



**REQUEST FOR PROPOSALS**

**Platte River Recovery Implementation Program  
Permitting Services RFP**

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

**September 9, 2014**



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**  
**Request for Proposals**

**SUBJECT:** Permitting Services  
**REQUEST DATE:** **September 9, 2014**  
**CLOSING DATE:** **October 17, 2014**  
**POINT OF CONTACT:** Chad Smith  
Headwaters Corporation  
Director of Natural Resources  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
(402) 432-7950  
[smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com)

**RECITALS**

The Governance Committee (GC) of the Platte River Recovery Implementation Program (Program or PRRIP) submits this Request for Proposals (RFP) to solicit proposals from contractors to provide on-call assistance with securing appropriate federal and state permits for Program management actions in 2014-2016 including sediment augmentation through mechanical in-channel placement of sediment and species habitat projects such as in-channel construction of nesting islands for target species and wetland restoration projects. Work under this RFP would be conducted for the GC and supervised by the Program's Executive Director's Office (EDO).

The scope of work and schedule in this RFP describe a three-year plan of work from 2014-2016. Under the final contract, annual written Notice to Proceed from the EDO will be required before work begins. All work will be contingent on availability of Program funding and annual budgets and work plans will be developed jointly by the contractor and EDO, subject to annual approval by the GC and other Program Advisory Committees.

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

- 1) **General approach to permitting** – A description of respondent's approach to applying for and securing permits for work of this nature.
- 2) **General scope of work for permitting** – A scope of work for securing appropriate permits for the activities described in this RFP.
- 3) **List of relevant project experience** within the past five years, including name, location, and brief description of the projects; name, address, and phone number of the contracting officer for the client; and identification of key project participants and their tasks.
- 4) **Resumes** of all primary investigators and level of full-time employees, part-time employees, and student involvement (if any). Provide a table showing the tasks, responsibilities, and the number of hours each key participant is committing to this project.
- 5) **Conflicts of Interest Statement** addressing whether or not any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.



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

52  
53 **TERMS AND CONDITIONS**

54 The selected contractor will be retained by:

55 Nebraska Community Foundation  
56 PO Box 83107  
57 Lincoln, NE 68501  
58

59 The GC has sole discretion and reserves the right to reject any and all proposals received in response to this  
60 RFP and to cancel this solicitation if it is deemed in the best interest of the Program to do so. Issuance of  
61 this RFP in no way constitutes a commitment by the Program to award a contract, or to pay Consultant’s  
62 costs incurred either in the preparation of a response to his RFP or during negotiations, if any, of a contract  
63 for services. The Program also reserves the right to make amendments to this RFP by giving written notice  
64 to Consultants, and to request clarification, supplements, and additions to the information provided by a  
65 Consultant. By submitting a proposal in response to this solicitation, Consultant understands and agrees  
66 that any selection of a Consultant or any decision to reject any or all responses or to establish no contracts  
67 shall be at the sole discretion of the Program. To the extent authorized by law, the Consultant shall  
68 indemnify, save, and hold harmless the Nebraska Community Foundation, the states of Colorado,  
69 Wyoming, and Nebraska, the Department of the Interior, members of the Governance Committee, and the  
70 Executive Director’s Office, their employees, employers, and agents, against any and all claims, damages,  
71 liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or  
72 omission by the Consultant or its employees, agents, sub-Consultants, or assignees pursuant to the terms of  
73 this project. Additionally, by submitting a proposal, Consultants agree that they waive any claim for the  
74 recovery of any costs or expenses incurred in preparing and submitting a proposal.  
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76 **PRE-PROPOSAL MEETING**

77 A **pre-proposal Web/conference call meeting** for interested parties will be held on **September 30, 2014**  
78 **at 1:00 p.m. Central time**. This meeting will provide important information on the Program and the scope  
79 of work and offer interested parties the opportunity to seek clarifications or ask questions. To facilitate  
80 logistical arrangements, if you plan to participate and submit a response to this RFP please contact Chad  
81 Smith at [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com) by **12:00 p.m. (noon) Central time on September 26, 2014**.  
82

83 **POINT OF CONTACT & RFP DUE DATE**

84 Questions about this RFP should be e-mailed Chad Smith. Questions, responses, and any additional  
85 information related to the RFP will be available to all bidders on the Program website  
86 ([www.platteriverprogram.org/Contractors/Pages/OpenRFPs.aspx](http://www.platteriverprogram.org/Contractors/Pages/OpenRFPs.aspx)). **One electronic copy of your proposal**  
87 **in PDF format must be submitted to Chad Smith at [smithc@headwaterscorp.com](mailto:smithc@headwaterscorp.com) no later than 12:00**  
88 **p.m. (noon) Central time on October 17, 2014.**



## SCOPE OF WORK FOR CONTRACT SERVICES

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### INTRODUCTION

The Program initiated on January 1, 2007 between Nebraska, Wyoming, and Colorado and the Department of the Interior to address endangered species issues in the central and lower Platte River basin. The species considered in the Program, referred to as “target species”, are the whooping crane, piping plover, interior least tern, and pallid sturgeon. A Governance Committee reviews, directs, and provides oversight for activities undertaken during the Program. The Governance Committee is comprised of one representative from each of the three states, three water user representatives, three representatives from environmental groups, and two members representing federal agencies. The Governance Committee named Dr. Jerry Kenny to serve as the Program Executive Director. Chad Smith, representing the Program EDO, will be the primary contact for prospective contractors responding to this RFP.

### OBJECTIVES AND SCOPE

Implementation of the Program’s Adaptive Management Plan (AMP) includes management actions in the channel of the central Platte River intended to test hypotheses related to habitat creation and maintenance and subsequent use by the target species. Three primary actions require permitting authority:

#### **1) Sediment Augmentation**

Several AMP hypotheses relate to restoration of sediment balance in the central Platte River. The Program completed a sediment augmentation pilot study in 2014 comparing the effectiveness of two types of augmentation activities. That pilot study was conducted under a Section 404 permit from the U.S. Army Corps of Engineers that included Section 401 Water Quality Certification from the Nebraska Department of Environmental Quality. A final pilot study report was made publicly available in July 2014. The results of the pilot study indicate that the most effective means of augmentation for the Program in the near term will be through mechanical placement of sediment in the channel, either directly into the channel during periods of adequate flow or through stockpiling and placement for mobilization during subsequent high flow events. All sediment can be accessed and prepared on Program lands along the central Platte River. This augmentation is expected to begin in late 2014 and occur annually as directed by the Governance Committee and in accordance with implementation of the AMP. Augmentation planning and oversight of implementation will be conducted by the Program’s Executive Director’s Office. However, the Program is seeking expert contractor assistance to secure necessary federal and state permits for augmentation activities.

#### **2) In-channel island construction**

Nesting habitat for interior least terns and piping plovers in the central Platte River channel is generally considered to be bare sand islands moated by river flow. Since 2011, the Program constructed islands on certain Program properties according to habitat criteria developed by the Program’s Technical Advisory Committee (TAC). While some of those islands persist, many have been largely or completely eroded or otherwise degraded by several high flow events on the central Platte. Those islands were constructed under permitting authority from the U.S. Army Corps of Engineers. Additionally, more islands will be constructed over time to continue investigations into habitat selection by terns and plovers. The Program is seeking expert contractor assistance to secure necessary federal and state permits for new island construction and ongoing maintenance.

#### **3) Wetland restoration and enhancement**

The Program committed to acquiring and maintaining approximately 400 acres of off-channel palustrine wetland habitat. The Program acquired a portion of the required palustrine wetland habitat and is considering restoration and enhancement activities to improve habitat suitability for whooping cranes.



138 Activities may include excavation, construction of water control structures, and other construction activities  
139 to increase wetland area and improve function.

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141 In all instances, general activities under this RFP include:

- 142 • Meet with Executive Director’s Office staff in Kearney, Nebraska to discuss planned activities,  
143 necessary permits, and strategies for securing those permits.
- 144 • Coordinating and completing all necessary permit application documentation.
- 145 • Coordinating meetings between the Corps, Nebraska Department of Environmental Quality, and  
146 Program as necessary.
- 147 • Ensuring permit requirements are met and all required reporting is completed in full and on schedule.

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149 Permitting activities conducted under this RFP will be contracted through a Master Service Agreement.  
150 The EDO will develop and execute Task Orders for specific permitting tasks as necessary. Detailed costs  
151 and scopes of work for each permitting task will be developed for each Task Order and that process will  
152 include appropriate review by the EDO and the Program’s Technical Advisory Committee and Finance  
153 Committee as necessary.

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### 155 **PROJECT SCHEDULE**

156 In general, the annual schedule will be determined by planned Program activities. The 2014 schedule is  
157 compressed because ideally sediment augmentation activities will be permitted and will begin before the  
158 end of the calendar year. A proposed schedule for 2014:

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- 160 • October 2014 – contract awarded, initial meeting with Program, begin permit application process
- 161 • November 2014 – meeting with Corps and State of Nebraska if necessary; complete final paperwork
- 162 • December 2014 – secure necessary permits; award mechanical augmentation contract, begin work

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### 164 **AVAILABLE INFORMATION**

165 Several additional sources of information are available to assist potential contractors in responding to this  
166 RFP. All of these documents can be accessed either from the Program Web site  
167 ([www.PlatteRiverProgram.org](http://www.PlatteRiverProgram.org)) or by contacting Chad Smith. Documents include:

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- 169 • PRRIP FINAL Sediment Augmentation Pilot Study Report
- 170 • Pilot Study Permit – U.S. Army Corps of Engineers
- 171 • Pilot Study Water Quality Certification – Nebraska Department of Environmental Quality
- 172 • Island Construction Permit – U.S. Army Corps of Engineers

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### 174 **DELIVERABLES**

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



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**Attachment A**  
**Standard Consultant Contract**



Company  
Address 1  
Address 2  
TIN# 00-0000000

Nebraska Community Foundation, Inc.  
PO Box 83107  
Lincoln, NE 68501-3107  
TIN# 47-0769903

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

**Contract between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and [Company].**

**[Project Name]**

1. **Parties.** This Contract is made and 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 [redacted] (“**Consultant**”). The following persons are authorized to represent the parties through this Contract: Diane Wilson of the Foundation, Dr. Jerry Kenny of the **Program**; and [Name] of the **Consultant**.

2. **Purpose of Contract.** The purpose of this Contract is to allow the **Foundation**, acting as the fiscal agent for the Governance Committee (GC) of the **Program**, to retain the services of the **Consultant** to render certain technical or professional services hereinafter described in connection with an undertaking to be financed by the **Program**, and to delegate the Executive Director’s Office (“**ED Office**”) through its Executive Director or his designee the authority to administer this Contract.

**TERMS AND CONDITIONS**

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. The term of this Contract is from (contract initiation date) through (contract expiration date). The services to be performed under this Contract will commence upon receipt of authorization to proceed. All services shall be completed during this term.

If the **Consultant** has been delayed and as a result will be unable, in the opinion of the **Program**, to complete performance fully and satisfactorily within this Contract period, the **Consultant** may be granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the **Program**.

4. **Payment.**

**A. Reimbursement of Expenses.** The Program agrees to pay the Consultant an amount based on the approved budget depicted in Exhibit B and hourly rate and reimbursable expenses price schedules depicted in Exhibit C, attached to this Contract and incorporated by reference as part of this Contract, for the services described in Exhibit A, attached to this Contract and incorporated by reference as part of this Contract. Total payment under this Contract shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).

**B. Project Budget.** The Project budget for each task included in Exhibit A is as follows:

| <u>Task</u>        | <u>Estimated Cost</u> |
|--------------------|-----------------------|
| Phase I.           |                       |
| Subtotal Phase I   |                       |
| Phase II.          |                       |
| Subtotal Phase II  |                       |
| Total Project Cost |                       |

The amounts for each task are estimates only, but are not to be exceeded unless authorized in writing by the Program. The Contract total amount is controlling. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Billing reports shall be submitted no more often than monthly for activities and costs accrued since the last billing report. A brief project progress report summarizing project activities in the billing period must be submitted with each billing.

**C. Billing Procedures.** The Consultant shall send billing reports for services performed for the various tasks outlined in Exhibit A to the ED Office (address included below). The Program’s Executive Director, upon receiving the billing report, will approve the bill and submit the bill for payment. The submittal for payment will then be reviewed by the Signatory Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties. Payments of bills are due within 60 days after the billing date of the Consultant.



**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  
Fax: (308) 237-4651  
Email: [kennyj@headwaterscorp.com](mailto:kennyj@headwaterscorp.com)

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

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

**F. Final Completion and Payment.** The final payment shall be made upon acceptance of the final report and receipt of the final billing.

**5. Responsibilities of Consultant.**

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

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

### C. Subcontracts.

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

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

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

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

**E. Presentation of Data.** The **Consultant** shall select and analyze all data in a systematic and meaningful manner so as to contribute directly in meeting the objectives of the Project, and shall present this information clearly and concisely, in a professional manner.

**F. Draft of Final Report.** The **Consultant** shall present the **Program** a draft of the final report covering all work elements of the Project including maps, charts, conclusions and recommendations prior to the publication of any final report and no later than the date specified in Exhibit A. Draft Reports will be provided to the Program in Microsoft Word format for distribution and review. The **Program** will respond with written comments to the **Consultant** as soon as possible. The **Consultant** will address the comments of the **Program** in the final report. Final Reports will be provided to the Program in Microsoft Word and PDF format.

**G. Project Completion Report.** A final project completion report in the form described in Exhibit A shall be submitted to the **Program** by the date specified in Exhibit A.

**H. Reports, Maps, Plans, Models and Documents.** One (1) copy of maps, plans, worksheets, logs, field notes and other reference or source documents prepared for or gathered under this Contract, and one (1) copy of each unpublished report prepared under this Contract shall be submitted to the **Program**. If the **Consultant** writes or uses a computer program or spreadsheet as a part of this project, the **Consultant** shall submit to the **Program** for approval all proposed program names and data formats prior to beginning work on that task. All data shall be submitted to **Program** in written and digital forms with the final report. Digital media shall be labeled by the **Consultant** to provide sufficient detail to access the information on the media. All user manuals shall be submitted by the **Consultant** to **Program** providing complete documentation of computer programs developed under this Contract. The user manual shall also specify the source code language and the type of computer equipment necessary to operate the program(s). Any programs or computer software generated as a part of this Contract shall be the sole property of the **Program**.

**I. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous review by the Program's **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 Contract and shall have complete authority to transmit instructions, receive information, and interpret and define the **Program's** policies and decisions with respect to services covered by this Contract.

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

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

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

**7. Special Provisions.**

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

**B. Publication.** It is understood that the results of this work may be available to the **Consultant** for publication and use in connection with related work. Use of this work for publication and related work by the **Consultant** must be conducted with 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 Contract shall be the sole responsibility of the **Program**. Media requests of the **Consultant** should be directed to the Director of Outreach and Operations in the **ED Office**.

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

**D. 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.

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

**8. General Provisions.**

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

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

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

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

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

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

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

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

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

**J. Conflicts of Interest**

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

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

**K. Entirety of Contract.** This Contract, consisting of (example) twelve ( 12) pages, Exhibit A, consisting of eleven ( 11) pages, **Exhibit B**, consisting of one ( 1) page, and **Exhibit C**, consisting of one ( 1) page, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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

**M. Indemnification.** The **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.

**N. 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** or **Program** employees will inure to the benefit of the **Consultant** or the **Consultant's** agents and/or employees as a result of this Contract.

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

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

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

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

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

(i) **Commercial General Liability Insurance.** **Consultant** shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per claimant and One Million Dollars (\$1,000,000.00) per occurrence.

(ii) **Business Automobile Liability Insurance.** **Consultant** shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage will include bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles

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

(iv) Professional Liability or Errors and Omissions Liability Insurance. The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the Foundation, Program and ED Office from any and all claims arising from the Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

**T. 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 social security taxes, workers' compensation, unemployment insurance and sales taxes.

**U. Termination of Contract.** This Contract may be terminated, without cause, by the Program upon fifteen (15) days written notice. This Contract may be terminated immediately for cause if the Consultant fails to perform in accordance with the terms of this Contract.

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

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

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

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



**9. Contacts.**

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

Diane M. Wilson  
Chief Financial and Administrative Officer  
Nebraska Community Foundation  
PO Box 83107  
Lincoln, Nebraska 68501-3107  
Phone: (402) 323-7330  
Fax: (402) 323-7349  
Email: [dwilson@nebcommfound.org](mailto:dwilson@nebcommfound.org)

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

Name, Title  
Platte River Recovery Implementation Prog.  
Headwaters Corporation  
Address 1  
City, State ZIP  
Phone: (000) 000-0000  
Fax: (000) 000-0000  
Email: [email](mailto:email)

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

Name, Title  
Company  
Address 1  
City, State ZIP  
Phone: (000) 000-0000  
Fax: (000) 000-0000  
Email: [email](mailto:email)

**Admin. Point of Contact (Program):**

Dr. Jerry F. Kenny, Executive Director  
Platte River Recovery Implementation Prog.  
Headwaters Corporation  
4111 4<sup>th</sup> Avenue, Suite 6  
Kearney, Nebraska 68845  
Phone: (308) 237-5728  
Fax: (308) 237-4651  
Email: [kennyj@headwaterscorp.com](mailto:kennyj@headwaterscorp.com)

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

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

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

Name, Title  
Company  
Address 1  
City, State ZIP  
Phone: (000) 000-0000  
Fax: (000) 000-0000  
Email: [email](mailto:email)

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**10. Signatures.** By signing this Contract, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Contract, that they have the authority to sign it.

**NEBRASKA COMMUNITY FOUNDATION**

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Diane M. Wilson  
Chief Financial and Administrative Officer

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Date

**[CONSULTANT]**

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**[Name, Title]**

---

Date

**EXHIBIT “A”  
SCOPE OF SERVICES**

**A. PROJECT DESCRIPTION**

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

**B. PROJECT REQUIREMENTS**

1. Monthly Progress Reports and Billing Statements

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

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

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

- a. If the **Consultant** writes or uses a computer program or spreadsheet as a part of this project, the **Consultant** shall submit to the **Program** for approval all proposed program names and data formats prior to beginning work on that task. All data shall be submitted to the **Program** in written and digital forms with the final report. Digital media shall be labeled by the **Consultant** to provide sufficient detail to access the information on the media. User manuals shall be submitted by the **Consultant** to the **Program** providing complete documentation of computer programs developed under this project. The user manuals shall also contain the source code language and the type of computer equipment necessary to operate the program(s). The computer programs and spreadsheets (written and digital forms) are due on the same date as the final report, which contains the information generated by the programs.

b. To facilitate the **Program**'s accurate evaluation of the **Consultant's** work product, computations, conclusions and recommendations, the **Consultant** shall:

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

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

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

### 3. Final Report

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

### 4. Final Report - Digital Format

In addition to the paper submittal described in Section C.4 above, the **Consultant** shall also provide the final documents and related materials in a digital format. This digital report shall, to the extent feasible, be assembled into one file rather than separate files for text, tables, graphics, etc. This digital report shall be contained on a CD(s) or DVD(s), and shall be in both Word and Adobe Acrobat format. Any plates, figures, etc. not suitable for Word shall be in AutoCAD, ArcGIS, Adobe Acrobat, or compatible format. Other formats may be used if approved in advance by the **ED Office**. The final documents will also be provided

fully assembled into one file, in a complete “internet ready” digital format to facilitate their distribution via the Office website.

5. Project Access

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

6. Stand-By Time

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

## **SCOPE OF SERVICES**

**EXHIBIT “B”  
BUDGET**

**EXHIBIT “C”  
HOURLY RATE AND REIMBURSABLE EXPENSES  
PRICE SCHEDULE 2013**