



REQUEST FOR PROPOSALS (RFP)

Surveying, Engineering, and Permitting for North Platte Flood Proofing Projects

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Office of the Executive Director
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845

June 28, 2012



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1 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
2 **REQUEST FOR PROPOSALS (RFP)**

3
4 **SUBJECT:** Surveying, Engineering, and Permitting for North Platte Flood-
5 Proofing Projects
6 **REQUEST DATE:** June 29, 2012
7 **PRE-PROPOSAL MEETING:** July 10, 2012
8 **CLOSING DATE:** July 19, 2012
9 **POINT OF CONTACT:** Steve Smith
10 Headwaters Corporation
11 (720) 524-6115
12 smiths@headwaterscorp.com
13

14 **I. OVERVIEW**

15 The Platte River Recovery Implementation Program (“Program” or “PRRIP”) was initiated on January 1,
16 2007 between Nebraska, Wyoming, Colorado, and the Department of the Interior to address threatened
17 and endangered species issues in the central and lower Platte River basin. The species considered in the
18 Program, referred to as “target species”, are the whooping crane, piping plover, interior least tern, and
19 pallid sturgeon.
20

21 A Governance Committee (GC) reviews, directs, and provides oversight for Program activities. The GC
22 is comprised of one representative from each of the three states, three water user representatives, two
23 representatives from environmental groups, and two members representing federal agencies. The GC has
24 named Dr. Jerry Kenny to serve as the Program Executive Director (ED). Dr. Kenny established
25 Headwaters Corporation as the staffing mechanism for the Program. Program staff is located in Nebraska
26 and Colorado and are responsible for assisting in carrying out Program-related activities.
27

28 Program target flows and short-duration high flow releases (SDHF) rely on the Program’s ability to fully
29 utilize water stored in an Environmental Account (EA) in Lake McConaughy. Full utilization of EA
30 water is based on 3,000 cfs hydraulic capacity at National Weather Service (NWS) minor flood stage for
31 the North Platte River at North Platte gage. Hydraulic capacity flood stage has decreased over time,
32 likely because of a combination of sediment aggradation, low flushing flows, and vegetation
33 encroachment within the North Platte River. Current capacity at 6.0-foot minor flood stage is
34 approximately 1,560 cfs.
35

36 The Program has collaboratively worked with the City of North Platte and Lincoln County to conceive
37 three flood-proofing projects that are intended to reduce flooding impacts in the flood-prone area near
38 Highway 83 and North River Road in North Platte. These projects would generally reduce flooding by a)
39 channeling surface water flow towards the North Platte River and away from the flood-prone area, and b)
40 draining high ground water levels away from the flood-prone area. Design-level survey, engineering, and
41 permitting are needed to move these projects towards construction.
42

43 The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to complete
44 surveying, engineering, and permitting for three flood-proofing projects along the North Platte River in
45 North Platte, Nebraska. The term Consultant shall be used throughout this document to describe both the
46 RFP Respondent providing the proposal and the Consultant (the successful Respondent) who would be
47 performing the work upon award of the project.
48



49 **II. PROJECT DESCRIPTION & SCOPE OF WORK**

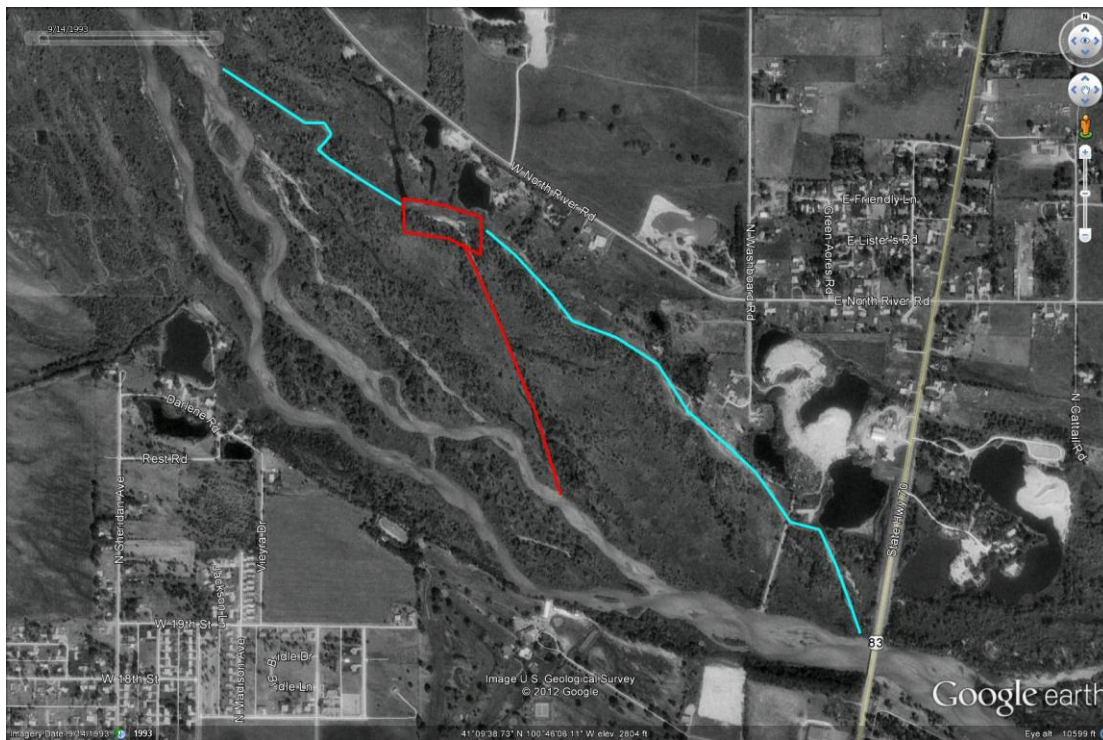
50 The Consultant will complete surveying, engineering, and permitting for three flood-proofing projects
51 along the North Platte River just north of the City of North Platte near the Highway 83 Bridge. A brief
52 description of each of the three projects is provided below, and tasks to be completed for each of the
53 projects are identified. There shall be no site visits during proposal preparation because of land access
54 issues. A virtual site tour will be provided during the pre-proposal meeting described in **Section VI**.

56 Re-Activation of the State Channel

57 The ‘State Channel’ was created by the Nebraska Department of Roads (NDOR) around 1970 to direct
58 flow in the ‘North River Road Channel’ into the ‘State Channel’ and towards the North Platte River
59 (Figure 1). A berm along the east side of the channel was created to direct flow into the State Channel. A
60 1993 aerial photo shows a sandy area at the head of the State Channel (red box in Figure 1), suggesting
61 that the berm was breached at this location in the early 1990s. Breaching the berm effectively cut off the
62 State Channel, and resulted in flow continuing east in the North River Road Channel towards the flood-
63 prone properties along North River Road.

65 Re-activation of the State Channel would direct high flows from the North River Road Channel into the
66 State Channel, reducing flood impacts to properties along North River Road. Partial re-activation of the
67 State Channel was achieved in May 2012 through disking at the head of the State Channel, with flow
68 naturally clearing disked material and diverting into the State Channel. Flow distribution between the
69 State Channel and the North River Road Channel could be controlled with installation of a check structure
70 and small culvert. The culvert would allow a small amount of flow to continue east in the North River
71 Road channel without flooding North River Road properties, and high flows could be diverted back to the
72 North Platte River via the State Channel.

73



74

75 **Figure 1. September 1993 Aerial Photo Showing State Channel (red) and North River Road Channel (blue)**



76

77 The following tasks will be completed for the State Channel re-activation flood-proofing project:

- 78 • Survey approximately 2,500 feet of the State Channel. Slope of the channel will be surveyed.
79 Additionally, 3 cross-sections will be surveyed: 1 near the head of the channel, 1 about midway
80 between down the channel, and 1 near the mouth of the channel.
- 81 • Survey the area at the head of the State Channel to provide enough data to supplement existing
82 Program LiDAR data to design a low-flow control structure in the existing North River Road
83 Channel, and a flow diversion to the State Channel. Objective will be to divert most of the flow to the
84 State Channel, and allow a small flow to continue down the North River Road Channel. Four cross-
85 sections will be completed at the head of the State Channel.
- 86 • Survey will be completed using a survey-grade, real-time, kinematic, Global Positioning System
87 (RTK-GPS) with signal referenced to the North American Datum of 1983 (NAD 1983) and vertically
88 to the North American Vertical Datum of 1988 (NAVD 1988).
- 89 • Coordinate survey site access with all potentially affected property owners prior to completing
90 survey.
- 91 • Based on flow criteria to be provided by ED Office staff, Consultant will design flow control and
92 check structures intended to allow a small amount of flow to continue in its current path to the North
93 River Road Channel, and the majority of flow to be diverted to the existing State Channel.
- 94 • Design will include earthwork calculations, with the objective of a balanced cut and fill project.
- 95 • Determine flow characteristics at the range of flows for the State Channel. Determine flow depth,
96 slope, width, and velocity for the State Channel at a variety of flows to be provided by the EDO
97 Office based on the existing Program 1D hydraulic model.
- 98 • Based on flow characteristics from previous bullet point, Consultant will provide recommendations
99 on any necessary modifications to the State Channel and existing berm.
- 100 • Provide design-level plans and specifications, and design-level engineer's cost estimate for re-
101 activation of State Channel.
- 102 • Identify preliminary construction easements locations and dimensions.
- 103 • Complete State Channel Re-Activation design memo, to include survey data and cross-section plots,
104 design drawings for flow control and check structures, earthwork quantities including cut and fill
105 amounts, and detailed cost estimates.

106

107 Gravel Pond Outlet

108 Effective use of an existing natural drainage near North River Road (yellow line in Figure 2) could reduce
109 flooding from high ground water levels. The drainage slopes to the east, crosses under Highway 83 via an
110 existing culvert, and flows to a gravel pond east of Highway 83. There is no existing outlet on the gravel
111 pond, and a new outlet would prevent flooding problems from simply being shifted from the North River
112 Road area to the gravel pond.

113

114 The location of the outlet would be chosen based on a) optimal pond water surface elevation to prevent
115 flooding at the gravel pond, and b) ability to drain water towards the North Platte River. The outlet would
116 include a check (e.g., flap gate) to prevent North Platte River water from flowing into the gravel pond
117 during high river stage. A pump may also be needed near the outlet, which would be used to lower the
118 pond water surface during high river stage when the outlet may not be effective. A potential outlet
119 location is shown as the orange line in Figure 2, and was based on a field reconnaissance by the ED
120 Office.

121



122

123 **Figure 2. 2010 Aerial Photo with Proposed Gravel Pond Outlet/Pump (orange) and Existing Drainage**
124 **(yellow)**

125

126 The following tasks will be completed for the Gravel Pond Outlet flood-proofing project:

- 127 • Survey approximately 1,500 feet of the potential outlet area to determine accurate slope.
128 Additionally, 3 cross-sections will be surveyed at the southern end of the ponds to determine an
129 appropriate location for an outlet.
- 130 • Survey will be completed using a survey-grade, real-time, kinematic, Global Positioning System
131 (RTK-GPS) with signal referenced to the North American Datum of 1983 (NAD 1983) and vertically
132 to the North American Vertical Datum of 1988 (NAVD 1988).
- 133 • Coordinate site access with all potentially affected property owners prior to completing survey.
- 134 • Design flowrate into pond by inlet culvert.
- 135 • Design culvert capable of maintaining maximum pond water surface elevation (WSE) (to be provided
136 by ED Office), while not allowing flow from the river back to the pond.
- 137 • Determine potential need for pond water pump based on range of river stage and maximum pond
138 WSE (to be provided by ED Office).
- 139 • Design will include earthwork calculations, with the objective of a balanced cut and fill project.
- 140 • Provide design-level plans and specifications, and design-level engineer's cost estimate for gravel
141 pond outlet and/or pump
- 142 • Identify preliminary easements locations and dimensions.
- 143 • Provide design-level plans and specifications, and design-level engineer's cost estimate for Gravel
144 Pond Outlet.



- Complete Gravel Pond Outlet design memo, to include survey data and cross-section plots, design drawings, and detailed cost estimates.

Whitehorse Creek Drainage
The effectiveness of an existing road ditch along the north side of North River Road and East Hall School Road has been minimized as a result of about 12 driveways west of Highway 83. Culverts were not installed under the driveways, and as a result high ground water is trapped behind the driveways and cannot drain effectively to the east via the existing road ditch.

The objective of the Whitehorse Creek Drainage alternative would be to drain high ground water to the east via the existing road ditch and east to the North Platte River via Whitehorse Creek. The 0.25-mile of road ditch west of Highway 83 and the 1.5-mile of road ditch east of Highway 83 may also need to be cleaned of debris (orange line in Figure 3). There may be a high point along the road ditch delineating the drainage boundary between the Whitehorse Creek and North Platte River basins. As a result, the existing road ditch will be surveyed and limited road ditch excavation and/or installation of a small pipe may be needed to optimize ditch flow to the east.

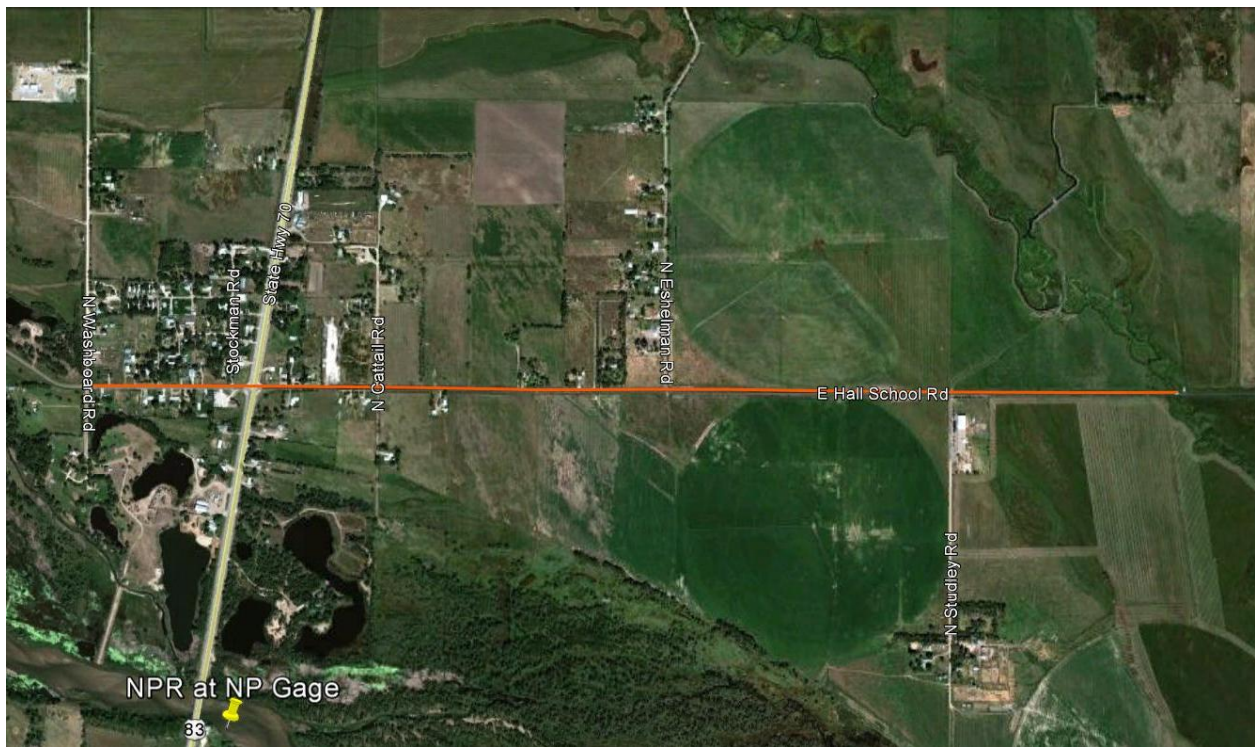


Figure 3. Whitehorse Creek Drainage

- The following tasks will be completed for the Whitehorse Creek Drainage flood-proofing project:
- Survey approximately 10,000 feet of the road ditch along north side of North River Road and East Hall School Road from about 1,500 feet west of Highway 83 to about 8,500 feet east of Highway 83 to Whitehorse Creek.



- 169 • Survey will be completed using a survey-grade, real-time, kinematic, Global Positioning System
170 (RTK-GPS) with signal referenced to the North American Datum of 1983 (NAD 1983) and vertically
171 to the North American Vertical Datum of 1988 (NAVD 1988).
- 172 • Coordinate site access with all potentially affected property owners prior to completing survey.
- 173 • Design culverts for approximately 10 driveways along the north side of North River Road between
174 Washboard Road and Highway 83.
- 175 • Determine need for additional culverts and/or rehab of existing road ditch along north side of Hall
176 School Road between Highway 83 and Whitehorse Creek.
- 177 • Calculate flow rate for final Whitehorse Creek Drainage based on culvert design, ditch slope, and
178 recommended ditch rehab (if necessary).
- 179 • Provide design-level plans and specifications, and design-level engineer’s cost estimate for
180 Whitehorse Creek drainage.
- 181 • Identify preliminary easements locations and dimensions.
- 182 • Provide design-level plans and specifications, and design-level engineer’s cost estimate for
183 Whitehorse Creek Drainage.
- 184 • Complete Whitehorse Creek Drainage design memo, to include survey data and cross-section plots,
185 design drawings, and detailed cost estimates.
- 186

187 Permitting of Flood-Proofing Projects

188 The following tasks will be completed for each of the three flood-proofing projects described above:

- 189 • Determine which permits will be needed to complete each flood-proofing project. May include: 404
190 permit from Corps of Engineers, and City and County permits required for working in the floodplain.
- 191 • Complete wetlands inventories as necessary for permitting of the three flood-proofing projects.
- 192 • Coordinate necessary meetings with agencies responsible for issuing required permits.
- 193 • Attend public meeting for permitting (if needed).
- 194 • Complete permit applications, and make revisions as necessary according to agency and public
195 comments.
- 196

197 **III. PROJECT BUDGET**

198 An estimated project budget should be submitted in the proposal, on a not-to-exceed time and expense
199 basis for the work to be completed. A final budget will be established as part of the Project Scoping and
200 Kickoff and will depend upon the budget estimate provided in the proposal for the selected Consultant.

201

202 Proposals will be evaluated on criteria described in **Section VI** below, including understanding of the
203 objectives of the project, qualifications of the team members, and clarity/content of project schedule,
204 scope, and budget. **The work will not be awarded based solely on a lowest cost basis.**

205

206 **IV. FIELD AND OFFICE EQUIPMENT**

207 Potential Consultants will own or acquire all field and office equipment and software required to
208 complete the work described in this RFP.

209

210 **V. CONTRACT TERMS**

211 The selected Consultant will be retained by: Nebraska Community Foundation
212 PO Box 83107
213 Lincoln, NE 68501
214



215 Proposal should indicate whether the Consultant agrees to the contract terms, as outlined in the attached
216 Program’s Consultant Contract (Attachment B), or provides a clear description of any exceptions to the
217 terms and conditions.

218
219 The term of the contract will be for a period beginning in July 2012 and terminating in December 2013.
220 Contracted services will be performed on a time and material not to exceed basis. Under the final
221 contract, written Notice to Proceed from the ED will be required before works begins. All work will be
222 contingent on availability of Program funding.

223
224 **VI. SUBMISSION REQUIREMENTS**
225 All interested parties having experience providing the services listed in this RFP are requested to submit a
226 proposal.

227
228 *Instructions for Submitting Proposals*

229 One electronic copy of your proposal must be submitted in PDF format to Steve Smith at
230 smiths@headwaterscorp.com no later than 12:00 p.m. (noon) Central time on Thursday, July 19, 2012.
231 Maximum allowable proposal PDF size is 8MB, and proposals are to be limited to a total of 50 pages or
232 less. A proposal is late if received any time after 12:00 p.m. Central time and will not be eligible for
233 consideration.

234
235 Questions regarding the information contained in this RFP should be submitted to Steve Smith at
236 smiths@headwaterscorp.com. A list of compiled Consultant questions and responses will be maintained
237 on the Program web site (www.PlatteRiverProgram.org) in the same location as this RFP solicitation.

238
239 *RFP Schedule*

240 The ED Office expects to complete the selection process and award the work by approximately August 2,
241 2012. The following table represents the RFP schedule (**note that all times are Central Standard**
242 **Time**):

243

Description	Date	Time (Central)
Issue RFP	June 29, 2012	NA
Pre-proposal meeting (mandatory)	July 10, 2012	8:00 AM
Last day for respondents to submit questions regarding the RFP	July 16, 2012	12:00 PM
Proposals due from respondents	July 19, 2012	12:00 PM
Evaluation of proposals	July 20 to July 30, 2012	
Award of Work	On or before August 2, 2012	
Start of Work	Approximately August 3, 2012	
Completion of Work	Approximately December 31, 2013	

244
245 *Pre-Proposal Meeting*
246 A mandatory pre-proposal meeting of interested parties will be held on July 10, 2012 from 8:00 to 9:00
247 a.m. Central Time in North Platte for the purpose of familiarizing the respondents with the scope of work
248 and requirements included herein before submitting a response to this RFP. Please email Steve Smith
249 (smiths@headwaterscorp.com) for the meeting information along with a list of people from your party
250 expected to join the meeting by 12:00 p.m. Central time on July 5, 2012.

251



252 The meeting will include a brief overview by the ED Office regarding the objectives of the project, the
253 scope of services, and the timeline. A virtual tour of the site conditions will be given in order to provide
254 the Consultant information for proposal preparation. The virtual site tour is in lieu of an actual site visit,
255 and there shall be no actual site visits because of land access issues. It is the Consultant's responsibility,
256 while at the pre-proposal meeting, to ask questions necessary to understand the RFP so the respondent can
257 submit a proposal that is complete and in accordance with RFP requirements. There shall be no
258 conference call dial-in information or meeting minutes distributed by the ED Office.

259

260 Proposal Content

261 Proposals should respond to the following general topics:

262

263 1) **Executive summary** that presents a brief firm overview that condenses and highlights the contents of
264 the proposal in such a way as to provide a broad understanding of the Consultant's qualifications and
265 proposal.

266

267 2) **Project understanding** that demonstrates the Consultant understands project goals and objectives
268 and identifies issues critical to project success.

269

270 3) **Project approach** that documents how the Consultant would organize and execute the scope of work
271 detailed in this RFP and provides project team organization, resumes, and responsibilities and
272 specifies which team members will work on each specific task.

273

274 4) **Qualifications and project experience** relevant to this project including the involvement/role of the
275 proposed team in those projects. Be clear which team members will work on specific tasks outlined
276 in the Project Approach and focus on those team members' qualifications specific to assigned task.

277

278 5) **Schedule** for completing the tasks identified in the project approach. Include potential constraints or
279 challenges based on the tasks described above.

280

281 6) **Compensation** for services to complete the project for the term of the contract – see Section III above
282 for additional details. Assumptions used must be clearly stated and a total estimated cost must be
283 included. Consultant must specify the estimated number of labor hours for each team member,
284 billable rate and estimated direct expenses (e.g., travel), and total project cost to complete the each
285 task/subtask detailed herein and Consultant's other recommended or optional tasks.

286

287 7) **Conflict of interest statement** addressing whether or not any potential conflict of interest exists
288 between this project and other past or on-going projects, including any projects currently being
289 conducted for the Program.

290

291 8) **Description of insurance** shall be provided with the proposal. Proof of insurance will be required
292 before a contract is issued. Minimum insurance requirements are described in the attached Program's
293 Consultant Contract (Attachment B).

294

295 9) **Acceptance of the terms and conditions** as outlined in the attached Program's Consultant Contract,
296 or clear description of any exceptions to the terms and conditions.

297

298

299



300 Criteria for Evaluating Proposals

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

- 303
- 304 1. Understanding of the overall objectives of the project and approach to meeting those objectives and
305 addressing critical project tasks and issues.
 - 306
 - 307 2. Consultant's project budget (**Section III**) to complete the scope of work described in **Section II**.
308 Although cost will be a selection criterion, the work will not be awarded solely on a lowest cost basis.
309
 - 310 3. Qualifications and the relevant experience of the proposed project team members.
 - 311
 - 312 4. Clarity and content of the project schedule, scope, and budget.
 - 313

314 Award Notice

315 After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal
316 Selection Panel will select a Consultant. That firm will negotiate with the ED Office to establish a fair
317 and equitable contract. If an agreement cannot be reached, a second firm will be invited to negotiate and
318 so on. If the Program is unable to negotiate a mutually satisfactory contract with a Consultant, it may, at
319 its sole discretion, cancel and reissue a new RFP.

320

321 Program Perspective

322 The Program GC has the sole discretion and reserves the right to reject any and all proposals received in
323 response to this RFP and to cancel this solicitation if it is deemed in the best interest of the Program to do
324 so. Issuance of this RFP in no way constitutes a commitment by the Program to award a contract, or to
325 pay Consultant's costs incurred either in the preparation of a response to his RFP or during negotiations,
326 if any, of a contract for services. The Program also reserves the right to make amendments to this RFP by
327 giving written notice to Consultants, and to request clarification, supplements, and additions to the
328 information provided by a Consultant.

329

330 By submitting a proposal in response to this solicitation, Consultants understand and agree that any
331 selection of a Consultant or any decision to reject any or all responses or to establish no contracts shall be
332 at the sole discretion of the Program. To the extent authorized by law, the Consultant shall indemnify,
333 save, and hold harmless the Nebraska Community Foundation, the states of Colorado, Wyoming, and
334 Nebraska, the Department of the Interior, members of the GC, and the ED Office, their employees,
335 employers, and agents, against any and all claims, damages, liability, and court awards including costs,
336 expenses, and attorney fees incurred as a result of any act or omission by the Consultant or its employees,
337 agents, sub-Consultants, or assignees pursuant to the terms of this project. Additionally, by submitting a
338 proposal, Consultants agree that they waive any claim for the recovery of any costs or expenses incurred
339 in preparing and submitting a proposal.

Attachment A
PRRIP 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 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: 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

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

Administrative Point of Contact (Consultant):

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

Admin. Point of Contact (Program):

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

Media Point of Contact (Program):

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

Technical Point of Contact (Consultant):

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

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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

Diane M. Wilson
Chief Financial and Administrative Officer

Date

[CONSULTANT]

[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.

C. **SCOPE OF SERVICES**

**EXHIBIT “B”
BUDGET**

**EXHIBIT “C”
HOURLY RATE AND REIMBURSABLE EXPENSES
PRICE SCHEDULE 2010**