



## **REQUEST FOR PROPOSALS (RFP)**

### **North Platte Chokepoint Engineering Services**

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

**March X, 2023**



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Exhibit A – North Platte Chokepoint Alternatives Memorandum (from the PRRIP EDO)

Exhibit B – Program’s Consultant Contract & Certification Regarding Lobbying



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

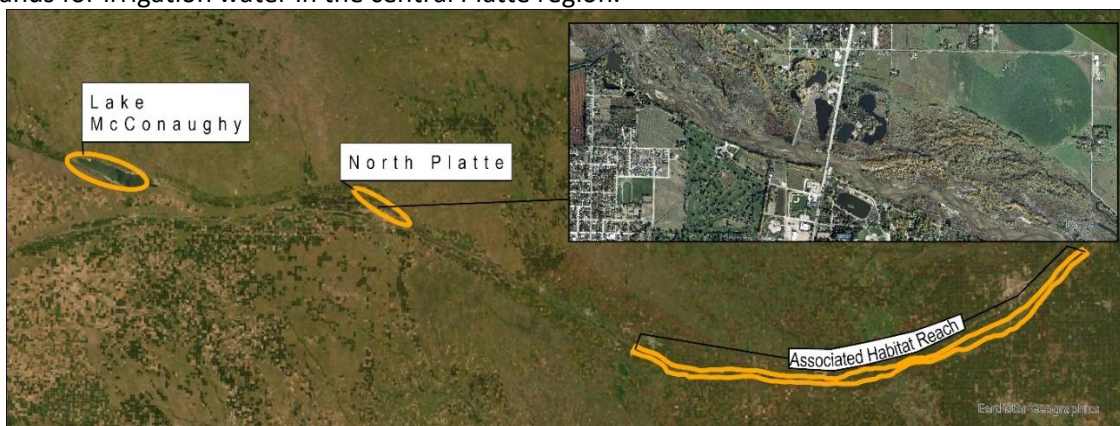
**SUBJECT:** North Platte Chokepoint Engineering Services  
**REQUEST DATE:** March 10, 2023  
**PRE-PROPOSAL MEETING:** March 30, 2023  
**CLOSING DATE:** April 14, 2023  
**POINT OF CONTACT:** Seth Turner  
Headwaters Corporation  
(720) 524-6115  
[turners@headwaterscorp.com](mailto:turners@headwaterscorp.com)

**I. OVERVIEW**

The Platte River Recovery Implementation Program (Program) 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) 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.

For the purposes of this study, the North Platte chokepoint extends from below the Tri-County Canal Diversion Dam on the Platte River to a few miles upstream of the Highway 83 bridge that crosses the North Platte River at North Platte, Nebraska. Flow capacity through this reach declined in recent decades due to diminished peak flows, floodplain development, vegetation encroachment (primarily *Phragmites*), and other factors. This reach is important to the Program because it represents a potential constraint on the ability to deliver water from the Lake McConaughy Environmental Account (EA) upstream to the Associated Habitat Reach (AHR) downstream, particularly in drier years with higher demands for irrigation water in the central Platte region.





The 2006 Program Document (Section III.E.2.d.iii) and the 2017 Addendum to the Program Document (Section II.B) set forth a goal of achieving and maintaining a flow capacity of 3,000 cubic feet per second (cfs) at the North Platte chokepoint, with the critical limitation that this be accomplished while remaining below the National Weather Service (NWS) minor flood stage of 6.0 ft.<sup>1</sup> Efforts to accomplish this were to continue as long as deemed appropriate by the GC or until alternative means of providing similar benefits to the Program's target species were developed. Recent measurements show the average shift-adjusted capacity of the North Platte River at North Platte to be only about 1,770 cfs.

A series of studies, model analyses (both channel hydraulics and sediment transport), and conceptual designs were undertaken during the Program's First Increment in an attempt to resolve both capacity and flooding issues at the chokepoint, culminating in the completion of two flood-proofing projects. The Whitehorse Creek Drainage Project (2014) installed driveway culverts along North River Road to direct stormwater and high groundwater to the east of Highway 83 towards Whitehorse Creek. The State Channel Berm Rehabilitation (2018) restored a low berm that directs high flows away from the north bank neighborhood towards the main North Platte River channel.

In July 2020, the Program completed a flow test to observe the impacts of river flows up to and exceeding a stage of 6.5 ft; increasing minor flood stage to this level would add about 800 cfs of usable flow capacity for the Program. The flow test successfully demonstrated that the flood-proofing projects eliminated flooding along the north bank at those stages but NWS declined to raise minor flood stage because of observed impacts (mostly groundwater related) at residences along the south bank upstream of Highway 83.

The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to provide engineering services associated with re-evaluation of past alternatives as well as development of new alternatives to increase conveyance capacity through the chokepoint. The full scope and appropriate methods for performing analyses will be developed jointly by the EDO, the Chokepoint Planning Workgroup, and the Consultant after selection and prior to performing the analyses.

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. PAST CHOKEPOINT EFFORTS

Past work to evaluate and address capacity and flooding issues at the chokepoint is summarized in an April 2021 memorandum to the Program's Chokepoint Planning Workgroup that is attached as **Exhibit A**. All materials referenced in that memo will be made available to prospective Consultants and can be obtained electronically by sending a request via email to Seth Turner of the EDO at [turners@headwaterscorp.com](mailto:turners@headwaterscorp.com). The recently published North Platte Chokepoint Investigation Final Report completed by River Design Group (RDG) on behalf of The Crane Trust and Audubon Nebraska that explores additional possible alternatives to address chokepoint issues is included in that package of reference materials.

<sup>1</sup> The Adaptive Management Plan (Program Document, Attachment 3, Section II.A) specifies that "management of Program water will not cause flows above the flood stage as defined by the National Weather Service."



### III. SCOPE OF WORK

The selected Consultant will provide engineering services associated with re-evaluation of past alternatives to increase chokepoint capacity as well as development of new alternatives. The scope and appropriate methods for performing analyses will be discussed with the Chokepoint Planning Workgroup prior to performing the analyses.

As stated previously, the Program's objective is to achieve and maintain 3,000 cfs conveyance capacity through the North Platte chokepoint reach while remaining below NWS minor flood stage which is set at 6.0 ft for the North Platte River at the North Platte gage (06693000). The shift-adjusted capacity at a stage of 6.0 ft in this reach has averaged around 1,770 cfs over the last 2.5 years. Objectives of the study under this RFP are as follows:

- Identify, screen, and rank past and potential new alternatives to improve conveyance capacity and reduce flood risk through the North Platte chokepoint reach.
- Update and calibrate baseline model(s).
- Conduct detailed hydraulic and/or sediment transport modeling as needed to evaluate the effectiveness of selected alternatives at achieving and maintaining gains in conveyance capacity through the North Platte chokepoint.
- Complete assessment of permitting requirements, estimated costs, and implementation timeline for selected alternatives.

The specific scope of work to achieve these study objectives will be determined once a Consultant is selected based on experience and qualifications, but a general description of the anticipated progression of the study is provided below.

Once selected, the Consultant, EDO, and the Chokepoint Planning Workgroup will work collaboratively to review past alternatives and identify new and/or refined alternatives that will be subjected to further analysis as part of this project as well as the analysis tools and metrics that will be employed. The results of this task will be used to develop the scope of work for the remainder of the project. Potential alternatives may include the kinds of channel and floodplain modifications described in past chokepoint work, vegetation control, alternatives that bypass the chokepoint by routing flow from the North Platte to the South Platte via existing or new canals, modifications to existing irrigation diversion infrastructure to increase sediment conveyance, or other alternatives brought forward by the Consultant or Chokepoint Planning Workgroup members.

Alternatives will be evaluated by the Consultant to assess effectiveness in meeting Program objectives. Technical evaluation of the feasibility of alternatives will likely require (at a minimum) updating of existing 1-D and/or 2-D hydraulic models. Modeling will encompass a range of flow rates to assess incremental changes in channel conveyance capacity but will emphasize the goal of achieving and maintaining 3,000 cfs capacity. It may also be necessary to develop a 2-D mobile bed sediment transport model to evaluate alternatives designed (for example) to enhance sediment conveyance through the chokepoint reach.

Once alternatives have been evaluated for effectiveness, the Consultant and the Chokepoint Planning Workgroup will collaboratively screen alternatives that meet minimum suitability criteria to be carried forward for consideration as part of a structured decision-making process. This will require the



Consultant to develop pre-feasibility level cost estimates for alternatives as well as provide information on the scope and complexity of permitting and other legal/administrative factors. The final task anticipated under this project will be providing technical support during the structured decision-making process. Selected alternatives may be carried forward to design, permitting and construction under an extension to this contract or a new competitive selection process.

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

- Civil engineering
- Fluvial geomorphology
- Riparian vegetation dynamics
- General hydrology and hydraulics
- 2-D hydrodynamic modeling
- 2-D mobile bed sediment transport modeling in sand bed rivers
- Structural engineering (bridge and diversion infrastructure, other hydraulic control structures)
- Irrigation/hydropower operations
- Environmental permitting

#### IV. PROJECT BUDGET

The Program budget for this project is on the order of \$400,000. However, an estimated project budget should **NOT** be submitted in the proposal and proposals will not be evaluated based on cost. The scope of work and budget for alternatives review will be negotiated prior to commencement of work. The remainder of the scope of work and project budget will be developed based on the results of that task.

#### 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 B**) 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 (mid-2023 through mid-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](mailto:turners@headwaterscorp.com) no later than 5:00 PM Central Time on Friday, April 14, 2023. 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 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](mailto:turners@headwaterscorp.com). A list of compiled Consultant questions and responses will be maintained on the Program web site ([www.PlatteRiverProgram.org](http://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 June 2, 2023. The following table represents the RFP schedule:

Description	Date	Time (Central)
Issue RFP	By March 10, 2023	n/a
Pre-proposal virtual meeting	March 30, 2023	12:00 PM
Last day for respondents to submit questions regarding the RFP	April 6, 2023	5:00 PM
Proposals due from Consultants	April 14, 2023	5:00 PM
Evaluation of Proposals	April 17 through April 28, 2023	
Interviews	Week of May 15, 2023	
Award of Work	On or before May 25, 2023	
Start of Work	Mid- to late-June, 2023	
Completion of Work	Approximately June 30, 2024	

### Virtual Pre-Proposal Meeting

A **mandatory** virtual pre-proposal meeting of interested parties will be held on March 30, 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](mailto: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 12:00 PM Central Time on March 24, 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 design elements and operational goals and constraints.
- 2) Project approach:** Discussion of the Consultant’s approach to providing the scope of work 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 Section III of this RFP. That scope was provided as general guidance and 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:** Schedule of standard hourly and reimbursable cost rates by labor category.
- 5) Conflict of interest 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) Description of insurance:** shall be provided with the proposal. Proof of insurance will be required before a contract is issued. Minimum insurance requirements are described in the attached Program’s Consultant Contract (**Exhibit B**).
- 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 DUNS<sup>2</sup> and SAM<sup>3</sup> number are required to assist in verification.
- 9) Lobbying Certification** – Form to complete attached as part of **Exhibit B**.

### 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:

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

<sup>3</sup> <https://federalcontractorregistry.com/>





1. The Consultant's understanding of the overall project goals, constraints, design elements, and operational scenarios and project approach.
2. Qualifications and the relevant experience of the proposed project team members and firm, including:
  - a. The selected Consultant will be expected to demonstrate experience with a comprehensive alternatives analysis process for identifying potential project components, developing and applying appropriate screening criteria, and formulating and ranking project alternatives configurations.
  - b. The selected Consultant will be expected to demonstrate extensive experience with both 1-D and 2-D hydraulic modeling as well as sediment transport modeling, with specific experience in braided sand-bed rivers.
  - c. The selected Consultant will be expected to demonstrate experience with water management and reservoir operations/routing, irrigation operations, etc.
  - d. The selected consultant should demonstrate experience with the various levels of permitting involved in developing water resources projects as well as experience developing opinions of probable cost for such projects.

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**  
**PRRIP Chokepoint Workgroup Alternatives Memorandum**



**TO:** NORTH PLATTE CHOKEPOINT PLANNING WORKGROUP  
**FROM:** PRRIP EXECUTIVE DIRECTOR'S OFFICE  
**SUBJECT:** NORTH PLATTE CHOKEPOINT ALTERNATIVES  
**DATE:** APRIL 6, 2021

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## **I. INTRODUCTION**

The Platte River Recovery Implementation Program (PRRIP or Program) continues to have a goal of achieving and maintaining a flow capacity of 3,000 cfs at the gage on the North Platte River at North Platte, Nebraska. The gage is located adjacent to the downstream side of the Highway 83 bridge, and the reach of the river extending a few miles upstream and downstream of the bridge is referred to as the “North Platte Chokepoint” because of diminished flow capacity in recent decades. Critically, flows of 3,000 cfs for Program purposes are to occur while remaining below minor flood stage, which the National Weather Service (NWS) has currently set at a stage of 6.0 feet. Based on the gage rating curve developed by the Nebraska Department of Natural Resources, discharge at that stage is presently estimated to be about 1,930 cfs.<sup>1</sup> Flows of 3,000 cfs occur at a stage of about 6.63 feet.

Starting in the late 1990s, significant flooding of residential areas on the north side of the river in the vicinity of North River Road and North Washboard Road began to occur at or around the 6.0-foot stage. Since the early 2000s, NWS had defined flood stage impacts based on observations in that area and low-lying areas of Cody Park. In an effort to reduce the north bank flooding impacts, the Program implemented two flood-proofing projects, the Whitehorse Creek drainage project (2014) and the State Channel Berm rehabilitation (2018). As early as 2012, the Program was having discussions with NWS about the possibility of increasing minor flood stage to 6.5 feet after completion of the flood-proofing projects. The flood stage increase would gain additional flow capacity for the Program (about 800 cfs) but would not achieve the full 3,000 cfs. Due to permitting issues, the need for mitigation wetlands, and other factors, completion of the flood-proofing projects took years longer than originally anticipated. Concurrently and somewhat intermittently, the Program continued to evaluate other solutions to close the gap in flow capacity below flood stage.

In July 2020, the Program, in coordination with stakeholder organizations and local, state, and federal government agencies, completed a flow test to observe the impacts of river flows up to and exceeding a stage of 6.5 feet. The flow test was a success in terms of demonstrating the benefits of the flood-proofing projects, as no floodwaters were observed anywhere in the neighborhood along the north bank of the river. However, impacts were observed at properties along the south bank in the Darlene Road-Red Fox Lane area (e.g., encroachment near a house foundation, septic system issues, a flooded storm cellar, and inaccessibility of an outbuilding) that the NWS determined were threats to property. As a result, NWS declared that minor flood

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<sup>1</sup> Discharge at 6.0 feet generally ranged between 1,500 and 2,000 cfs during the Program's First Increment from 2007-2019.



stage would remain at 6.0 feet, and flood impacts definitions were revised to reflect observations during the flow test.

Absent the flood stage increase, the Program would need to find alternative means of increasing capacity below 6.0 ft by more than 1,000 cfs or find ways to bypass the North Platte chokepoint altogether. The North Platte Chokepoint Planning Workgroup has been reconvened to consider potential next steps towards resolving this issue. **The objective of this memo is to summarize the many previous efforts by the Program to identify and implement solutions to increase North Platte chokepoint capacity during the First Increment.**

The underlying premise of all of this work at the North Platte chokepoint is outlined in Section III.E.2.d of the Program Document, which among other things calls for delivering 5,000 cfs pulse flows of Program water for three days to the upper end of the associated habitat reach (AHR) at the Overton gage. It was eventually determined that this could be accomplished by EA releases passing up to 3,000 cfs through the North Platte chokepoint, supplemented by a Central Platte regulating reservoir at the upper end of the AHR. The J-2 Regulating Reservoirs Project progressed well into the design phase and would have had an outlet capacity of 2,000 cfs, but the project was derailed by significant cost increases and land acquisition issues. The Program has not identified any viable replacement projects that would have remotely comparable capacity to release water to the Platte River. Additionally, the 2019 State of Platte Report conclusively and negatively answered the question of whether implementation of short-duration high flows (SDHF) would produce suitable target species habitat.

Despite these setbacks, any capacity improvements that could be achieved at the North Platte chokepoint would still be beneficial to the Program. Ongoing and future Adaptive Management Plan activities and experimental flow tests can help determine how much increased flow capacity is actually necessary to achieve the Program's target species management objectives. An example of such a flow test is the germination suppression event planned for June 2021. For now, it is worthwhile to undertake the present review of previous alternatives considered for the North Platte chokepoint to determine if any projects still remain feasible or studies warrant updating and to potentially identify new alternatives that were not previously evaluated.

## II. NORTH PLATTE CHOKEPOINT ALTERNATIVES

The following sections summarize chokepoint-related documents that were reviewed by the EDO and made available to the North Platte Chokepoint Planning Workgroup on the PRRIP website.

Parsons (2003). Preliminary Evaluation of Channel Capacity in the North Platte River at North Platte, Nebraska. Prepared for Central Nebraska Public Power and Irrigation District.

This study predates the Program by several years but was an attempt to understand channel capacity changes in the North Platte chokepoint following a decision by NWS in 2002 to lower minor flood stage from 6.0 feet to 5.7 feet. Flooding in the North River Road and North Washboard Road area was reported to be a relatively new phenomenon, having only started occurring a few years earlier in the late 1990s.



Parsons concurred with previous studies by the USGS and Corps of Engineers in the 1980s that determined the main channel capacity (different from the flood stage or carrying capacity) to be consistently on the order of 1,700-2,000 cfs. They stated that “Expecting, or trying to create, a channel capacity greater than this 1,700 cfs rate would be contrary to principles of dynamic equilibrium and therefore ill-advised.”

Around 1991 a sudden and significant decline in the hydraulic properties of the North Platte chokepoint was observed. Parsons hypothesized that this was primarily due to changes in the overbank areas, including the rapid and extensive growth of phragmites (“This is the most dramatic change documented for this period, and it alone could account for the changes and associated problems.”); the intentional blockage of a drain channel adjacent to residential properties on North River Road (and leading to a box culvert under Highway 83); and the State Channel, which was built around 1970 but was overgrown and basically non-functional for redirecting high flows towards the main channel by the 1990s.

Program Document, Attachment 5, Section 2. Includes J.F. Sato and Associates (2005). Final Report, North Platte Channel Capacity Study for the Water Management Committee, North Platte Cooperative Agreement.

J.F. Sato and Associates completed a report in December 2005 that included a series of possible alternatives for short-term improvements to channel capacity at the North Platte chokepoint. Attachment 5, Section 2 of the Program Document called for the implementation of the Base Case, Alternative 1, and Alternative 2, with proposed completion of the project by October 1, 2009. Elements of the proposed project were as follows:

#### **Base Case**

1. Open State Channel.
2. Extend State Channel north to existing ponds/North River Road.
3. Construct road ditch along west side of Washboard Road.
4. Open southern channel from road ditch to abandoned detour road.
5. Remove abandoned detour road and construct ditch to main channel of the North Platte.
6. Remove phragmites along opened drainages.

#### **Alternative 1: All elements of the Base Case PLUS**

1. Improve and open the channel to connect existing culverts in Washboard Road to the existing concrete box culvert under Highway 83.
2. Improve conveyance through the ponds to the main channel and provide overflow structure.

#### **Alternative 2: All elements of Alternative 1 PLUS**

1. Remove sand bar that is blocking the northern channel about 1,500 feet above Highway 83 and improve the channel downstream of this point.



J.F. Sato and Associates also proposed additional studies to identify long-term solutions, but the Governance Committee did not approve that proposal.

Short Elliott Hendrickson, Inc. (SEH, 2008). Project Update Report, Platte River Restoration and Enhancement Project.

SEH was hired in April 2007 to complete plans and specifications for the project outlined by J.F. Sato and Associates. They met with the property owners who would be impacted by the proposed project components and found that there had been little or no prior contact with these property owners. Based on objections from the property owners and/or permitting issues, nearly all of the construction elements of the project were eliminated. SEH then proposed a modified project that included the following:

- Island (sand bar) removal per the J.F. Sato and Associates report, but with a significantly reduced excavation component to minimize permitting requirements.
- Phragmites removal.
- Installation of staff gages at affected properties.
- Monitoring program to read staff gages from fall 2007 through fall 2008.
- Monitoring of controlled pulse flow release planned for spring 2008.
- Develop a calibrated HEC-RAS model to help with flow forecasting.
- Revise flood stage elevation.

Extensive phragmites treatment was conducted over the next few years. Spraying included the island or sand bar removal area, but no mechanical work was ever done there. SEH developed a HEC-RAS model and completed various analyses that were documented in this report. The pulse flow release occurred, but not until April 2009.

The report also documents a July 2007 meeting involving SEH, the Program, and staff from the NWS North Platte office. NWS stated the following:

The gage station at Highway 83 is not located in the ideal spot since it is downstream of the bridge. The ideal location would have been upstream of the bridge. If the gage station was upstream of the bridge there would be more of a direct correlation between the gage station elevation and the [affected] properties without the influences of downstream structures.

In 2008, NWS increased minor flood stage from 5.7 feet to 6.0 feet, where it remains today; discharge at this minor flood stage has ranged from 1,500 to 2,000 cfs at different times since then.

PRRIP Executive Director's Office (EDO) and U.S. Fish and Wildlife Service (2009). 2009 Platte River Flow Routing Test: Results, Information Gleaned, Lessons Learned.

The Program and its partners conducted a flow routing test in April 2009, reportedly reaching a peak of 1,747 cfs at a stage of 6.08 feet. The report stated these “key take-home points” regarding the North Platte chokepoint:



- The North Platte River at North Platte chokepoint remains a serious constraint on the ability of the Program to use the Environmental Account to help achieve short duration high flows of the desired magnitude. The NWS flood-stage capacity of this reach appears to be in the neighborhood of 1,700 to 1,800 cfs, based on the published flood stage of 6.0 feet at the North Platte gage. The Program has further work to do to achieve the 3,000 cfs capacity it has committed to at this location.
- Phragmites infestation of the Platte River remains a serious problem. These invasive weeds contribute to chokepoint problems around North Platte. Infestations may aggravate localized flooding problems in the mainstem Platte channel between North Platte and Lexington, and they appear to result in slower travel times, high transit losses, and greater peak flow attenuation as augmented flow moves down the Platte River system.

SEH (2009). Memorandum, Current Conclusions and Recommendations from the April 2009 Short Duration High Flows summary report and follow-up discussions.

SEH (2010). April 2009 High Flow Event, Project Update Report: Platte River Restoration and Enhancement Project.

These two documents are grouped together in one PDF file. SEH stated that “Based on the information gathered over the last two years, all indications are that the goal of allowing for increased flow through the reach can be achieved with a combination of vegetation removal and hopefully through the purchase of flow easements.”

SEH reported that velocity measurements in areas of phragmites were half or less than in the free-flowing sections of river “which means that flow capacity in a reach can be more than doubled by just removing the phragmites.” During the April 2009 flow routing test, it was also observed that previously-sprayed vegetation in the island/sand bar removal area was washed away and opened that channel. Based on these observations, SEH concluded that spraying and/or shredding of phragmites, followed by repeated annual pulse flows to wash away dead vegetation, should be enough to achieve the desired flow capacity through the North Platte chokepoint. SEH also recommended working with property owners to purchase flood easements during high flow events, and if needed, providing temporary protection of non-critical structures.

At the time, it appeared that gage stage had increased by about 1 foot for the 3,000 cfs flow rate since 1994. Despite the observations and conclusions described above, SEH also noted that modeling indicated that phragmites were only responsible for part of that increase. They suggested that sedimentation downstream of the Highway 83 bridge, possibly caused by a flow constriction at the east end of Cody Park, was also a contributing factor.

HDR and Tetra Tech (2011). Final Technical Memorandum, Evaluation of Alternatives for Improvements in Carrying Capacity of the North Platte River at North Platte.

At the time of this study, capacity at 6.0 feet was reportedly only about 1,500 cfs. HDR and Tetra Tech completed work based on the premise that sedimentation downstream of the Highway





83 bridge was the primary problem, and that the objective was to reduce the 3,000 cfs stage by 0.8 feet. They developed and screened six alternatives (two hydraulic improvement options and four sediment management options), and “the three alternatives with the highest rank...were evaluated for their effectiveness to increase the carrying capacity from the current discharge of 1,500 cfs to 3,000 cfs without increasing stage.” Those top three alternatives were as follows:

1. Construct an approximately 0.5-mile long levee along the south bank downstream from Highway 83 and reconnect the overbank channel along the north bank in the vicinity of Cody Park.
2. Widen the channel through the UPRR bridge and set back the bank and sandpit levees upstream and downstream of the bridge along an alignment that matches the main channel approaches to this existing channel constriction.
3. Reactivation of the north bank channel between the Highway 83 bridge and the restriction at the east end of Cody Park.

HDR and Tetra Tech completed both hydraulic and sediment transport modeling for these alternatives and a baseline condition. Results indicated that none of the alternatives would be successful in achieving the desired reduction in stage for a flow of 3,000 cfs, with the best being a reduction of 0.1 foot at the gage (compared to the 0.8 feet needed) and the worst actually increasing the stage at 3,000 cfs. Another notable conclusion in the HDR and Tetra Tech report was as follows:

Since the evaluated alternatives only include elements located below Highway 83, it is likely that implementing upstream measures that would reduce the sediment supply to the bridge (i.e., reactivation of overbank channels in the reach above the bridge) would be necessary to significantly reduce flood stages at the gage and possibly downstream near the Cody Park restriction. Based on the model results from the evaluated alternatives, reactivating overbank channels could result in increased sediment storage in the overbanks, thereby reducing the sediment supply to and associated aggradation in downstream reaches.

HDR and Tetra Tech thus recommended “that an evaluation of additional alternatives that include variations of these measures be carried out to assess the potential benefits on flood stage and carrying capacity.”

EDO (2012). Memorandum, Choke Point Options (June 10) and Choke Point Workgroup Conference Call Meeting Notes (June 20).

EDO (2012). Memorandum, Further Detail on Institutional and Engineering Options (July 19) and Choke Point Workgroup Conference Call Meeting Notes (July 26).

At the May 2012 WAC meeting, the EDO presented two options for increasing capacity at flood stage towards the 3,000 cfs objective:



1. Institutional options that may provide a basis for NWS to increase flood stage from the existing 6.0 feet (capacity of approximately 1,560 cfs) to 6.5 feet (capacity of approximately 2,400 cfs).
2. Engineering the river to increase capacity at flood stages.

The WAC supported an expenditure of \$150,000 to implement some of the institutional options and formed a new workgroup to study engineering options.

Institutional options included implementation of flood-proofing projects or buying out potentially affected properties. In fall 2011, the EDO met with representatives from the City of North Platte and Lincoln County to discuss possible flood-proofing projects. In May 2012, the EDO met with NWS North Platte to discuss those projects as a possible basis for increasing flood stage. NWS identified the developed area along North River Road west of Highway 83 as the primary area of concern for potential flood impacts to structures. NWS also explained that “Flood stage is equal to the stage where flow initially overtops the channel banks, but is not based on stage when high ground water levels cause flooding.”

The three proposed flood-proofing projects were as follows:

1. Reactivation of the State Channel
2. Construction of a new outlet from a gravel pit pond on the east side of Highway 83 to make more effective use of natural drainage near North River Road west of Highway 83.
3. Installation of driveway culverts in the road ditch on the north side of North River Road to improve drainage to Whitehorse Creek.

The Whitehorse Creek drainage project was completed in 2014, and the State Channel berm rehabilitation was finally completed in 2018. The gravel pond outlet was determined to be an inefficient and comparatively costly solution and was not implemented.

Potentially affected properties to be targeted for buyouts were identified based on flood inundation modeling by the EDO and anecdotal information from the summer 2011 flooding. The total cost of buyouts was estimated to be about \$3.4 million. The EDO noted that “In addition to the high cost, property buyouts are likely politically unacceptable until all other options have been exercised, and SDHFs are deemed essential for successful Program implementation.” Based on feedback from the workgroup, the EDO completed additional analyses to reflect the benefits of flood-proofing projects and evaluated combinations of buyouts and flood easements. Estimated costs still ranged from \$1.9 to \$4.3 million depending on the alternative. The EDO said “There is a low likelihood of all owners willing to sell or enter into easements, and as a result this alternative should not be considered further.” However, the workgroup requested that the option be retained for further consideration.



Four engineering options were presented to the workgroup for discussion:

1. Existing or new infrastructure to divert water from North Platte River to South Platte River to circumvent the North Platte chokepoint issue (e.g., additional capacity through NPPD's system).
  - a. In the NPPD system, a combination of Sutherland East Reservoir and a new South Platte River outlet was identified as the most feasible option but was considered a long-term solution at best given the high cost and lengthy timeline to develop. The outlet alone (via Fremont Slough) was estimated to cost \$10 million in 2012. In an October 2020 email, Jeff Shafer said "NPPD believes the Sutherland East concept is not feasible due to the estimated costs. We are still interested in an additional outlet from Sutherland Reservoir and would be open to studying the concept."
  - b. A concept involving an 18-inch pipeline from the North Platte River to the South Platte River with a capacity of 22 cfs and a cost of \$1.5 million was briefly considered but not pursued further.
  - c. Improvements to existing canals that divert from the North Platte River and return to the South Platte River were considered to be a low-cost solution that should be explored further.
2. Additional storage in existing canals/reservoirs in CNPPID's system available for releases to the central Platte River.
  - a. Any potential regulating storage in CNPPID's system was very limited, and this concept was eliminated.
3. Dredge material from the North Platte River to provide additional capacity and potentially modify North Platte River channel dimensions to maximize sediment transport capacity.
  - a. Dredging options were focused on lowering the channel bed in the reach between the Highway 83 bridge and the UPRR bridge, with the anticipated result being a comparable reduction in the stage for 3,000 cfs. However, dredging would need to be repeated periodically to maintain hydraulic capacity.
  - b. The workgroup suggested the use of jetties or bendway weirs as a means of inducing scour and reducing the need for repeat dredging. Initial analyses indicated that such structures would not be appropriate in this reach of the river and would not achieve the intended objectives.
4. Install sediment collector(s) on the North Platte River to reduce sediment input and potentially induce "natural" dredging.
  - a. With costs similar to dredging but the outcome more uncertain, these were not pursued further.

Out of all of these engineering options, only improvements to existing canals and various dredging options were considered in future evaluations.



EDO (2014). Memorandum, Spring 2013 SDMF Release Hydrologic Summary.

In April 2013, the Program conducted a pulse flow release that created short-duration medium flow (SDMF) conditions at the associated habitat reach. The Keith-Lincoln, North Platte, and Suburban canals were used to route water from the North Platte River to the South Platte River, bypassing the North Platte chokepoint. Of 588 cfs collectively diverted into the canals from the North Platte River, only 265 cfs (45 percent) was returned to the South Platte River. The Keith-Lincoln Canal was the least effective and was eliminated from consideration for future flow routing activities. The North Platte and Suburban canals were to be retained for further evaluation, and it was noted that improvements could be made to increase conveyance efficiency. However, no specific improvements to the existing canals were ever pursued.

Anderson Consulting Engineers, Inc. (ACE, 2015). Memorandum, North Platte Choke Point: Investigation of Channel Modifications Upstream of Highway 83 (January 21).

ACE (2015). Memorandum, North Platte Choke Point: Feasibility Assessment of Recommended Alternatives (May 5).

ACE (2016). Memorandum, North Platte Chokepoint: Feasibility Assessment of Recommended Alternatives.

ACE (2018). Memorandum, North Platte Chokepoint: Updated Modeling and Inundation Mapping.

Overall, this series of memos by ACE presents refinements to concept evaluations that began at the time of the June-July 2012 EDO memos discussed above. Initial analyses showed that dredging the river channel could achieve the desired flow capacity at the North Platte chokepoint, but that it would be lost within 3-5 years. It was also found that the addition of jetties or bendway weirs did not improve the longevity of dredging improvements, and thus recurring maintenance would still be necessary.

In a discussion of an “existing conditions” model run, the January 2015 ACE memo describes fairly rapid changes in the hydraulic capacity at the North Platte chokepoint during and just after a major flood event:

Historic field observations and measurements indicate that the hydraulic capacity at Highway 83 at 6.0 foot flood stage was approximately 1,500 to 1,600 cfs prior to the 2011 flood event. Just after the 2011 flood event, capacity at flood stage increased to approximately 2,600 cfs. However, within a few months of the 2011 flood, hydraulic capacity at the Highway 83 gage was diminished to 1,500 to 1,600 cfs.

With regard to modeling of this event, ACE concluded the following:

The 1D sediment transport model is capable of recreating observed trends in hydraulic capacity before and after the 2011 flood event. However, the temporal rate at which the model predicts changes in hydraulic capacity is slower than what has been observed in



the field. Channel response likely occurs quicker than the sediment transport model is predicting.

Based on a series of model analyses, ACE found that a combination of upstream channel improvements (e.g., channel widening), dredging downstream of Highway 83, and installation of jetties or bendway weirs downstream of Highway 83 appeared capable of maintaining the long-term hydraulic capacity target for the entire 16-year model period. This became the Recommended Construction Alternative, but the potential longevity of the project should be viewed with some caution given the observations about the temporal rate of modeled flow capacity changes.

The May 2015 ACE memo further developed the details and feasibility assessment of the Recommended Construction Alternative. Total cost to implement the alternative was estimated at about \$3.3 million, plus annual O&M costs of \$30,500 per year assuming vegetation treatment every three years and dredging every five years. Given anticipated permitting requirements, it was expected that the Recommended Construction Alternative would take a minimum of 4 years to implement.

This was compared to a Property Inundation Compensation Alternative (flood easements), which incorporated 28 parcels totaling 87 acres, and two secondary buildings, and was estimated to cost about \$374,000. These costs did not assume any acquisition of the impacted land or structures. Rather, “this information represents a reasonably conservative estimate to initiate the negotiation and development of inundation compensation agreements with each individual parcel owner,” which in turn assumes that property owners are actually willing to enter into such an agreement.

The September 2016 ACE memo retained the same information about the Recommended Construction Alternative and the Property Inundation Compensation Alternative but added a new alternative to bypass the chokepoint by diverting 1,500 cfs from the North Platte River to the South Platte River via existing diversion structures and conveyance facilities. Improvements to the Keith-Lincoln, North Platte (Platte Valley Irrigation District or PVID), and Suburban canals had not been pursued further after the 2013 SDMF release, which had shown relatively little capacity to route water through these canals and around the North Platte chokepoint. This new alternative proposed the construction of entirely new parallel canals with much larger capacities. Several alignments were investigated, with the most feasible being a new canal running parallel to the PVID canal. In addition to excavation, this new canal would require land acquisition and numerous road, rail, and siphon crossings. Costs were estimated to be more than \$13 million plus \$10,000 for annual O&M.

The June 2018 ACE memo documented updated modeling using 2017 LiDAR data (previous modeling used 2009 LiDAR data) to demonstrate the benefits of the State Channel Berm and also updated the mapping and costs associated with the Property Inundation Compensation Alternative. The revised cost estimates for this alternative ranged from \$92,400 to \$320,400 depending on the extent of the area that is considered to be impacted by inundation. This would still require the negotiation of flood easements with the owners of 29 individual parcels. No formal action has been taken in pursuit of this alternative, and numerous issues would need to be resolved in order to do so (e.g., what if not all property owners agree to participate? are the



estimated fees to be paid for every flood event? etc.). Additionally, the Program Document would need to be revised to allow flows above flood stage.

### III. CONCLUSIONS

During the First Increment, the Program put considerable effort into solving the issue of flow capacity limitations at the North Platte chokepoint, but with limited success. Phragmites were treated periodically by both chemical and mechanical (e.g., disking, shredding) means, but the invasive vegetation continues to persist. Two flood-proofing projects were completed to mitigate flooding issues along the north bank with the hope of gaining capacity by raising minor flood stage. This process took nearly nine years and culminated in a test flow release in July 2020. While the flood-proofing projects performed as intended (if not better), flood impacts were instead observed on the south bank, and the NWS declined to raise the minor flood stage.

The many other alternatives considered for increasing flow capacity at the North Platte chokepoint were met with numerous obstacles: objections from affected property owners, lengthy permitting and construction times, insufficient capacity to be useful, high costs, model results indicating the opposite of what was intended, and so forth. Low-cost improvements to existing canals were considered to bypass the chokepoint by diverting water from the North Platte River to the South Platte River, but the potential capacity gained was too small to make much difference. Construction of a new canal to do the same was prohibitively expensive. The Recommended Construction Alternative evaluated by ACE was estimated to take four years to implement, but given the time it took to successfully design, permit, construct, and test the flood-proofing projects, this is surely underestimating the time required for a project that involves dredging and construction activities in the river channel and on private land. These are but a few of the problems faced. However, if any viable new solutions emerge from North Platte Chokepoint Planning Workgroup discussions, the EDO is prepared to evaluate them as needed.



1  
2

**EXHIBIT B**  
**Standard Consulting Services Contract & Certification Regarding Lobbying**



EXHIBIT B – CONTRACT FORM

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

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

North Platte Chokepoint Engineering Services

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. The Contractor shall use the billing form attached as Exhibit D.

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

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

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

65  
66                   **D.       Withholding of Payment.**

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

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

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

87  
88                   **5.       Responsibilities of Contractor.**

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

94  
95                   **B.       Personnel.** All of the services required hereunder will be performed by the  
96 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.

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

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

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

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

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

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

165  
166 **7. Special Provisions.**

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

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

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

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

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

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

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

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

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

205  
206 **8. General Provisions.**

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

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

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

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

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

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

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

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

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

254  
255 **J. Conflicts of Interest**

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

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

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

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



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

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

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

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

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

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

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

328  
329 (i) **Commercial General Liability Insurance.** Contractor shall provide  
330 coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage  
331 to or destruction of the property of others, including loss of use thereof, and including products and  
332 completed operations in an amount not less than Two Million Dollars (\$2,000,000.00) aggregate and One  
333 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.

9. Contacts.

<b>Administrative Point of Contact (Foundation):</b>	<b>Admin. Point of Contact (Program):</b>
Jason Kennedy	Jason Farnsworth, Executive Director
Chief Financial & Administrative Officer	Platte River Recovery Implementation Prog.
Nebraska Community Foundation	Headwaters Corporation
PO Box 83107	4111 4 <sup>th</sup> Avenue, Suite 6
Lincoln, Nebraska 68501-3107	Kearney, Nebraska 68845
Phone: (402) 323-7330	Phone: (308) 237-5728
Fax: (402) 323-7349	Fax: (308) 237-4651
Email: <a href="mailto:jkennedy@nebcommfound.org">jkennedy@nebcommfound.org</a>	Email: <a href="mailto:farnsworthj@headwaterscorp.com">farnsworthj@headwaterscorp.com</a>

<b>Technical Point of Contact (Program):</b>	<b>Media Point of Contact (Program):</b>
Seth Turner, Water Plan Coordinator	Alicia Uribe, Executive Office Manager
Platte River Recovery Implementation Prog.	Platte River Recovery Implementation Prog.
Headwaters Corporation	Headwaters Corporation
4111 4 <sup>th</sup> Avenue, Suite 6	4111 4 <sup>th</sup> Avenue, Suite 6
Kearney, Nebraska 68845	Kearney, Nebraska 68845
Phone: (308) 237-5728	Phone: (308) 237-5728
Fax: (308) 237-4651	Fax: (308) 237-4651
Email: <a href="mailto:turners@headwaterscorp.com">turners@headwaterscorp.com</a>	Email: <a href="mailto:uribea@headwaterscorp.com">uribea@headwaterscorp.com</a>

<b>Administrative Point of Contact (Contractor):</b>	<b>Technical Point of Contact (Contractor):</b>
XXXX	XXXX

405 **10. Signatures.** By signing this Contract, the undersigned certify that they have read and  
406 understood it, that they have the authority to sign it, and that their respective Party agrees to be bound  
407 by the terms of the Contract.  
408

409 **NEBRASKA COMMUNITY FOUNDATION**  
410  
411  
412

413 \_\_\_\_\_  
414 Jason D. Kennedy Date  
415 Chief Financial and Administrative Officer  
416

417 **CONTRACTOR**  
418  
419  
420  
421

422 \_\_\_\_\_  
423 Name Date  
424 Title  
425  
426

427 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT**  
428

429 I hereby certify that the Governance Committee of the Platte River Recovery Implementation Program  
430 has authorized the Nebraska Community Foundation, acting as contracting agent for the Governance  
431 Committee, to enter into this Agreement.  
432

433 \_\_\_\_\_  
434 Jason M. Farnsworth Date  
435 Executive Director  
436

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

**EXHIBIT "B"**  
**HOURLY RATE AND REIMBURSABLE EXPENSES**  
**PRICE SCHEDULE**

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