



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- PROGRAM)  
REQUEST FOR BIDS (RFB)**

**SUBJECT:** 2023 Whooping Crane Aerial Survey Flights  
**CLOSING DATE:** February 1, 2023 – 5:00 pm central time  
**PUBLIC BID OPENING:** February 3, 2023 – 2:00 pm (PRRIP office)  
**POINT OF CONTACT:** Mallory Jaymes  
Headwaters Corporation  
4111 4<sup>th</sup> Ave, Suite 6  
Kearney, NE 68845  
(308) 380-1384  
[jaymesm@headwaterscorp.com](mailto:jaymesm@headwaterscorp.com)

**I. OVERVIEW**

The Platte River Recovery Implementation Program (Program) was initiated on January 1, 2007 between Nebraska, Wyoming, and Colorado and the Department of the Interior to address endangered species issues in the central and lower Platte River basin. The species considered in the Program, referred to as “target species,” are 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.

Whooping crane monitoring has been collected biannually by the Program since 2007 to measure whooping crane use of the associated habitat reach (AHR) to determine if the program is meeting its target species objectives. The GC submits this Request for Bids (RFB) to solicit bids from contractors to provide aircraft and pilot(s) for spring and fall whooping crane monitoring seasons in Calendar Year 2023.

**II. PROJECT DESCRIPTION**

This scope of work set forth in this RFB includes one spring and one fall monitoring season in which two Program employees will be flown daily by the Contractor’s aircraft and pilot on set transects along the Platte River in search of whooping cranes. The entire search area stretches from Lexington, NE to Chapman, NE and will be split in half and flown by two separate aircraft simultaneously each morning during the monitoring seasons. The west half stretches from Lexington, NE to Hwy 10. The east half stretches from Hwy 10 to Chapman, NE. Contractors can bid on one side or both sides of the search area. In the event a contractor makes the lowest bid on both sides, but only has the means to fly one side, they can pick their side of preference.



The monitoring season schedules are as follows:

- Spring: March 6, 2023 – April 29, 2023
  - Fall: October 9, 2023 – November 15, 2023
- (The start dates may be initiated earlier, or the end dates extended in the event whooping cranes are known to be in the area.)*

### III. SCOPE OF WORK

The Program is requesting bids to provide aircraft and pilot(s) for monitoring flights as described below:

- Aircraft and pilot must be available every morning for the duration of each monitoring season.
- Flights will be initiated from the Grand Island and Kearney airports 45 minutes before sunrise and monitoring will begin at their transect origin 30 minutes prior to sunrise and will last a duration of about 2 hours.
- Aircraft must seat a minimum of 2 passengers.
- Flights will be flown 750 feet above ground level at approximately 100 mph unless conditions (weather, avian species, etc.) dictate otherwise.
- Flights will proceed along predetermined transects with the river transect being flown east to west and return transects west to east.
- Aircraft must be equipped with navigation equipment necessary to follow transects and record miles flown.

### IV. PROJECT DURATION

The Contractor under this agreement shall commence this work *March 6th, 2023* and continue through *April 29th, 2023* for the spring period. Work commences again in the fall from *October 9, 2023* and continue through *November 15, 2023*. The start dates may be initiated earlier, or the end dates extended in the event whooping cranes are known to be in the area.

### V. CONTRACT TERMS

The selected contractor will be retained by:

Nebraska Community Foundation  
PO Box 83107  
Lincoln, NE 68501

The Contract form is attached as Exhibit A. It is understood that the Governance Committee reserves the right to accept any bid that, in its judgment, is the best bid, and to waive any irregularities in any bid.

Insurance Requirements: If awarded, Contractor shall represent and guarantee that all employees, agents, servants or representatives of Contractor, and all employees, agents, servants, or representatives of sub-contractors are covered by insurance as required by Nebraska Statute. Prior to entering into contract with PRRIP, contractor shall furnish PRRIP with certificates of insurance, naming PRRIP as named or additional insured without waiving any defense of sovereign immunity or increasing the limits of PRRIP's liability in excess of Nebraska State Statute for item (3) below, providing evidence that contractor has in full force and effect the following minimum insurance with insurers authorized to



do business in the State of Nebraska. The certificate(s) of insurance shall also provide that PRRIP shall be notified in writing by the carrier at least 30 days prior to any cancellation of said insurance. Insurance requirements include:

1. **General Liability Insurance** – Contractor’s insurance shall include 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 \$1,000,000 per occurrence.
2. **Business Automobile Liability Insurance** – Contractor shall maintain automobile liability insurance in an amount not less than \$1,000,000 per occurrence.
3. **Workers’ Compensation and Employers’ Liability Insurance** – Contractor’s insurance shall include “Stop Gap” coverage in an amount not less than \$500,000 per employee for each accident and disease.

*Costs incurred in response to this RFB will be the responsibility of the bidder. Neither the Nebraska Community Foundation nor the Governance Committee will be liable for any costs incurred by the bidder in the completion and submission of the bid.*

## VI. SUBMISSION REQUIREMENTS

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

### Instructions for Submitting Bids

*One fully completed electronic copy of the attached Bid Form must be submitted in PDF format to Mallory Jaymes at [jaymesm@headwaterscorp.com](mailto:jaymesm@headwaterscorp.com) no later than 5:00 p.m. Central Time on Friday, February 1, 2023. A Bid is late if received any time after 5:00 p.m. Central Time and will not be eligible for consideration.*

### Bid Content

Bids must include the following forms and additional documentation:

- 1) **Whooping Crane Bid Form** – complete attached document.
- 2) **Additional Documentation Required: Description of Insurance** – include with bid. Proof of insurance will be required before a contract is issued. Minimum insurance requirements are described in Section V.
- 3) **Additional Documentation Required: Conflict of interest.** Statement noting no potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.
- 4) **Additional Documentation Required: Affirmative Statement** – certify that neither the firm nor the principals of the firm are on the federal suspended and disbarred list. A DUNS<sup>1</sup> and SAM<sup>2</sup> number are required to assist in verification.

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

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



### Criteria for Evaluating Bids

Bids will be evaluated and Contractors selected based on the following principal considerations:

1. Bid price.
2. Availability of required equipment, personnel, and skills.
3. Insurance requirements, conflict of interest statement, affirmative statement.

The winning bid(s) will be selected to best meet overall project objectives. Should the successful Contractor(s) be unable at any time to accomplish the work they have been contracted for or meet any of the requirements or standards listed in this Bid, the next ranked Contractor may be contacted to provide the required work.

### **VII. CONTRACTOR SELECTION**

Bids will be reviewed and the award made to the lowest cost bid(s) that conform to the specifications of this RFB and is/are considered to provide the most value to the Program. Bid opening will occur on February 3, 2023 at 2:00 pm at 4111 4<sup>th</sup> Ave. Suite 6 Kearney, NE 68845 and will be open for public attendance.

### **VIII. PROGRAM PERSPECTIVE**

The GC of the Program has the sole discretion and reserves the right to reject any and all bids received in response to this RFB and to cancel this Solicitation if it is deemed in the best interest of the Program to do so. Issuance of this RFB in no way constitutes a commitment by the Program to award a contract, or to pay contractor'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 RFB by giving written notice to contractors, and to request clarification, supplements, and additions to the information provided by a contractor.

By submitting a bid in response to this Solicitation, contractors understand and agree that any selection of a contractor 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 contractor 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 GC, and the ED 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 contractor or its employees, agents, subcontractors, or assignees pursuant to the terms of this project. Additionally, by submitting a bid, contractors agree that they waive any claim for the recovery of any costs or expenses incurred in preparing and submitting a bid.

### **IX. AVAILABLE INFORMATION**

A shapefile of the transects is available on the Program website ([www.platteriverprogram.org](http://www.platteriverprogram.org)) at the same location as this RFB. A map of the flight transects can be found on the last page of the Bid Form.

**2023 WHOOPING CRANE FLIGHT BID FORM**

PROJECT: 2023 Whooping Crane Aerial Surveys  
CLOSING DATE: February 1, 2023 – 5:00 pm central time  
PUBLIC BID OPENING: February 3, 2023 – 2:00 pm (PRRIP office)  
CONTACT: Mallory Jaymes – Wildlife Biologist  
Headwaters Corporation  
4111 4<sup>th</sup> Ave, Suite 6  
Kearney, NE 68845  
[jaymesm@headwaterscorp.com](mailto:jaymesm@headwaterscorp.com)

| Item No. | Description               | Unit | Bid Unit Price |
|----------|---------------------------|------|----------------|
| 001      | Aircraft                  | Hour | \$_____        |
| 002      | Pilot                     | Hour | \$_____        |
| 003      | Other (specify):<br>_____ | Hour | \$_____        |

Note: Price requested are hourly rates for aircraft and pilot. Payment will be made on actual hours worked and expenses incurred.

**Submitting Bid for: East Leg/West Leg/Both \_\_\_\_\_**

**# Passengers Allowed Including Pilot \_\_\_\_\_**

**# Pilots Available During the Monitoring Season \_\_\_\_\_**

**# Aircraft Available During each Monitoring Season \_\_\_\_\_**

**Aircraft and Pilot Available Daily during each monitoring season (circle one) YES / NO**

\_\_\_\_\_ Initial to verify that you understand the insurance requirements.

\_\_\_\_\_ Initial if there is not any potential conflict of interest that exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.

\_\_\_\_\_ Initial to verify that as a contractor you are not suspended or debarred from receiving federal funds.

Submitted by:

\_\_\_\_\_  
Company

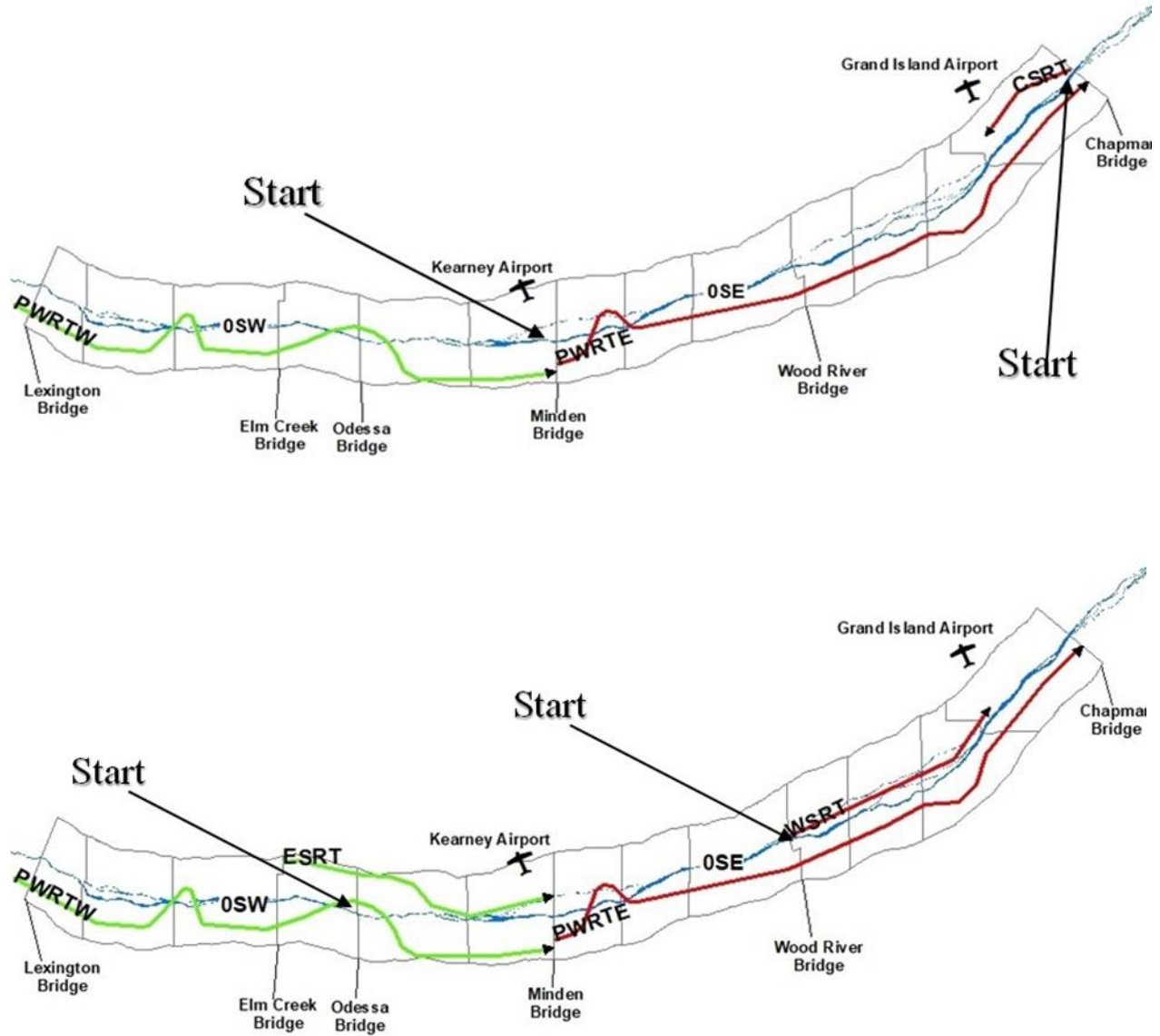
\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Individual (Print)

\_\_\_\_\_  
Sign/Date



38 Maps showing the daily alternating flight transects for both east and west contracts. The Platte  
39 River shown in blue flows east to west and the return transects shown in green and red flows  
40 to east.



**EXHIBIT A – CONTRACT FORM****PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

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

**Whooping Crane Monitoring Flights**

**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 XXXXXXXXX (“**Contractor**”). The following persons are authorized to represent the parties through this Contract: Jason Kennedy of the Foundation; Jason Farnsworth of the **Program**; and XXXXXXXXX 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 until December 31, 2023, or until the work required is satisfactory completed, whichever occurs first. Work performed under this Contract shall occur from March 6, 2023 through April 29, 2023 and October 9, 2023 through November 15, 2023. The start dates may be initiated earlier, or the end dates extended in the event whooping cranes are known to be in the area. Any extension of the contract term beyond December 31, 2023 must be in writing, signed by both 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 \$XXXXX.

**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.

**C. Billing Procedures.** The **Contractor** shall send billing reports for services performed for the various tasks outlined in Exhibit A to the **ED Office** (address included below). The 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 **Contractor** 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  
Fax: (308) 237-4651  
Email: farnsworthj@headwaterscorp.com

**D. Withholding of Payment.**

(i) When the **Program** has reasonable grounds for believing that the **Contractor** 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 **Contractor** 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.U. 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.



90           **5.       Responsibilities of Contractor.**

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

96  
97           **B.       Personnel.** All of the services required hereunder will be performed by the  
98 Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall  
99 be authorized, licensed, or permitted under state law to perform such services, if state law requires such  
100 authorization, license, or permit.

101  
102           **C.       Subcontracts.**

103  
104                   **(i)       Approval Required for Subcontracts.** Any subcontractors and outside  
105 associates or consultants required by the Contractor in connection with the services, work performed or  
106 rendered under this Contract will be limited to such individuals or firms as were specifically identified in  
107 the bid and agreed to during negotiations or are specifically authorized by the Program during the  
108 performance of this Contract. The Contractor shall submit a list of the proposed subcontractors, associates  
109 or consultants; the scope and extent of each subcontract; and the dollar amount of each subcontract prior  
110 to Contract execution to the Program for approval. During the performance of the Contract, substitutions  
111 in or additions to such subcontracts, associates, or consultants will be subject to the prior approval of the  
112 Program. The Program approval of subcontractors will not relieve the Contractor from any responsibilities  
113 outlined in this Contract. The Contractor shall be responsible for the actions of the subcontractors,  
114 associates, and subconsultants.

115  
116                   **(ii)       Billings for Subcontractors.** Billings for subcontractors, associates, or  
117 subconsultants services will not include any mark up. The subcontract costs will be billed to the Program  
118 at the actual costs as billed to the Contractor. Subcontract costs will be documented by attaching  
119 subcontractor billings to the Contractor's billing submittals.

120  
121                   **(iii)       Copies of Subcontracts.** The Contractor shall provide to the Program  
122 copies of each subcontractor contract immediately following execution with the subcontractor. All  
123 subcontracts between the Contractor and a subcontractor shall refer to and conform to the terms of this  
124 Contract. However, nothing in this Contract shall be construed as making the Program a party to any  
125 subcontract entered between the Contractor and a subcontractor.

126  
127                   **(iv)       Contracts for Subcontractors.** All subcontracts that Contractor enters  
128 into shall include any applicable provisions and certifications required by 2 CFR Part 200, including  
129 Appendix II thereto, and any other federal, state or local laws or regulations.

130  
131                   **(v)       Debarment and Suspension.** Contractor shall not enter into subcontracts  
132 with any entity or individual that is suspended, debarred or otherwise excluded from participation in the  
133 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.

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

## **6. Responsibilities of the Program.**

**A. Designated Representative.** The Executive Director of the Program shall act as the Program's administrative representative with respect to the Contractor'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 Contractor.** 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 Contractor without charge and the ED Office shall cooperate with the Contractor 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 Contractor 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 Contractor for publication and use in connection with related work. Use of this work for publication and related work by the Contractor 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 Contractor's services and the result of those services provided under this Contract shall be the sole responsibility of



the **Program**. Media requests of the **Contractor** should be directed to the Director of Outreach and Operations in the **ED Office**.

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

**E. Kickbacks.** The **Contractor** 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 **Contractor** 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.** Contractor certifies by signing this Contract that neither Contractor 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.** Contractor makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit C and incorporated by reference as part of this Contract. Contractor shall execute such Certification at the time of executing this Contract.

**H. Office Space, Equipment, and Supplies.** The **Contractor** 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 **Contractor** 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 Contractor which are pertinent to this Contract. The **Contractor** 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 **Contractor** which are pertinent to this Contract. The **Contractor** 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 **Contractor**, 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 **Contractor** 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 **Contractor** shall cooperate fully with other contractors and the **Program** in all such cases.

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

**H. Compliance with Law.** The **Contractor** 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 **Contractor** in the performance of this Contract shall be kept confidential by the **Contractor** unless written permission is granted by the **Program** for its release.

**J. Conflicts of Interest**

**(i)** **Contractor** 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**. **Contractor** shall notify the **Program** of any potential or actual conflicts of interest arising during the course of the **Contractor'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 **Contractor** 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 **Contractor'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 Platte River Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

**K. Entirety of Contract.** This Contract, consisting of eleven (11) pages, Exhibit A, consisting of one (1) page, Exhibit B, consisting of one (1) page, and Exhibit C, consisting of one (1) page represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

**L. 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.

**M. Indemnification.** The Contractor 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 Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice. The obligations of this paragraph shall survive termination of this Contract.

**N. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor 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 Contractor 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 Contractor 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 Contractor or the Contractor's agents and/or employees as a result of this Contract.

**O. 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.

**P. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The Contractor 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 Contractor. Such notice shall be



provided in accordance with the notice provision of this Contract.

**Q. 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](#).

**R. Patent or Copyright Protection.** The [Contractor](#) 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 [Contractor](#) or its subcontractors will violate any such restriction.

**S. Proof of Insurance.** The [Contractor](#) shall not commence work under this Contract until the [Contractor](#) has obtained the following insurance coverages and provided the corresponding certificates of insurance:

**(i) Commercial General Liability Insurance.** [Contractor](#) 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 One Million Dollars (\$1,000,000.00) per occurrence.

**(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.

**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.



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**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.**

**Administrative Point of Contact (Foundation):** Jason Kennedy  
Chief Financial & Administrative Officer  
Nebraska Community Foundation  
PO Box 83107  
Lincoln, Nebraska 68501-3107  
Phone: (402) 323-7330  
Fax: (402) 323-7349  
Email: [jkennedy@nebcommfound.org](mailto:jkennedy@nebcommfound.org)

**Admin. Point of Contact (Program):** Jason Farnsworth, Executive Director  
Platte River Recovery Implementation Prog.  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Fax: (308) 237-4651  
Email: [farnsworthj@headwaterscorp.com](mailto:farnsworthj@headwaterscorp.com)

**Technical Point of Contact (Program):** Mallory Jaymes, Wildlife Biologist  
Platte River Recovery Implementation Prog.  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Fax: (308) 237-4651  
Email: [jaymesm@headwaterscorp.com](mailto:jaymesm@headwaterscorp.com)

**Media Point of Contact (Program):** Alicia Uribe, Executive Office Manager  
Platte River Recovery Implementation Prog.  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Fax: (308) 237-4651  
Email: [uribea@headwaterscorp.com](mailto:uribea@headwaterscorp.com)

**Administrative Point of Contact (Contractor):** **Technical Point of Contact (Contractor):**

XXXXXXXXXXXXX SAME AS ADMIN POC  
XXXXXXXXXXXXX  
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**10. Signatures.** By signing this Contract, the undersigned certify that they have read and understood it, that they have the authority to sign it, and that their respective Party agrees to be bound by the terms of the Contract.

**NEBRASKA COMMUNITY FOUNDATION**

\_\_\_\_\_  
Jason D. Kennedy  
Chief Financial and Administrative Officer

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Date

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT**

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

\_\_\_\_\_  
Jason M. Farnsworth  
Executive Director

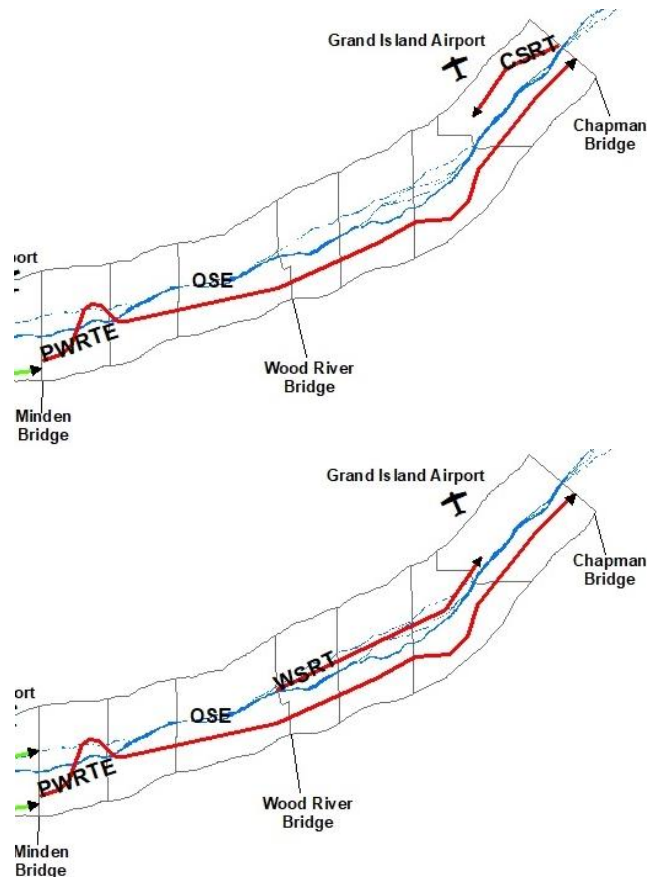
\_\_\_\_\_  
Date



## EXHIBIT "A" SCOPE OF SERVICES

### A. WORK DESCRIPTION

Activities in this project include providing a plane and pilot for use of flying program employees on the designated transects (shown below) to search for whooping cranes. Contractor is expected to have a plane and pilot available for use each morning of the spring and fall seasons. Transects follow the Platte River between Chapman and Minden bridges every morning and then include a transect to return to the airport that alternates daily (shown in red). Deviations from transects can occur for purposes such as the need for positive identification of birds. Flights will take place from March 6<sup>th</sup> to April 29<sup>th</sup> and October 9<sup>th</sup> to November 15<sup>th</sup>. The start dates may be initiated earlier, or the end dates extended in the event whooping cranes are known to be in the area. *Upon award of the contract, GPS coordinates for transects will be given to the contractor. Payment will be made on actual hours worked.*





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

| Item No. | Description   | Unit | Bid Unit Price |
|----------|---------------|------|----------------|
| 1        | Aircraft      | Hour | \$XXX          |
| 2        | Pilot         | Hour | \$XXX          |
| 3        | Other-Specify | Hour | \$XXX          |



**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.

XXXXXXXXXXXX ("CONTRACTOR")

By:

XXXXXXXXXXXX

Date