



REQUEST FOR PROPOSALS (RFP)

RECONNAISSANCE-LEVEL INVESTIGATION OF SEDIMENT AUGMENTATION ALTERNATIVES TO REDUCE SEDIMENT DEFICITS IN THE J2 RETURN CHANNEL DOWNSTREAM OF LEXINGTON, NEBRASKA

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Office of the Executive Director
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845

May 15, 2024



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- PROGRAM) REQUEST FOR PROPOSALS (RFP)

SUBJECT: Evaluation of Sediment Augmentation Alternatives
REQUEST DATE: June XX, 2024
PRE-PROPOSAL MEETING: July XX, 2024
CLOSING DATE: July XX, 2024
POINT OF CONTACT: Justin Brei, P.E.
Headwaters Corporation
breij@headwaterscorp.com

OVERVIEW

The Platte River Recovery Implementation Program (Program or PRRIP) initiated on January 1, 2007 between the states of Nebraska, Wyoming, and Colorado and the Department of the Interior to address endangered species issues in the central and lower Platte River basin. Program “target species” include the whooping crane, piping plover, interior least tern (now de-listed), and pallid sturgeon. The Program has been charged with management of land and water along the central Platte River to achieve management objectives for these target species.

A Governance Committee (GC) has been established that reviews, directs, and provides oversight for activities undertaken during the Program. The GC is comprised of one representative from each of the three states, three water user representatives, two representatives from environmental groups, and two members representing federal agencies. Headwaters Corporation provides the Executive Director and staff for the Program, collectively known as the Executive Director’s Office (EDO). Program staff are located in Nebraska and Colorado and are responsible for assisting in carrying out various Program-related activities. These activities typically take place along the associated habitat reach (AHR) which spans approximately 90 miles from Lexington, NE to Chapman, NE along the Central Platte River (See Figure 1).

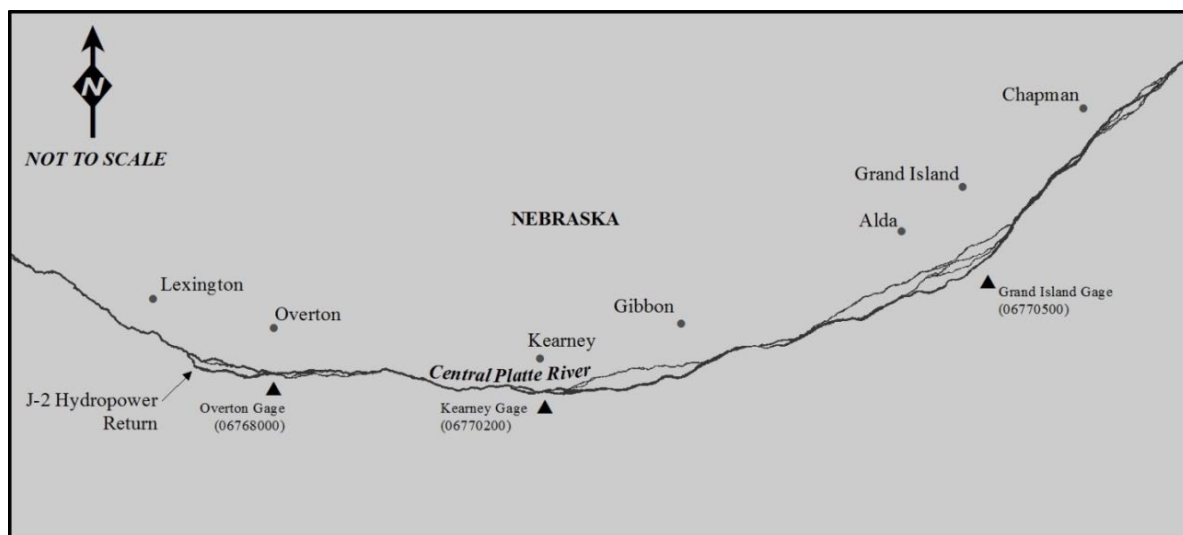


Figure 1. Associated Habitat Reach (AHR) of the central Platte River in Nebraska.



Since 2007, the Program has been implementing an adaptive management program to test strategies for increasing suitability of target species habitat in the AHR. One area of focus has been the impact of a sediment deficit at the upstream end of the AHR below the J-2 hydropower return (J2 Return; Figure 2). Clearwater hydropower returns at this location have resulted in channel incision and narrowing in the segment of channel below the return including the transition of a portion of the channel from braided to wandering planform. Program stakeholders are concerned that this incision and narrowing could occur within this reach at unacceptable rates or progress downstream through time in absence of sediment augmentation, eventually extending downstream past the Overton Bridge and impacting the highly suitable whooping crane roosting habitat in the Cottonwood Ranch Reach.

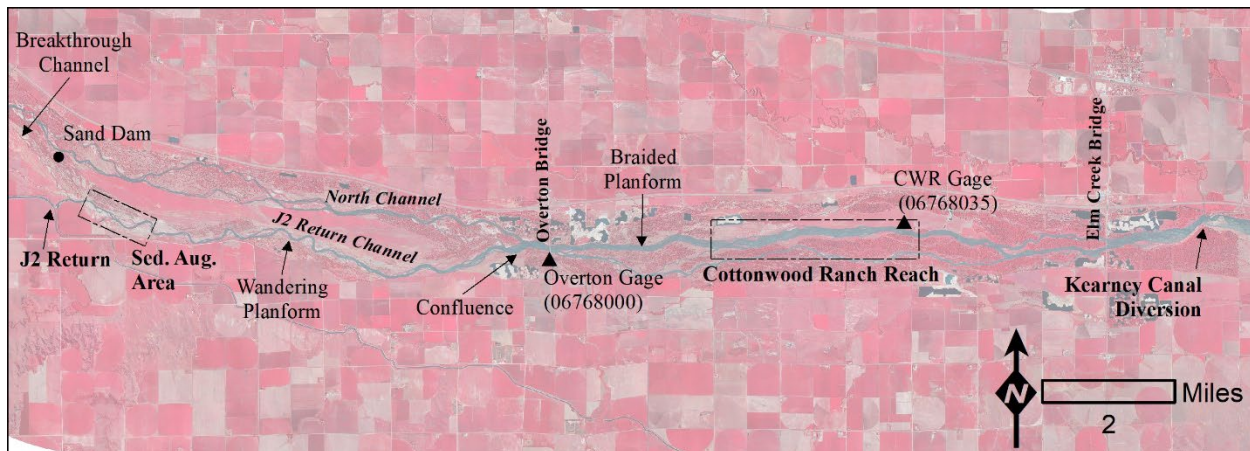


Figure 2. Overview map of sediment augmentation evaluation reach and features.

To address this concern, the Program began by conducting an initial pilot augmentation project in 2012. The purpose of this pilot project was to collect data on the means and methods of both mechanical (ie. bulldozer) augmentation and augmentation by dredging from an adjacent sand and gravel mine and pumping directly into the river. In 2017, the Program initiated a full-scale sediment augmentation experiment that involved mechanical placement of 40,000–60,000 yd³ of sand into the channel each year, immediately downstream of the J2 Return. Sediment was sourced from terraces adjacent to the channel and augmented by bulldozer (pushing) and/or hydraulic scraper (hauling). After 6 consecutive years of this activity, the Program is evaluating results and would like to investigate alternative augmentation methods that would self-sustain over the long-term, requiring less annual effort. The scope of work described in this RFP requests that consultants develop potential alternatives to this mechanical placement and evaluate their potential effectiveness, long-term sustainability, and feasibility.

One such alternative is hydraulic augmentation, or using flow to recruit sediment into the J2 Return Channel. The concept for and focus area for hydraulic augmentation revolves around a rip-rap-reinforced sand dam that is located at the upper end of Jeffrey Island and blocks North Channel flow from entering the J2 Return Channel upstream of the hydropower return (Figure 3). Historically, the site of the sand dam was a natural flow split. Since the 1950s, landowners have attempted various means of maintaining access across this split from apparent low water crossings up to the armored sand dam present today. Incision in the J2 Return Channel caused headcuts and washouts of the crossings finally resulting in construction of the current reinforced sand dam structure 30 to 40 years ago. The Program

would like to investigate the feasibility of modifying the sand dam to once again convey flow across (or around) the south side of Jeffrey Island for the purpose of hydraulically augmenting sediment into the J2 Return Channel. Early discussions focused on modifying the dam to build a bottom-opening gate structure that would convey flow and bedload through the dam and into the J2 Return Channel during high flow events. However, stakeholders are concerned that doing so may create a sediment deficit in the North Channel that would offset any benefits in the J2 Return channel or actually make the situation worse by translocating the issue downstream to the confluence of the North and J2 Return Channels immediately upstream of the Overton Bridge. This would potentially move the incisional area several miles closer to Cottonwood Ranch. Another alternative that has been discussed more recently would be to construct a top-opening gate structure in the sand dam that would convey only flow into the J2 Return Channel with that flow mobilizing bed and bank material in the segment of historical channel that is currently abandoned. Proposed flow extents and relative intensities for this alternative are shown in Figure 4. Concerns with this alternative include long-term stability of a retrofitted sand dam structure and availability/longevity of supply relative to the potential cost of retrofitting the sand dam. Other potential alternatives may include construction of other structure(s) or mechanical means to either convey or recruit sediment into the J2 Return Channel using fewer resources (i.e. long-term cost when compared to current mechanical augmentation efforts).

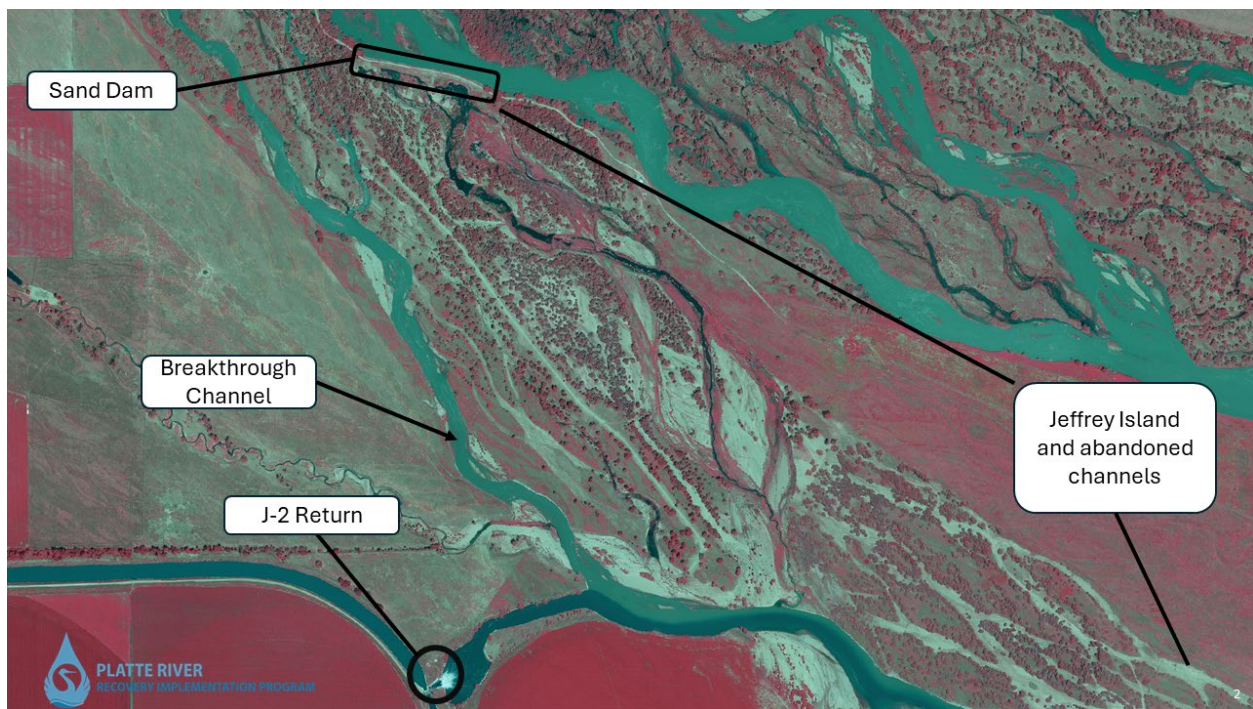


Figure 3. Location of the Sand Dam on the south bank of the North Channel in relation to the J2-Return Channel, Jeffrey Island, and the abandoned channels below the Sand Dam.

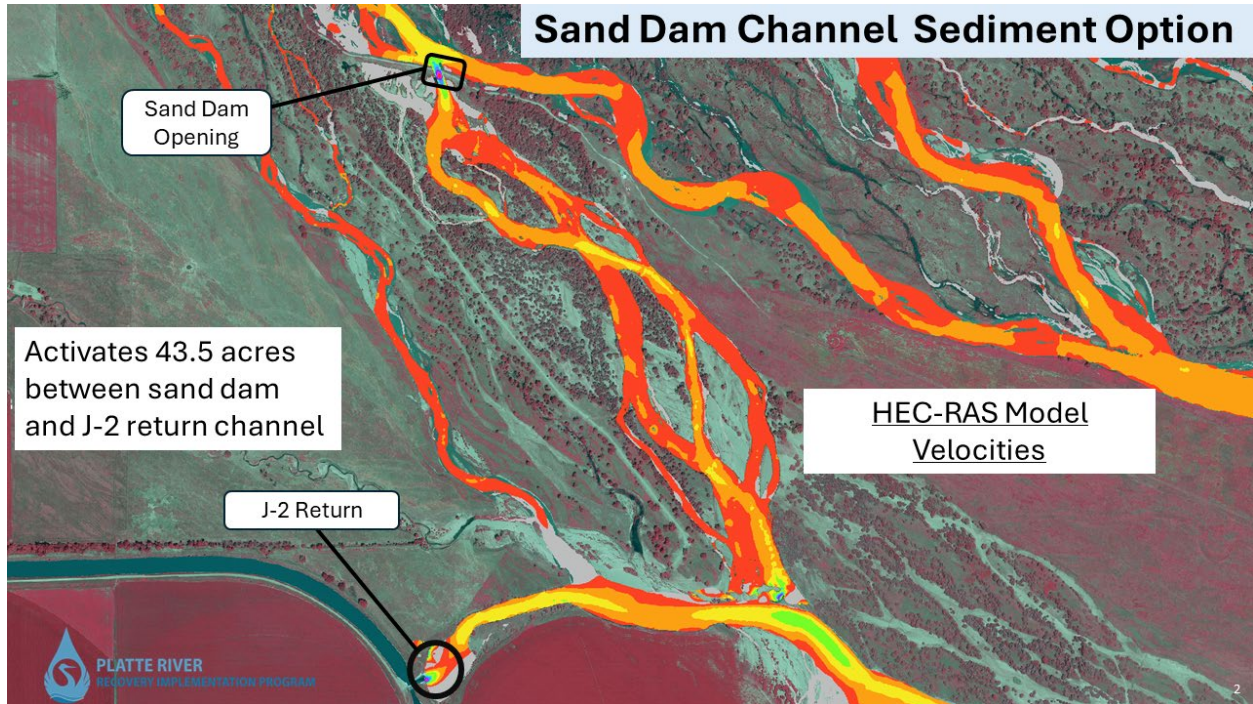


Figure 4. Sand Dam hydraulic augmentation concept.

The GC submits this Request for Proposals (RFP) to Consultants to provide engineering services associated with developing and evaluating alternatives to mechanical augmentation of sediment.

The term Consultant shall be used throughout this document to describe both potential RFP Respondents submitting a proposal and the successful Respondent performing the work upon award of the project.

SCOPE OF WORK

The selected Consultant will provide engineering services associated with developing and evaluating alternatives to mechanical augmentation of sediment. The final scope of work will be developed collaboratively once a Consultant is selected but a general description of anticipated tasks is provided below:

Task 1 – Scoping, Background, and Data Inventory

Once selected, the Consultant and EDO will work collaboratively to:

- Perform an initial review of available hydrologic, hydraulic, and sediment data.
- Determine additional data needs.
- Review PRRIP objectives
- Select the type of modeling software, minimum and maximum resolution, and any other parameters.
- Select hydrologic boundary conditions to be used for calibration and scenario modeling.



Task 2 – Alternative Development

The selected Consultant will identify additional design alternatives that should be considered and further develop existing design alternatives discussed in the project overview (North channel sediment option, Sand Dam Channel sediment option). The Consultant should consider augmentation strategies across a wide range of costs and other considerations, with a focus on long-term success, sustainability, and low annual effort compared to the existing implementation strategy. The Consultant will assemble a list of alternatives and, in cooperation with EDO and PRRIP committees, develop a process for screening alternatives for more intensive analysis.

Task 3 – 2-D Mobile Bed Hydrodynamic Modeling

To evaluate the feasibility of passive augmentation alternatives, the selected Consultant will need to develop and calibrate a mobile bed hydrodynamic model. A large amount of current and historical elevation data, aerial imagery, sediment data, and steady flow hydraulic models will be made available for this purpose, however collection of additional sediment data may be necessary. Once the mobile bed model is calibrated, it will be used to simulate the geomorphic effects of proposed alternatives on the North Channel and the J2 Return Channel.

Task 4 – Feasibility Evaluation

Once alternatives have been screened, a feasibility analysis will be conducted for remaining options. This feasibility analysis should examine all aspects of project implementation and potential for success. An evaluation of the geotechnical and structural improvements that would be required to safely operate any structural alternatives without the risk of avulsion or other adverse effects will be required. Items such as dam raising/reinforcement, and downstream apron design should be considered, among others. Alternative modeling analysis is expected to be iterative, with initial assumptions of operational flows and gate operations guiding further study. Various gate operation rules and various flows should be evaluated and modeled to examine geomorphic effects on channels and success at achieving project objectives under different scenarios. Hydrologic analysis will also be required to consider the frequency at which the structure may be operated under chosen operational rules. Finally, conceptual cost estimates will be developed for each alternative.

Task 5 – Meetings and Report Writing

Regular check-in meetings between the Consultant and EDO will ensure that choices made align with the Program's interests. The feasibility report, model(s) and report, and results for each scenario in a georeferenced format will be the final deliverable of this project. The Consultant may be asked to present intermediate and final products to Program technical committees for review and comment.

The following areas of expertise may be necessary to complete the full scope of work:

- Strong 2-D hydrodynamic modeling and sediment transport modeling is required
- Fluvial geomorphology
- Geotechnical/structural engineering
- Geospatial analysis/elevation data processing



PROJECT BUDGET

The Program budget for this project is on the order of \$250,000. However, an estimated project budget should **NOT** be submitted in the proposal and proposals will not be evaluated based on cost. A final scope of work and budget will be negotiated prior to commencement of work.

CONTRACT TERMS

The selected Consultant will be retained by:

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501

Proposals should indicate whether the Consultant agrees to the contract terms as outlined in the attached Program's Consultant Contract (**Appendix B**) or provide a clear description of any exceptions to the terms and conditions.

The initial term of the contract is expected to be for a one-year period beginning at the date of final signing of the contract (late **XXX 2024 through late XXX 2025**) with the potential to extend to include additional years of monitoring and data analysis depending on results of 2024 work. The actual contract schedule will be developed with the Consultant and incorporated into the contract. Contracted services will be performed on a time and materials not to exceed basis. Under the final contract, a written Notice to Proceed from the EDO will be required before work begins. All work will be contingent on availability of Program funding.

The selected Consultant may be requested to negotiate additional services, with the option to extend, re-compete, or cancel at the discretion of the GC.

SUBMISSION REQUIREMENTS

All interested parties having experience providing the services listed in this RFP are requested to submit a proposal.

Instructions for Submitting Proposals

One (1) electronic (PDF) copy of your proposal must be submitted by email at breij@headwaterscorp.com no later than 5:00 PM Mountain Time on **XXXXX, July XX, 2024**. The maximum allowable proposal PDF size is 15MB, and proposals are to be limited to a total of 50 pages or less. A proposal is late if received any time after 5:00 PM Mountain Time and will not be eligible for consideration.

Questions regarding the information contained in this RFP should be submitted to Justin Brei at breij@headwaterscorp.com. A list of compiled Consultant questions and responses will be maintained on the Program web site (www.PlatteRiverProgram.org) in the same location as this RFP solicitation. The last day to accept questions is **July XX, 2024**.



RFP Schedule

The EDO expects to complete the selection process and award the work by August XX, 2024. The following table represents the RFP schedule:

Description	Date	Time (CST)
Issue RFP	By June XX, 2024	n/a
Pre-proposal virtual meeting	XXX 2024	12:00 PM
Last day for respondents to submit questions regarding the RFP	XXX, 2024	5:00 PM
Proposals due from Consultants	XXX, 2024	5:00 PM
Evaluation of Proposals	XXXX, 2024	
Interviews	XXX, 2024	
Award of Work	XXX, 2024	
Start of Work	XXXX, 2024	

Virtual Pre-Proposal Meeting

A **mandatory** virtual pre-proposal meeting of interested parties will be held on XXXX, 2024 from 12:00-1:00 PM Mountain Time via Microsoft Teams for the purpose of familiarizing potential Consultants with the Scope of Work and requirements included herein before submitting a response to this RFP. To register, please email Justin Brei (breij@headwaterscorp.com) with names and email addresses for the people from your firm and/or team expected to join the virtual pre-proposal meeting by 12:00 PM Mountain Time on XXXXXX, 2024. A meeting invite with the Microsoft Teams link will be forwarded to expected participants.

The meeting will include a brief overview by the EDO regarding the objectives of the project, the scope of services, and the timeline. It is the Consultant's responsibility, during the pre-proposal meeting, to ask questions necessary to understand the RFP so the Consultant can submit a proposal that is complete according to the RFP requirements. No minutes will be distributed by the EDO regarding the meeting. Any proposals submitted by Consultants who did not register for and participate in the mandatory virtual pre-proposal meeting will be rejected.

Proposal Content

Proposals should respond to the following general topics:

- 1) **Project understanding:** Discussion that demonstrates the Consultant's understanding of key objectives, goals and constraints.
- 2) **Project approach:** Discussion of the Consultant's approach to data collection and data analysis including critical issues, tasks, or considerations that may have shaped your approach. This section should not be a reiteration of the general scope of work presented in this RFP. That scope was provided as general guidance and original thinking and/or discussion of improvements to that approach are welcome and encouraged. Specific items that should be addressed in the approach include:
 - a. Discussion of preferred modeling software, limitations (including computational load), concerns or suggestions related to successful mobile bed modeling of our alternatives.



- b. Calibration and validation approach for the model.
- c. Potential challenges with the known alternatives and a plan for addressing the challenges

- 3) Qualifications and project experience:** Provide project team organization, resumes/qualifications, and responsibilities. Identify relevant project experience, particularly within the past five years, including the name, location, and brief description of the projects; name, address, email, and phone number for the primary client contact; and the involvement/role of the proposed team members in those projects. Demonstrated experience with 2D hydrodynamic and sediment transport modeling is required. Successful Consultants will also demonstrate experience with selecting and sizing hydraulic structures to convey sediment and flow.
- 4) Conflict of interest statement** addressing whether any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.
- 5) Confirmation of Insurance and Certificate of Good Standing:** The Program’s Consultant Contract (**Appendix B**) describes requirements for a Certificate of Good Standing (*Exhibit C, Section 8.G.*) and Insurance (*Exhibit D, Section 8.S.*). Proof of a Certificate of Good Standing and all Insurance types and coverage levels will be required before a contract is issued. The proposal should confirm the Consultant’s ability to meet these requirements and provide such proof during contract development.
- 6) Acceptance of the terms and conditions** as outlined in the attached Program’s Consultant Contract, or clear description of any exceptions to the terms and conditions.
- 7) Affirmative Statement** – that the firm and the principals of the firm (and any members of the team if relevant) are NOT on the federal suspended and disbarred list. A DUNS¹ and SAM² number are required to assist in verification.
- 8) Lobbying Certification** – Form to complete attached as part of **Exhibit B**.

¹ <https://www.dnb.com/duns-number.html>

² <https://federalcontractorregistry.com/>



Criteria for Evaluating Proposals

The GC appointed a Proposal Selection Panel that will evaluate all proposals and select a Consultant based on the following principal considerations:

1. The Consultant's understanding of the overall project goals, constraints, elements, and their approach to successfully implementing the project scope.
2. Qualifications and the relevant experience of the proposed project team members and firm, which may include:
 - a. Experience developing and calibrating 2D mobile bed hydrodynamic models.
 - b. Experience selecting and sizing hydraulic structures for conveyance of sediment and flow.
 - c. Experience evaluating geomorphic impacts of river modifications.

Interviews may be held if necessary, as determined by the Proposal Selection Panel.

Award Notice

After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal Selection Panel will select a Consultant. That firm will negotiate with the EDO to establish a fair and equitable contract. If an agreement cannot be reached, a second firm will be invited to negotiate and so on. If the Program is unable to negotiate a mutually satisfactory contract with a Consultant, it may, at its sole discretion, cancel and reissue a new RFP.

Program Perspective

The GC has the sole discretion and reserves the right to reject any and all proposals received in response to this RFP and to cancel this solicitation if it is deemed in the best interest of the Program to do so. Issuance of this RFP in no way constitutes a commitment by the Program to award a contract, or to pay Consultant's costs incurred either in the preparation of a response to his RFP or during negotiations, if any, of a contract for services. The Program also reserves the right to make amendments to this RFP by giving written notice to Consultants, and to request clarification, supplements, and additions to the information provided by a Consultant.

By submitting a proposal in response to this solicitation, Consultants understand and agree that any selection of a Consultant or any decision to reject any or all responses or to establish no contracts shall be at the sole discretion of the Program. To the extent authorized by law, the Consultant shall indemnify, save, and hold harmless the Nebraska Community Foundation, the states of Colorado, Wyoming, and Nebraska, the Department of the Interior, members of the Governance Committee, and the Executive Director's Office, their employees, employers, and agents, against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Consultant or its employees, agents, sub-Consultants, or assignees pursuant to the terms of this project. Additionally, by submitting a proposal, Consultants agree that they waive any claim for the recovery of any costs or expenses incurred in preparing and submitting a proposal.



APPENDIX A

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 _____ (“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 to render certain technical or professional services hereinafter described in connection with an undertaking to be financed by the Program, and to delegate the Executive Director’s Office (“ED Office”) through its Executive Director or designee the authority to administer this Contract.

3. **Term of Contract and Required Approvals.** *The term of this Contract is generally from DATE through DATE.* All services shall be completed during this term. The services to be performed under this Contract will commence upon receipt of authorization to proceed. If the Consultant has been delayed and as a result will be unable, in the opinion of the Program, to complete performance fully and satisfactorily within this Contract period, the Consultant may be granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the Program. An extension of the contract term must be in writing, signed by both Parties in order for it to be valid.

4. **Payment for Services.**
 - A. **Billing Amount.** The Program agrees to pay the Consultant a fixed price of \$XXX,XXX based on the approved Scope of Work as detailed in **Exhibit A – Project Scope of Work**. The total budget for the Scope of Work in Exhibit A is \$XXX,XXX.

 - B. **Billing Rates.** Consultant shall not exceed the costs and rates for each task included in **Exhibit A** unless authorized in writing by the Program. The contract total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Invoices shall be submitted no more often than monthly for activities and costs accrued since the last invoice.

 - C. **Billing Procedures.** The Consultant shall send invoices for services performed for the various tasks outlined in **Exhibit A** to the ED Office. Invoices shall include all services and costs accrued by Contractor and Subconsultants since the last billing report. The Program’s Executive Director, 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.

D. Withholding of Payment.

- (i) When the Program has reasonable grounds for believing that the Consultant will be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the Program may withhold payment of such portion of any amount otherwise due and payable to the Consultant reasonably deemed appropriate to protect the Program against such loss. These amounts may be withheld until the cause for the withholding is cured to the Program's satisfaction or this Contract is terminated pursuant to Section 8.T. Any amount so withheld may be retained by the Program for such period as it may be deemed advisable to protect the Program against any loss. This provision is intended solely for the benefit of the Program and no person shall have any right against the Program or NCF by reason of the Program's failure or refusal to withhold monies. No interest shall be payable by the Program or NCF on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the Program or NCF.
- (ii) If a work element has not been completed by the dates established in **Exhibit A**, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

E. Final Completion and Payment. The final payment shall be made upon acceptance of the final report, receipt of the final billing, and if applicable, execution of the final contract amendment documenting the final contract amount.

5. Responsibilities of Consultant.

- A. Scope of Services.** The Consultant shall perform the specific services required under this Contract in a satisfactory and proper manner as outlined in **Exhibit A**. If there is any conflict between this Contract and the provisions of the specific requirements of **Exhibit A**, the specific requirements shall prevail.
- B. Personnel.** All of the services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.
- C. Subcontracts.**
 - (i) **Approval Required for Subcontracts.** Any subcontractors required by the Consultant in connection with the services or work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the proposal and agreed



to during negotiations or are specifically authorized in writing by the Program during the performance of this Contract. The Consultant shall include a list of the proposed subcontractors; the scope and extent of each subcontract; and the estimated dollar amount of each subcontract prior to Contract execution to the Program for approval that will be incorporated by reference in **Exhibit A**. During the performance of the Contract, substitutions in or additions to such subcontracts will be subject to the prior written approval of the Program. Program approval of subcontractors will not relieve the Consultant from any responsibilities outlined in this Contract. The Consultant shall be responsible for the actions of any subcontractors.

- (ii) **Billings for Subcontractors.** Billings for subcontractor services will not include any mark up. Subcontract costs will be billed to the Program at the actual costs as billed to the Consultant. Subcontract costs will be documented by attaching the subcontractor's invoice to the Consultant's invoice.
- (iii) **Copies of Subcontracts.** The Consultant shall provide to the Program copies of each subcontract immediately following execution with the subcontractor. All subcontracts between the Consultant and a subcontractor shall refer to and conform to the terms of this Contract. However, nothing in this Contract shall be construed as making NCF or the Program a party to any subcontract entered between the Consultant and a subcontractor.
- (iv) **Contracts for Subcontractors.** All subcontracts that Consultant enters into shall include any applicable provisions and certifications required by 2 CFR Part 200, including Appendix II thereto, and any other federal, state, or local laws or regulations.
- (v) **Debarment and Suspension.** Consultant shall not enter into subcontracts with any entity or individual that is suspended, debarred, or otherwise excluded from participation in the transaction covered by this Contract.

D. 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.

E. Reports, Maps, Plans, Models and Documents. Consultant shall furnish to the Program one (1) copy of maps, plans, worksheets, logs, field notes, or other documents prepared under this Contract, and one (1) copy of each unpublished report prepared under this Contract.

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

6. Responsibilities of the Program.



- A. Designated Representative.** The Executive Director 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 of the Scope of 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. Review Reports.** The ED Office shall examine all studies, reports, sketches, opinions of construction costs, and other documents presented by the Consultant to the Program and shall promptly render in writing the Program’s decisions pertaining thereto within the time periods specified in **Exhibit A**.
- D. Provide Criteria.** The ED Office shall provide all criteria and full information regarding its requirements for the project.
- 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 and all subcontractors.
- 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 neither Consultant nor its principals are 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 B – 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 its 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. Certificate of Good Standing.** The Consultant shall provide a Certificate of Good Standing from the relevant Secretary of State office prior to performing work under this Contract, to be incorporated by reference into this Contract as **Exhibit C – Consultant Certificate of Good Standing**.
- H. 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.
- I. 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.
- J. Conflicts of Interest**
- (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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. 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.

- P. 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.
- Q. 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 or its subcontractors will violate any such restriction.
- R. Insurance Coverage.** The Consultant's relevant Certificate of Insurance shall be provided to the Program and incorporated by reference into this Contract as **Exhibit D – Consultant Certificate of Insurance**. The Consultant shall not commence work under this Contract until the Consultant has obtained the following insurance coverages and provided the corresponding certificate noting such coverages:
- (i)** Commercial General Liability Insurance. Consultant shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Two Million Dollars (\$2,000,000.00) aggregate and One Million Dollars (\$1,000,000.00) per occurrence. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury.
 - (ii)** Business Automobile Liability Insurance. Consultant shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. Coverage will include bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles.
 - (iii)** Workers' Compensation and Employers' Liability Insurance. The Consultant shall provide proof of workers' compensation coverage. Consultant's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident and disease.
 - (iv)** Professional Liability Insurance. The Consultant shall provide proof of professional liability insurance covering damages arising out of negligent acts, errors, or omissions committed by



- Consultant in the performance of this Agreement, with a liability limit of not less than One Million Dollars (\$1,000,000) per claim. The Consultant shall maintain this policy for a minimum of two (2) years after completion of the work or shall arrange for a two-year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional services under this Contract and caused by any error, omission, breach, or negligent act, including infringement of intellectual property (except patent or trade secret) of the Consultant.
- S. 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.
- T. 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.
- U. 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.
- V. Time is of the Essence.** Time is of the essence in all provisions of the Contract.
- W. Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.
- X. 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.
- Y. Survival.** The parties' obligations under sections 8.D. (Audit/Access to Records), 8.R. (Insurance Coverage), and 8.T. (Termination of Contract) will survive the termination of this Contract.



- Z. 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:

CONTACT NAME

TITLE

CONSULTANT NAME

ADDRESS 1

ADDRESS 2

ADDRESS 3

PHONE:

EMAIL:

FEIN:

DUNS:

SAM Unique Entity ID:

For the ED Office:

NAME

TITLE

4111 4th Avenue

Kearney, NE 68845

Phone:

Email:



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	Date
Chief Financial and Administrative Officer	

CONSULTANT:

NAME	Date
TITLE	

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 Agreement.

Jason M. Farnsworth	Date
Executive Director	



EXHIBIT A

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)

Project Scope of Work



EXHIBIT B

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)

Certification Regarding Lobbying

The undersigned certifies, on behalf of the Consultant, 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:

NAME	Date
TITLE	



EXHIBIT C

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)

Consultant Certificate of Good Standing



EXHIBIT D
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)
Consultant Certificate of Insurance