



Dr. Edmund D. Andrews  
766 Grant Place  
Boulder, CO 80302

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

## PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

### SECOND AMENDMENT

#### **To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and Edmund D. Andrews**

#### **1. Parties.**

This is the Second Amendment to the Agreement entered into by and between the Nebraska Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program"), and Edmund D. Andrews ("Consultant"), a private consultant, dated February 13, 2017. This Second Amendment is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2019. The following persons are authorized to represent the parties through this Amendment: Diane Wilson of the Foundation, Chadwin Smith of the Program, and Ned Andrews of the Consultant.

#### **2. Purpose and Authority.**

This Second Amendment to the Agreement between Foundation and Consultant is being made for the purposes of:

- (1) Extend the Agreement between Foundation and Consultant for service on the Program's Independent Scientific Advisory Committee ("ISAC") from the effective date of the Amendment through December 31, 2019.
- (2) To provide the Consultant with a 2019 stipend of **\$27,360** in approved and available FY 2019 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date below through December 31, 2019 to provide the following services as outlined in the approved FY 2019 Program Work Plan:

<b>Summer ISAC Meeting to discuss AMP Update Process</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>2019 AMP Reporting Session</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>Conference Calls/WebEx</b> – 4 calls x \$360 per member per call (\$180/hour x 2-hour call)	<b>\$1,440</b>
<b>Document review</b> – 10 days of review x \$1,440/day	<b>\$14,400</b>
<b>TOTAL</b>	<b>\$27,360</b>

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 13, 2017, attached to this Amendment as **Exhibit A**.



IN WITNESS WHEREOF, the Parties have executed this Amendment.

Nebraska Community Foundation

Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
EDMUND D. ANDREWS

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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## **EXHIBIT A**

### **Andrews 2017-2019 ISAC Agreement**



Dr. Edmund D. Andrews  
766 Grant Place  
Boulder, CO 80302

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation**  
**Program, and Edmund D. Andrews**  
**Independent Scientific Advisory Committee**

**1. Parties.** This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Edmund D. Andrews (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Ned Andrews.

**2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

**TERMS AND CONDITIONS.**

**3. Term of Agreement.** This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

**4. Payment.**

**A. Stipend.** The Program agrees to pay Consultant **\$26,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
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The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

**B. Expenses.** Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.



- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
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**C. Invoices.** Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

**D. Billing Procedures.** Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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

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

**E. Withholding of Payment.** If a work element has not been received by the Program by the dates established in this Agreement, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

**F. Final Completion and Payment.** Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

**5. Responsibilities of Consultant.**

**A. Scope of Services.** The Consultant shall perform the specific services required under this Agreement in a satisfactory and proper manner.

**B. Personnel.** All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

**C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.



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

**E. Presentation of Information.** The Consultant shall compile and present all information clearly and concisely in a professional manner.

**F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

**B. Information to be furnished to the Consultant.** All information as is available to the Program and necessary for the carrying out of work under this Agreement shall be furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

**C. Review of Information.** The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

**7. Special Provisions.**

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

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

**C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

**D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of Consultant. 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 Consultant personnel in every phase of performance of Contract-related work.

**E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other



considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

**G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

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

## **8. General Provisions.**

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

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

**C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Program.

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

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



be construed to permit the Program to terminate this Agreement to acquire similar services from another party.

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

**G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

**H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.

**I. Conflicts of Interest**

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

(ii) A conflict of interest warranting termination of the Agreement 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*.

**J. Entirety of Agreement.** This Agreement, consisting of *nine (9)* pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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





- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Contractor.** The Consultant 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 Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Agreement.
- P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the Program.
- Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

**W. 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):**

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

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

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

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)




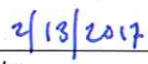
**Administrative and Technical Point of Contact (Consultant):**

Dr. Edmund D. Andrews  
766 Grant Place  
Boulder, CO 80302  
Phone: (303) 939-9398  
Email: [ned\\_andrews@att.net](mailto:ned_andrews@att.net)

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


**NEBRASKA COMMUNITY FOUNDATION**

  
\_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships  
TIN# 47-0769903

  
\_\_\_\_\_  
Date

**CONSULTANT**

  
\_\_\_\_\_  
Edmund D. Andrews

  
\_\_\_\_\_  
Date



**EXHIBIT A**  
**Certification Regarding Lobbying**

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

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

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

**CONSULTANT**

**By: Edmund D. Andrews**

  
Edmund D. Andrews

  
Date



Dr. Brian P. Bledsoe  
1341 Arizona Bend  
Watkinsville, GA 30766

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

## PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

### SECOND AMENDMENT

#### **To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and Brian P. Bledsoe**

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Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
BRIAN P. BLEDSOE

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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## **EXHIBIT A**

### **Bledsoe 2017-2019 ISAC Agreement**



Dr. Brian P. Bledsoe  
1341 Arizona Bend  
Watkinsville, GA 30766

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation**  
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**Billing Point of Contact (Program):**

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

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**C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.



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

**E. Presentation of Information.** The Consultant shall compile and present all information clearly and concisely in a professional manner.

**F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

**B. Information to be furnished to the Consultant.** All information as is available to the Program and necessary for the carrying out work under this Agreement shall be furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

**C. Review of Information.** The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

**7. Special Provisions.**

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

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

**C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

**D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of Consultant. 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 Consultant personnel in every phase of performance of Contract-related work.

**E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other



considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

**G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

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

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



be construed to permit the Program to terminate this Agreement to acquire similar services from another party.

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

(ii) A conflict of interest warranting termination of the Agreement 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*.

**J. Entirety of Agreement.** This Agreement, consisting of *nine (9)* pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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



- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Contractor.** The Consultant 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 Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Agreement.
- P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the Program.
- Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

**W. 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):**

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

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

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

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)




**Administrative and Technical Point of Contact (Consultant):**

Dr. Brian P. Bledsoe  
1341 Arizona Bend  
Watkinsville, GA 30766  
Phone: (970) 402-6100  
Email: [bbledsoe@uga.edu](mailto:bbledsoe@uga.edu)


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

**NEBRASKA COMMUNITY FOUNDATION**

  
\_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships  
TIN# 47-0769903

2/13/2017  
\_\_\_\_\_  
Date

**CONSULTANT**

  
\_\_\_\_\_  
Brian P. Bledsoe  
DUNS# 831871533

2/14/17  
\_\_\_\_\_  
Date





**EXHIBIT A**  
**Certification Regarding Lobbying**

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

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

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

**CONSULTANT**

**By: Brian P. Bledsoe**

*Brian Bledsoe*

Brian P. Bledsoe

*2/4/17*

Date





Dr. Adrian H. Farmer  
1509 Front Nine Drive  
Fort Collins, CO 80525

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

## PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

### SECOND AMENDMENT

#### **To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and Adrian H. Farmer**

#### **1. Parties.**

This is the Second Amendment to the Agreement entered into by and between the Nebraska Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program"), and Adrian H. Farmer ("Consultant"), a private consultant, dated February 8, 2017. This Second Amendment is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2019. The following persons are authorized to represent the parties through this Amendment: Diane Wilson of the Foundation, Chadwin Smith of the Program, and Adrian Farmer of the Consultant.

#### **2. Purpose and Authority.**

This Second Amendment to the Agreement between Foundation and Consultant is being made for the purposes of:

- (1) Extend the Agreement between Foundation and Consultant for service on the Program's Independent Scientific Advisory Committee ("ISAC") from the effective date of the Amendment through December 31, 2019.
- (2) To provide the Consultant with a 2019 stipend of **\$27,360** in approved and available FY 2019 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date below through December 31, 2019 to provide the following services as outlined in the approved FY 2019 Program Work Plan:

<b>Summer ISAC Meeting to discuss AMP Update Process</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>2019 AMP Reporting Session</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>Conference Calls/WebEx</b> – 4 calls x \$360 per member per call (\$180/hour x 2-hour call)	<b>\$1,440</b>
<b>Document review</b> – 10 days of review x \$1,440/day	<b>\$14,400</b>
<b>TOTAL</b>	<b>\$27,360</b>

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 8, 2017, attached to this Amendment as **Exhibit A**.



IN WITNESS WHEREOF, the Parties have executed this Amendment.

Nebraska Community Foundation

Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
ADRIAN H. FARMER

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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50

## **EXHIBIT A**

### **Farmer 2017-2019 ISAC Agreement**



Dr. Adrian H. Farmer  
1509 Front Nine Drive  
Fort Collins, CO 80525

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation**  
**Program, and Adrian H. Farmer**

**Independent Scientific Advisory Committee**

**1. Parties.** This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Adrian H. Farmer (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Adrian Farmer.

**2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

**TERMS AND CONDITIONS.**

**3. Term of Agreement.** This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

**4. Payment.**

**A. Stipend.** The Program agrees to pay Consultant \$26,600 for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

**B. Expenses.** Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.





- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

**C. Invoices.** Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

**D. Billing Procedures.** Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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

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

**E. Withholding of Payment.** If a work element has not been received by the Program by the dates established in this Agreement, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

**F. Final Completion and Payment.** Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

**5. Responsibilities of Consultant.**

**A. Scope of Services.** The Consultant shall perform the specific services required under this Agreement in a satisfactory and proper manner.

**B. Personnel.** All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

**C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.



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considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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**K. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement 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.





- 241 **L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the  
242 ED Office, and their officers, agents, employees, successors and assignees from any and all claims,  
243 lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties  
244 and obligations hereunder or in connection with the negligent performance of Consultant's duties or  
245 obligations, including but not limited to any claims, lawsuits, losses or liability arising out of  
246 Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.  
247
- 248 **M. Independent Contractor.** The Consultant shall function as an independent contractor for the purposes  
249 of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for  
250 any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be  
251 incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for  
252 the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in  
253 this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as  
254 an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation  
255 of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no  
256 health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation,  
257 Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents  
258 and/or employees as a result of this Contract.  
259
- 260 **N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and  
261 given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or  
262 delivery in person. Notice is effective upon delivery.  
263
- 264 **O. Notice of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program  
265 with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or  
266 consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the  
267 notice provision of this Agreement.  
268
- 269 **P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes,  
270 data, samples, specimens, and materials of any kind resulting from performance of this Agreement are  
271 at all times the property of the Program.  
272
- 273 **Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or  
274 techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and  
275 pledges that no work performed by the Consultant or its contractors will violate any such restriction.  
276
- 277 **R. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local  
278 law, including but not limited to federal and state income taxes, social security taxes, workers'  
279 compensation, unemployment insurance, and sales taxes.  
280
- 281 **S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon  
282 fifteen (15) days written notice. This Agreement may be terminated immediately for cause if  
283 Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise  
284 have the right to unilaterally terminate the agreement for cause. In the event of termination, Program  
285 shall pay Consultant for all reasonable work performed up to the effective date of the termination.  
286
- 287 **T. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity  
288 the status of third party beneficiary, and this Agreement shall not be construed so as to create such  
289 status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

**W. 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):**

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

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

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

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
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Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)





**Administrative and Technical Point of Contact (Consultant):**

Dr. Adrian H. Farmer  
1509 Front Nine Drive  
Fort Collins, CO 80525  
Phone: (970) 631-3134  
Email: [apfarmer@comcast.net](mailto:apfarmer@comcast.net)


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

**NEBRASKA COMMUNITY FOUNDATION**

  
\_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships  
TIN# 47-0769903

2/08/2017  
\_\_\_\_\_  
Date

**CONSULTANT**

  
\_\_\_\_\_  
Adrian H. Farmer  
DUNS# 828576566

2 Feb 2017  
\_\_\_\_\_  
Date



**EXHIBIT A**  
**Certification Regarding Lobbying**

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


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

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

**CONSULTANT**

**By: Adrian H. Farmer**

  
Adrian H. Farmer

  
Date



Dr. David L. Galat  
3951 County Road 259  
Fulton, MO 65251-3042

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

## PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

### SECOND AMENDMENT

#### To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and David L. Galat

#### **1. Parties.**

This is the Second Amendment to the Agreement entered into by and between the Nebraska Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program"), and David L. Galat ("Consultant"), a private consultant, dated February 13, 2017. This Second Amendment is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2019. The following persons are authorized to represent the parties through this Amendment: Diane Wilson of the Foundation, Chadwin Smith of the Program, and David Galat of the Consultant.

#### **2. Purpose and Authority.**

This Second Amendment to the Agreement between Foundation and Consultant is being made for the purposes of:

- (1) Extend the Agreement between Foundation and Consultant for service on the Program's Independent Scientific Advisory Committee ("ISAC") from the effective date of the Amendment through December 31, 2019.
- (2) To provide the Consultant with a 2019 stipend of **\$27,360** in approved and available FY 2019 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date below through December 31, 2019 to provide the following services as outlined in the approved FY 2019 Program Work Plan:

<b>Summer ISAC Meeting to discuss AMP Update Process</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>2019 AMP Reporting Session</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>Conference Calls/WebEx</b> – 4 calls x \$360 per member per call (\$180/hour x 2-hour call)	<b>\$1,440</b>
<b>Document review</b> – 10 days of review x \$1,440/day	<b>\$14,400</b>
<b>TOTAL</b>	<b>\$27,360</b>

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 13, 2017, attached to this Amendment as **Exhibit A**.



IN WITNESS WHEREOF, the Parties have executed this Amendment.

Nebraska Community Foundation

Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
DAVID L. GALAT

Date: \_\_\_\_\_

Date: \_\_\_\_\_



49

50

## **EXHIBIT A**

### **Galat 2017-2019 ISAC Agreement**



Dr. David L. Galat  
3951 County Road 259  
Fulton, MO 65251-3042

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation Program, and David L. Galat**

**Independent Scientific Advisory Committee**

**1. Parties.** This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and David L. Galat (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. David Galat.

**2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

**TERMS AND CONDITIONS.**

**3. Term of Agreement.** This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

**4. Payment.**

**A. Stipend.** The Program agrees to pay Consultant **\$26,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

**B. Expenses.** Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.





- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

**C. Invoices.** Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

**D. Billing Procedures.** Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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

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

**E. Withholding of Payment.** If a work element has not been received by the Program by the dates established in this Agreement, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

**F. Final Completion and Payment.** Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

**5. Responsibilities of Consultant.**

**A. Scope of Services.** The Consultant shall perform the specific services required under this Agreement in a satisfactory and proper manner.

**B. Personnel.** All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

**C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.



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

**E. Presentation of Information.** The Consultant shall compile and present all information clearly and concisely in a professional manner.

**F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

**B. Information to be furnished to the Consultant.** All information as is available to the Program and necessary for the carrying out work under this Agreement shall be furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

**C. Review of Information.** The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

**7. Special Provisions.**

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

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

**C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

**D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of Consultant. 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 Consultant personnel in every phase of performance of Contract-related work.

**E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other



considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

**G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

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

## **8. General Provisions.**

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

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

**C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Program.

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

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



be construed to permit the Program to terminate this Agreement to acquire similar services from another party.

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

**G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

**H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.

**I. Conflicts of Interest**

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

(ii) A conflict of interest warranting termination of the Agreement 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*.

**J. Entirety of Agreement.** This Agreement, consisting of *nine (9)* pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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



- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Contractor.** The Consultant 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 Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
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PO Box 83107  
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Email: [dwilson@nebcommfound.org](mailto:dwilson@nebcommfound.org)

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Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [kennyj@headwaterscorp.com](mailto:kennyj@headwaterscorp.com)

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)



**Administrative and Technical Point of Contact (Consultant):**

Dr. David L. Galat  
3951 County Road 259  
Fulton, MO 65251-3042  
Phone: (573) 303-6914  
Email: [galatd@missouri.edu](mailto:galatd@missouri.edu)

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

**NEBRASKA COMMUNITY FOUNDATION**

  
\_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships  
TIN# 47-0769903

2/13/2017  
Date

**CONSULTANT**

  
\_\_\_\_\_  
David L. Galat

6 Feb 2017  
Date





**EXHIBIT A**  
**Certification Regarding Lobbying**

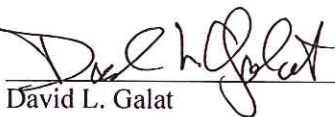
The undersigned certifies, on behalf of Consultant, that to the best of his or her knowledge and belief:

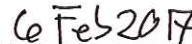
1. No federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection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

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

**CONSULTANT**

**By: David L. Galat**

  
David L. Galat

  
Date





Dr. Jennifer A. Hoeting  
4913 Hinsdale Drive  
Fort Collins, CO 80526

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

# **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

## **SECOND AMENDMENT**

### **To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and Jennifer A. Hoeting**

#### **1. Parties.**

This is the Second Amendment to the Agreement entered into by and between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Jennifer A. Hoeting (“Consultant”), a private consultant, dated February 13, 2017. This Second Amendment is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2019. The following persons are authorized to represent the parties through this Amendment: Diane Wilson of the Foundation, Chadwin Smith of the Program, and Jennifer A. Hoeting of the Consultant.

#### **2. Purpose and Authority.**

This Second Amendment to the Agreement between Foundation and Consultant is being made for the purposes of:

- (1) Extend the Agreement between Foundation and Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2019.
- (2) To provide the Consultant with a 2019 stipend of **\$27,360** in approved and available FY 2019 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date below through December 31, 2019 to provide the following services as outlined in the approved FY 2019 Program Work Plan:

<b>Summer ISAC Meeting to discuss AMP Update Process</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>2019 AMP Reporting Session</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>Conference Calls/WebEx</b> – 4 calls x \$360 per member per call (\$180/hour x 2-hour call)	<b>\$1,440</b>
<b>Document review</b> – 10 days of review x \$1,440/day	<b>\$14,400</b>
<b>TOTAL</b>	<b>\$27,360</b>

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 13, 2017, attached to this Amendment as **Exhibit A**.



IN WITNESS WHEREOF, the Parties have executed this Amendment.

Nebraska Community Foundation

Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
JENNIFER A. HOETING

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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## **EXHIBIT A**

### **Hoeting 2017-2019 ISAC Agreement**



Dr. Jennifer A. Hoeting  
4913 Hinsdale Drive  
Fort Collins, CO 80526

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation**  
**Program, and Jennifer A. Hoeting**  
**Independent Scientific Advisory Committee**

**1. Parties.** This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Jennifer A. Hoeting (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Jennifer Hoeting.

**2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

**TERMS AND CONDITIONS.**

**3. Term of Agreement.** This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

**4. Payment.**

**A. Stipend.** The Program agrees to pay Consultant **\$22,400** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000 - \$4,200 (2016 overbill) = \$9,800

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

**B. Expenses.** Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.



- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

**C. Invoices.** Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$11,200) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$11,200) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

**D. Billing Procedures.** Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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

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

**E. Withholding of Payment.** If a work element has not been received by the Program by the dates established in this Agreement, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

**F. Final Completion and Payment.** Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

**5. Responsibilities of Consultant.**

**A. Scope of Services.** The Consultant shall perform the specific services required under this Agreement in a satisfactory and proper manner.

**B. Personnel.** All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

**C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.



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

**E. Presentation of Information.** The Consultant shall compile and present all information clearly and concisely in a professional manner.

**F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

**B. Information to be furnished to the Consultant.** All information as is available to the Program and necessary for the carrying out work under this Agreement shall be furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

**C. Review of Information.** The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

**7. Special Provisions.**

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

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

**C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

**D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of Consultant. 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 Consultant personnel in every phase of performance of Contract-related work.

**E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other



considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

**G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

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

## **8. General Provisions.**

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

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

**C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Program.

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

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



be construed to permit the Program to terminate this Agreement to acquire similar services from another party.

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

**G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

**H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.

**I. Conflicts of Interest**

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

(ii) A conflict of interest warranting termination of the Agreement 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*.

**J. Entirety of Agreement.** This Agreement, consisting of *nine (9)* pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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





- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Contractor.** The Consultant 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 Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Agreement.
- P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the Program.
- Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

**W. 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):**

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

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

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

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)





**Administrative and Technical Point of Contact (Consultant):**

Dr. Jennifer A. Hoeting  
4913 Hinsdale Drive  
Fort Collins, CO 80526  
Phone: (970) 988-1184  
Email: [jennifer.hoeting@gmail.com](mailto:jennifer.hoeting@gmail.com)

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

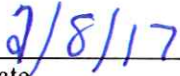
**NEBRASKA COMMUNITY FOUNDATION**

  
\_\_\_\_\_  
Diane M. Wilson  
Manager of Public/Private Partnerships  
TIN# 47-0769903

  
\_\_\_\_\_  
Date

**CONSULTANT**

  
\_\_\_\_\_  
Jennifer A. Hoeting

  
\_\_\_\_\_  
Date



**EXHIBIT A**  
**Certification Regarding Lobbying**

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

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

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

**CONSULTANT**

**By: Jennifer A. Hoeting**

Jennifer A. Hoeting

Date

2/8/17



David R. Marmorek, Lead Scientist and Senior Partner  
ESSA Technologies, Ltd.  
600-2695 Granville St.  
Vancouver, B.C., Canada V6H 3H4

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

## PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

### SECOND AMENDMENT

#### **To Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and David R. Marmorek**

#### **1. Parties.**

This is the Second Amendment to the Agreement entered into by and between the Nebraska Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program"), and David R. Marmorek ("Consultant"), a private consultant, dated February 16, 2017. This Second Amendment is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2019. The following persons are authorized to represent the parties through this Amendment: Diane Wilson of the Foundation, Chadwin Smith of the Program, and David Marmorek of the Consultant.

#### **2. Purpose and Authority.**

This Second Amendment to the Agreement between Foundation and Consultant is being made for the purposes of:

- (1) Extend the Agreement between Foundation and Consultant for service on the Program's Independent Scientific Advisory Committee ("ISAC") from the effective date of the Amendment through December 31, 2019.
- (2) To provide the Consultant with a 2019 stipend of **\$41,760** in approved and available FY 2019 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date below through December 31, 2019 to provide the following services as outlined in the approved FY 2019 Program Work Plan:

<b>Summer ISAC Meeting to discuss AMP Update Process</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>2019 AMP Reporting Session</b> – 4-day meeting (3 days of meeting, one day of travel) x \$1,440 per member per day (\$180/hour x 8-hour day)	<b>\$5,760</b>
<b>Conference Calls/WebEx</b> – 4 calls x \$360 per member per call (\$180/hour x 2-hour call)	<b>\$1,440</b>
<b>Document review</b> – 10 days of review x \$1,440/day	<b>\$14,400</b>
<b>ISAC Chair</b> – additional \$14,400 for ISAC coordination and preparation of reports for the GC (10 days x \$1,440/day)	<b>\$14,400</b>
<b>TOTAL</b>	<b>\$41,760</b>

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 16, 2017, attached to this Amendment as **Exhibit A**.





IN WITNESS WHEREOF, the Parties have executed this Amendment.

Nebraska Community Foundation

Consultant

By \_\_\_\_\_  
DIANE M. WILSON, Manager of Public  
Private Partnerships

By \_\_\_\_\_  
DAVID R. MARMOREK

Date: \_\_\_\_\_

Date: \_\_\_\_\_



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## **EXHIBIT A**

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### **Marmorek 2017-2019 ISAC Agreement**



David R. Marmorek, Lead Scientist and Senior Partner  
ESSA Technologies, Ltd.  
600-2695 Granville St.  
Vancouver, B.C., Canada V6H 3H4

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

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation Program, and David R. Marmorek**

**Independent Scientific Advisory Committee**

**1. Parties.** This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and David R. Marmorek (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and David Marmorek.

**2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

**TERMS AND CONDITIONS.**

**3. Term of Agreement.** This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

**4. Payment.**

**A. Stipend.** The Program agrees to pay Consultant **\$40,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000
- ISAC Chair – ISAC coordination and preparation of reports for the GC (10 days x \$1,400/day) = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.



**B. Expenses.** Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.
- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

**C. Invoices.** Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$20,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$20,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

**D. Billing Procedures.** Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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

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

**E. Withholding of Payment.** If a work element has not been received by the Program by the dates established in this Agreement, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

**F. Final Completion and Payment.** Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

**5. Responsibilities of Consultant.**

**A. Scope of Services.** The Consultant shall perform the specific services required under this Agreement in a satisfactory and proper manner.

**B. Personnel.** All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.



95 **C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for  
96 any part of the work to be performed pursuant to this Agreement.

97  
98 **D. Requests from the Program.** The Consultant shall be responsible and responsive to the Program and  
99 the ED Office in their requests and requirements.

100  
101 **E. Presentation of Information.** The Consultant shall compile and present all information clearly and  
102 concisely in a professional manner.

103  
104 **F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous  
105 review by the Program and the ED Office prior to acceptance.

106  
107 **6. Responsibilities of the Program.**

108  
109 **A. Designated Representative.** The Executive Director of the Program shall act as the Program's  
110 administrative representative with respect to the Consultant's service to be performed under this  
111 Agreement and shall have complete authority to transmit instructions, receive information, and interpret  
112 and define the Program's policies and decisions with respect to services covered by this Agreement.

113  
114 **B. Information to be furnished to the Consultant.** All information as is available to the Program and  
115 necessary for the carrying out work under this Agreement shall be furnished to the Consultant without  
116 charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

117  
118 **C. Review of Information.** The ED Office shall examine all information presented by the Consultant and  
119 shall promptly render in writing the Program's decisions pertaining thereto within specified time  
120 periods.

121  
122 **D. Provide Criteria.** The ED Office shall provide all criteria and full information regarding its  
123 requirements for the services.

124  
125 **7. Special Provisions.**

126  
127 **A. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement  
128 of this Contract shall be paid by either party.

129  
130 **B. Publication.** It is understood that the results of this work may be available to the Consultant for  
131 publication and use in connection with related work. Use of this work for publication and related work  
132 by the Consultant must be conducted with prior authorization from the Program's Technical Point of  
133 Contact.

134  
135 **C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of  
136 those services provided under this Agreement shall be the sole responsibility of the Program. Media  
137 requests of the Consultant should be directed to the Director of Operations, Administration, and Human  
138 Dimensions in the EDO.

139  
140 **D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of  
141 Consultant. This shall include, but not be limited to, the right to make site inspections at any time, to  
142 bring experts and consultants on site to examine or evaluate completed work or work in progress, and  
143 to observe all Consultant personnel in every phase of performance of Contract-related work.





- E. Kickbacks.** The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- F. Debarment and Suspension.** Consultant certifies by signing this Contract that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participation in the transaction covered by this Contract.
- G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.
- H. Office Space, Equipment, and Supplies.** The Consultant will supply its own office space, equipment, and supplies.
- 8. General Provisions.**
- A. Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.
- B. Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Nebraska. The Courts of the State of Nebraska shall have jurisdiction over this Agreement and the parties.
- C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Program.
- D. Audit/Access to Records.** The Program, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of the Program.
- E. Availability of Funds.** Each payment obligation of the Program is conditioned upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If funds are not allocated and available for the continuance of the services performed by the Consultant, the Agreement and/or applicable task order may be terminated by the Program at the end of the period for which the funds are available. The Program shall notify the Consultant at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the



event this provision is exercised, and the Program shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Program to terminate this Agreement to acquire similar services from another party.

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

**G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

**H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.

#### **I. Conflicts of Interest**

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

(ii) A conflict of interest warranting termination of the Agreement 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*.

**J. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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



- L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.
- M. Independent Contractor.** The Consultant 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 Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice of Proposed Sale or Transfer of the Consultant.** The Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Agreement.
- P. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the Program.
- Q. Patent or Copyright Protection.** The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. Taxes.** The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

**W. 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):**

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

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

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

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

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [barronb@headwaterscorp.com](mailto:barronb@headwaterscorp.com)

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

Chadwin Smith, Director of Natural Resources Decision Support  
Platte River Recovery Implementation Program  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Email: [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)




**Administrative and Technical Point of Contact (Consultant):**

David R. Marmorek, Lead Scientist and Senior Partner  
 ESSA Technologies Ltd.  
 600 - 2695 Granville St.  
 Vancouver, B.C., Canada V6H 3H4  
 Phone: (604) 677-9557  
 Email: [dmarmorek@essa.com](mailto:dmarmorek@essa.com)

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

**NEBRASKA COMMUNITY FOUNDATION**

  
 Diane M. Wilson  
 Manager of Public/Private Partnerships  
 TIN# 47-0769903

2/16/2017  
 Date

**CONSULTANT**

  
 David R. Marmorek  
 DUNS# 241645779

Feb. 6, 2017.  
 Date



**EXHIBIT A**  
**Certification Regarding Lobbying**

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

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

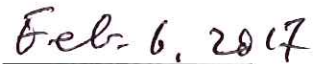
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who makes an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

**CONSULTANT**

**By: David. R. Marmorek**



David R. Marmorek



Date