



**DRAFT**

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

### **Sand Dam Retrofit Feasibility Study**

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

**November 3, 2023**



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



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

**SUBJECT:** Sand Dam Retrofit Feasibility Study  
**REQUEST DATE:** November 3, 2023  
**PRE-PROPOSAL MEETING:** November 17, 2023  
**CLOSING DATE:** December 1, 2023  
**POINT OF CONTACT:** Libby Casavant  
Headwaters Corporation  
(319) 359-9183  
[casavantl@headwaterscorp.com](mailto:casavantl@headwaterscorp.com)

**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.

The Program’s management objective is to improve survival of whooping cranes during migration through increased use of the Associated Habitat Reach (AHR) of the Platte River in central Nebraska. This ninety-mile reach extends from Lexington, NE downstream to Chapman, NE and includes the Platte River channel and off-channel habitats (Figure 1). At the upstream end of the AHR, a clearwater hydropower return (J-2 on Figure 1) has created a sediment deficit that has led to incision and narrowing of the downstream channel. At its worst, the channel was incising at a rate of 0.5 ft/yr (1989 - 2002). Since then, incision has slowed and the channel now seems to be adjusting laterally more than vertically. Despite this regime shift, Program stakeholders are concerned that the geomorphic change due to the sediment deficit could progress downstream over time, impeding our ability to maintain the wide, unvegetated, braided river morphology that is suitable for whooping crane roosting.

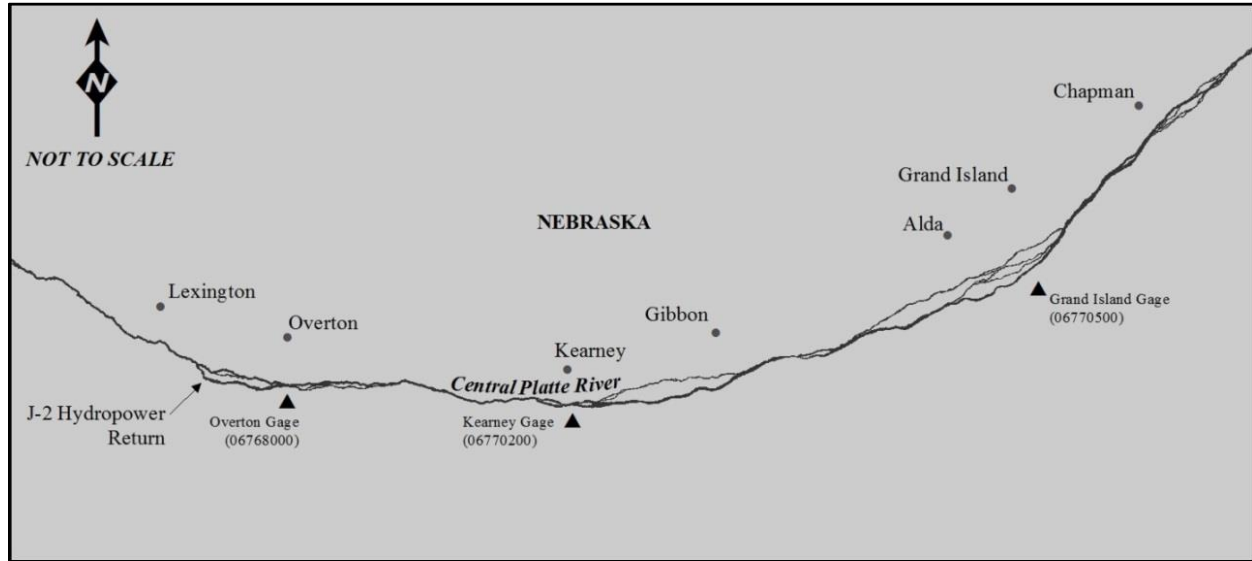


Figure 1. Associated Habitat Reach (AHR) of the central Platte River in Nebraska extending from Lexington downstream to Chapman.

A full-scale sediment augmentation experiment was conducted from 2017-2022 to assess the Program's ability to offset the deficit. Annual augmentation consisted of mechanical removal and placement of 40,000-60,000 cubic yards of terrace sediment. Once placed in the channel, flow carried the sediment downstream over the course of the year, reducing incision by approximately 50%. The effectiveness of these projects is encouraging, however, the long-term sustainability of this practice is uncertain. The annual cost of mechanical augmentation is approximately \$250,000, and easily available terrace material is anticipated to run out in 4- 8 years. For this reason, the Program would like to evaluate more passive and sustainable alternatives.

One such alternative is to restore an upstream connection between the Platte River and the J2 Return Channel. Reviving this connection would allow for some sediment transport through the J2 Channel which may inhibit the downstream progression of incision. The most likely method of reconnection would be the installation of a gated structure on the Jeffrey Island Sand Dam (Figure 2). This structure would be operated in a way to maximize sediment capture and transport to the J2 Channel, while limiting the threat of avulsion.

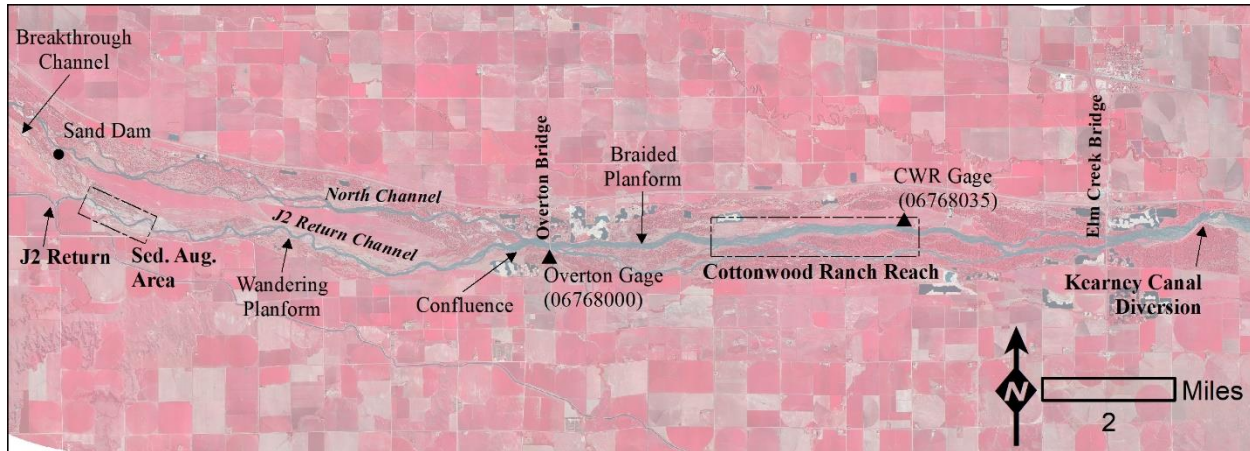


Figure 2. Detailed view of the relevant area.

The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to conduct a feasibility study for retrofitting the Sand Dam as an alternative to mechanical sediment augmentation. The full scope and appropriate methods for performing analyses will be developed collaboratively by the EDO and the Consultant after selection and prior to commencement of work.

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

### SCOPE OF WORK

The selected Consultant will perform a reconnaissance level investigation into the feasibility of retrofitting the Sand Dam to pass sediment from the main channel into J2 Return channel as an alternative to mechanical sediment augmentation. This investigation should include morphodynamic modeling to determine potential upstream and downstream impacts on the main river channel, as well as an estimate of diverted sediment volumes. 3-D hydrodynamic modeling may be useful in evaluating gate structures and operation scenarios. Consultants are invited to propose the methods they believe will be most effective at answering the following questions:

1. What alignment, type of structure, and operation rules would maximize sediment capture and delivery to the J2 Return Channel?
2. What volume of sediment would be delivered?
3. How must the structure be designed and constructed to limit the risk of channel avulsion and to maintain owner access to Jeffrey Island?
4. What maintenance issues or upstream/downstream changes might we expect?
5. How will sediment movement into the J-2 Return channel affect the morphology of the north channel between Lexington and Overton bridges? How will sediment balance at the Overton bridge (after the confluence of the North and J-2 Return channels) be affected?

The Program will provide recent, high-resolution topo-bathymetric LiDAR data, aerial imagery, and riverbed and bar sediment grain size distributions. Our recent draft report on sediment augmentation is



also available for download on our website where this RFP is posted. The specific scope of work 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.

1. Perform an initial review of available data and determine additional data needs.
2. Collect data, create and calibrate necessary models.
3. Collaborate with EDO to short list candidate scenarios.
4. Present findings in a written report along with all models and relevant results.

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

- Fluvial geomorphology
- 2D Sediment transport modeling
- 2/3D Morphodynamic modeling
- Hydraulic structure design and construction

#### PROJECT BUDGET

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

#### CONTRACT TERMS

The selected Consultant will be retained by:

Nebraska Community Foundation  
PO Box 83107  
Lincoln, NE 68501

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

The initial term of the contract is expected to be for a one-year period beginning at the date of final signing of the contract (early-2024 through early-2025). Actual contract schedule will be developed with the Consultant and incorporated into the contract. Contracted services will be performed on a time and materials not to exceed basis. Under the final contract, a written Notice to Proceed from the EDO will be required before work begins. All work will be contingent on availability of Program funding.

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



## SUBMISSION REQUIREMENTS

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

### Instructions for Submitting Proposals

One (1) electronic (PDF) copy of your proposal must be submitted to Libby Casavant by email at [casavantl@headwaterscorp.com](mailto:casavantl@headwaterscorp.com) no later than 5:00 PM Central Time on **Tuesday, December 1, 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 Libby Casavant at [casavantl@headwaterscorp.com](mailto:casavantl@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. The last day to accept questions is **November 22, 2023**.

### RFP Schedule

The EDO expects to complete the selection process and award the work by August 22, 2023. The following table represents the RFP schedule:

Description	Date	Time (Central)
Issue RFP	By November 3, 2023	n/a
Pre-proposal virtual meeting	November 17, 2023	12:00 PM
Last day for respondents to submit questions regarding the RFP	November 22, 2023	5:00 PM
Proposals due from Consultants	December 1, 2023	5:00 PM
Evaluation of Proposals	December 4 through December 15, 2023	
Interviews	Week of January 8, 2024	
Award of Work	On or before January 16, 2024	
Start of Work	Mid- to late February, 2024	
Completion of Work	Mid- to late February, 2025	

### Virtual Pre-Proposal Meeting

A **mandatory** virtual pre-proposal meeting of interested parties will be held on **November 17, 2023 from 12:00-1:00 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 Libby Casavant ([casavantl@headwaterscorp.com](mailto:casavantl@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 November 15, 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 objectives, goals and constraints.
- 2) Project approach:** Discussion of the Consultant’s approach including critical issues, tasks, or considerations. This section should not be a reiteration of the general scope of work presented in Section II 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. Specific items that should be addressed in the approach include:
  - a. Data requirements
  - b. Preferred type of model(s) to be used (proprietary or not)
  - c. Briefly discuss an appropriate calibration and validation procedure, with expected accuracy ranges.
  - d. Suggest types of structures, ranges of flows, and some initial scenarios to investigate.
  - e. Discuss how various risks and outcomes will be weighed in the report.
- 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.
- 4) Rate Schedule:** Schedule of standard hourly and reimbursable cost rates by labor category.
- 5) Conflict of interest statement** addressing whether any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.
- 6) Certificate 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 Certificate of Insurance (*Exhibit A, Section 8.S.*). Copies of both certificates will be required before a contract is issued and will be included in the final signed contract. Those copies do not need to be provided with the proposal, but the proposal should confirm the Consultant’s ability to meet these requirements and provide these certificates later 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** – The proposal should attest that the firm and the principals of the firm (and any members of the team or subcontractors if relevant) are NOT on the federal suspended and disbarred list. A DUNS<sup>1</sup> and SAM<sup>2</sup> number are required to assist in verification.

**9) Lobbying Certification** – This certification will be required before a contract is issued and a signed version will be included in the final signed contract. The certificate form is included as part of **Exhibit A**. The proposal should confirm the Consultant's ability to meet this requirement and sign this certification during contract development.

#### Criteria for Evaluating Proposals

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

1. The Consultant's understanding of the overall project goals, constraints, design elements, and operational scenarios and project approach.
2. Qualifications and the relevant experience of the proposed project team members and firm, which may include:
  - a. Experienced in fluvial geomorphology
  - b. Experience developing and calibrating 2-D sediment transport models.
  - c. Experience developing and calibrating 2/3D morphodynamic models.
  - d. Experience with design and construction of hydraulic structures.
  - e. Familiarity with the project study site.

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

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

<sup>2</sup> <https://federalcontractorregistry.com/>



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.



## EXHIBIT A

### PRRIP Professional Consulting Services Contract Template



CONSULTANT NAME Nebraska Community Foundation  
CONSULTANT ADDRESS 1 PO Box 83107  
CONSULTANT ADDRESS 2 Lincoln, NE 68501-3107  
FEIN FEIN 47-0769903  
DUNS  
SAM

### PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

#### Contract between Nebraska Community Foundation, Platte River Recovery Implementation Program, and CONSULTANT NAME

#### PROJECT TITLE

- 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 CONSULTANT NAME (“Consultant”). The following persons are authorized to represent the parties through this Contract: Jason Kennedy of the Foundation; Jason Farnsworth of the Program; and NAME of the Consultant.
- 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 Consultant to render certain technical or professional services hereinafter described in connection with an undertaking to be financed by the Program, and to delegate the Executive Director’s Office (“ED Office”) through its Executive Director or 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 all required approvals have been granted. *The term of this Contract is generally from START DATE through END DATE.* All services shall be completed during this term. The services to be performed under this Contract will commence upon receipt of authorization to proceed. If the Consultant has been delayed and as a result will be unable, in the opinion of the Program, to complete performance fully and satisfactorily within this Contract period, the Consultant may be granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the Program. An extension of the contract term must be in writing, signed by both Parties in order for it to be valid.
- 4. Payment for Services.**
  - A. Billing Amount.** The Program agrees to pay the Consultant an amount based on the approved Scope of Work as detailed in **Exhibit A – Project Scope of Work**. The total budget for the Scope of Work in Exhibit A is PROJECT TOTAL.
  - B. Billing Rates.** The costs and rates for each task included in **Exhibit A** are not to be exceeded unless authorized in writing by the Program. The contract total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Billing reports shall be submitted no more often than monthly for activities and costs accrued since the last billing report.



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

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

Mr. Jason Farnsworth, Executive Director  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [farnsworthj@headwaterscorp.com](mailto:farnsworthj@headwaterscorp.com)

**D. Withholding of Payment.**

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

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

**5. Responsibilities of Consultant.**

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



**B. Personnel.** All of the services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

**C. Subcontracts.**

**(i) Approval Required for Subcontracts.** Any Subconsultants or outside Associates required by the Consultant in connection with the services or work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the proposal and agreed to during negotiations or are specifically authorized by the Program during the performance of this Contract. The Consultant shall include a list of the proposed Subconsultants or Associates; the scope and extent of each subcontract; and the dollar amount of each subcontract prior to Contract execution to the Program for approval that will be incorporated by reference in **Exhibit A**. During the performance of the Contract, substitutions in or additions to such subcontracts will be subject to the prior approval of the Program. Program approval of Subconsultants will not relieve the Consultant from any responsibilities outlined in this Contract. The Consultant shall be responsible for the actions of the Subconsultants and any Associates.

**(ii) Billings for Subconsultants.** Billings for Subconsultant services will not include any mark up. Subcontract costs will be billed to the Program at the actual costs as billed to the Consultant. Subcontract costs will be documented by attaching Subconsultant billings to the Consultant's billing submittals.

**(iii) Copies of Subcontracts.** The Consultant shall provide to the Program copies of each Subconsultant contract immediately following execution with the Subconsultant. All subcontracts between the Consultant and a Subconsultant 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 Consultant and a Subconsultant.

**(iv) Contracts for Subconsultants.** All subcontracts that Consultant enters into shall include any applicable provisions and certifications required by 2 CFR Part 200, including Appendix II thereto, and any other federal, state or local laws or regulations.

**(v) Debarment and Suspension.** Consultant shall not enter into subcontracts with any entity or individual that is suspended, debarred, or otherwise excluded from participation in the transaction covered by this Contract.

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

**E. Reports, Maps, Plans, Models and Documents.** 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.



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

**6. Responsibilities of the Program.**

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

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

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

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

**7. Special Provisions.**

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

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

**C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Contract shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Executive Office Manager in the ED Office.

**D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of the Consultant and all Subconsultants.

**E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**F. Debarment and Suspension.** Consultant certifies by signing this Contract that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or



voluntarily excluded by any federal department or agency from participation in the transaction covered by this Contract.

**G. Anti-Lobbying.** Consultant makes the representations set forth in **Exhibit B – Certification Regarding Lobbying**, incorporated by reference as part of this Contract. The Consultant shall execute such Certification at the time of executing this Contract.

**H. Office Space, Equipment, and Supplies.** The Consultant will supply its own office space, equipment, and supplies.

**8. General Provisions.**

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

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

**C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Consultant shall not use this Contract, or any portion thereof, as collateral for any financial obligation, without the prior written permission of the Program.

**D. Audit/Access to Records.** The Program, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Contract. The Consultant shall, immediately upon receiving written instruction from the Program or the Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers, and records of the Consultant which are pertinent to this Contract. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of the Program.

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





- F. Award of Related Contracts.** The Program may undertake or award supplemental or successor contracts for work related to this Contract. The Consultant shall cooperate fully with other Consultants and the Program in all such cases.
- G. Certificate of Good Standing.** Consultant shall provide Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs prior to performing work under this Contract, to be incorporated by reference into this Contract as **Exhibit C – Consultant Certificate of Good Standing.**
- H. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Contract shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.
- J. Conflicts of Interest**
- (i)** Consultant shall not engage in providing consultation to or representation of clients, agencies or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program or a disclosure which would adversely affect the interests of the Program. Consultant shall notify the Program of any potential or actual conflicts of interest arising during the course of the Consultant's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation, and data are provided to the Program or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
- (ii)** A conflict of interest warranting termination of the Contract includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Program, its signatories, boards, commissions, or the Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.
- K. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.



- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Consultant.** The Consultant shall function as an independent Consultant for the purposes of this Contract and shall not be considered an employee of the Program, Foundation, or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice and Approval of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Contract.
- P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Contract are at all times the property of the Program.
- Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Consultant or its Subconsultants will violate any such restriction.
- R. Insurance Coverage.** The Consultant's relevant Certificate of Insurance shall be provided to the Program and incorporated by reference into this Contract as **Exhibit D – Consultant Certificate of Insurance**. The Consultant shall not commence work under this Contract until the Consultant has obtained the following insurance coverages and provided the corresponding certificate noting such coverages:



- (i) Commercial General Liability Insurance. Consultant shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Two Million Dollars (\$2,000,000.00) aggregate and One Million Dollars (\$1,000,000.00) per occurrence. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury.
- (ii) Business Automobile Liability Insurance. Consultant shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. Coverage will include bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles.
- (iii) Workers' Compensation and Employers' Liability Insurance. The Consultant shall provide proof of workers' compensation coverage. Consultant's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident and disease.
- (iv) Professional Liability Insurance. The Consultant shall provide proof of Professional Liability insurance covering damages arising out of negligent acts, errors, or missions committed by Consultant in the performance of this Agreement, with a liability limit of not less than One Million Dollars (\$1,000,000) per claim. The Consultant shall maintain this policy for a minimum of two (2) years after completion of the work or shall arrange for a two-year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional Services under this contract and caused by any error, omission, breach or negligent act, including infringement of intellectual property (except patent or trade secret) of the Consultant.
- S. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- T. Termination of Contract.** This Contract may be terminated, without cause, by the Program upon fifteen (15) days written notice. This Contract may be terminated immediately for cause if the Consultant fails to cure its performance in accordance with the terms of this Contract within seven (7) days after receiving notice from the Program. In the event of a termination, the Program shall pay Consultant for all reasonable work performed up to the effective date of the termination. In the event the contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation, and data are provided to the Program or its designee.
- U. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The



provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**V. Time is of the Essence.** Time is of the essence in all provisions of the Contract.

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

**X. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

**Y. Survival.** The parties' obligations under sections 8.D. (Audit/Access to Records), 8.R. (Insurance Coverage), and 8.T. (Termination of Contract) will survive the termination of this Contract.

**Z. Entirety of Contract.** This Contract, *consisting of NUMBER (XX) pages*, including **Exhibit A – Project Scope of Work** (12 pages), **Exhibit B – Certification Regarding Lobbying** (1 page), **Exhibit C – Consultant Certificate of Good Standing** (2 pages), and **Exhibit D – Consultant Certificate of Insurance** (3 pages), represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.



## 9. Contacts.

### **Administrative Point of Contact (Foundation):**

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

### **Technical Point of Contact (Program):**

NAME AND TITLE  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone:  
Email:

### **Technical Point of Contact (Consultant):**

CONSULTANT CONTACT INFORMATION

### **Administrative Point of Contact (Program):**

Jason M. Farnsworth, Executive Director  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [farnsworthj@headwaterscorp.com](mailto:farnsworthj@headwaterscorp.com)

### **Media Point of Contact (Program):**

Alicia Uribe, Executive Office Manager  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [uribea@headwaterscorp.com](mailto:uribea@headwaterscorp.com)

### **Administrative Point of Contact (Consultant):**

CONSULTANT CONTACT INFORMATION



**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.

**FOR THE NEBRASKA COMMUNITY FOUNDATION:**

_____	_____
Jason D. Kennedy	Date
Chief Financial and Administrative Officer	

**FOR THE CONSULTANT:**

_____	_____
NAME	Date
TITLE	

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT**

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

_____	_____
Jason M. Farnsworth	Date
Executive Director	



1  
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**EXHIBIT A**  
**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)**  
**Project Scope of Work**



**EXHIBIT B**  
**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- Program)**  
**Certification Regarding Lobbying**

The undersigned certifies, on behalf of the Consultant, that to the best of his or her knowledge and belief:

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

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

**FOR THE CONSULTANT:**

\_\_\_\_\_  
NAME  
TITLE

\_\_\_\_\_  
Date





**EXHIBIT C**

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

**Consultant Certificate of Good Standing**



**EXHIBIT D**

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

**Consultant Certificate of Insurance**