



Yoder/Fernandez

**RESOLUTION NO. 6429**

**WHEREAS**, in 1990, the Omaha Public Power District Board of the Directors approved the 1990 Decommissioning Trust Agreement and in 1992, the Omaha Public Power District Board of Directors approved the 1992 Decommissioning Trust Agreement; and

**WHEREAS**, the 1990 Trust Agreement was established in response to a Nuclear Regulatory Commission requirement for the Omaha Public Power District to establish an external trust fund segregated from District assets to pay for the license termination costs of decommissioning the Fort Calhoun Nuclear Station and the 1992 Trust Agreement was established to ensure funds were available to pay for the costs of decommissioning the Fort Calhoun Nuclear Station that were not covered by the Nuclear Regulatory Commission requirement; and

**WHEREAS**, the Trust Agreements were originally established during a period when the Fort Calhoun Station was operational and the trust funds were used to fund for the future decommissioning of the Fort Calhoun Nuclear Station; and

**WHEREAS**, the Fort Calhoun Station has ceased operation and, subsequently, decommissioning of the Station has commenced; and

**WHEREAS**, the form of the 1990 Trust Agreement requires amendment to update sections related to the funding of the Trust, withdrawals from the Trust, external reporting on the Trust, and the appropriate persons to approve transactions under the Trust; and

**WHEREAS**, Management requests clarification of the persons authorized to act on behalf of the District under the terms of the 1992 Trust Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Omaha Public Power District as follows:

1. The Board approves the amendment of the 1990 Decommissioning Trust Agreement in the form attached hereto as Exhibit A and authorizes Management of the District to execute the amended trust agreement on behalf of the District; and

2. The "Treasury Officers" who shall be authorized to act on behalf of the District pursuant to Section 5 of the 1992 Trust Agreement shall mean the District's Treasurer, any Assistant Treasurer of the District, and any Treasury Agent (or successor term for the Treasury Agent position) who may be designated by Management.

Exhibit A

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement (the “Amended Agreement”) dated and effective as of \_\_\_\_\_, 2021, by and between Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska (the “District”) and The First National Bank of Omaha, a National Bank chartered and doing business by virtue of the laws of the United States of America with its principal place of business in Omaha, Nebraska, as External Fund Trustee (the “Trustee”).

RECITALS

WHEREAS, the District presently owns the Fort Calhoun Nuclear Power Generating Station Unit No. 1 (the “Station”), which is regulated under Operating License Number DPR-40 (the “License”) issued by the Nuclear Regulatory Commission (the “NRC”); and

WHEREAS, the Station ceased operation in October 2016 and presently is undergoing decommissioning under the DECON process, pursuant to regulations of the NRC (the “Decommissioning”); and

WHEREAS, to ensure that sufficient funds are available to pay the costs of Decommissioning the Station, NRC regulations 10 C.F.R. Part 50, as amended from time to time, require the District to establish and maintain an External Trust Fund (hereinafter defined) by depositing funds in an account segregated from the District’s assets; and

WHEREAS, Resolution No. 3945 was adopted by the Board of Directors of the District on June 7, 1990, (the “Resolution”) which Resolution permits the District to establish such External Trust Fund with the Trustee upon the terms and conditions hereinafter set forth in this Amended Agreement; and

WHEREAS, pursuant to the Trust Agreement dated as of July 2, 1990 (the “Original Trust Agreement”), the District established the External Trust Fund, which has remained in effect; and

WHEREAS, the District and Trustee desire to amend and restate the Original Trust Agreement as set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

## SECTION 1. RESOLUTION

The Trustee acknowledges its previous receipt of a true and correct copy of the Resolution establishing the Fund (as herein defined).

## SECTION 2. ESTABLISHMENT OF FUND

Pursuant to the Original Trust Agreement, the District established for the benefit of the NRC, the customer-owners of the District and the citizens of the State of Nebraska; and for the purpose of discharging the District's legal obligation to accomplish the Decommissioning, a segregated External Trust Fund designated the "Omaha Public Power District Fort Calhoun Station Decommissioning External Trust Fund" (the "Fund") to be held in the custody of the Trustee. On the Original Effective Date (hereinafter defined) of the Original Trust Agreement, the District deposited in the Fund, the initial payment (referred to as the First Annual Payment in the Original Trust Agreement) and has continued to make periodic additional deposits to the Fund since that date. The District shall make periodic additional deposits to the Fund under this Amended Agreement as provided in Section 4 hereof.

## SECTION 3. GRANTOR TRUST

The parties hereby acknowledge that the District is an entity exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986, as amended. The parties agree that the Fund established pursuant to the Original Trust Agreement and maintained in effect pursuant to this Amended Agreement is a Grantor Trust pursuant to Section 671 *et. seq.* of the Internal Revenue Code of 1986, as amended; that the District is the owner of the entire Fund for federal income tax purposes; and that the Trustee shall not be required to file a federal tax return with respect to the Fund for any taxable year during which the Fund is in existence.

## SECTION 4. DEPOSITS TO FUND

Deposits to the Fund shall be made in an amount and frequency as determined by the District in its sole discretion.

## SECTION 5. TRUSTEE DUTIES

The Trustee has established the Fund pursuant to the Original Trust Agreement. The Fund

has accepted the cash and securities deposited therein pursuant to the Original Trust Agreement and will continue to accept cash and securities pursuant to this Amended Agreement. The Trustee has the duty to execute the investment of any and all monies held hereunder in the following investments:

A. Any obligations of the United States Government having the backing of the full faith and credit of the United States of America; and/or

B. Any and all investments permitted to be made by public power districts under the laws of the State of Nebraska, as amended from time to time, (collectively the “Permitted Investments”).

The Trustee shall exercise its investment duties pursuant to this Section 5 only in accordance with the oral instructions (followed by prompt written confirmation thereof) of the District. The District hereby retains sole authority to determine which among the Permitted Investments the Trustee shall make, and the District hereby agrees to be bound by the terms and conditions of the Amended Agreement when making such investment determinations. Notwithstanding any of the foregoing terms to the contrary, the District may, in its sole discretion, and at any time during the term of the Amended Agreement, delegate its power to direct the investment of the Fund’s assets to an investment manager. Any such investment manager to whom the District may delegate its investment powers granted herein, shall be required to execute and deliver to the Trustee any and all documents as may be necessary to evidence said investment manager’s agreement to be bound by all terms and conditions respecting the Permitted Investments contained in this Section 5 of the Amended Agreement. In the event the Trustee allows all such directions received from the District or such investment manager appointed by the District, the Trustee shall not be liable for any losses incurred by reason of any action taken pursuant to such directions provided such directions are in compliance with the requirements of this Section 5.

The maturity date of any Permitted Investment made pursuant to the Original Trust Agreement and this Amended Agreement shall not unreasonably extend beyond the Termination Date (hereinafter defined) of the Amended Agreement.

If the District shall so request the Trustee, in writing, income received on the Permitted Investments shall be paid by the Trustee to the District as received (the “Paid Earnings”). All Paid Earnings shall be used by the District to meet Decommissioning expenses and, should there

be any excess after payment of such expenses, such Paid Earnings may be used by the District for valid corporate purposes.

During the term of the Amended Agreement, the Trustee shall give the District (or the District's representatives) full access, during Trustee's normal business hours, to all books and records relating to the Fund, and shall provide the District (or the District's representatives) with such information regarding the Fund as the District (or the District's representatives) may reasonably request.

#### SECTION 6. DECOMMISSIONING EXPENSES

To enable the District to meet Decommissioning expenses as they arise, the District is hereby empowered to make withdrawals from the Fund at any time upon submittal to the Trustee of an itemized written request setting forth the amount requested and certifying that the withdrawal is to pay Decommissioning expenses ("Withdrawal Request").

All Withdrawal Requests shall be made by the District's Treasurer, or by such Assistant Treasurers or Treasury Agents (or successor term for this position) as may be designated in writing to Trustee from time to time, Provided a Withdrawal Request is in compliance with the requirements of this Section 6, the Trustee shall pay to the District, out of the Fund, the amount requested on or before the date specified by the District in any such Withdrawal Request.

#### SECTION 7. COMPENSATION OF TRUSTEE

The District shall compensate the Trustee for its performance of the services specified in the Amended Agreement, on a quarterly basis, in such amounts and upon such terms as shall be agreed to annually by the parties hereto in writing.

The District shall pay such quarterly invoices no later than thirty (30) days following the end of the applicable calendar quarter or ten (10) days following the receipt by the District of such quarterly invoices, whichever occurs later.

#### SECTION 8. LIMITED USE

Except as provided in Sections 5 and 6 of the Amended Agreement, all monies, deposits, and securities held in the Fund pursuant to the Amended Agreement shall be used solely for the costs of Decommissioning. No principal or income payable to, or to become payable under, the

Fund shall vest in the District for any other purposes except those specifically authorized herein. No principal or income of the Fund shall be taken or reached by any legal or equitable process in satisfaction of any debt of the District.

#### SECTION 9. TERMINATION

This Amended Agreement shall terminate on such date as the Decommissioning shall be completed as determined by the District in accordance with regulations and decisions of the NRC (the "Termination Date").

Prior to the expected Termination Date, the District shall submit its final Withdrawal Request to the Trustee which shall disburse funds to cover final Decommissioning costs. On the Termination Date, the Trust herein established shall terminate, and any amounts remaining in the Fund shall be returned to the District.

#### SECTION 10. STANDARD OF CARE

The Trustee shall perform such duties as are specifically set forth in the Agreement. The Trustee shall exercise its duties with the degree of care and skill that a prudent person would exercise in the conduct of his own affairs.

No provision of the Amended Agreement, however, shall be construed to relieve Trustee from liability for its own neglect or willful misconduct except that:

A. In the absence of bad faith on the part of the Trustee, the Trustee may rely upon the authenticity and correctness of documents and writings, including but not limited to all investment instructions and Certifications pursuant to Sections 5 and 6 of the Amended Agreement, furnished to the Trustee by the District, or by any investment manager appointed under Section 6 of the Amended Agreement;

B. The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith at the direction of the District or any investment manager designated pursuant to the Amended Agreement; and

C. The Trustee shall have no responsibility to collect from the District any payments necessary to discharge any liabilities of the District established by the NRC.

## SECTION 11. MAINTENANCE OF OFFICE

There shall at all times be a Trustee hereunder which shall be a national bank organized, chartered and doing business by virtue of the laws of the United States of America and authorized under such laws to exercise corporate trust powers, having combined capital and surplus and retained earnings of at least Fifty Million Dollars (\$50,000,000.00), and subject to supervision or examination by Federal authority. For purposes of determining whether such corporation meets the requirement of the preceding sentence, the combined capital and surplus and retained earnings of such corporation shall be deemed to be its combined capital and surplus and retained earnings as set forth in its most recent published report of condition. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11, the District shall have the authority to request the immediate resignation of the Trustee in the manner and with the effect specified in Section 12 below.

## SECTION 12. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may at any time resign by giving 90 days' prior written notice to the District by certified mail of such resignation, provided that no such resignation shall take effect until a successor Trustee is appointed. If a successor Trustee has not: (1) been so appointed; and (2) accepted such appointment within ninety (90) days after the District has received Trustee's resignation, the District may petition any court of competent jurisdiction for the appointment of a successor Trustee. Such court may thereupon, after receiving such petition, appoint a successor Trustee.

Upon written notification by the District, the Trustee may be removed by the District, and a Successor Trustee appointed, upon the occurrence of any of the following:

- A. The Trustee ceases to be eligible in accordance with the provisions of Section 11 above and fails to resign after request by the District;
- B. The Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent, or a receiver shall have been appointed of the Trustee, or of its property or affairs for the purpose of rehabilitation, conservation or liquidation; or
- C. The District shall determine, in its sole discretion, that the Trustee should be removed.

Any resignation or removal of the Trustee and appointment of a successor Trustee

pursuant to the provisions of this Section 12 shall become effective only upon acceptance of appointment by the successor Trustee as provided in Section 13 below.

#### SECTION 13. SUCCESSOR TRUSTEE

Any successor Trustee appointed as provided in Section 13 herein shall execute, acknowledge and deliver to the District, and to its predecessor Trustee, an instrument accepting such appointment hereunder and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations hereunder, with like effect as if originally named as Trustee herein. Notwithstanding anything in the foregoing sentence to the contrary, on the request of the District, or on the request of the successor Trustee, the Trustee ceasing to act hereunder shall execute and deliver all such instruments of transfer as may be necessary to transfer to such successor Trustee: (1) all assets of the Fund; and (2) all the rights and powers of the Trustee ceasing to act under the Amended Agreement.

No successor Trustee shall accept appointment as provided in this Section 13 unless at the time of such acceptance such successor Trustee shall be eligible under the provisions of Section 11 of the Amended Agreement.

#### SECTION 14. IRREVOCABLE TRUST

The Fund established pursuant to the Original Trust Agreement and confirmed with this Amended Agreement shall constitute an Irrevocable Trust as required by NRC regulations, as amended from time to time, for the purpose of providing sufficient available funds to accomplish Decommissioning. The District shall have no rights to the monies held in the Fund except as provided in the Amended Agreement. Notwithstanding anything herein to the contrary, however, should NRC regulations be amended, the effect of which would be that the Fund is no longer required, the District may terminate the Amended Agreement and revoke the Fund herein established and all assets of the Fund as of the date of any such termination shall be returned to the District.

#### SECTION 15. EFFECTIVE DATE

The Original Trust Agreement commenced and became operative on July 2, 1990 (the



“Original Effective Date”).

#### SECTION 16. SUCCESSORS AND ASSIGNS

All the covenants and representations made by the District and contained in the Amended Agreement shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

#### SECTION 17. SEVERABILITY

If any provision of the Amended Agreement should be determined by a court of competent jurisdiction to be contrary to law, such provision shall be deemed and construed to be severable from the remaining provisions herein contained, and shall in no way affect the validity of the remaining provisions of the Amended Agreement.

#### SECTION 18. ENTIRE AGREEMENT

The Amended Agreement supersedes all prior negotiations, agreements and understandings among the parties with respect to the subject matter hereof, and upon execution by the District and Trustee, the Original Trust Agreement shall be terminated and of no further force and effect. To be effective, any amendment to, or modification of, the Amended Agreement must be in writing, and executed by the District and the Trustee.

#### SECTION 19. NOTICES

Unless otherwise specified herein, all notices required to be given by or to either party pursuant to the terms of the Amended Agreement, including but not limited to, all Withdrawal Requests, invoices, reports, requests and communications, shall be sufficiently given only if in writing and if sent by first class United States mail, postage prepaid, by or to the appropriate addressee indicated below:

To the Trustee:  
First National Bank of Omaha  
One First National Center  
Omaha, NE 68102  
Attn: Corporate Trust Division

To the District:

Director-Treasury and Financial Operations  
Omaha Public Power District  
444 South 16<sup>th</sup> Street Mall  
Omaha, NE 68102

With a Copy To:

Stephen M. Bruckner  
500 Energy Plaza  
Omaha, NE 68102

Changes to the above addresses may be made from time to time by either of the above-listed entities, by notice to the other entity from the above-named representative of the respective entity or from any other duly authorized officer of that entity as certified by the Secretary of that entity.

SECTION 20. HEADLINES

The headings of the Sections used in the Amended Agreement are for convenience only and shall not control or affect the meaning of any of the provisions thereof.

SECTION 21. REPRESENTATIONS

A. The Trustee represents that it has the power, authority and legal right to enter into and perform its obligations set forth in the Amended Agreement and that the execution, delivery and performance hereof have been duly authorized and will not violate any applicable law, regulation or by-law of the Trustee.

B. The District represents that it has the power, authority and legal right to enter into and perform its obligations set forth in the Amended Agreement, and that the Agreement and the Fund are in conformity with requirements set forth in 10 C.F.R. §50.75, as amended from time to time. The District further represents that the execution, delivery and performance of the Amended Agreement have been duly authorized and will not violate any applicable law, regulation or by-law of the District.

SECTION 22. COUNTERPARTS

The Amended Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as an original and shall constitute and be one and the same agreement.

SECTION 23. GOVERNING LAW

The Amended Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have each caused the Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested as of the date first above written, but actually on June 27, 1990.

ATTEST: OMAHA PUBLIC POWER DISTRICT

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

ATTEST: FIRST NATIONAL BANK OF  
OMAHA, Trustee

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

ATTEST:  
  
\_\_\_\_\_  
[Name], Trust Officer



# Board Action

## BOARD OF DIRECTORS

April 13, 2021

### ITEM

Decommissioning Trust Funds

### PURPOSE

Authorize revisions to the 1990 Decommissioning Trust Agreement and clarification regarding persons who may take actions under 1992 Trust Agreement

### FACTS


- a. The District has two decommissioning trust agreements originally approved by the Omaha Public Power District (OPPD) Board of Directors on June 7, 1990 (1990 Trust) and October 15, 1992 (1992 Trust).
- b. The 1990 Trust was established to meet a Nuclear Regulatory Commission (NRC) mandate that required OPPD to establish and maintain an external trust fund segregated from OPPD's assets to pay for the license termination costs of decommissioning the Fort Calhoun Nuclear Station (FCS). The 1992 Trust was established to ensure additional funds were available to pay for the costs of decommissioning the FCS that were not covered by the NRC mandate.
- c. The District is revising the 1990 Trust Agreement to allow monthly withdrawals from the Trust as well as eliminating reporting that is not required by the NRC. Additionally, the 1990 Trust Agreement is being updated to allow Treasury Agents to manage investments and make withdrawals. Management also is seeking clarification as to the Treasury Officers authorized to take action under the terms of the 1992 Trust.

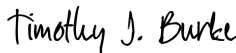
### ACTION

Board approval to revise the 1990 Trust Agreement and clarify the persons authorized to take action under the 1992 Decommissioning Trust Agreement.

RECOMMENDED:

APPROVED FOR BOARD CONSIDERATION:

DocuSigned by:  
  
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 L. Javier Fernandez  
 Vice President and Chief Financial Officer

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 Timothy J. Burke  
 President and Chief Executive Officer

LJF:jap

Attachments: Exhibit A – Revised 1990 Trust Agreement Resolution