

**ORIGINAL**

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT entered into on this 10<sup>th</sup> day of May in the year of 2006 by and between; The **STATE OF NEBRASKA, NEBRASKA DEPARTMENT OF NATURAL RESOURCES** hereinafter referred to as the "STATE", and **FRENCHMAN VALLEY IRRIGATION DISTRICT** hereinafter referred to as the "DISTRICT."

### WITNESSETH:

WHEREAS, the District has the rights to natural flow for an identified Water Supply as hereinafter defined in Paragraph II for the calendar year 2006; and

WHEREAS, the State desires to "purchase" and/or "lease" the use of the District's Water Supply for the calendar year 2006; and

WHEREAS, the District is willing to "sell" and/or "lease" the use of its Water Supply for the calendar year 2006 to the State.

NOW THEREFORE, in consideration of these facts, the parties agree as follows:

### I. DURATION OF AGREEMENT

This agreement is for the period from the execution of this Memorandum of Agreement (hereinafter "Agreement") to the end of the 2006 calendar year. There will be no extension or renewal of this Agreement unless further agreed to in writing by the parties.

### II. DEFINITIONS

For purposes of the Agreement, the following term(s) are defined as follows:

"Water Supply" or "2006 Water Supply" shall mean the total amount of natural flow that would be available to the District for beneficial use at the Headgate of Culbertson Canal during the 2006 calendar year. Based on the average of natural flow diversions, as reflected in the State's records for the years 2001 to 2005, the expected water supply from natural flow is approximately 8000 Acre-Feet per year. Both parties agree that the actual amount of natural flow could be more or less than the five-year average.

### III. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:

A. The District agrees to relinquish the rights to the use of its Water Supply for the period from the date of the execution of this Agreement to the end of the 2006 calendar year.

B. By execution of this Agreement, the District represents and affirms that, in accordance with all relevant state statutes and District procedures, the District has received the requisite affirmative vote of its qualified electors, at a duly authorized meeting of the District, authorizing it to enter into this Agreement.

C. The District agrees to consult and collaborate with the State, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated

Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al. dated January 9, 2006, and the letter from the Lower Republican Natural Resources District to Governor Dave Heineman dated February 1, 2006.

D. The District agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the District's 2006 Water Supply to the State.

#### IV. THE STATE AGREES TO PERFORM AS FOLLOWS:

A. The State of Nebraska will pay the sum of four hundred thousand dollars (\$400,000.00) to the District, as payment in full to purchase and/or lease the use of the District's 2006 Water Supply, within ninety (90) days of the execution of this Agreement. This payment compensates the District for relinquishing the use of its Water Supply for the calendar year 2006 to the State for the term of this Agreement.

B. The State agrees to consult and collaborate with the District, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al. dated January 9, 2006, and the letter from the Lower Republican Natural Resources District to Governor Dave Heineman dated February 1, 2006.

C. The State will continue to work with the Natural Resources Districts and surface water irrigation districts to meet Nebraska's obligations under the Republican River Compact and Settlement Agreements.

D. By execution of this Agreement, the State represents and affirms that it has appropriated and secured the funds necessary to meet its obligations under this Agreement.

E. The State agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the District's 2006 Water Supply to the State.

#### FRENCHMAN VALLEY IRRIGATION DISTRICT

Clarence Jankovits Jr  
Clarence Jankovits, Board President  
Frenchman Valley Irrigation District

5-15-06  
Date

#### NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ann Bleed  
Ann Bleed, Acting Director  
Nebraska Department of Natural Resources

5/10/06  
Date

**APPROVED**

AS TO FORM & CONTENT  
BY NDNR LEGAL COUNSEL

ASD DATE 5/9/06

Law Offices of  
**STANLEY C. GOODWIN**

Stanley C. Goodwin  
Nathan A. Schnelder

Telephone  
308 345-2580  
308 345-2581 (FAX)

116 West C. Street  
P.O. Box 607  
McCook, NE 69001

May 17, 2006

RECEIVED

MAY 18 2006

DEPARTMENT OF  
NATURAL RESOURCES

State of Nebraska  
Department of Natural Resources  
301 Centennial Mall South  
4<sup>th</sup> Floor  
P.O. Box 94676  
Lincoln, NE 68509-4676

Attention: Ann Diers

Re: Enclosure

Dear Ms. Diers:

Enclosed please find the executed agreement of Frenchman Valley Irrigation District. This document is returned to you pursuant to the letter of instruction of Ann Bleed dated May 10, 2006. Pursuant to that letter we have retained one executed original and have calendared the expectation of receipt of the payment required by the agreement.

Thank you for your assistance in this matter.

Yours truly,



Stanley C. Goodwin

SCG:cjl

DNR 006908

## Acknowledgment

The undersigned hereby acknowledges receipt of the State of Nebraska's check for \$400,000.00 as payment in full of the State's monetary obligations under the Memorandum of Agreement by and between the State and Frenchman Valley Irrigation District.

Frenchman Valley Irrigation District



By: Stanley C. Goodwin, Attorney in Fact for  
Frenchman Valley Irrigation District

7/10/06  
Date

ORIGINAL

**MEMORANDUM OF AGREEMENT**

**THIS AGREEMENT** entered into on this 10<sup>th</sup> day of May in the year of 2006 by and between; The **STATE OF NEBRASKA, NEBRASKA DEPARTMENT OF NATURAL RESOURCES** hereinafter referred to as the "STATE", The **MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT** hereinafter referred to as the "DISTRICT", and **RIVERSIDE IRRIGATION COMPANY, INC.** hereinafter referred to as the "COMPANY."

**WITNESSETH:**

**WHEREAS**, the Company has the rights to natural flow for an identified Water Supply as hereinafter defined in Paragraph II for the year 2006; and

**WHEREAS**, the State and the District desire to "purchase" and/or "lease" the use of the Company's Water Supply for the calendar year 2006; and

**WHEREAS**, the Company is willing to "sell" and/or "lease" the use of its Water Supply for the calendar year 2006 to the State and the District.

**NOW THEREFORE**, in consideration of these facts, the parties agree as follows:

**I. DURATION OF AGREEMENT**

This agreement is for the period from the execution of this Memorandum of Agreement (hereinafter "Agreement") to the end of the 2006 calendar year. There will be no extension or renewal of this Agreement unless further agreed to in writing by the parties.

**II. DEFINITIONS**

For purposes of the Agreement, the following term(s) are defined as follows:

"Water Supply" or "2006 Water Supply" shall mean the total amount of natural flow that would be available to the Company for beneficial use at the Headgate of Riverside Canal during the 2006 calendar year. Based on the average of natural flow diversions, as reflected in the State's records for the years 2001 to 2005, the expected water supply from natural flow is approximately 2000 Acre-Feet per year. Both parties agree that the actual amount of natural flow could be more or less than the five-year average.

**III. THE COMPANY AGREES TO PERFORM AS FOLLOWS:**

A. The Company agrees to relinquish the rights to the use of its Water Supply for the period from the date of the execution of this Agreement to the end of the 2006 calendar year.

B. By execution of this Agreement, the Company represents and affirms that, in accordance with all relevant state statutes and Company procedures, the Company has received the requisite affirmative vote of its qualified electors, at a duly authorized meeting of the Company, authorizing it to enter into this Agreement.

C. The Company agrees to consult and collaborate with the State, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al. dated January 9, 2006.

D. The Company agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the Company's 2006 Water Supply to the State.

**IV. THE STATE AND THE DISTRICT AGREE TO PERFORM AS FOLLOWS:**

A. The State and the District will each pay the sum of fifty thousand dollars (\$50,000.00) to the Company, for a total payment of one hundred thousand dollars (\$100,000.00), as payment in full to purchase and/or lease the use of the Company's 2006 Water Supply, within ninety (90) days of the execution of this Agreement. These payments compensate the Company for relinquishing the use of its Water Supply for the calendar year 2006 to the State and the District for the term of this Agreement.

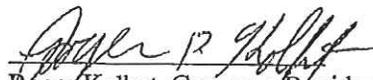
B. The State agrees to consult and collaborate with the Company, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al. dated January 9, 2006.

C. The State will continue to work with the Natural Resources Districts and surface water irrigation districts to meet Nebraska's obligations under the Republican River Compact and Settlement Agreements.

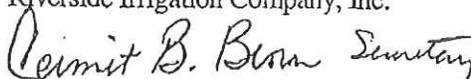
D. By execution of this Agreement, both the State and the District represent and affirm that they have appropriated and secured the funds necessary to meet their obligations under this Agreement.

E. Both the State and the District agree to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the Company's 2006 Water Supply to the State and the District.

**RIVERSIDE IRRIGATION COMPANY, INC.**

  
Roger Kolbet, Company President  
Riverside Irrigation Company, Inc.

5-15-06  
Date

  
Vermit B. Berra Secretary

**ORIGINAL**

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ann Bleed

Ann Bleed, Acting Director  
Nebraska Department of Natural Resources

5/18/06  
Date

**APPROVED**

AS TO FORM & CONTENT  
BY NDNR LEGAL COUNSEL

ADD DATE 5/19/06

MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT

Gayle Haag

Gayle Haag, Board President  
Middle Republican Natural Resources District

5/18/06  
Date

Law Offices of  
**STANLEY C. GOODWIN**

Stanley C. Goodwin  
Nathan A. Schnelder

Telephone  
308 345-2580  
308 345-2581 (FAX)

116 West C. Street  
P.O. Box 607  
McCook, NE 69001

May 17, 2006

State of Nebraska  
Department of Natural Resources  
301 Centennial Mall South  
4<sup>th</sup> Floor  
P.O. Box 94676  
Lincoln, NE 68509-4676

RECEIVED

MAY 22 2006

DEPARTMENT OF  
NATURAL RESOURCES

Attention: Ann Diers

Re: Enclosure

Dear Ms. Diers:

Enclosed please find the agreement among the Department, Middle Republican Natural Resources District and Riverside Irrigation Company, Inc. This document is returned to you pursuant to the letter of instruction of Ann Bleed dated May 10, 2006. Pursuant to that letter we have retained one executed original and have calendared the expectation of receipt of the payment required by the agreement.

Thank you for your assistance in this matter.

Yours truly,



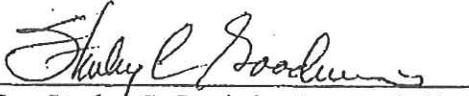
Stanley C. Goodwin

SCG:cjl

## Acknowledgment

The undersigned hereby acknowledges receipt of the State of Nebraska's check for \$50,000.00 as payment in full of the State's monetary obligations under the Memorandum of Agreement by and between the State, the Middle Republican Natural Resources District, and Riverside Irrigation Company, Inc.

Riverside Irrigation Company, Inc.



By: Stanley C. Goodwin, Attorney in Fact for  
Riverside Irrigation Company, Inc.

7/31/06  
Date

RECEIVED

AUG 02 2006

DEPARTMENT OF  
NATURAL RESOURCES

**MEMORANDUM OF AGREEMENT**

**COPY**

**THIS AGREEMENT** entered into on this 10<sup>th</sup> day of May in the year of 2006 by and between; The **STATE OF NEBRASKA, NEBRASKA DEPARTMENT OF NATURAL RESOURCES** hereinafter referred to as the "STATE", and **BOSTWICK IRRIGATION DISTRICT IN NEBRASKA** hereinafter referred to as the "DISTRICT."

**WITNESSETH:**

**WHEREAS**, the District has the rights to natural flow and storage use rights for an identified Water Supply as hereinafter defined in Paragraph II(A) for the year 2006; and

**WHEREAS**, the State desires to "purchase" and/or "lease" the use of the District's Water Supply for the calendar year 2006; and

**WHEREAS**, the District is willing to "sell" and/or "lease" the use of its identified Water Supply for the year 2006 to the State for the 2006 Irrigation Season.

**NOW THEREFORE**, in consideration of these facts, the parties agree as follows:

**I. DURATION OF AGREEMENT**

This agreement is for the period from the execution of this Memorandum of Agreement (hereinafter "Agreement") to the end of the Irrigation Season as hereinafter defined in Paragraph II(B). There will be no extension or renewal of this Agreement unless further agreed to in writing by the parties.

**II. DEFINITIONS**

For purposes of the Agreement, the following terms are defined as follows:

A. "Water Supply" shall mean the Water Supply determined by the U.S. Bureau of Reclamation (hereinafter "Bureau") under its water storage permit for Harlan County Lake as calculated and published by the Bureau for January 2006 according to the Harlan County Lake Operation Consensus Plan (hereinafter "Consensus Plan"); and natural flow that may become available for diversion at the Superior-Courtland Diversion Dam during the Irrigation Season.

B. "Irrigation Season" shall mean the date beginning with the commencement of water deliveries for direct irrigation at the Superior-Courtland Diversion Dam and ending on the date of the last water delivery for direct irrigation, which date shall be no later than September 1, 2006.

**III. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:**

A. The District agrees to sell and/or lease the rights to the use of its Water Supply as herein defined in Paragraph II(A) for the period from the date of the execution of this Agreement to the end of the Irrigation Season as herein defined in Paragraph II(B).

B. The District agrees to consult and collaborate with the State, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated

Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al, dated January 9, 2006, and the letter from the Lower Republican Natural Resources District to Governor Dave Heineman dated February 1, 2006.

C. By execution of this Agreement, the District represents and affirms that, in accordance with all relevant state statutes and District procedures, the District has received the requisite affirmative vote of its electors, at a duly authorized meeting of the District, authorizing it to enter into this Agreement.

D. The District agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the District's 2006 Water Supply to the State.

#### IV. THE STATE AGREES TO PERFORM AS FOLLOWS:

A. The State of Nebraska will pay the sum of two million five hundred thousand dollars (\$2,500,000.00) to the District, as payment in full to purchase and/or lease the use of the District's Water Supply, within ninety (90) days of the execution of this Agreement. This payment compensates the District for the sale and/or lease of its Water Supply as defined above for the calendar year 2006 to the State for the term of this Agreement. The State will also make a one time payment of sixty-four thousand five hundred dollars (\$64,500.00) to the District to assist the District in its payments of the annual operation and maintenance charges assessed by the U.S. Army Corp of Engineers. The District agrees to accept its computed share of those annual charges for such costs arising from the release of the Districts' share in accordance with a separate agreement between the District and Kansas Bostwick Irrigation District (hereinafter "Kansas Bostwick").

B. The State agrees to consult and collaborate with the District, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al, dated January 9, 2006, and the letter from the Lower Republican Natural Resources District to Governor Dave Heineman dated February 1, 2006.

C. The State agrees to do everything in its power, independently and in conjunction with, the District and its water users to assure the normal continuation of farm commodity assistance, federal crop insurance or other agricultural assistance programs which have been available to District water users in the past; and to take such actions including, but not limited to, amending the terms of this Agreement or providing interpretations hereof, as may be necessary because of this Agreement, to assure all such normal continuation of all such programs. This provision shall not be interpreted as a guaranty of any water user's ability to participate in any farm commodity assistance, federal crop insurance or other agricultural assistance programs which have been available to District water users in the past. Any denial of a water user's ability to participate in such programs shall not affect the validity of this Agreement.

D. The State will continue to work with the Natural Resources Districts and surface water irrigation districts to meet Nebraska's obligations under the Republican River Compact and Settlement Agreements.

E. By execution of this Agreement, the State represents and affirms that it has appropriated and secured the funds necessary to meet its obligations under this Agreement.

F. The State agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the District's Water Supply to the State.

**V. THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

A. The parties agree to work with the Natural Resources Districts in meeting the goals and objectives identified in their Integrated Management Plans and corresponding groundwater management rules and regulations to help protect, to the extent possible, the District's 2006 Water Supply which includes storage water releases from Harlan County Lake and natural flow.

B. The parties agree to rely upon the Bureau for all necessary accounting and administration of the Water Supply during the term of this Agreement as authorized and required under the Consensus Plan and agreements and contracts between the Bureau, District and Kansas Bostwick; and to accept the Water Supply management determinations of the Bureau as authorized and required under the Consensus Plan and agreements and contracts between the Bureau, District and Kansas Bostwick. In the event that Kansas Bostwick does not accept releases from Harlan County Lake, the parties agree to further define and identify, by addendum to this Agreement, the Water Supply sold and/or leased by the District to the State during the 2006 Irrigation Season in conformance with the Bureau's routine accounting and administration procedures.

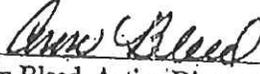
C. The parties agree that the District has retained and reserves the rights to any additional water that it would be entitled to receive under the agreements and contracts between the Bureau, District and Kansas Bostwick, outside of the constraints of this Agreement.

**BOSTWICK IRRIGATION DISTRICT IN NEBRASKA**

  
Walter Knehans, Board President  
Bostwick Irrigation District in Nebraska

5-10-06  
Date

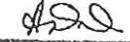
**NEBRASKA DEPARTMENT OF NATURAL RESOURCES**

  
Ann Bleed, Acting Director  
Nebraska Department of Natural Resources

5/10/06  
Date

**APPROVED**

AS TO FORM & CONTENT  
BY NDNR LEGAL COUNSEL

 DATE 5/9/06

**COPY**

*File - requested mat'l*

To: Jeanne Glenn

From: Ann Bleed

Re: Benefits and Costs of Surface Water Leasing

Reducing ground water pumping reduces the consumptive use of water in the basin, but, due to the inertia of the ground water system, has little impact on stream flows until several year after the reductions or later, depending on the distance of the well from the river. Reducing surface water diversions and releasing stored water from reservoirs not only reduces consumptive use from irrigating crops and from the evaporation of water from the reservoir, but also has an immediate impact on stream flow. Another year of leasing surface water would bring us closer to Compact compliance and help to assure Kansas that Nebraska is serious about Compact compliance. Therefore the DNR and the NRDs are again considering leasing water from the surface water irrigation districts.

Unfortunately, due to low stream flows, there is not an abundance of surface water available for lease. Surface water diversions themselves in 2005 were 57% than the average diversions between 1998 and 2002. Also, until last week, we did not expect there to be any significant water supply in either the Swanson or Harlan County Reservoirs. Recent snows and rain have raised the expected supply of water in Harlan County Reservoir from zero to 20,200 acre feet. The potential for additional natural flow for Bostwick Irrigation District has also increased.

The following table shows the costs and benefits of the water leases the State purchased last year. The Middle Republican Natural Resources District paid \$50,000 of the purchase of the Riverside Irrigation District water.

2006 Irrigation District	Water Available AF	Cost	\$/AF Cost	Benefit AF	\$/AF benefit
Frenchman Valley	6,400	\$ 400,000	\$ 63	3,672	\$ 108.93
Riverside	2,000	\$ 100,000	\$ 50	1,256	\$ 79.62
Bostwick	15,118	\$ 3,000,000	\$ 198	17,762	\$ 168.90
Total/Average	23,518	\$ 3,500,000	\$ 104	22,690	\$ 154.25

This year we are discussing possible leases with all of the above districts plus the Frenchman Cambridge Irrigation District, which will have 26,000 acre feet of storage available. We expect the water available from the Riverside and Frenchman Valley

Irrigation Districts to be about the same this year as last. At this point we do not know exactly how much water would be available from the Nebraska Bostwick Irrigation District, but with the recent rains and snow it could be from 20,000 to 30,000 acre feet. All districts except Bostwick Irrigation District have already expressed an interest in leasing their water. We have initiated discussions with the Bostwick Board, but they have not yet indicated whether they are willing to consider a lease.

I have made it absolutely clear to all the irrigation districts that DNR does not have funding available to pay for these leases. However, the NRDs have indicated they are interested in trying to raise funds for at least some of these leases. I therefore agreed to assist in negotiating a potential water lease. Given the price of corn, the costs to lease this water will probably be higher than last year. Initial bids by the irrigation districts are as shown in the table below. The Bostwick Irrigation District bid is shown in yellow because they have not yet provided a bid.

The use of the Frenchman Cambridge Irrigation District water will depend on obtaining permission to change the location of use from the U. S. Bureau of Reclamation. This will involve an assessment under the National Environmental Protection Act (NEPA). The Bureau of Reclamation office in Grand Island is currently assisting the state in obtaining the necessary approvals from Washington. The use of the Bostwick water would require the willingness of Kansas Bostwick Irrigation District to use the water. This was not a problem last year.

2007	Water Available AF	Cost	\$/AF Cost	Benefit AF	\$/AF benefit
Frenchman Valley	6,400	\$ 640,000	\$ 100	3,672	\$ 174
Riverside	2,000	\$ 120,000	\$ 60	1,256	\$ 96
Bostwick	15,000	\$ 3,000,000	\$ 200	17,762	\$ 169
Frenchman Cambridge	26,000	\$ 10,400,000	\$ 400	11,960	\$ 870
Total/Average		\$ 14,160,000		29,722	\$ 476

Compliance with the Republican River Compact in Water-Short Years requires that Nebraska's average Computed Beneficial Consumptive Use (CBCU) be less than its two year running average Allocated supply. Although the final computations for the years 2005 and 2006 are not completed, even with the surface water lease, we are expecting our CBCU will be greater than our Allocation by a total for the two years of around 58,000 acre feet. Given expected stream flows for 2007, we expect next year's Allocation for Nebraska will also be very low and thus another year of leasing would be extremely helpful in trying to achieve Compact compliance. Unless stream flows unexpectedly

improve significantly, however, the lease will not keep Nebraska's CBCU under its Allocation.

If the State decides to move forward with any surface water leases, we will have to move quickly. Planting season is about to begin and therefore we will need to provide an answer to the districts before the end of March. Last year we were able to confirm a deal pending final approval of the budget by the legislature and the governing based on the stated intention of the Governor and the appropriations committee to approve funds for the lease. The districts were not paid until July. The districts understand that we would have to have a similar type of agreement this year.