



**REQUEST FOR PROPOSAL**

**Platte River Recovery Implementation Program  
Grassland Vegetation Monitoring Design and Implementation RFP**

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

**February 27, 2013**



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**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM  
REQUEST FOR PROPOSALS**

**SUBJECT:** Grassland Vegetation Survey Design and Monitoring

**REQUEST DATE:** February 27, 2013

**PRE-PROPOSAL MEETING:** March 15, 2013

**CLOSING DATE:** March 22, 2013

**POINT OF CONTACT:** David Baasch  
Headwaters Corporation  
(308) 390-0456  
[baaschd@headwaterscorp.com](mailto:baaschd@headwaterscorp.com)

**I. OVERVIEW**

The Platte River Recovery Implementation Program (Program) was initiated on January 1, 2007 between Nebraska, Wyoming, Colorado, and the Department of the Interior (DOI) 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. Program participants have reached an agreement for participation in the First Increment of the Program for the period from 2007 through 2019.

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

The Program’s long-term goal is to improve and maintain the associated habitats. This goal includes: 1) improving and maintaining migrational habitat for whooping cranes and reproductive habitat for least terns and piping plovers; 2) reducing the likelihood of future listings of other species found in this area; and 3) testing the assumption that managing flow in the central Platte River also improves the pallid sturgeon’s lower Platte River habitat. The DOI and states commit to achieving the following objectives by the end of the First Increment of the Program: protecting, restoring where appropriate, and maintaining at least 10,000 acres of habitat in the central Platte River area between Lexington and Chapman, Nebraska. The Program’s management objectives are to: 1) improve survival of whooping cranes during migration; 2) improve least tern and piping plover production; 3) avoid adverse impacts on pallid sturgeon in the Lower Platte River; and 4) within overall objectives 1-3, provide benefits to non-target listed species and non-listed species of concern and reduce likelihood of future listing.

As outlined in the Program’s Land Plan, the initial focus of the acquisition process has been on obtaining interests in and protecting wet meadow and channel habitat between Lexington and



45 Chapman, Nebraska which are suitable for development into “habitat complexes.” A “habitat  
46 complex” consists of wet meadows, channel areas, and buffers. “Channel area” is the portion of  
47 the river that conducts flow and is bounded on either side by stable banks or permanent islands  
48 with vegetation that obstructs view. At low flows it includes interconnected small channels and  
49 exposed sand or gravel bars and non-permanent islands. “Wet meadows” are areas with a  
50 generally level or low-lying undulating surface consisting of a mosaic of swales with wetland  
51 soils and vegetation and ridges with upland native or restored grasslands. “Buffer” is used to  
52 shield wet meadow or channel habitat areas from potential disturbances and may include an  
53 extended wet meadow or channel area, upland grassland, pasture, hay land, cropland, palustrine  
54 wetland, woodland, managed sandpits, or a combination of these and other compatible land  
55 features. In developing parcel-specific management plans, the Program selects restoration,  
56 maintenance and other management measures believed to provide benefit to the target species or  
57 that do not harm or may benefit other Program “species of concern,” when such activities are  
58 consistent with the needs of the target species. Management activities conducted on Program  
59 owned or managed grassland or wet meadow habitat areas generally include, but are not limited  
60 to grazing, haying, prescribed burns, and tree and noxious weed removal.

61

62 The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to  
63 provide technical services in support of the development and implementation of a vegetation  
64 monitoring protocol on Program owned or managed grassland and wet meadow habitat areas.  
65 The scope of services includes the development and implementation of a vegetation monitoring  
66 protocol that will provide the Program an inventory of the vegetation communities and plant  
67 species compositions on all Program owned or managed grassland and wet meadow habitat  
68 areas. The term Consultant shall be used throughout this document to describe both the RFP  
69 Respondent providing the proposal and Consultant (the successful Respondent) who would be  
70 performing the work upon award of the project.

71

## 72 **II. PROJECT DESCRIPTION**

73 In 2007, the Program began acquiring and securing land through management agreements along  
74 the central Platte River. Much of the 3,629 acres of grassland or wet meadow area that will be  
75 monitored in 2013 was grassland when acquired; however, some parcels have recently been  
76 converted from agricultural cropland to grassland. Program owned and managed grasslands  
77 were acquired or secured to provide benefits to whooping cranes and increase whooping crane  
78 use along the central Platte River and as such, are managed to ensure a portion of these  
79 properties provide short- structured grassland vegetation during the spring (March-April) and fall  
80 (October-November) whooping crane migration seasons. Management for this purpose,  
81 however, is believed to have the potential to result a shift in vegetation communities and/or plant  
82 species composition over time.

83

84



### 85 III. SCOPE OF WORK

86 The Consultant will be responsible for the development and implementation of a vegetation  
87 monitoring protocol that will provide the Program an inventory of the vegetation communities  
88 and plant species compositions on Program owned or managed grassland habitat areas. General  
89 Consultant services to be completed for this RFP are as follows:

90

#### 91 1) Protocol Development

- 92 • Develop a Vegetation Monitoring Protocol that will provide the Program an inventory of  
93 the vegetation communities (mapped) and plant species compositions on Program owned  
94 or managed grassland and wet meadow habitat areas.
- 95 • The Vegetation Monitoring Protocol should contain sufficient detail to allow suitably  
96 skilled ecologists to implement the protocol and obtain comparable results.

#### 97 2) Vegetation Monitoring

- 98 • Implement the Vegetation Monitoring Protocol on Program owned or managed grassland  
99 habitat areas during 2013.

#### 100 3) Reporting

- 101 • Develop an annual summary report that includes parcel-specific maps of vegetation  
102 communities as well as detailed accounts of species occurrence and abundance within the  
103 areas sampled.

104 **This contract will be on a one year basis, with the option to renew, re-compete, or cancel at**  
105 **the discretion of the Program.**

106

107 Vegetation monitoring conducted within the scope of this project will be conducted on all  
108 Program owned or managed grassland or wet meadow habitat areas identified in Attachment 1  
109 and delineated in Attachment 2. The objectives for vegetation monitoring include:

- 110 • Objective 1: Inventory natural vegetation communities and plant species composition on  
111 Program owned or managed grassland and wet meadow areas.
  - 112 ○ Scale – All Program owned or managed grassland areas specified in Attachment 1  
113 and delineated in Attachment 2.
  - 114 ○ Focus – Vegetation communities and general plant species composition
  - 115 ○ Timeline – 25 June – 15 July, 2013
  - 116 ○ Reference – Terrestrial Ecological Systems and Natural Communities of  
117 Nebraska (Version IV – March 9, 2010)
- 118 • Objective 2: Identify invasive/noxious vegetation and Program species of concern on  
119 Program owned or managed grassland areas.
  - 120 ○ Scale – All Program owned or managed grassland areas specified in Attachment 1  
121 and identified in Attachment 2.
  - 122 ○ Timeline – 25 June – 15 July, 2013
  - 123 ○ Reference – Nebraska state listed noxious weeds and Program species of concern  
124



125 **IV. PROJECT BUDGET**

126 An estimated project budget should be submitted in the proposal. Proposals will be evaluated  
127 based on project design and completeness, Consultant qualification, and cost. A final scope of  
128 work and project budget will be negotiated prior to commencement of work.

129

130 **V. CONTRACT TERMS**

131 The selected Consultant will be retained by:

132

133 Nebraska Community Foundation

134 PO Box 83107

135 Lincoln, NE 68501

136

137 Proposal should indicate whether the Consultant agrees to the contract terms as outlined in the  
138 attached Program's Consultant Contract (Attachment 3), or provide a clear description of any  
139 exceptions to the terms and conditions.

140

141 The term of the contract will be for a period beginning approximately April 1, 2013 and  
142 terminating December 31, 2013 with an option to renew at the sole discretion of the GC.

143 Contracted services will be performed on a time and material not to exceed basis. Under the  
144 final contract, written Notice to Proceed from the Executive Director will be required before  
145 works begins. All work will be contingent on availability of Program funding.

146

147 **VI. SUBMISSION REQUIREMENTS**

148 All interested parties having experience providing the services listed in this RFP are requested to  
149 submit a proposal.

150

151 *Instructions for Submitting Proposals*

152 One paper copy and one electronic (PDF) copy of your proposal must be submitted to David  
153 Baasch at the Program office in Kearney Nebraska *no later than 5:00 p.m. Central time on*  
154 *March 22, 2013*. Maximum allowable proposal PDF size is 8MB, and proposals are to be  
155 limited to a total of 50 pages or less. A proposal is late if received by the office any time after  
156 5:00 p.m. Central time and will not be eligible for consideration.

157

158 Questions regarding the information contained in this RFP should be submitted to David Baasch  
159 at [baaschd@headwaterscorp.com](mailto:baaschd@headwaterscorp.com). A list of compiled Consultant questions and responses will  
160 be maintained on the Program web site ([www.PlatteRiverProgram.org](http://www.PlatteRiverProgram.org)) in the same location as  
161 this RFP solicitation.

162

163

164 RFP Schedule

165 The ED Office expects to complete the selection process and award the work by approximately  
166 April 1, 2013. The following table represents the RFP schedule:  
167

Description	Date	Time (Central)
Issue RFP	February 27, 2013	NA
Pre-proposal meeting	March 15, 2013	2:00 PM
Last day for respondents to submit questions regarding the RFP	March 19, 2013	5:00 PM
Proposals due from respondents	March 22, 2013	5:00 PM
Evaluation of proposals	March 25, 2013 thru March 29, 2013	
Award of Work	On or before April 1, 2013	
Start of Work	On or before April 1, 2013	
Completion of Work	On or before December 31, 2013	

168

169 Pre-Proposal Meeting

170 A mandatory pre-proposal meeting of interested parties will be held on March 15, 2013 from  
171 2:00 to 3:00 p.m. Central Time via conference call for the purpose of familiarizing the  
172 respondents with the work scope and requirements included herein before submitting a response  
173 to this RFP. Please email David Baasch at [baaschd@headwaterscorp.com](mailto:baaschd@headwaterscorp.com) for the conference  
174 call dial-in information along with a list of people from your party expected to join in the pre-  
175 proposal conference call by 3:00 p.m. Central Time on March 14, 2013.

176

177 The meeting will include a brief overview by the ED Office regarding the objectives of the  
178 project, the scope of services, and the timeline. It is the respondent's responsibility, while at the  
179 pre-proposal meeting/conference call, to ask questions necessary to understand the RFP so the  
180 respondent can submit a proposal that is complete and according to the RFP requirements. No  
181 minutes will be distributed by the ED Office regarding the meeting.

182

183 Proposal Content

184 Proposals should respond to the following general topics:  
185

186

187 **1) Project understanding:** Discussion that demonstrates the Consultant's understanding of  
188 common vegetation sampling methods related to the Program's vegetation monitoring needs.  
189 Multiple sampling methods may be included in the proposal, but each approach will require a  
190 separate budget estimate.

191

192 **2) Project approach:** Discussion of the Consultant's approach to achieving the monitoring  
193 objectives of this project including critical issues, tasks, or considerations that may have  
194 shaped your approach. This section should not be a reiteration of the general scope of work  
195 presented in Section III of this RFP. That scope was provided as general guidance and  
196 original thinking and/or discussion of ways to meet Program objectives are welcome.



- 197 **3) Qualifications and project experience:** Provide project team organization,  
198 resumes/qualifications, and responsibilities. Identify relevant project experience including the  
199 involvement/role of the proposed team in those projects.  
200
- 201 **4) Schedule:** Identify general schedule and critical issues for tasks in 2013. Given that the final  
202 scope will be developed following Consultant selection, the schedule discussion should focus  
203 on critical tasks such as timing of protocol development, data collection, and report writing.  
204 The Program will need a minimum of 45 days to review and approve the monitoring protocol  
205 prior to implementation as well as a minimum of 30 days to review the draft and final reports  
206 so plan the schedule accordingly.  
207
- 208 **5) Conflict of interest statement** addressing whether or not any potential conflict of interest  
209 exists between this project and other past or on-going projects, including any projects  
210 currently being conducted for the Program.  
211
- 212 **6) Description of insurance** shall be provided with the proposal. Proof of insurance will be  
213 required before a contract is issued. Minimum insurance requirements are described in the  
214 attached Program’s Consultant Contract (Attachment A).  
215
- 216 **7) Acceptance of the terms and conditions** as outlined in the attached Program’s Consultant  
217 Contract, or clear description of any exceptions to the terms and conditions.  
218

219 Criteria for Evaluating Proposals

220 The Governance Committee appointed a Proposal Selection Panel that will evaluate all proposals  
221 and select a Consultant based on the following principal considerations:  
222

- 223 1. The Consultant’s understanding of the Program’s vegetation monitoring needs.  
224
- 225 2. The Consultant’s approach to meeting the objectives of this project including identification  
226 of and addressing critical project tasks and issues.  
227
- 228 3. Qualifications and the relevant experience of the proposed project team members and firm.  
229

230 Award Notice

231 After completing the evaluation of all proposals and, if deemed necessary, interviews, the  
232 Proposal Selection Panel will select a Consultant. That firm will negotiate with the ED Office to  
233 establish a fair and equitable contract. If an agreement cannot be reached, a second firm will be  
234 invited to negotiate and so on. If the Program is unable to negotiate a mutually satisfactory  
235 contract with a Consultant, it may, at its sole discretion, cancel and reissue a new RFP.  
236

237 Program Perspective

238 The Governance Committee of the Program has the sole discretion and reserves the right to  
239 reject any and all proposals received in response to this RFP and to cancel this solicitation if it is  
240 deemed in the best interest of the Program to do so. Issuance of this RFP in no way constitutes a





241 commitment by the Program to award a contract, or to pay Consultant’s costs incurred either in  
242 the preparation of a response to his RFP or during negotiations, if any, of a contract for services.  
243 The Program also reserves the right to make amendments to this RFP by giving written notice to  
244 Consultants, and to request clarification, supplements, and additions to the information provided  
245 by a Consultant.

246  
247 By submitting a proposal in response to this solicitation, Consultants understand and agree that  
248 any selection of a Consultant or any decision to reject any or all responses or to establish no  
249 contracts shall be at the sole discretion of the Program. To the extent authorized by law, the  
250 Consultant shall indemnify, save, and hold harmless the Nebraska Community Foundation, the  
251 states of Colorado, Wyoming, and Nebraska, the Department of the Interior, members of the  
252 Governance Committee, and the Executive Director’s Office, their employees, employers, and  
253 agents, against any and all claims, damages, liability, and court awards including costs, expenses,  
254 and attorney fees incurred as a result of any act or omission by the Consultant or its employees,  
255 agents, sub-Consultants, or assignees pursuant to the terms of this project. Additionally, by  
256 submitting a proposal, Consultants agree that they waive any claim for the recovery of any costs  
257 or expenses incurred in preparing and submitting a proposal.

258

## 259 **VII. AVAILABLE INFORMATION**

260 The following pertinent Program-related documents can be accessed from the Program web site  
261 ([www.PlatteRiverProgram.org](http://www.PlatteRiverProgram.org)):

262

- 263 • *Platte River Recovery Implementation Program, Final Program Document.* October 24,  
264 2006.
- 265 • *Platte River Recovery Implementation Program, Attachment 3, Adaptive Management Plan.*  
266 October 24, 2006.
- 267 • *Platte River Recovery Implementation Program, Attachment 4, Land Plan.* December 7,  
268 2005.



## **Attachment 1**

List of Program owned or managed grassland areas to be surveyed

Map	Site	Acres	Tentative Management Plan for 2013
1	Cook Hay Meadow	61	Hay after July 15
1	Dyer Grassland	125	Potential burn in spring 2013; no grazing tenant identified; evaluate success/failure of 2010 broadcast seeding
2	CWR North 1 & 2	81	Reduced stocking rate for 2013 (not yet set); grazing period is typically May 1 - October 15
2	CWR East Loyd Island	252	Reduced stocking rate for 2013 (not yet set); grazing period is typically May 1 - October 15
2	CWR East	92	Grazing period is typically February - April
2	Morse N	166	4-pasture rotation with CWR SW and Morse SW & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	Morse Hay N	12	Hay after July 15
2	Morse Middle	135	4-pasture rotation with CWR SW and Morse N & SW. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	Morse Hay S	44	Hay after July 15; potential spring 2013 Rx Fire; potential late season haying
2	Morse Crop	30	Broadcast seeded in winter of 2011 with local ecotype mix; potential spring 2013 Rx Fire; potential late season haying; need to evaluate success/failure of 2011 broadcast seeding
2	Morse SW	153	4-pasture rotation with CWR SW and Morse N & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	CWR SW	128	4-pasture rotation with Morse N, SW, & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	CWR NW	145	Season long grazing from April 15- August 15; 60 AU's?
2	CWR NE	150	Season long grazing from April 15- October 15; 30 AU's?

\* Maps of each property are included in Attachment 2

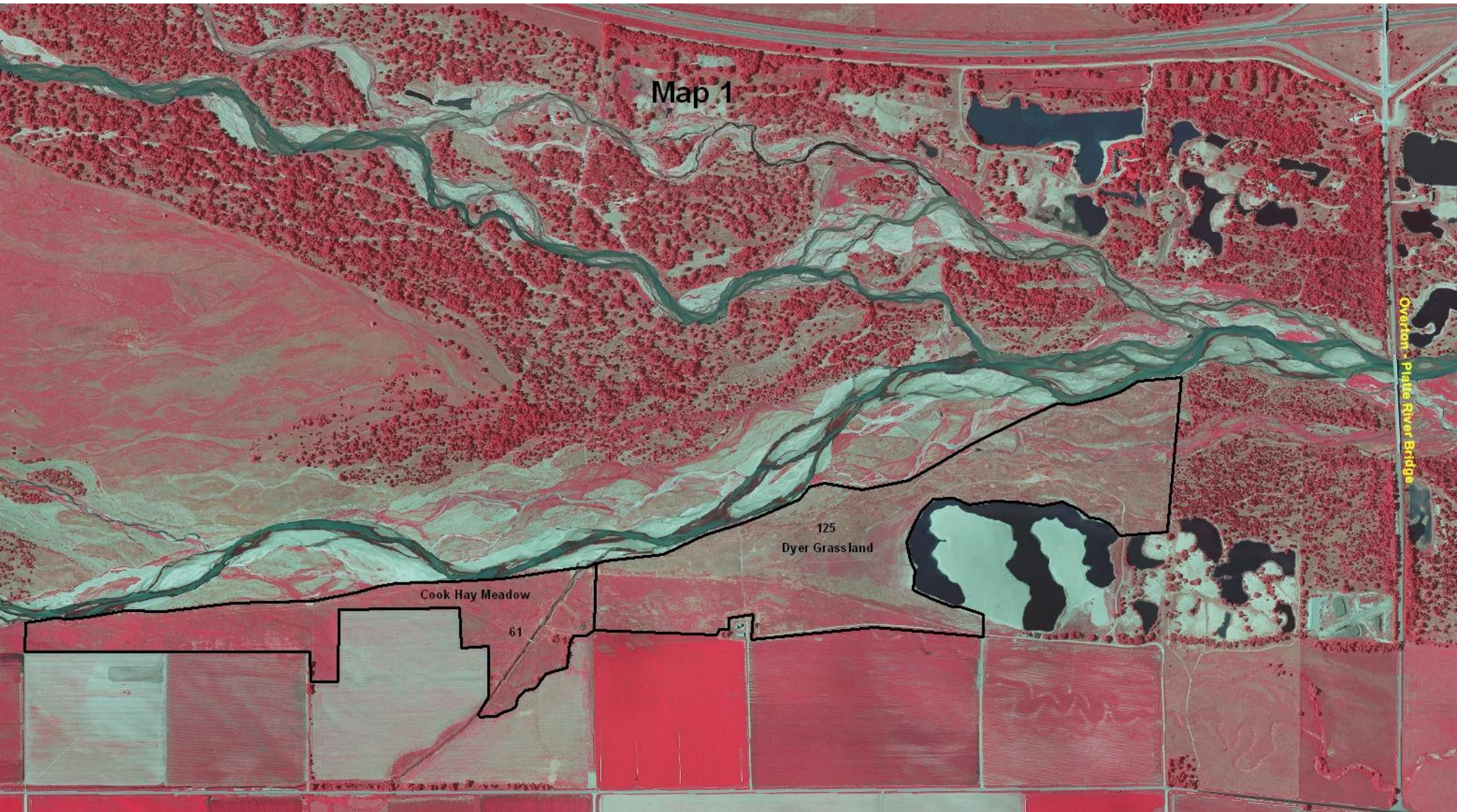
Map	Site	Acres	Tentative Management Plan for 2013
3	Johns North Wet Meadow	381	Continue with May 1- September 30 grazing; potential to reduce stocking rate; potential burn in spring 2013
3	Johns South Wet Meadow	182	Continue with May 1 - September 30 grazing; potential to reduce stocking rate; potential burn in spring 2013
3	Sullwald Hay meadow	36	Hay after July 15; potential burn in spring 2013
3	McCormick North Island	34	Defer late spring and summer. Graze 1 month- heavy (Sep 15- Oct 15) or spilt into 2, 2 week grazing periods in early spring and late fall.
3	McCormick South Meadow	42	Defer late spring and summer. Graze 1 month- heavy (Sep 15- Oct 15) or spilt into 2, 2 week grazing periods in early spring and late fall.
4	WY South Meadow	118	Season-long grazing May 1 - September 30
4	Hostetler Crop	222	Broadcast seeded in winter of 2011 with commercial mix; hayed in late Fall of 2012; potential spring 2013 Rx Fire; potential late season haying; evaluate success/failure of 2011 broadcast seeding
5	Binfield North Meadow	223	Season long grazing from May 1- October 15; Reduced stocking from 2012 not yet set
5	Binfield North Hay Meadow	66	Hay after July 15
5	Binfield South Hay Meadow	30	Hay after July 15
5	Binfield South Meadow	57	Season long grazing from May 1- October 15; Potentially reduce stocking from 2012
5	Binfield East Meadow	179	Season long grazing from May 1- October 15; Potentially reduce stocking from 2012; Potential burn in spring 2013
5	Binfield West Meadow	361	Season long grazing from May 1- October 15; Reduced stocking from 2012 not yet set; potential burn in spring 2013
5	Binfield West Hay Meadow	124	Hay after July 15

**28 Properties – 3629 Acres**



## **Attachment 2**

Maps of Program owned or managed grassland areas to be surveyed



Map 1

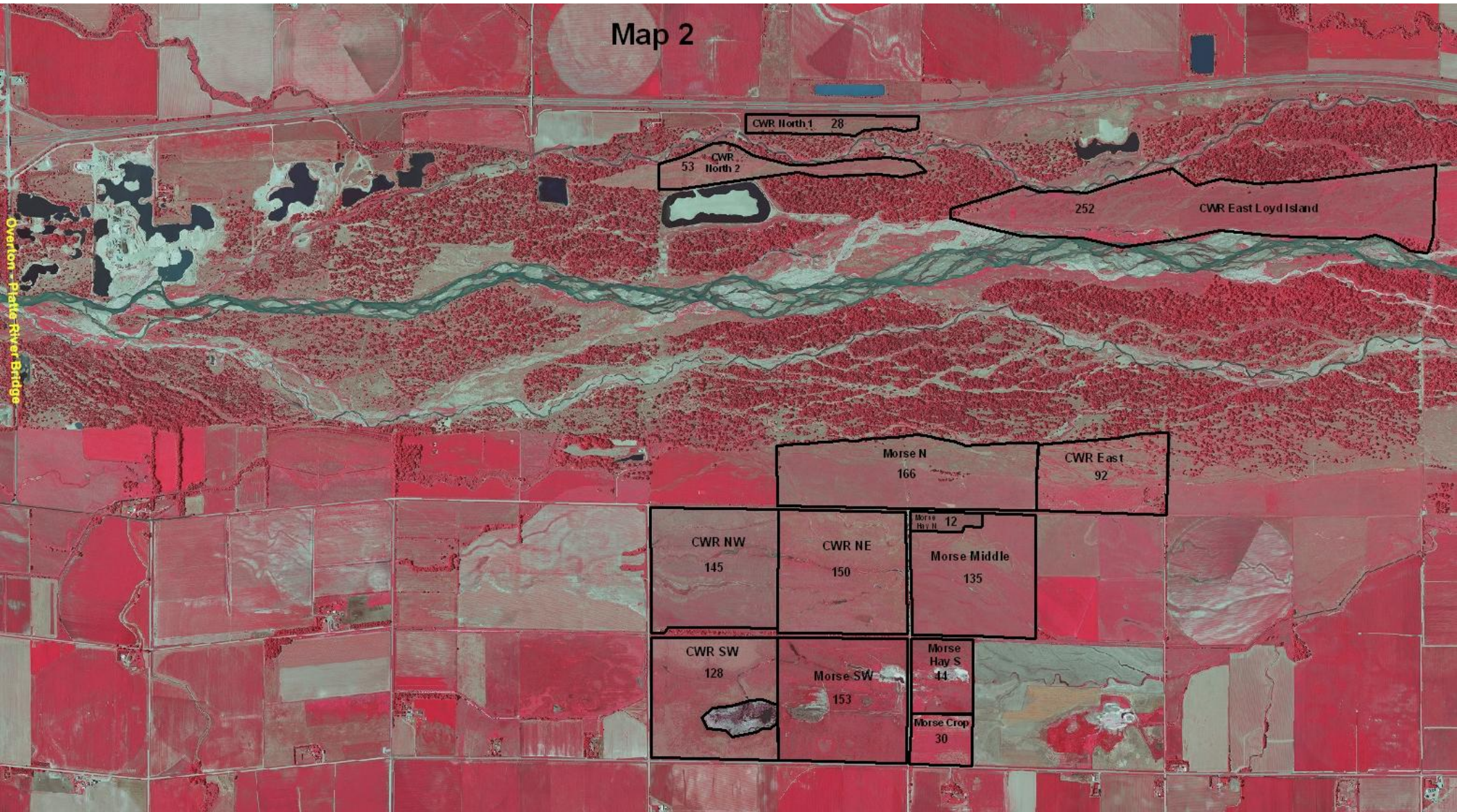
Cook Hay Meadow

61

125  
Dyer Grassland

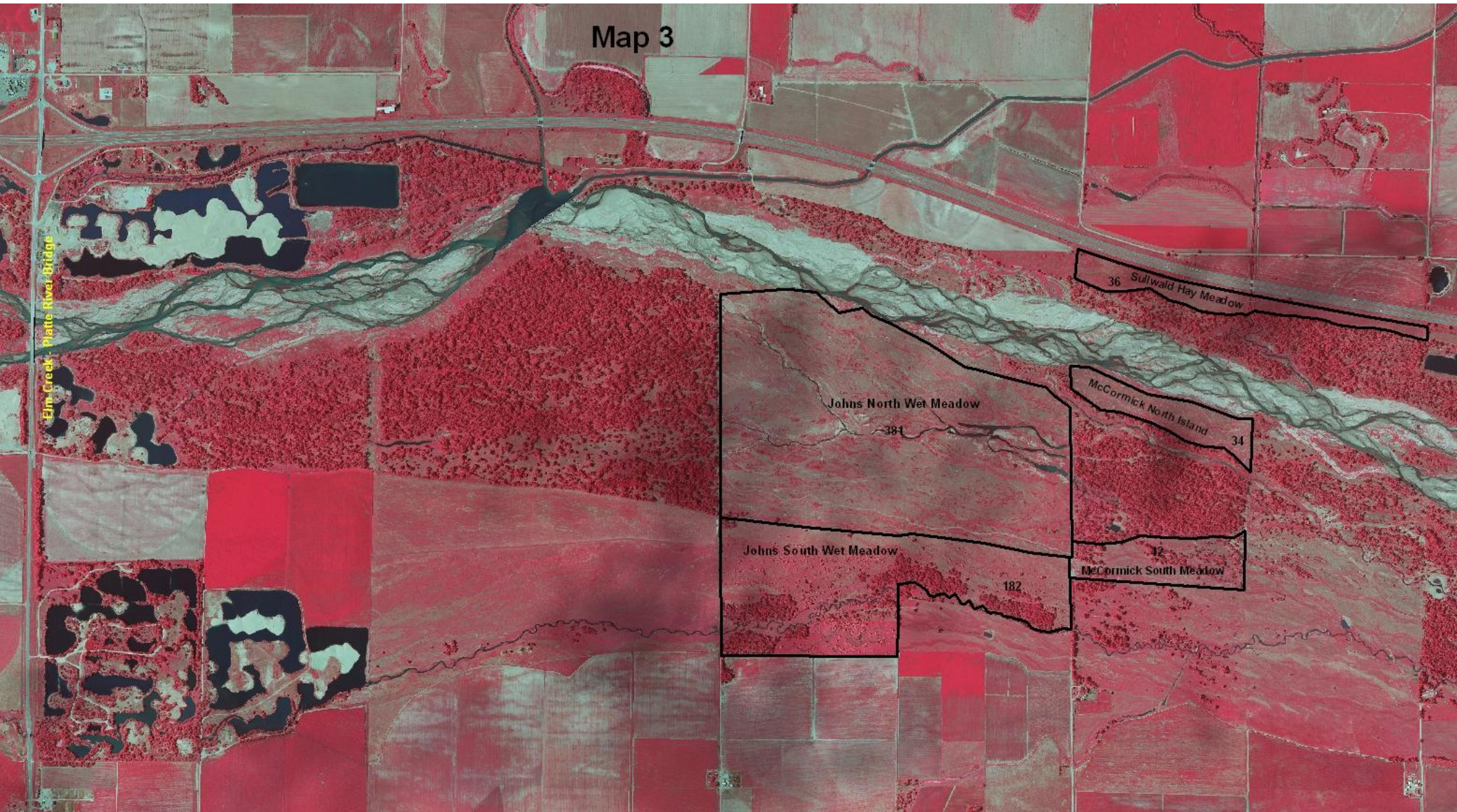
Overtort - Platte River Bridge

# Map 2



Map 3

Elm Creek - Platte River Bridge



Johns North Wet Meadow

384

Johns South Wet Meadow

182

McCormick North Island

34

McCormick South Meadow

42

Sullwald Hay Meadow

36



Map 4

Hostetter Cropland Conversion  
222

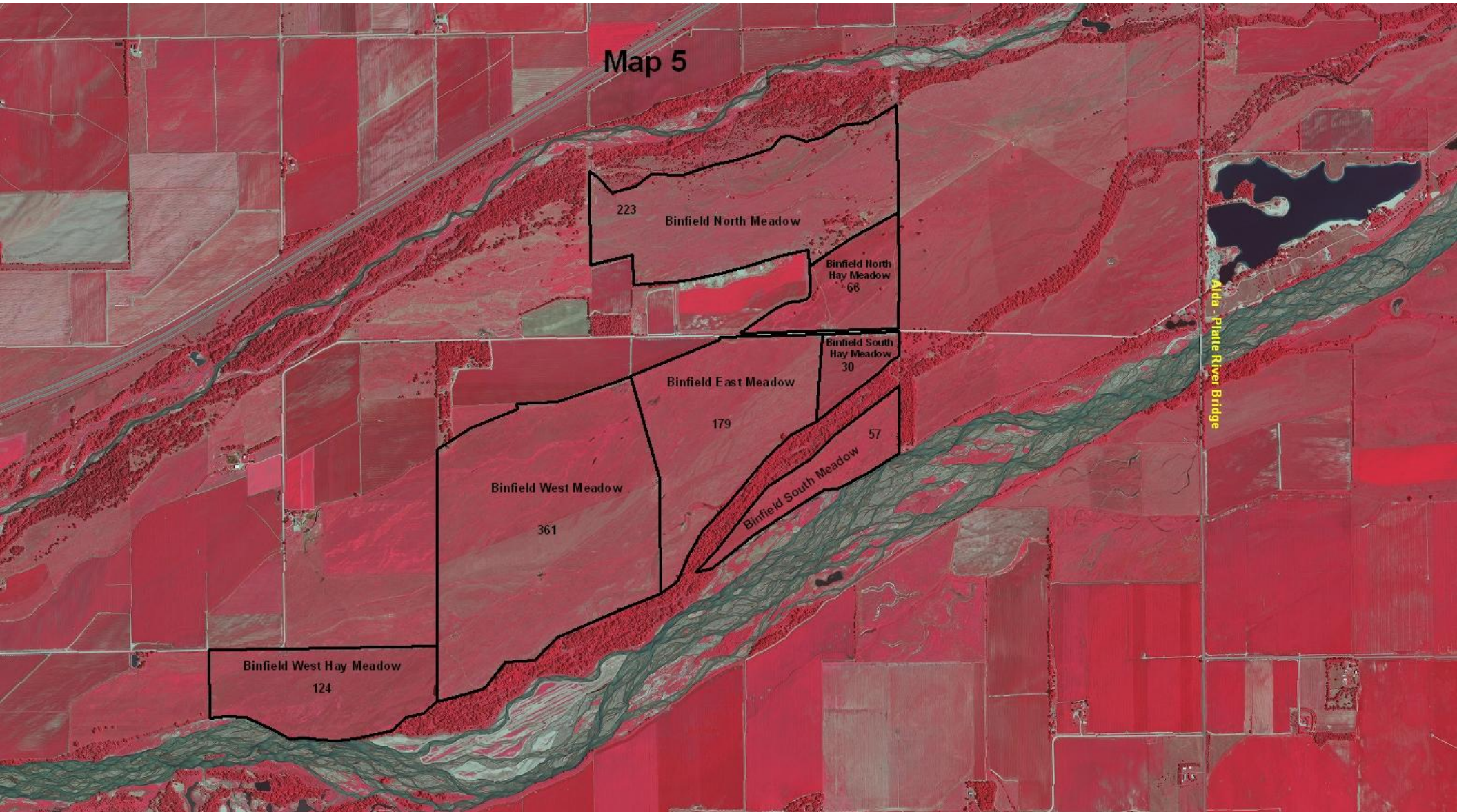
Wyoming  
South Meadow  
118

Kearney - Platte River Bridge

HWY 10 - Platte River Bridge



# Map 5



Alda - Platte River Bridge



## **Attachment 3**

### 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**

\_\_\_\_\_  
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.

## **SCOPE OF SERVICES**

**EXHIBIT “B”  
BUDGET**

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