



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM PROFESSIONAL SERVICES CONTRACT

- 1. Parties.** This Professional Services Contract is made and entered into by and between Nebraska Community Foundation (“NCF”), representing all signatories to the Platte River Recovery Implementation Program (the “Program”), and Gary A. Lamberti (“Consultant”).
- 2. Purpose of Contract.** The purpose of this Contract is to allow NCF, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC), and to delegate the Executive Director’s Office (“ED Office”) through its Executive Director (ED) or designee the authority to administer this Contract.
- 3. Term of Contract and Required Approvals.** *The term of this Contract is generally from September 13, 2024 through December 31, 2027.* All services shall be completed during this term. The 3.25-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Contract will be developed through the Program’s budget process and approved annually by the GC.
- 4. Payment for Services.**
 - A. Payment.** The Program agrees to pay the Consultant a flat-rate stipend for each year of ISAC service and to reimburse all travel-related expenses for in-person ISAC meetings. The annual stipend amount for the remainder of calendar year 2024 is specified in this Contract. The annual stipend amount and travel expense reimbursement authorization for calendar years 2025, 2026, and 2027 under this Contract are at the discretion of the GC and will be specified in annual Contract Amendments developed through the Program’s budget process and approved annually by the Finance Committee (FC) and the GC.
 - 1) Stipend.** The Program agrees to pay the Consultant a **flat-rate stipend of \$8,100** for the following services to be performed in during the remainder of calendar year 2024:
 - *Document Review, Specific ISAC Member Input, and Additional ISAC Member Discussions* – self-directed remote review of Program documents/products to provide specific guidance as requested by the GC and the EDO; virtual meetings and self-directed remote work to develop ISAC responses to Program questions, prepare presentations, and generally work collaboratively with other ISAC members under the guidance of the ISAC Chair and/or Co-Chairs.
 - The total flat-rate stipend is not to be exceeded unless authorized in writing by the Program. The Contract total amount is controlling and is a ceiling price that the Consultant exceeds at her/his own risk. Payment shall be made directly to the Consultant.
 - 2) Expense Reimbursement.** No in-person ISAC meetings will be held for the remainder of calendar year 2024. Specific expense reimbursement details will be included in future annual Contract Amendments.



B. Billing Procedures. *The Consultant shall send one (1) invoice for the ISAC services described above to the ED Office no later than December 31, 2024.* The Program's ED, upon receiving the invoice, will review and advance the invoice to the Bureau of Reclamation who will advise NCF of approval. NCF will make payment of these funds directly to the Consultant within 30 days of receiving notice of approval. Payments are due within 60 days of the billing date.

C. Final Completion and Payment. The final payment shall be made upon completion of all ISAC services under this Contract and upon receipt of the Consultant's invoice.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under and detailed within this Contract in a satisfactory and proper manner.

B. Personnel. All of the services required hereunder will be performed by the Consultant.

C. Requests from the Program. The Consultant shall be responsible and responsive to the Program and the ED Office in their requests and requirements related to this Contract.

D. Presentation of Information. The Consultant shall compile and present all information clearly and concisely in a professional manner.

E. Inspection and Acceptance. All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and the ED Office prior to acceptance.

6. Responsibilities of the Program.

A. Designated Representative. The ED shall act as the Program's administrative representative with respect to the Consultant's service to be performed under this Contract and shall have complete authority to transmit instructions, receive information, and interpret and define the Program's policies and decisions with respect to services rendered under this Contract.

B. Data to be Furnished to the Consultant. All information, data, reports, and maps as are available to the Program and necessary for the carrying out the services set forth herein shall be furnished to the Consultant without charge, and the ED Office shall cooperate with the Consultant in every way possible in the carrying out of the project.

C. Provide Criteria. The ED Office shall provide all criteria and full information regarding its requirements for the services set forth herein.

7. Special Provisions.

A. No Finder's Fees. No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

B. Publication. It is understood that the results of this work may be available to the Consultant for publication and use in connection with related work. Use of this work for publication and related work by the Consultant must be conducted with full disclosure to and coordination with the ED Office.



- C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Contract shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the ED Office.
- D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of the Consultant.
- E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- F. Debarment and Suspension.** Consultant certifies by signing this Contract that he/she is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participation in the transaction covered by this Contract.
- G. Anti-Lobbying.** Consultant makes the representations set forth in **Exhibit A – Certification Regarding Lobbying**, incorporated by reference as part of this Contract. The Consultant shall execute such Certification at the time of executing this Contract.
- H. Office Space, Equipment, and Supplies.** The Consultant will supply his/her own office space, equipment, and supplies.
- 8. General Provisions.**
- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract that are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument and signed by the parties to this Contract.
- B. Applicable Law; Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Nebraska. The Courts of the State of Nebraska shall have jurisdiction over this Contract and the parties.
- C. Assignment; Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Consultant shall not use this Contract, or any portion thereof, as collateral for any financial obligation, without the prior written permission of the Program.
- D. Audit; Access to Records.** The Program, NCF, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant that are pertinent to this Contract. The Consultant shall, immediately upon receiving written instruction from the Program or NCF, provide to NCF, the Program, or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers, and records of the Consultant which are pertinent to this Contract. The Consultant shall cooperate fully with NCF or any such



governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of the Program.

- E. Availability of Funds.** Each payment obligation of the Program is conditioned upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If funds are not allocated and available for the continuance of the services performed by the Consultant, the contract may be terminated by the Program at the end of the period for which the funds are available. The Program shall notify the Consultant at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is exercised, and the Program shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Program to terminate this Contract to acquire similar services from another party.
- F. Award of Related Contracts.** The Program may undertake or award supplemental or successor contracts for work related to this Contract. The Consultant shall cooperate fully with other consultants and the Program in all such cases.
- G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Contract shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.
- I. Conflicts of Interest.** The Consultant makes the representations set forth in **Exhibit B – Conflict of Interest Form (ISAC Members)**, incorporated by reference as part of this Contract. The Consultant shall execute **Exhibit B** at the time of executing this Contract. In addition:
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies, or firms that may constitute a conflict of interest giving rise to a disadvantage to the Program or a disclosure which would adversely affect the interests of the Program. Consultant shall notify the Program of any potential or actual conflicts of interest arising during the course of the Consultant's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation, and data are provided to the Program or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
 - (ii) A conflict of interest warranting termination of the Contract includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Program, its signatories, boards, commissions, or the NCF, or initiating suits in equity.



- J. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
- K. Indemnification.** The Consultant shall indemnify and hold harmless NCF, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses, and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- L. Independent Consultant.** The Consultant shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Program, NCF, or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes that may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of NCF or the Program, or to incur any obligation of any kind on the behalf of NCF or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to NCF, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- M. Notices.** All notices arising out of, or from, the provisions of this contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. Notice is effective upon delivery.
- N. Notice and Approval of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Contract.
- O. Ownership of Documents, Work Product, Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Contract are at all times the property of the Program.



- P. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Consultant will violate any such restriction.
- Q. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- R. Termination of Contract.** This Contract may be terminated, without cause, by the Program upon fifteen (15) days' advance written notice. This Contract may be terminated immediately for cause if the Consultant fails to cure its performance in accordance with the terms of this Contract within seven (7) days after receiving notice from the Program. In the event of a termination, the Program shall pay Consultant for all reasonable work performed up to the effective date of the termination. In the event the contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation, and data are provided to the Program or its designee.
- S. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- T. Time is of the Essence.** Time is of the essence in all provisions of the Contract.
- U. Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.
- V. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.
- W. Survival.** The parties' obligations under sections 8.D. (Audit/Access to Records) and 8.R. (Termination of Contract) will survive the termination of this Contract.
- X. Entirety of Contract.** This Contract represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.



9. Contacts.

For the Foundation:

Jason D. Kennedy
Chief Financial & Administrative Officer
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: jkennedy@nebcommfound.org
FEIN: 47-0769903

For the Consultant:

Gary A. Lamberti, Ph.D.

For the ED Office:

Chadwin B. Smith, Ph.D.
Science Policy Coordinator
Platte River Recovery Implementation Program
4111 4th Avenue
Kearney, NE 68845
Phone: (402) 432-7950
Email: smithc@headwaterscorp.com



10. Signatures.

By signing this Contract, the undersigned certify that they have read and understood it, that they have the authority to sign it, and that their respective Party agrees to be bound by the terms of the Contract.

NEBRASKA COMMUNITY FOUNDATION:

 Jason D. Kennedy
 Chief Financial and Administrative Officer

 Date

CONSULTANT:

 Gary A. Lamberti

 Date

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT

I hereby certify that the Governance Committee of the Platte River Recovery Implementation Program (Program) has authorized the Nebraska Community Foundation, acting as contracting agent of the Governance Committee of the Program, to enter into this Contract.

 Jason M. Farnsworth
 Executive Director

 Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program) EXHIBIT A – Certification Regarding Lobbying

The undersigned certifies that to the best of his or her knowledge and belief:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. No registrant under the Lobbying Disclosure Act of 1995 has made any lobbying contacts on behalf of the Consultant with respect to the federal grant or cooperative agreement under which the Consultant is receiving monies.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited by Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

FOR THE CONSULTANT:

Gary A. Lamberti

Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program) EXHIBIT B – Conflict of Interest Form (ISAC Members)

The PRRIP developed guidance regarding the avoidance of conflicts of interest in accordance with the ISAC Charter (Attachment 6, Appendix I) and the Peer Review Guidelines (Adaptive Management Plan, Appendix A) as contained in the PRRIP Final Program Document. As stated in the ISAC Charter: “The ISAC must retain as much independence from the adaptive management program as possible. This independence requires that their role focus on reviewing products produced by the Program.”

Potential conflicts of interest include but are not limited to:

- Financial interest in the restoration and management activities associated with the PRRIP.
- Familial relationship with any of the scientists conducting research and/or monitoring associated with the PRRIP.
- Bias, for personal reason for or against the scientists mentioned above and/or the entities involved in the implementation of the PRRIP.
- Professional connection with any entities involved with PRRIP implementation.
- Impacts of lobbying or political pressure exerted by person(s) looking for a particular result or more work with the PRRIP.
- Has conducted, is conducting, or intends to conduct work for or on behalf of the Program, or work that directly overlaps with Program scientific and technical priorities, which could result in an ISAC member reviewing and commenting on her/his own work product(s).

As a candidate proposed for participation on the ISAC, I hereby state that I do not have any conflicts of interest with the Platte River Recovery Implementation Program as outlined above and (if necessary) explained on the following page. I can serve effectively on the ISAC without any financial, familial, personal, or professional bias in order to further the goals and objectives of the PRRIP and the implementation and evaluation of the Extension Science Plan and associated scientific and technical activities, analyses, and syntheses.

FOR THE CONSULTANT:

Gary A. Lamberti

Date