



TO: GOVERNANCE COMMITTEE
FROM: EXECUTIVE DIRECTOR'S OFFICE
SUBJECT: PERMITTING SERVICES FOR PROGRAM MANAGEMENT ACTIONS
DATE: NOVEMBER 30, 2021

Certain Program management actions require US Army Corps of Engineers Section 404 authorizations, Nebraska Section 401 certifications, or other federal, state, or local permits. These include sediment augmentation through mechanical in-channel placement of sediment, habitat creation and maintenance, and implementation of Water Action Plan projects.

In 2018, HDR Engineering, Inc. was awarded a sole-source contract for this work, the term of which presently ends December 31, 2021.

The EDO recommends GC approval of the following two attached documents:

1. Amendment #1 to the HDR contract dated December 4, 2018, extending the term of the contract through April 30, 2022. This action is necessary to ensure the continuity of permitting support while the contract for these services is re-bid (item #2 below), including completion of the annual monitoring report for sediment augmentation (due February 1, 2022) and as-needed during the construction of the recapture well network at Cottonwood Ranch (substantial completion expected by March 31, 2022). There is no additional budget request with this amendment.
2. Request for Proposals (RFP) to solicit proposals from contractors to provide on-call assistance with securing appropriate federal, state, and local permits for Program management actions during the four-year period 2022-2025. Recognizing that the current contract for such services was to expire at the end of the year, the GC in September 2021 recommended that a new contract be awarded through a competitive bidding process. The RFP is to be advertised in January 2022, with proposals due to the EDO on February 2, 2022. This is to be followed by review of proposals received by a selection committee and recommendation of a contractor to be approved at the March 2022 GC meeting. Contractor selection is to be based on the merits of submitted proposals and contractor qualifications rather than interviews. The proposed budget for permitting services in 2022 is \$50,000 under line item PD-15.

In addition to the document approvals, it is requested that the GC appoint a selection panel at this time.

HDR Engineering, Inc.
1917 S 67th Street
Omaha, NE 68106-2973
TIN: 47-0680568
DUNS: 18-729-4624

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107
FEIN: 47-0769903

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

FIRST AMENDMENT

To Agreement between Nebraska Community Foundation, Platte River Recovery Implementation Program, and HDR Engineering, Inc.

1. Parties.

This is the First Amendment to the Agreement entered into by and between Nebraska Community Foundation ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program"), and HDR Engineering, Inc. ("Consultant"), dated _____. The following persons are authorized to represent the parties through this Agreement: Diane Wilson of the Foundation, Jason Farnsworth of the Program; and Matt Pillard of the Consultant.

2. Purpose and Authority.

This First Amendment to the Agreement between Foundation and Consultant is being made for the purpose of:

- (1) Extending the term of the existing contract between Foundation and Consultant, executed December 4, 2018, through April 30, 2022.

All other terms of the original agreement remain in effect as originally written.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

43 IN WITNESS WHEREOF, the Parties have executed this Agreement.

44
45 Nebraska Community Foundation

HDR Engineering, Inc.

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49 By _____
50 DIANE M. WILSON, Manager Public/Private

By _____
MATTHEW B. TONDL, Sr. Vice President

51
52
53 Date: _____

Date: _____

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57
58 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
59 **ACKNOWLEDGEMENT**

60
61 I hereby certify that the Governance Committee of the Platte Program has authorized the Nebraska
62 Community Foundation, acting as contracting agent of the Governance Committee of the Platte
63 Program, to enter into this agreement.

64
65 _____
66 Jason Farnsworth
67 Executive Director

Date



REQUEST FOR PROPOSALS

Platte River Recovery Implementation Program Permitting Services RFP

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

November 30, 2021



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM Request for Proposals

SUBJECT: Permitting Services
REQUEST DATE: January 5, 2022
CLOSING DATE: February 2, 2022
POINT OF CONTACT: Seth Turner
 Headwaters Corporation
 Senior Water Resources Engineer
 405 Urban Street, Suite 401
 Lakewood, CO 80228
 (720) 524-6115
turners@headwaterscorp.com

RECITALS

The Governance Committee (GC) of the Platte River Recovery Implementation Program (Program or PRRIP) submits this Request for Proposals (RFP) to solicit proposals from contractors to provide on-call assistance with securing appropriate federal, state and local permits for Program management actions in 2022-2025 including sediment augmentation through mechanical in-channel placement of sediment, habitat creation and maintenance, and water action plan projects. Work under this RFP will be conducted for the GC and supervised by the Program's Executive Director's Office (EDO). **Contractor selection will be based solely on the merits of submitted proposals and contractor qualifications rather than interviews.**

The scope of work and schedule in this RFP describe a four-year plan of work from 2022-2025. Under the final contract, specific work items will be scoped and authorized as a series of Task Orders and written Notice to Proceed from the EDO will be required before work begins. All work will be contingent on availability of Program funding and annual budgets and work plans will be developed jointly by the contractor and EDO, subject to annual approval by the GC and other Program Advisory Committees.

In responding to this RFP, the Governance Committee requests proposals that include:

- 1) **Statement of Qualifications** for the range of services contemplated in this RFP. Prospective contractors should provide a detailed description of qualifications and experience related to the types of permitting activities described in the Scope of Work below.
- 2) **List of relevant project experience** within the past five years, including name, location, and brief description of the projects; name, address, and phone number of the contracting officer for the client; and identification of key project participants and their tasks.
- 3) **Resumes** of all primary staff that would be involved in permitting activities. Provide a table showing the expertise and likely area of involvement for each staff member.
- 4) **Hourly rate and direct expense table** for 2022 including relevant staff from the proposing firm any sub-contractors.
- 5) **Conflicts 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) **Suspension and Debarment.** Contractor must not be suspended or debarred from receiving federal funds. Proposal must include statement of eligibility to receive federal funds and must provide contractor Dun & Bradstreet (D-U-N-S) number or other means of identification in the U.S System for Award Management site (www.sam.gov).

7) **Acceptance of the terms and conditions** as outlined in the attached Program's Consultant Contract (Attachment A), or clear description of any exceptions to the terms and conditions.

TERMS AND CONDITIONS

The selected contractor will be retained by:

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501

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

PRE-PROPOSAL MEETING

A virtual pre-proposal Web/conference call meeting for interested parties will be held on **January 19, 2022 at 10:00 a.m. Central time**. This meeting will provide important information on the Program and the scope of work and offer interested parties the opportunity to seek clarifications or ask questions. To facilitate logistical arrangements, if you plan to participate and submit a response to this RFP please contact Seth Turner at turners@headwaterscorp.com by **12:00 p.m. (noon) Central time on January 18, 2022**.

POINT OF CONTACT & RFP DUE DATE

Questions about this RFP should be e-mailed Seth Turner. Questions, responses, and any additional information related to the RFP will be available to all bidders on the Program website (www.platteriverprogram.org/Contractors/Pages/OpenRFPs.aspx). **One electronic copy of your proposal in PDF format must be submitted to Seth Turner at turners@headwaterscorp.com no later than 12:00 p.m. (noon) Central time on February 2, 2022.**



SCOPE OF WORK FOR CONTRACT SERVICES

INTRODUCTION

The Program 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, and pallid sturgeon. A Governance Committee reviews, directs, and provides oversight for activities undertaken during the Program. The Governance Committee 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. Seth Turner, representing the Program EDO, will be the primary contact for prospective contractors responding to this RFP.

OBJECTIVES AND SCOPE

Implementation of the Program’s Adaptive Management Plan (AMP) includes management actions in the channel of the central Platte River intended to test hypotheses related to habitat creation and maintenance and subsequent use by the target species. Implementation of the Water Action Plan (WAP) includes the construction, operation and maintenance of water supply projects to increase Platte River flow. These activities include actions that potentially require permitting authority including:

1) Sediment Augmentation

Several AMP hypotheses relate to restoration of sediment balance in the central Platte River. The Program completed a sediment augmentation pilot study in 2014 comparing the effectiveness of two types of augmentation activities. That pilot study was conducted under a Section 404 permit from the U.S. Army Corps of Engineers that included Section 401 Water Quality Certification from the Nebraska Department of Environmental Quality. A final pilot study report was made publicly available in July 2014. The results of the pilot study indicate that the most effective means of augmentation for the Program in the near term will be through mechanical placement of sediment in the channel, either directly into the channel during periods of adequate flow or through stockpiling and placement for mobilization during subsequent high flow events. All sediment can be accessed and prepared on Program lands along the central Platte River. Augmentation of 60,000-80,000 tons began in late 2017 and has occurred annually as directed by the Governance Committee and in accordance with implementation of the AMP. Augmentation planning and oversight of implementation will be conducted by the Program’s Executive Director’s Office. However, the Program is seeking expert contractor assistance to maintain necessary federal and state permits for augmentation activities. These activities are outline in the special provisions in the ACOE Section 404 permit and generally consists of quantification and reporting of habitat metrics by means of NeSCAP, aggradation-degradation, target volumes and areas for excavation and augmentation and post-construction monitoring/validation activities.

2) Species habitat creation and maintenance

The Program creates and maintains off-channel sand and water nesting habitat for piping plovers. Wetlands occur at most of these sites and management actions can impact wetlands, requiring Section 404 permitting. Likewise, on-channel management actions may result in the need for Section 404, Section 401, floodplain and NPDES permitting.



3) Water Action Plan (WAP) projects

The Program implements water supply projects such as the Cottonwood Ranch broad-scale recharge and groundwater recapture network that require state, local and federal permitting. Permit requirements are project-specific and often include Section 404 and 401 permitting, floodplain permitting, and NPDES permitting.

In all cases, permitting scope generally includes:

- Meet with Executive Director's Office staff in Kearney, Nebraska to discuss planned activities, necessary permits, and strategies for securing those permits.
- Coordinating and completing all necessary permit application documentation.
- Ensuring permit requirements are met and all required reporting is completed in full and on schedule.

Actual permitting activities will be scoped and implemented as a series of Task Orders undertaken via contract amendment.

PROJECT SCHEDULE

In general, the annual schedule will be determined by planned Program activities.

BUDGET

Budget will be dependent on Program activities that will be scoped in cooperation with Contractor. Annual budgets will be subject to Governance Committee approval as a part of the overall annual fiscal year Program budget approval process.

AVAILABLE INFORMATION

Several additional sources of information will be available to the selected Contractor including all existing studies, designs, and associated permit documents and authorizations.

DELIVERABLES

The successful contractor will be responsible for completing all necessary permit application paperwork, transmitting final permits to the Program, maintaining necessary documentation, and compiling and submitting all necessary reporting for any permits.



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Attachment A

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Standard Consultant Contract

Company Name
Address 1
Address 2
FEIN ??-??????
DUNS #

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107
FEIN 47-0769903

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Contract between Nebraska Community Foundation, Platte River Recovery Implementation Program, and Company Name

PURPOSE OF CONTRACT CONTRACT YEAR RANGE

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 Company Name (“Contractor”). The following persons are authorized to represent the parties through this Contract: Diane Wilson of the Foundation; Jason Farnsworth of the Program; and NAME 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 all required approvals have been granted. The term of this Contract is from Month Day, Year through Month Day, Year. 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 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 to be valid.

4. Payment.

Consultant Contract for Service

Insert name of project

Page 1 of 17

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**, both attached to and incorporated by reference as part of this Contract. Total Payment under this contract shall not exceed \$**XXX,XXX**.

B. Cost Rates. The labor and equipment cost rates for each task included in **Exhibit A** are as set forth on **Exhibit B**.

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

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 after the billing date.

Billing Point of Contact (Program):

Mr. Jason Farnsworth, Executive Director
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th 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 deem 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 Contractor.

A. Scope of Services. The **Contractor** 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 **Contractor** or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts.

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

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

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

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

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

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

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

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 **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 **number (XX)** pages, **Exhibit A**, consisting of **number (XX)** pages, **Exhibit B**, consisting of **number (XX)** pages, and **Exhibit C**, consisting of **number (XX)** pages, 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. Insurance Coverage. 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 **Two Million Dollars (\$2,000,000.00)** aggregate and **One Million Dollars (\$500,000.00)** per occurrence. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury.

(ii) **Business Automobile Liability Insurance.** **Contractor** shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than **One Million Dollars (\$1,000,000.00)** per occurrence. Coverage will include bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles.

(iii) **Workers' Compensation and Employers' Liability Insurance.** The **Contractor** shall provide proof of workers' compensation coverage. Contractor's insurance shall include "Stop Gap" coverage in an amount not less than **Five Hundred Thousand Dollars (\$500,000.00)** per employee for each accident and disease.

(iv) **Professional Liability Insurance.** The **Contractor** shall provide proof of Professional Liability insurance covering damages arising out of negligent acts, errors, or omissions committed by Contractor in the performance of this Agreement, with a liability limit of not less than **One Million Dollars (\$1,000,000)** per claim. **Contractor** shall maintain this policy for a minimum of two (2) years after completion of the work or shall arrange for a two-year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional Services under this contract and caused by any error, omission, breach or negligent act, including infringement of intellectual property (except patent or trade secret) of the **Contractor**.

T. Taxes. The **Contractor** shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance and sales taxes.

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

V. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

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

Contract.

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

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

Z. Survival. The parties' obligations under sections 8.D. (Audit/Access to Records), 8.S. (Insurance Coverage), and 8.U. (Termination of Contract) will survive the termination of this Contract.

9. Contacts.

Administrative Point of Contact (Foundation):

Diane M. Wilson
Manager of Public/Private Partnerships
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Fax: (402) 323-7349
Email: dwilson@nebcommfound.org

Admin. Point of Contact (Program):

Jason Farnsworth, Executive Director
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: farnsworthj@headwaterscorp.com

Technical Point of Contact (Program):

Name, Title
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: xxxxxxx

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Outreach
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: barronb@headwaterscorp.com

Administrative Point of Contact (Contractor):

Name, Title
Company
Address 1
Address 2
Phone: (000) 000-0000
Fax: (000) 000-0000
Email: xxxxxxx

Technical Point of Contact (Contractor):

Name, Title
Company
Address 1
Address 2
Phone: (000) 000-0000
Fax: (000) 000-0000
Email: xxxxxxx

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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

Diane M. Wilson
Manager of Public/Private Partnerships

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 Farnsworth
Executive Director

Date

EXHIBIT “A” SCOPE OF SERVICES

A. PROJECT DESCRIPTION

1. Location: [Text]
2. Purpose: [Text]
3. History: [Text]

B. PROJECT REQUIREMENTS

1. Monthly Progress Reports and Billing Statements

The **Contractor** shall submit a brief monthly progress report outlining the study status, progress, and results to date, regardless of whether or not a billing statement is submitted, on or before the last working day of the month. The progress report will also show the percentage of the job completed by task and the percentage of budget spent. The progress report will also include a billing projection for the upcoming month for the purpose of Program reimbursement request planning.

Each billing statement must include a task-by-task report justifying the cost items contained in the billing statement. The monthly progress report may be used as the justification for the billing statement as long as all cost items covered in the billing statement are addressed in the progress report.

2. Computer Models, Statement of Assumptions, Project Work File

- a. 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 with the final report. Digital media shall be labeled by the **Contractor** to provide sufficient detail to access the information on the media. User manuals shall be submitted by the **Contractor** to the **Program** providing complete documentation of computer programs developed under this project. The user manuals shall also contain the source code language and the type of computer equipment necessary to operate the program(s). The computer programs and spreadsheets (written and digital forms) are due on the same date as the final report, which contains the information generated by the programs.
- b. To facilitate the **Program**'s accurate evaluation of the **Contractor's** work product, computations, conclusions and recommendations, the **Contractor** shall:

* Include in the final report a section describing the assumptions and methodology used by the **Contractor** in generating the data and conclusions contained in that chapter.

* Maintain a project work file containing the materials used in project analysis. This file will be available for review by the **Program** and should be organized in such a way as to allow replication of the steps and procedures used by the **Contractor** to reach the conclusions described in the study.

* Prepare a project notebook containing a description of the assumptions and methodologies used in the project analysis. The notebook shall be organized in such a way as to allow replication of the steps, calculations, and procedures used by the **Contractor** to reach conclusions, described in the draft final report. The project notebook shall be submitted with the draft final report.

3. Final Report

The **Contractor** shall use the Contract Scope of Services as the outline for draft and final reports so that **Contractor** compliance with Contract provisions can be verified. If the final report contains information of an engineering nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by a Professional Engineer licensed in the State of Nebraska or other state if appropriate to location of project site. If the final report contains information of a geologic nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by a Professional Geologist licensed in the State of Nebraska. If the final report contains information of both an engineering and geologic nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by both a Professional Engineer and a Professional Geologist licensed in the State of Nebraska. At a minimum, the reproducible original to be submitted as part of the deliverables required herein must utilize an original seal(s) and original signature(s).

4. Final Report - Digital Format

The **Contractor** shall provide the final documents and related materials in a digital format. This digital report shall, to the extent feasible, be assembled into one file rather than separate files for text, tables, graphics, etc. This digital report shall be in both Word and Adobe Acrobat format. Any plates, figures, etc. not suitable for Word shall be in AutoCAD, ArcGIS, Adobe Acrobat, or compatible format. Other formats may be used if approved in advance by the **ED Office**. The final documents will also be provided fully assembled into one file, in a complete “internet ready” digital format to facilitate their distribution via the Office website.

5. Project Access

The ED Office shall be responsible for obtaining access as required for project tasks.

6. Stand-By Time

The Program will not reimburse the Contractor for stand-by time charges for the Contractor's supervisory personnel.

C. **TASKS AND SCHEDULE**

Detailed list of tasks, work products, and schedule of completion.

**EXHIBIT “B”
HOURLY RATE AND REIMBURSABLE EXPENSE
PRICE SCHEDULE**

<u>Task</u>	<u>Unit</u>	<u>Cost Rate</u>
001 Management/ Consulting	HR	\$XX
002 Clerical Support	HR	\$XX
003 Mileage Reimbursement	MILE	\$XX

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.

COMPANY (“CONTRACTOR”)

By:

Name, Title

Date