wells and reservoir equipment and appurtenances used by the NRD from the

said Premises, unless the NRD decides to abandon such items in place and decommission the wells pursuant to state statutes.

5. **Taxes.**

It is understood and agreed that, as of the initial date of this License, the Premises are not subject to real estate taxes pursuant to Neb. Rev. Stat. § 77-201 et seq. (Reissue 2003) or to a payment in lieu of taxes. However, it is agreed that if the Premises become subject to real estate tax or subject to a payment in lieu of tax, then NRD shall pay the said tax or payment in lieu of tax, in addition to any consideration specified in this Agreement. .

6. **Use of Premises.**

NRD will use the Premises for the purpose of augmenting the flows in Antelope Creek, Salt Creek and or the Platte River, ground water monitoring, storm water quality/quantity for the reservoir , as determined in the NRD's sole discretion, and such other uses as may be incidental and related thereto.

7. **License without Cost to City; Repairs at Cost of NRD.**

Except as herein otherwise specifically provided, this Agreement , in every sense, shall be without cost to City for the development, maintenance and improvement of the personal property located on the Premises and NRD shall, at its sole cost, except as herein otherwise specifically provided, maintain and repair such personal property including all improvements and facilities located on the Premises , in good order, condition and repair as may be required by ordinary and reasonable use on the part of the NRD. The NRD has the option of abandoning any of the personal property covered by this Agreement in place and decommissioning any of the wells at any time during the term of this Agreement. At the time of the termination of this Agreement, the NRD shall either remove or at the option of the NRD, properly abandon and

decommission in place, any remaining personal property and leave the Premises in a condition similar to the surrounding neighborhood. As relates to the discontinuance of the use of Reservoir #7, NRD may properly fill the reservoir and abandon in place pursuant to the requirements of the City at that time.

8. **Alterations; Signs.**

NRD shall have the right, during the term of this Agreement , to make alterations, attach fixtures, replace, modify, or improve the wells, and erect signs in or upon the Premises as permitted by law, and all improvements, appliances, fixtures and all other property, of whatever nature made or placed upon the Premises by NRD, shall be and remain the property of NRD and may be removed or abandoned in place and any wells decommissioned prior to the expiration of this Agreement, provided only that NRD shall restore the Premises to the same condition as existing at the time of entry under this Agreement, ordinary wear and tear excepted.

9. **Fire Insurance.**

City shall insure or self-insure the Premises against reasonable and foreseeable perils. NRD shall insure or self-insure all of the personal property located at the Premises.

10. **Indemnity; Liability Insurance.**

(a) NRD shall defend, indemnify and hold City and its agents, officers and employees harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments or fines arising by reason of injury or death of any person, or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney fees, court costs, investigator fees, and expert fees) of any nature whatsoever arising out of NRD's activities on the Premises or in its use or occupancy of the Premises, regardless of where the injury, death or

damage may occur, except to the extent such injury, death or damage is caused by the negligent act or omission or willful misconduct of City. City shall give NRD reasonable notice of and an opportunity to defend against, any such claims or actions.

Notwithstanding the above indemnification, NRD shall give City reasonable notice of any matter covered herein and shall forward to City a copy of every demand, notice, summons or other process received in any claim or legal proceeding covered hereby.

(b) NRD agrees to self-insure or obtain general or public liability insurance in the amount of Five Million Dollars (\$5,000,000.00) and shall include the City as an additional insured. Said insurance policy shall contain a provision to notify the City in writing prior to any cancellation or reduction of coverage.

11. **Utilities.**

NRD shall pay for all water, sewer, gas, heat, light, and power supplied to the Premises, including standard metering devices for the measurement of such services. In the event it shall become necessary, as a condition of service, to make changes upon the Premises covered by this Agreement, of any wiring, plumbing or similar installations, NRD will make such changes and installations, at its expense, as directed and required by the utility. It is further agreed that City shall have the right, without cost to NRD, to install and maintain in, on or across the Premises, sewer, water, gas, electric, and telephone lines, or other installations necessary to the operation of the utility; provided, however, that City shall carry out such work and locate any above-ground or below ground structures in a manner so as not to unreasonably interfere with NRD's use of the Premises.

12. **Comply with Laws.**

NRD shall, in the use of the Premises, comply with all applicable requirements of all municipal, state and Federal authorities now in force, or which may hereafter be in force, and will observe all applicable municipal ordinances, state and Federal statutes now in force, or hereafter to be in force.

13. **City; Limitation on Structures.**

City reserves the right to take any action it considers necessary to prevent NRD from erecting, or permitting to be erected, any building or other structure on the Premises that, in the opinion of City, would limit the usefulness of the Premises for City purposes.

14. **No Adverse Affect.**

It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Premises for City purposes.

15. **No Assignment or Subletting.**

NRD shall not assign or sublicense this Agreement in whole or in part, or any interest therein, without the prior written consent of the City. Any such assignment or sublicensing without the City's prior written consent shall be void and shall, at the option of City, terminate the Agreement.

16. **City; Right of Access; Inspections.**

City shall have free access to the Premises at all reasonable times for the purposes of examining or inspecting the conditions thereof relevant to any right or power reserved by City pursuant to the terms of this Agreement.

17. **Surrender.**

At the end of the Term of this License, NRD shall surrender and deliver up the Premises to the City in as good condition as at the beginning of the term, ordinary wear and tear, and damage by the elements excepted, and shall remove all of the personal property as well as any facilities or improvements licensed hereunder, except as provided in Paragraph 4 and 8 above, from the Premises and leave the same in a neat and clean condition.

18. **Termination for Cause; Notice.**

After thirty (30) days prior written notice to NRD of any default under this Agreement and the opportunity to cure such default with such thirty (30) days, City may elect to terminate all of the rights of NRD hereunder if such default is not cured with such thirty (30) days, by giving ten (10) days written notice of termination of this Agreement to NRD. In the event of a default that results in a termination of the Agreement, City shall, in that event, be entitled to exercise all remedies herein provided for a default by NRD, as well as any and all remedies provided by law or in equity. It is further agreed that upon such default that results in termination and after notice as provided above, NRD shall remove, abandon in place, or decommission all the personal property on the Premises.

19. **Hazardous Materials; Indemnification.**

NRD shall not cause or permit any hazardous substance or material to be brought upon, kept or used in or about the Premises by NRD, its agents, employees, contractors or invitees, except for such use as is in compliance with all laws, ordinances and regulations. NRD agrees that it shall be fully liable for all costs and expenses related to any use, storage, or disposal of hazardous substances or materials kept upon the Premises by the NRD, and the NRD shall give prompt notice to the City within twenty-four hours of the occurrence of any violation

or potential violation of the provisions of this License. NRD shall defend, indemnify, and hold harmless City and its agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys and consultant fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to:

- (a) The presence, disposal, release or threatened release of any such hazardous substance or material that is on, from, or effects soil, water, vegetation, buildings, personal property, persons, animals, or otherwise;
- (b) Any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous substance or material;
- (c) Any lawsuit brought or threatened, settlement reached, or government order relating to such hazardous substance or materials; or
- (d) Any violation of any laws applicable thereto.

The provisions of this License shall be in addition to any other obligations and liabilities NRD may have to City at law or in equity and shall survive the transactions contemplated herein and shall survive the termination of this License.

As used herein, the term "hazardous substance or material" means:

- (a) Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
- (b) Any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;

- (c) Any glycol, oil, petroleum products, and their byproducts; and
- (d) Any material or substance which is or becomes regulated by any federal, state, or local governmental City.

20. **Notice.**

All notices to be given pursuant to this Agreement shall be addressed to the NRD, Lower Platte South NRD, P.O. Box 83581, Lincoln, Nebraska 68501, or to the City at County City Building, 555 South 10th, Lincoln, Nebraska 68508. Notice shall be deemed to have been fully given if and when enclosed in a properly sealed envelope addressed as aforesaid and either deposited in the United States Mail, postage prepaid, or hand delivered.

21. **Time of the Essence.**

It is specifically declared and agreed that time is of the essence in the performance of the provisions of the Agreement.

22. **Headings.**

The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this License.

23. **Remedies of City Cumulative.**

The remedies given to City in this Agreement shall be cumulative, and the exercise of any one remedy by City shall not be to the exclusion of any other remedy.

24. **Waivers.**

Waiver by City of any breach of any covenant or duty of NRD under this Agreement is not a waiver of a breach of any other covenant or duty of NRD, or of any subsequent breach of the same covenant or duty.

25. **Modification of Agreement.**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

26. **Entire Agreement.**

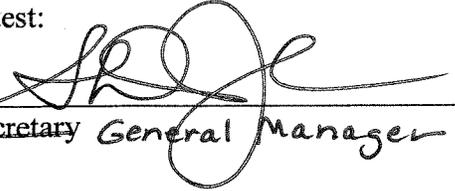
This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this License shall not be binding upon either party except to the extent incorporated in this License.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year

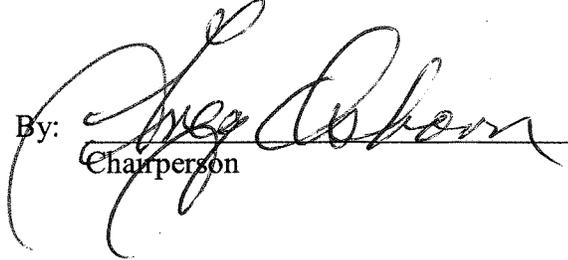
first above written.

**LOWER PLATTE SOUTH NRD**

Attest:

  
\_\_\_\_\_  
Secretary General Manager

By:

  
\_\_\_\_\_  
Chairperson

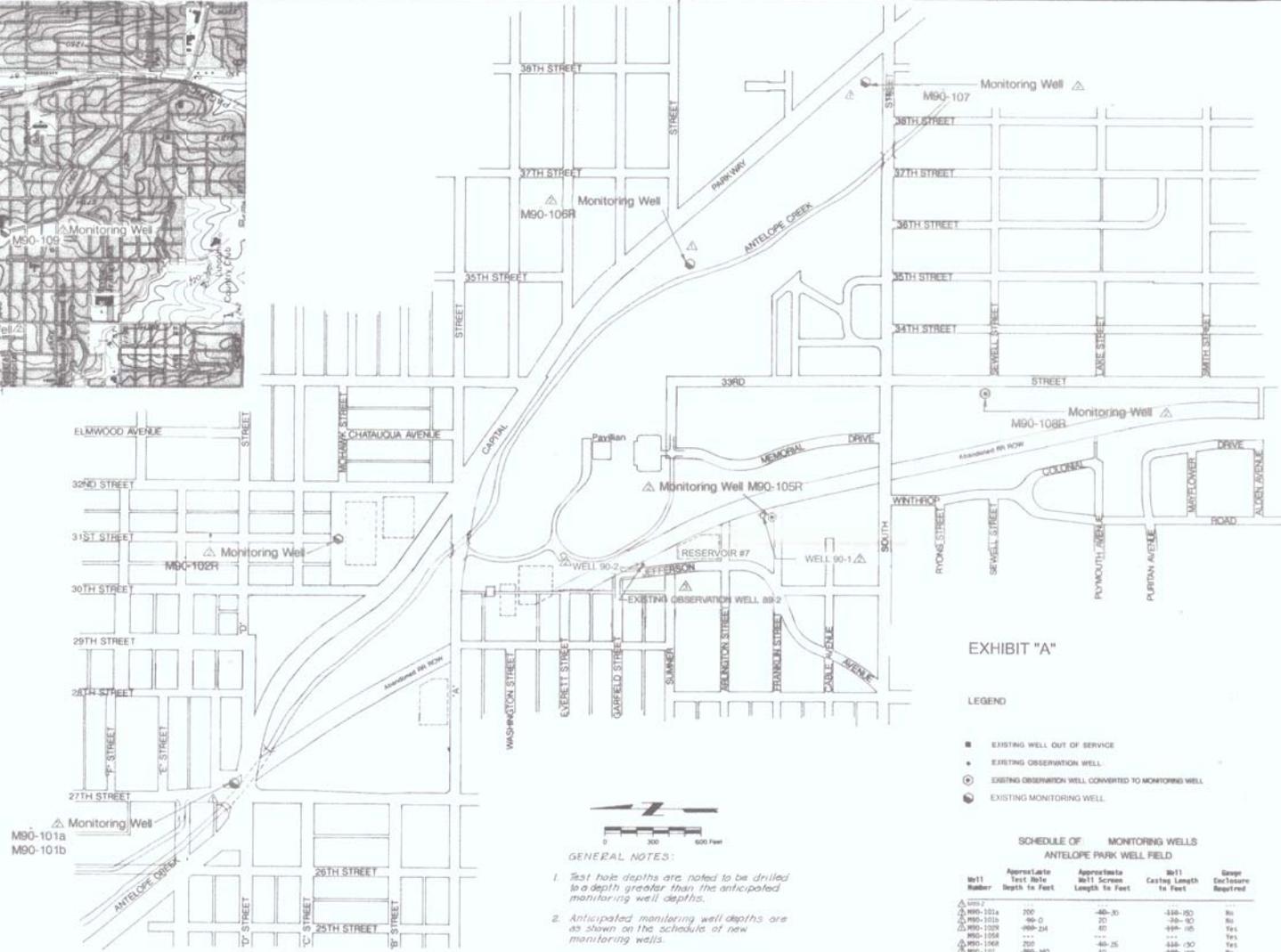
Attest:

**CITY OF LINCOLN, NEBRASKA**

\_\_\_\_\_  
City Clerk

By:

\_\_\_\_\_  
Mayor



- GENERAL NOTES:**
1. Test hole depths are noted to be drilled to a depth greater than the anticipated monitoring well depths.
  2. Anticipated monitoring well depths are as shown on the schedule of new monitoring wells.
  3. Monitoring well M90-101b does not require test hole for soil samples & electric logging. Construct shallow monitoring well based upon test hole for M90-101a.

**EXHIBIT "A"**

**LEGEND**

- EXISTING WELL OUT OF SERVICE
- ▲ EXISTING OBSERVATION WELL
- ⊙ EXISTING OBSERVATION WELL CONVERTED TO MONITORING WELL
- EXISTING MONITORING WELL

**SCHEDULE OF MONITORING WELLS  
ANTELOPE PARK WELL FIELD**

Well Number	Approximate Test Hole Depth in Feet	Approximate Well Screen Length in Feet	Well Casing Length in Feet	Design Elevation Required
▲ M90-101a	700	-40-30	-110-100	Nil
▲ M90-101b	90-0	20	-30-10	Nil
▲ M90-102R	490-24	40	-114-105	Yes
▲ M90-105R	---	---	---	Yes
▲ M90-108R	210	40-25	-118-130	Yes
▲ M90-107	490-240	40	-100-100	Nil
▲ M90-108	---	---	---	Yes
▲ M90-109	490-240	40	-118-102	Nil
▲ M90-110	210	20	-118-127	Nil
▲ M90-107	490-240	40	-118-116	Yes
▲ TOTAL	---	---	---	---

REVISED	DATE	BY	DESCRIPTION	APPROVED
	4/7/1901		Connected To Reservoir Construction Details	
	2/26/14		UPDATED TO REMOVE TEST PROPOSED	
	5/29/2014		UPDATED FOR EXHIBIT "A"	

**CONTRACT NO.**

DESIGNED BY: M.K.P.  
 DRAWN BY: E.M.L.  
 CHECKED BY: J.W.  
 APPROVED BY: M.K.P.  
 DATE: JULY 2010

**LINCOLN WATER CONSORTIUM**

PROJECT NO.

**LINCOLN WATER SYSTEM  
MONITORING WELLS**

**RESERVOIR #7 AND WELLS  
ANTELOPE PARK WELL FIELD**

**EXHIBIT "A"**

**G-6**

SHEET 6 OF 7

NORTH



EXHIBIT "B"

Antelope Wellfield  
For NRD

Production \_\_\_\_\_

Closed Valve \_\_\_\_\_

5/29/2014

