



REQUEST FOR PROPOSALS (RFP)

Expanded Recapture Reconnaissance Study

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

June 15, 2023



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Exhibit A – Program’s Standard Consulting Services Contract

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

SUBJECT: Expanded Recapture Reconnaissance Study
REQUEST DATE: June 15, 2023
PRE-PROPOSAL MEETING: June 29, 2023
CLOSING DATE: July 18, 2023
POINT OF CONTACT: Seth Turner
Headwaters Corporation
(720) 524-6115
turners@headwaterscorp.com

I. OVERVIEW

The Platte River Recovery Implementation Program (Program or PRRIP) is a collaborative effort 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.

A Governance Committee (GC) was 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.

The Program and State of Nebraska¹ seek to optimize the use of excess flow diversions into existing groundwater recharge projects to reduce deficits to [target flows](#) at the [Platte River near Grand Island, NE](#) gage. Elwood Reservoir groundwater recharge, Phelps County Canal groundwater recharge, and Cottonwood Ranch broad-scale recharge (BSR) (see **Figure 1**) are projects that can store/recharge large volumes of water. However, these projects are inefficient at reducing deficits to target flows defined by the U.S. Fish and Wildlife Service (USFWS) because baseflow returns from groundwater recharge occur on timescales of years to decades and do not always coincide with the timing of target flow deficits or other Program objectives. The Program and State of Nebraska seek to improve project utility to get more near-term and objective-optimized benefit out of the water purchased for recharge.

Stakeholders are seeking to increase efficiency by investing in infrastructure that allows the Program and State of Nebraska to better control the timing and rate of surface and groundwater return flows to the Platte River. This could be accomplished through some combination of (1) an outlet from Elwood

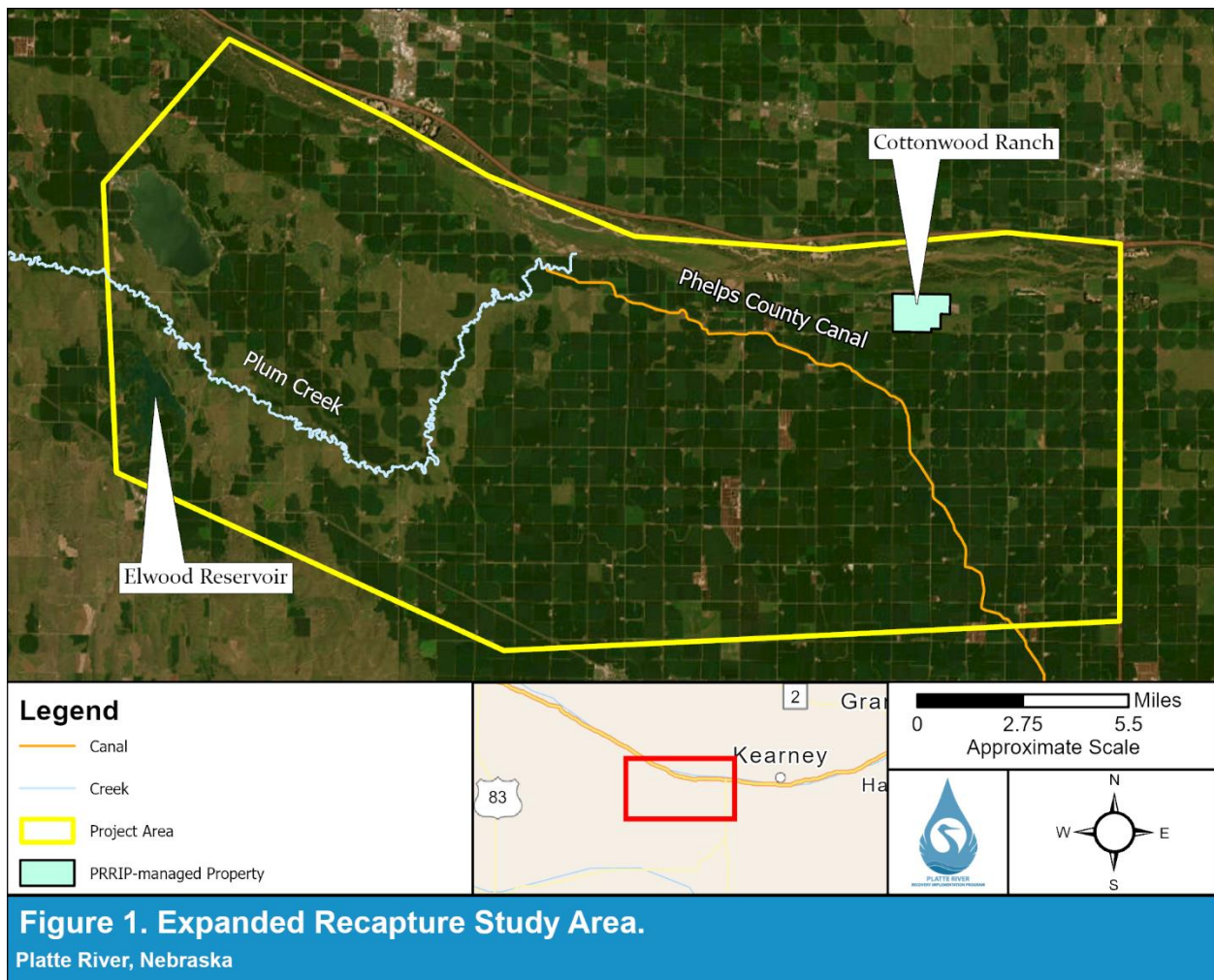
¹ Recharge capacity/operations in Elwood Reservoir and Phelps County Canal are split between the Program, the State of Nebraska, and the Tri-Basin Natural Resources District.



Reservoir to Plum Creek and (2) a wellfield to recapture groundwater and pump it into Plum Creek, groundwater drains and/or directly to the Platte River.

The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to provide engineering services to conduct a reconnaissance-level study to assess the feasibility, costs and benefits of different Elwood outlet and recapture wellfield configurations. The proposed Scope of Work is outlined in Section III of this RFP.

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.



II. EXISTING PROGRAM RECHARGE AND RECAPTURE PROJECTS

Program water projects are evaluated in terms of capacity to reduce deficits (shortages) to USFWS target flows at Grand Island, NE. Groundwater recharge projects located south of the Platte River are



used by the Program, the State of Nebraska, and the Tri-Basin Natural Resources District (TBNRD) to supplement baseflows of the Platte River by retiming flow from periods of excess (streamflow at Grand Island > USFWS target flows) to periods of shortage (streamflow at Grand Island < USFWS target flows). The Nebraska Department of Natural Resources (DNR) may declare excess flows available to divert into recharge projects when streamflows are above USFWS targets at Grand Island and all existing water rights are fulfilled, including instream flow water rights held by Central Platte Natural Resources District (CPNRD) and Nebraska Game and Parks Commission (NGPC) at locations from Overton to Louisville.

Intentionally recharged water returns to the river channel as baseflow accretions at low rates over periods of years to decades. These return flows are continuous, regardless of the current excess/shortage status of the river at Grand Island. In this sense, recharge projects are considered to be “uncontrollable.” While water that returns when there are not shortages to target flows still provides benefits to the river and the Program’s target species, it does not count toward Program deficit-reduction objectives. For recharge projects, normal and wet years present the most opportunities for excess flow diversions and dry years are when deficit reductions are needed.

Existing projects involved in this expanded recapture study include (1) Elwood Reservoir groundwater recharge, (2) Phelps County Canal groundwater recharge, and (3) Cottonwood Ranch broad-scale recharge, all located south of the Platte River in Gosper and Phelps counties in central Nebraska. Facilities owned and operated by the Central Nebraska Public Power and Irrigation District (CNPPID) are used to convey water to these recharge projects, and CNPPID is the entity responsible for securing annual permits from Nebraska DNR to divert excess flows for the purpose of groundwater recharge. The State of Nebraska and TBNRD also utilize Phelps and Elwood for groundwater recharge and therefore have a shared interest in the results of this study.

Elwood Reservoir Groundwater Recharge

Groundwater recharge in Elwood Reservoir for the Program began in May 2015, and excess flow deliveries into Elwood averaged about 12,500 AF from 2015-2019. Deliveries since late 2019 were limited due to both drought conditions and modified operations at Elwood while seepage issues near the Pump Station Dam were diagnosed and an appropriate repair was designed. The Program has a Water Service Agreement with CNPPID that reserves a minimum of 50% of Elwood Reservoir excess flow diversions for the Program, up to a total of nearly 135,000 AF over the period 2023-2032. The remaining allocation of Elwood Reservoir excess flow diversions is shared by the State of Nebraska and TBNRD.

The rate of seepage from Elwood Reservoir varies with the water level, but from May 2015-December 2021, seepage from Elwood for Program recharge was estimated at an average of about 22.6 AF/day. As an example of the type of solutions envisioned from this study, at this rate about 8,250 AF could seep into the underlying aquifer as recharge over the course of a year. With the anticipated average annual diversions of about 13,500 AF, this would leave at least 5,250 AF of Program water that could potentially be released from the reservoir each year through a new gravity outlet to Plum Creek. It is likely that the



balance of recharge and gravity release would be adjusted as needed to maximize deficit reductions at Grand Island.

Releasing Program water from Elwood back to the river by surface conveyance would also allow available storage capacity to be maximized each year, rather than carrying over thousands of acre-feet from one year to the next while waiting for it to seep out as groundwater recharge. This may also help to minimize evaporation losses. From 2015-2021, it is estimated that more than 6,000 AF of Program water was lost to evaporation from Elwood Reservoir, representing more than 9% of the total excess flow volume purchased by the Program for Elwood recharge during that time period.

Phelps County Canal Groundwater Recharge

The Program's Phelps County Canal groundwater recharge project was initiated with a pilot study during the 2011-2012 non-irrigation season. Operations were expanded to full-scale during 2012-2013, with the canal checked at Mile Post (MP) 13.3 during this and all subsequent recharge periods. From 2011-2021, Phelps recharge averaged nearly 3,200 AF per year based on excess flow diversions into the canal. The Program has a Water Service Agreement with CNPPID that reserves a minimum of 75% of Phelps County Canal excess flow diversions for the Program, up to a total of 50,000 AF over the period 2023-2032. In the past, the other 25% share of Phelps County Canal excess flow diversions to MP 13.3 was reserved for the State of Nebraska. The State of Nebraska and TBNRD also utilize the Phelps County Canal below MP 13.3 for recharge and conveyance to other designated recharge areas.

Cottonwood Ranch Broad-Scale Recharge and Recapture Well Projects

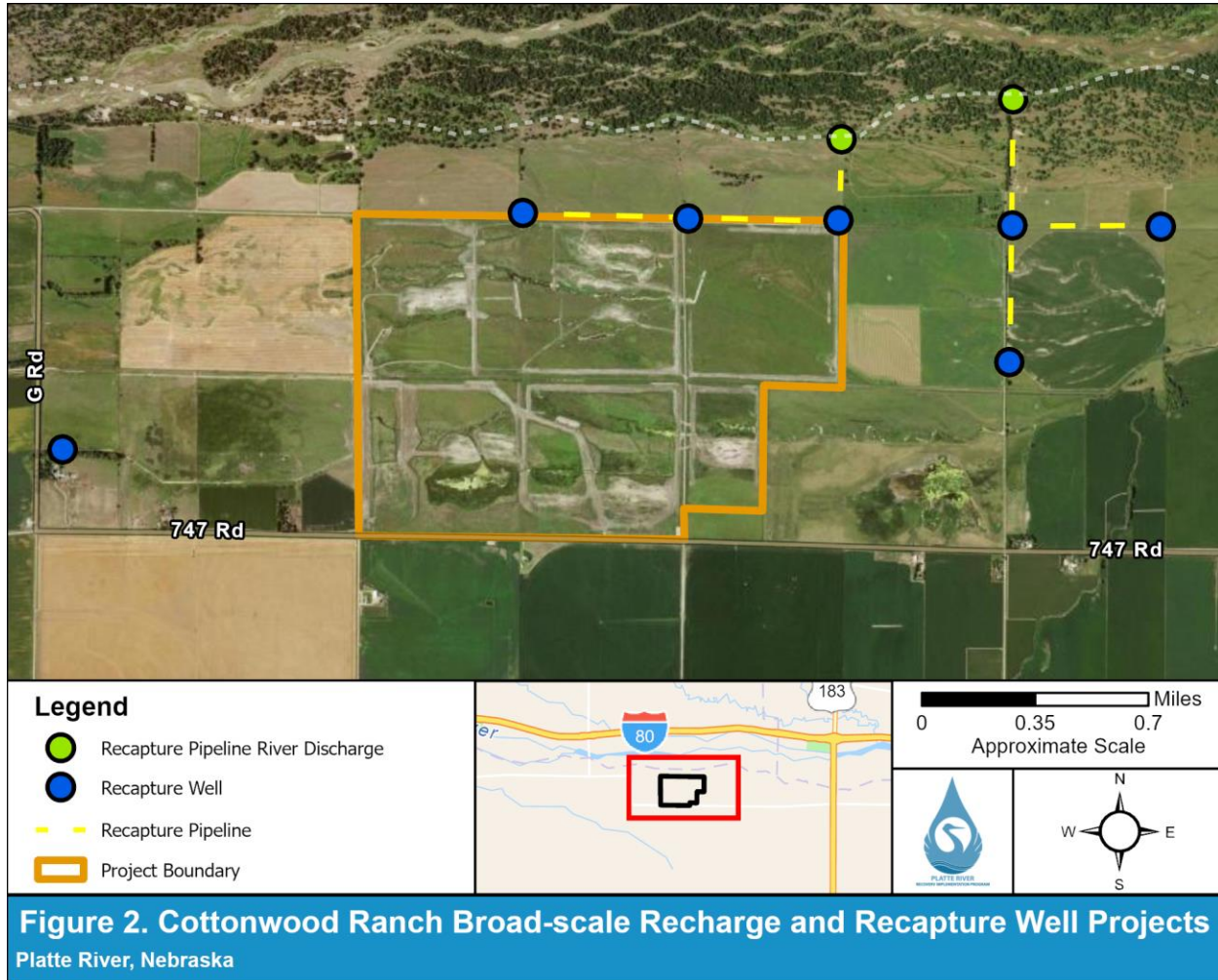
Constructed in 2019, the Cottonwood Ranch broad-scale recharge project (see **Figure 2**) utilizes shallow pools in eight cells spread over about 400 acres of land to facilitate groundwater recharge. To date, deliveries to the project for recharge have totaled only about 815 AF but several thousand AF of excess flow deliveries are anticipated each year under normal to wet hydrologic conditions.

Recapture wells add a controllable element to recharge projects and are operated to "accelerate" the river return of intentionally recharged groundwater by pumping that water directly to the river specifically during periods of shortage. The Program has completed installation of 8 recapture wells, including the Cook recapture well (2016) and a network of 7 recapture wells in the vicinity of Cottonwood Ranch (2022). Of the 7 new recapture wells, 6 wells are organized into 2 separate "networks" of 3 wells each; the wells in each network are located roughly ½ mile apart to avoid interference (see **Figure 2**). Collectively, these wells can add about 10-15 cfs to the flow of the river during periods of shortage. The existing recapture wells are operated and maintained through an agreement between the Program and TBNRD.

As of December 31, 2021, it was estimated that the Program had more than 48,000 AF that was recharged into the groundwater aquifer south of the Platte River that had not yet returned to the river



by means of natural groundwater migration or recapture pumping. This represents a large reservoir that could be tapped by additional recapture wells.



III. SCOPE OF WORK

The selected Consultant will provide engineering services as needed for a reconnaissance-level evaluation of adding new controllable elements to Program recharge projects, including (1) construction of a gravity outlet from Elwood Reservoir to Plum Creek, (2) construction of additional recapture wells, and (3) combination(s) of both. Key tasks for the study are as follows:

1. Elwood Outlet:
 - a. Range of feasible outlet capacities (in conjunction with CNPPID).
 - b. Plum Creek capacity and potential impacts/mitigation: infrastructure and channel morphology.
 - c. Reconnaissance-level feasibility considerations: cost, land rights, permitting.



2. Recapture Wells:

- a. Practical size and location constraints for recapture wellfield(s), including conveyance of pumped water from wellfield(s) to river.
- b. Wellfield efficiency – depletions and well interference.
- c. Reconnaissance-level feasibility considerations: cost, land rights, permitting.

3. Trade-off Analysis:

- a. Evaluation of potential combinations of Elwood outlet capacities and wellfield size/locations to maximize efficiency in offsetting target flows (or support germination suppression flows, river baseflows, etc.), maximize operational flexibility, minimize cost, and/or other reconnaissance-level screening criteria.
- b. Analysis constrained by estimates of excess flow availability and storage/recharge capacity through time (wet/dry cycles likely important, will need to consider appropriate study periods, e.g., OPSTUDY 1947-1994 or more current).

Information of Note

There is very little published work that evaluates the hydrology or geomorphology of Plum Creek. The only active flow measurement is the [Plum Creek near Smithfield, NE](#) gage. Between Elwood Reservoir and the Platte River confluence, Plum Creek crosses under at least 12 roadways and over the top of a Phelps County Canal siphon. Channel incision and riparian vegetation cover vary widely along the flow path of the creek.

It is not anticipated that development of complex groundwater models using MODFLOW will be necessary. To the extent that groundwater analyses may be needed for this study, simpler tools such as spreadsheet models or the Alluvial Water Accounting System (AWAS) should suffice.

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

- Civil engineering
- Fluvial geomorphology
- Surface water hydrology and hydraulics
- Groundwater hydrology
- Groundwater well design and construction
- Structural engineering
- Environmental permitting

IV. PROJECT BUDGET

The Program budget for this project is on the order of \$200,000. Consultant proposals should include a budget spreadsheet with itemized employee roles, billing rates, and estimated hours for the tasks outlined in the Scope of Work.



V. 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 (**Exhibit A**) or provide a clear description of any exceptions to the terms and conditions.

The initial term of the contract will be for a one-year period beginning at the date of final signing of the contract (September 2023 through August 2024). 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 renew, re-compete, or cancel at the discretion of the GC.

VI. 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 to Seth Turner by email at turners@headwaterscorp.com no later than 5:00 PM Central Time on Tuesday July 18, 2023. The maximum allowable proposal PDF size is 15MB, and proposals are to be limited to a total of 40 pages or less. A proposal is late if received any time after 5:00 PM Central Time and will not be eligible for consideration.

Questions regarding the information contained in this RFP should be submitted to Seth Turner at turners@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.



RFP Schedule

The EDO expects to complete the selection process and award the work by August 24, 2023. The following table represents the RFP schedule:

Description	Date	Time (Central)
Issue RFP	By June 15, 2023	n/a
Pre-proposal virtual meeting	June 29, 2023	12:00 PM
Last day for respondents to submit questions regarding the RFP	July 11, 2023	5:00 PM
Proposals due from Consultants	July 18, 2023	5:00 PM
Evaluation of Proposals	July 19-August 2, 2023	
Interviews	August 15-17, 2023	
Award of Work	On or before August 24, 2023	
Start of Work	Week of September 4, 2023	
Completion of Work	Approximately August 31, 2024	

Virtual Pre-Proposal Meeting

A **mandatory** virtual pre-proposal meeting of interested parties will be held on Thursday June 29, 2023 from 12:00-1:30 PM Central 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 Seth Turner (turners@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 5:00 PM Central Time on Wednesday June 28, 2023. 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 project elements and operational goals and constraints.
- 2) Project approach:** Discussion of the Consultant's approach to providing the proposed reconnaissance-level Scope of Work outlined in Section III of this RFP. This should be responsive to all parts of the scope and should include detailed descriptions of the Consultant's approach to each task. Any critical issues, additional and/or alternative tasks, or other considerations that may have



shaped your approach should be addressed. Original thinking and/or discussion of improvements to that approach are welcome and encouraged.

- 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. A Nebraska licensed Professional Engineer is required.
- 4) Rate schedule and budget:** Provide a schedule of standard hourly and reimbursable cost rates by labor category. As stated in Section IV of this RFP, Consultant proposals should include a budget spreadsheet with itemized employee roles, billing rates, and estimated hours to complete the Scope of Work.
- 5) Conflict of interest statement:** Consultant shall include a statement addressing whether or not 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.
- 6) Confirmation of Insurance and Certificate of Good Standing:** The Program's Consultant Contract (*Exhibit A*) describes requirements for a Certificate of Good Standing (*Exhibit A, Section 8.G.*) and Insurance (*Exhibit A, 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.
- 7) 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.
- 8) 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 DUNS² and SAM³ number are required to assist in verification.
- 9) Lobbying Certification** form to complete attached as **Exhibit B**. Signed certification does not count towards the 40-page limit.

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 objectives, constraints, design elements, operational scenarios, and existing associated groundwater recharge and recapture projects.

² <https://www.dnb.com/duns-number.html>

³ <https://federalcontractorregistry.com/>



2. The Consultant's approach to each task in the outlined Scope of Work.
3. Qualifications and the relevant experience of the proposed project team members and firm.
4. The overall clarity and content of the Consultant's proposal.

Consultant's proposed budget will be a consideration for the Proposal Selection Panel, but contract will be awarded primarily on the basis of consultant's qualifications and project approach. 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.



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EXHIBIT A
Standard Consulting Services Contract

EXHIBIT B – CONTRACT FORM

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Contract between Nebraska Community Foundation, Platte River Recovery Implementation Program,
and XXXXXXXXXX.

Expanded Recapture Reconnaissance Study

1. **Parties.** This Contract is made and entered into by and between Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”) and XXXXXXXXXX (“Contractor”). The following persons are authorized to represent the parties through this Contract: Jason Kennedy of the Foundation; Jason Farnsworth of the Program; and XXXXXXXXXX of the Contractor.

2. **Purpose of Contract.** The purpose of this Contract is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Contractor 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 his designee the authority to administer this Contract.

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and shall remain in effect through June 30, 2024 or until the contracted work is satisfactorily completed, whichever occurs first. Work performed under this Contract shall occur from the date of final signature below through June 30, 2024. Any extension of the contract term beyond June 30, 2024 must be in writing and signed by all Parties in order to be valid.

If the Contractor 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 Contractor 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.**

A. **Reimbursement of Expenses.** The Program agrees to pay the Contractor an amount based on the approved hourly rate and reimbursable expenses depicted in Exhibit B, attached to and incorporated by reference as part of this Contract, for the services described in Exhibit A, attached to and incorporated by reference as part of this Contract. Total Payment under this contract shall not exceed \$XXX,XXX.

B. **Cost Rates.** The labor and equipment cost rates for each task included in Exhibit A are as set forth on Exhibit B. These unit prices are not to be exceeded unless authorized in writing by the Program. The contract total amount is controlling and is a ceiling price that contractor exceeds at its own risk. Payment shall be made directly to the Contractor. The Contractor shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Billing reports shall be submitted no more often than monthly for activities and costs accrued since the last billing report.

48 **C. Billing Procedures.** The Contractor shall send billing reports for services
49 performed for the various tasks outlined in Exhibit A to the ED Office (address included below). The
50 Program's Executive Director, upon receiving the billing report, will review the bill and advance the
51 invoice to the Bureau of Reclamation who will advise the Foundation of approval. The Foundation will
52 make payment of these funds directly to the Contractor within 30 days of receiving notice of approval.
53 Payments are due within 60 days of the billing date.

54
55 **Billing Point of Contact (Program):**

56 Mr. Jason Farnsworth, Executive Director
57 Platte River Recovery Implementation Program
58 Headwaters Corporation
59 4111 4th Avenue, Suite 6
60 Kearney, Nebraska 68845
61 Phone: (308) 237-5728
62 Fax: (308) 237-4651
63 Email: farnsworthj@headwaterscorp.com
64

65 **D. Withholding of Payment.**

66
67 (i) When the Program has reasonable grounds for believing that the Contractor will
68 be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the
69 Program may withhold payment of such portion of any amount otherwise due and payable to the
70 Contractor reasonably deemed appropriate to protect the Program against such loss. These amounts may
71 be withheld until the cause for the withholding is cured to the Program's satisfaction or this Contract is
72 terminated pursuant to Section 8.U. Any amount so withheld may be retained by the Program for such
73 period as it may be deemed advisable to protect the Program against any loss. This provision is intended
74 solely for the benefit of the Program and no person shall have any right against the Program or Foundation
75 by reason of the Program's failure or refusal to withhold monies. No interest shall be payable by the
76 Program or Foundation on any amounts withheld under this provision. This provision is not intended to
77 limit or in any way prejudice any other right of the Program or Foundation.

78
79 (ii) If a work element has not been completed by the dates established in Exhibit A, the
80 Program may withhold all payments beginning with the month following that date until such deficiency
81 has been corrected.
82

83 **E. Final Completion and Payment.** The final payment shall be made upon
84 acceptance of the final report, receipt of the final billing, and if applicable, execution of the final contract
85 amendment documenting the final contract amount.
86

87 **5. Responsibilities of Contractor.**

88
89 **A. Scope of Services.** The Contractor shall perform the specific services required
90 under this Contract in a satisfactory and proper manner as outlined in Exhibit A. If there is any conflict
91 between this Contract and the provisions of the specific requirements of Exhibit A, the specific
92 requirements shall prevail.
93

94 **B. Personnel.** All of the services required hereunder will be performed by the
95 Contractor 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 and outside associates or consultants required by the **Contractor** in connection with the services, work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the bid and agreed to during negotiations or are specifically authorized by the **Program** during the performance of this Contract. The **Contractor** shall submit a list of the proposed subcontractors, associates or consultants; the scope and extent of each subcontract; and the dollar amount of each subcontract prior to Contract execution to the **Program** for approval. During the performance of the Contract, substitutions in or additions to such subcontracts, associates, or consultants will be subject to the prior approval of the **Program**. The **Program** approval of subcontractors will not relieve the **Contractor** from any responsibilities outlined in this Contract. The **Contractor** shall be responsible for the actions of the subcontractors, associates, and subconsultants.

(ii) **Billings for Subcontractors.** Billings for subcontractors, associates, or subconsultants services will not include any mark up. The subcontract costs will be billed to the **Program** at the actual costs as billed to the **Contractor**. Subcontract costs will be documented by attaching subcontractor billings to the **Contractor's** billing submittals.

(iii) **Copies of Subcontracts.** The **Contractor** shall provide to the **Program** copies of each subcontractor contract immediately following execution with the subcontractor. All subcontracts between the **Contractor** and a subcontractor shall refer to and conform to the terms of this Contract. However, nothing in this Contract shall be construed as making the **Program** a party to any subcontract entered between the **Contractor** and a subcontractor.

(iv) **Contracts for Subcontractors.** All subcontracts that Contractor 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.** Contractor 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 **Contractor** 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.** 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 shall be submitted to the **Program**. If the **Contractor** writes or uses a computer program or spreadsheet as a part of this project, the **Contractor** shall submit to the **Program** for approval all proposed program names and data formats prior to beginning work on that task. All data shall be submitted to the **Program** in written and digital forms. Digital media shall be labeled by the **Contractor** to provide sufficient detail to access the information in the media.

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

144
145 **6. Responsibilities of the Program.**

146
147 **A. Designated Representative.** The Executive Director of the Program shall act as
148 the Program's administrative representative with respect to the Contractor's service to be performed
149 under this Contract and shall have complete authority to transmit instructions, receive information, and
150 interpret and define the Program's policies and decisions with respect to services covered by this Contract.

151
152 **B. Data to be Furnished to the Contractor.** All information, data, reports, and maps
153 as are available to the Program and necessary for the carrying out of the Scope of Services set forth herein
154 shall be furnished to the Contractor without charge and the ED Office shall cooperate with the Contractor
155 in every way possible in the carrying out of the project.

156
157 **C. Review Reports.** The ED Office shall examine all studies, reports, sketches,
158 opinions of construction costs, and other documents presented by the Contractor to the Program and
159 shall promptly render in writing the Program's decisions pertaining thereto within the time periods
160 specified in Exhibit A.

161
162 **D. Provide Criteria.** The ED Office shall provide all criteria and full information
163 regarding its requirements for the project.

164
165 **7. Special Provisions.**

166
167 **A. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee
168 related to the procurement of this Contract shall be paid by either party.

169
170 **B. Publication.** It is understood that the results of this work may be available to the
171 Contractor for publication and use in connection with related work. Use of this work for publication and
172 related work by the Contractor must be conducted with full disclosure to and coordination with the
173 Program's Technical Point of Contact.

174
175 **C. Publicity.** Any publicity or media contact associated with the Contractor's
176 services and the result of those services provided under this Contract shall be the sole responsibility of
177 the Program. Media requests of the Contractor should be directed to the Director of Outreach and
178 Operations in the ED Office.

179
180 **D. Monitor Activities.** The Program shall have the right to monitor all Contract-
181 related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the
182 right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate
183 completed work or work in progress, and to observe all Contractor personnel in every phase of
184 performance of Contract-related work.

185
186 **E. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or
187 contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or
188 other considerations made contingent upon the award of this Contract. If the Contractor breaches or
189 violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the

190 [Program](#), or deduct from the Contract price or consideration, or otherwise recover, the full amount of any
191 commission, percentage, brokerage, or contingency fee.

192
193 **F. Debarment and Suspension.** Contractor certifies by signing this Contract that
194 neither Contractor nor its principals are presently debarred, suspended, proposed for debarment,
195 declared ineligible or voluntarily excluded by any federal department or agency from participation in the
196 transaction covered by this Contract.

197
198 **G. Anti-Lobbying.** Contractor makes the representations set forth on the
199 Certification Regarding Lobbying, which is attached as Exhibit C and incorporated by reference as part of
200 this Contract. Contractor shall execute such Certification at the time of executing this Contract.

201
202 **H. Office Space, Equipment, and Supplies.** The [Contractor](#) will supply its own office
203 space, equipment, and supplies.

204 205 **8. General Provisions.**

206
207 **A. Amendments.** Any changes, modifications, revisions or amendments to this
208 Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written
209 instrument, executed and signed by all Parties to this Contract.

210
211 **B. Applicable Law/Venue.** The construction, interpretation and enforcement of this
212 Contract shall be governed by the laws of the State of Nebraska. The Courts of the State of Nebraska shall
213 have jurisdiction over this Contract and the parties.

214
215 **C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or
216 otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the
217 prior written consent of the other party. The [Contractor](#) shall not use this Contract, or any portion thereof,
218 as collateral for any financial obligation, without the prior written permission of the [Program](#).

219
220 **D. Audit/Access to Records.** The [Program](#), the [Foundation](#) and any of their
221 representatives shall have access to any books, documents, papers, and records of the Contractor which
222 are pertinent to this Contract. The [Contractor](#) shall, immediately upon receiving written instruction from
223 the [Program](#) or the [Foundation](#), provide to the Foundation or any governmental entity, independent
224 auditor, accountant, or accounting firm, all books, documents, papers and records of the [Contractor](#) which
225 are pertinent to this Contract. The [Contractor](#) shall cooperate fully with the [Foundation](#) or any such
226 governmental entity, independent auditor, accountant, or accounting firm, during the entire course of
227 any audit authorized by or required of the [Program](#).

228
229 **E. Availability of Funds.** Each payment obligation of the [Program](#) is conditioned
230 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
231 funds are not allocated and available for the continuance of the services performed by the [Contractor](#),
232 the contract may be terminated by the [Program](#) at the end of the period for which the funds are available.
233 The [Program](#) shall notify the [Contractor](#) at the earliest possible time of the services which will or may be
234 affected by a shortage of funds. No penalty shall accrue to the [Program](#) in the event this provision is
235 exercised, and the [Program](#) shall not be obligated or liable for any future payments due or for any
236 damages as a result of termination under this section. This provision shall not be construed to permit the
237 [Program](#) to terminate this Contract to acquire similar services from another party.

238 **F. Award of Related Contracts.** The **Program** may undertake or award supplemental
239 or successor contracts for work related to this Contract. The **Contractor** shall cooperate fully with other
240 contractors and the **Program** in all such cases.

241
242 **G. Certificate of Good Standing.** **Contractor** shall provide Certificate of Good
243 Standing verifying compliance with the unemployment insurance and workers' compensation programs
244 prior to performing work under this Contract.

245
246 **H. Compliance with Law.** The **Contractor** shall keep informed of and comply with all
247 applicable federal, state and local laws and regulations in the performance of this Contract.

248
249 **I. Confidentiality of Information.** All documents, data compilations, reports,
250 computer programs, photographs, and any other work provided to or produced by the **Contractor** in the
251 performance of this Contract shall be kept confidential by the **Contractor** unless written permission is
252 granted by the **Program** for its release.

253
254 **J. Conflicts of Interest**

255
256 (i) **Contractor** shall not engage in providing consultation to or
257 representation of clients, agencies or firms which may constitute a conflict of interest giving rise to a
258 disadvantage to the **Program** or a disclosure which would adversely affect the interests of the **Program**.
259 **Contractor** shall notify the **Program** of any potential or actual conflicts of interest arising during the course
260 of the **Contractor's** performance under this Contract. This Contract may be terminated in the event a
261 conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts.
262 In the event the contract is terminated under this provision, the **Contractor** shall take steps to ensure that
263 the file, evidence, evaluation and data are provided to the **Program** or its designee. This does not prohibit
264 or affect the **Contractor's** ability to engage in consultations, evaluations or representation under
265 agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

266
267 (ii) A conflict of interest warranting termination of the Contract includes, but
268 is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River
269 Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating
270 suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

271
272 **K. Entirety of Contract.** This Contract, consisting of thirteen (13) total pages
273 including Exhibit A (consisting of one (1) page), Exhibit B (consisting of one (1) page), and Exhibit C
274 (consisting of one (1) page), represents the entire and integrated Contract between the parties and
275 supersedes all prior negotiations, representations, and agreements, whether written or oral.

276
277 **L. Force Majeure.** Neither party shall be liable for failure to perform under this
278 Contract if such failure to perform arises out of causes beyond the control and without the fault or
279 negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or
280 the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually
281 severe weather. This provision shall become effective only if the party failing to perform immediately
282 notifies the other party of the extent and nature of the problem, limits delay in performance to that
283 required by the event, and takes all reasonable steps to minimize delays. This provision shall not be
284 effective unless the failure to perform is beyond the control and without the fault or negligence of the
285 nonperforming party.

286 **M. Indemnification.** The Contractor shall indemnify and hold harmless the
287 Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees
288 from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of
289 Contractor's duties and obligations hereunder or in connection with the negligent performance of
290 Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability
291 arising out of Contractor's malpractice. The obligations of this paragraph shall survive termination of this
292 Contract.

293
294 **N. Independent Contractor.** The Contractor shall function as an independent
295 contractor for the purposes of this Contract, and shall not be considered an employee of the Program,
296 Foundation, or ED Office for any purpose. The Contractor shall assume sole responsibility for any debts
297 or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be
298 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
299 Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or
300 employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to
301 incur any obligation of any kind on the behalf of the Foundation or the Program. The Contractor agrees
302 that no health/hospitalization benefits, workers' compensation and/or similar benefits available to
303 Foundation, Program, or ED Office employees will inure to the benefit of the Contractor or the
304 Contractor's agents and/or employees as a result of this Contract.

305
306 **O. Notices.** All notices arising out of, or from, the provisions of this contract shall be
307 in writing and given to the parties at the address provided under this Contract, either by regular mail,
308 facsimile, e-mail, or delivery in person. Notice is effective upon delivery.

309
310 **P. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The
311 Contractor shall provide the Program with the earliest possible advance notice of any proposed sale or
312 transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be
313 provided in accordance with the notice provision of this Contract.

314
315 **Q. Ownership of Documents/Work Product/Materials.** All documents, reports,
316 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
317 this Contract are at all times the property of the Program.

318
319 **R. Patent or Copyright Protection.** The Contractor recognizes that certain
320 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
321 restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any
322 such restriction.

323
324 **S. Proof of Insurance.** The Contractor shall not commence work under this Contract
325 until the Contractor has obtained the following insurance coverages and provided the corresponding
326 certificates of insurance:

327
328 (i) Commercial General Liability Insurance. Contractor shall provide
329 coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage
330 to or destruction of the property of others, including loss of use thereof, and including products and
331 completed operations in an amount not less than Two Million Dollars (\$2,000,000.00) aggregate and One
332 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. Contractor 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 Contractor shall provide proof of workers' compensation coverage. Contractor'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 Contractor shall provide proof of Professional Liability insurance covering damages arising out of negligent acts, errors, or missions committed by Contractor in the performance of this Agreement, with a liability limit of not less than One Million Dollars (\$1,000,000) per claim. Contractor 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 Contractor.

T. Taxes. The Contractor 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.

U. Termination of Contract. This Contract may be terminated, without cause, by the Program upon fifteen (15) days written notice. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract. In the event of a termination, the Program shall pay Contractor for all reasonable work performed up to the effective date of the termination.

V. 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.

W. Time is of the Essence. Time is of the essence in all provisions of the Contract.

X. Titles Not Controlling. Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.

Y. 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.

379 **9. Contacts.**

380
381 **Administrative Point of Contact (Foundation): Admin. Point of Contact (Program):**
382 Jason Kennedy Jason Farnsworth, Executive Director
383 Chief Financial & Administrative Officer Platte River Recovery Implementation Prog.
384 Nebraska Community Foundation Headwaters Corporation
385 PO Box 83107 4111 4th Avenue, Suite 6
386 Lincoln, Nebraska 68501-3107 Kearney, Nebraska 68845
387 Phone: (402) 323-7330 Phone: (308) 237-5728
388 Fax: (402) 323-7349 Fax: (308) 237-4651
389 Email: jkennedy@nebcommfound.org Email: farnsworthj@headwaterscorp.com

390
391 **Technical Point of Contact (Program): Media Point of Contact (Program):**
392 Seth Turner, Water Plan Coordinator Alicia Uribe, Executive Office Manager
393 Platte River Recovery Implementation Prog. Platte River Recovery Implementation Prog.
394 Headwaters Corporation Headwaters Corporation
395 4111 4th Avenue, Suite 6 4111 4th Avenue, Suite 6
396 Kearney, Nebraska 68845 Kearney, Nebraska 68845
397 Phone: (303) 204-8283 Phone: (308) 237-5728
398 Fax: (308) 237-4651 Fax: (308) 237-4651
399 Email: turners@headwaterscorp.com Email: uribea@headwaterscorp.com

400
401 **Administrative Point of Contact (Contractor): Technical Point of Contact (Contractor):**
402 XXXX XXXX
403

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

CONTRACTOR

Name
Title

Date

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT

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

Jason M. Farnsworth
Executive Director

Date

1 **EXHIBIT "A"**
2 **SCOPE OF SERVICES**
3
4

5 **A. WORK DESCRIPTION**

6 To be finalized with Selected Contractor, North Platte Chokepoint Planning Workgroup, and PRRIP
7 Executive Director's Office.

- 1
- 2
- 3
- 4
- 5

To be added from selected Contractor as approved by the Program.

EXHIBIT "C"
Certification Regarding Lobbying

The undersigned certifies, on behalf of Contractor, 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 Contractor, 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 Contractor with respect to the federal grant or cooperative agreement under which the Contractor 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.

NAME OF BUSINESS ("CONTRACTOR")

By:

Name
Title

Date



1
2

EXHIBIT B
Certification Regarding Lobbying



EXHIBIT "C"
Certification Regarding Lobbying

The undersigned certifies, on behalf of Contractor, 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 Contractor, 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 Contractor with respect to the federal grant or cooperative agreement under which the Contractor 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.

NAME OF BUSINESS ("CONTRACTOR")

By:

Name
Title

Date