



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

1
2
3 **SUBJECT:** 2022 Whooping Crane Aerial Survey Flights
4 **CLOSING DATE:** February 1, 2022 – 5:00 pm central time
5 **POINT OF CONTACT:** Mallory Jaymes
6 Headwaters Corporation
7 4111 4th Ave, Suite 6
8 Kearney, NE 68845
9 (308) 380-1384
10 jaymesm@headwaterscorp.com
11

12 **I. OVERVIEW**

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

19 A Governance Committee (GC) has been established that reviews, directs, and provides
20 oversight for activities undertaken during the Program. The GC is comprised of one
21 representative from each of the three states, three water user representatives, two representatives
22 from environmental groups, and two members representing federal agencies. Headwaters
23 Corporation serves as the Executive Director’s Office of the Program. Program staff are located
24 in Nebraska and Colorado and are responsible for assisting in carrying out the various Program-
25 related activities.
26

27 Whooping crane monitoring has been collected biannually by the Program since 2007 to measure
28 whooping crane use of the associated habitat reach (AHR) to determine if the program is meeting
29 its target species objectives. The GC submits this Request for Bids (RFB) to solicit bids from
30 contractors to provide aircraft and pilot(s) for spring and fall whooping crane monitoring seasons
31 in Calendar Year 2022.
32

33 **II. PROJECT DESCRIPTION**

34 This scope of work set forth in this RFP includes one spring and one fall monitoring season in
35 which two Program employees will be flown daily by the contractor’s aircraft and pilot on set
36 transects along the Platte River in search of whooping cranes. The entire search area stretches
37 from Lexington, NE to Chapman, NE and will be split in half and flown by two separate aircraft
38 simultaneously each morning during the monitoring seasons. The west half stretches from
39 Lexington, NE to Hwy 10. The east half stretches from Hwy 10 to Chapman, NE. Contractors
40 can bid on one side or both sides of the search area. In the event a contractor makes the lowest
41 bid on both sides, but only has the means to fly one side, they can pick their side of preference.
42
43



44 The monitoring season schedules are as follows:

45

46 Spring: March 6, 2022 – April 29, 2022

47

48 Fall: October 9, 2022 – November 15, 2022

49

50

51 **III. SCOPE OF WORK**

52 The Program is requesting bids to provide aircraft and pilot(s) for monitoring flights as described
53 below:

54

- 55 • Aircraft and pilot must be available every morning for the duration of each monitoring
56 season.
- 57 • Flights will be initiated from the Grand Island and Kearney airports 45 minutes before
58 sunrise and monitoring will begin at their transect origin 30 minutes prior to sunrise and will
59 last a duration of about 2 hours.
- 60 • Aircraft must seat a minimum of 2 passengers.
- 61 • Flights will be flown 750 feet above ground level at approximately 100 mph unless
62 conditions (weather, avian species, etc.) dictate otherwise.
- 63 • Flights will proceed along predetermined transects with the river transect being flown east to
64 west and return transects west to east.
- 65 • Aircraft must be equipped with navigation equipment necessary to follow transects and
66 record miles flown.

67

68 **IV. PROJECT DURATION**

69 The Contractor under this agreement shall commence this work *March 6th, 2022* and continue
70 through *April 29th, 2022* for the spring period. Then commence work again in the fall from
71 *October 9, 2022* and continue through *November 15, 2022*. The start dates may be initiated
72 earlier, or the end dates extended in the event whooping cranes are known to be in the area.

73

74 **V. CONTRACT TERMS**

75 The selected contractor will be retained by:

76

77 Nebraska Community Foundation

78 PO Box 83107

79 Lincoln, NE 68501

80

81 The Contract form is attached as Exhibit A. It is understood that the Governance Committee
82 reserves the right to accept any bid that, in its judgment, is the best bid, and to waive any
83 irregularities in any bid.

84

85 *Costs incurred in response to this RFB will be the responsibility of the bidder. Neither the*
86 *Nebraska Community Foundation nor the Governance Committee will be liable for any costs*
87 *incurred by the bidder in the completion and submission of the bid.*



88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131

VI. SUBMISSION REQUIREMENTS

All interested parties having experience providing the services listed in this RFB are requested to submit a bid.

Instructions for Submitting Bids

One fully completed electronic copy of the attached Bid Form must be submitted in PDF format to Mallory Jaymes at jaymesm@headwaterscorp.com no later than 5:00 p.m. Central Time on Friday, February 1, 2022. A Bid is late if received any time after 5:00 p.m. Central Time and will not be eligible for consideration.

Additional Bid Form Information:

- 1) **Conflict of interest.** Initial if there is not any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.
- 2) **Suspension and Debarment.** Initial to verify that as a contractor you are not suspended or debarred from receiving federal funds. Contractor must provide Dun & Bradstreet (D-U-N-S) number or other means of identification in the U.S System for Award Management site (www.sam.gov) before a contract is issued.
- 3) **Description of insurance.** Initial that you understand that proof of insurance will be required and provided before a contract is issued. Minimum insurance requirements will include \$1,000,000 general liability per occurrence.

VII. CONTRACTOR SELECTION

Bids will be reviewed and the award made to the lowest cost bid(s) that conform to the specifications of this solicitation and is/are considered to provide the most value to the Program.

VIII. PROGRAM PERSPECTIVE

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

By submitting a bid in response to this solicitation, contractors understand and agree that any selection of a contractor or any decision to reject any or all responses or to establish no contracts shall be at the sole discretion of the Program. To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the Nebraska Community Foundation, the states of



132 Colorado, Wyoming, and Nebraska, the Department of the Interior, members of the GC, and the
133 ED Office, their employees, employers, and agents, against any and all claims, damages,
134 liability, and court awards including costs, expenses, and attorney fees incurred as a result of any
135 act or omission by the contractor or its employees, agents, subcontractors, or assignees pursuant
136 to the terms of this project. Additionally, by submitting a proposal, contractors agree that they
137 waive any claim for the recovery of any costs or expenses incurred in preparing and submitting a
138 proposal.

139

140 **IX. AVAILABLE INFORMATION**

141 A shapefile of the transects is available on the Program website (www.platteriverprogram.org) at
142 the same location as this RFB solicitation. A map of the flight transects can be found on the last
143 page of the Bid Form.

144



145
146
147
148
149
150
151
152
153
154
155

2022 WHOOPING CRANE FLIGHT BID FORM

PROJECT: 2022 Whooping Crane Aerial Surveys
CLOSING DATE: February 1, 2022 – 5:00 pm central time
CONTACT: Mallory Jaymes – Wildlife Biologist
Headwaters Corporation
4111 4th Ave, Suite 6
Kearney, NE 68845
jaymesm@headwaterscorp.com

Item No.	Description	Unit	Bid Unit Price
001	Aircraft	Hour	\$ _____
002	Pilot	Hour	\$ _____
003	Other- specify:	Hour	\$ _____

Note: Price requested are hourly rates for aircraft and pilot. Payment will be made on actual hours worked and expenses incurred.

Submitting Bid for: East Leg/West Leg/Both _____
Passengers Allowed Including Pilot _____
Pilots Available During the Monitoring Season _____
Aircraft Available During each Monitoring Season _____
Aircraft and Pilot Available Daily during each monitoring season (circle one) YES / NO

_____ Initial if there is not any potential conflict of interest that exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.

_____ Initial to verify that as a contractor you are not suspended or debarred from receiving federal funds.

172	Submitted by:	180	
173		181	
174		182	
175	_____	183	_____
176	(Company)	184	(Phone Number)
177		185	
178		186	
179	_____	187	_____
	(Individual - Print)		(Sign/Date)



Maps showing the daily alternating flight transects for both east and west contracts. The Platte River shown in blue is flow east to west and the return transects shown in green and red flow west to east.

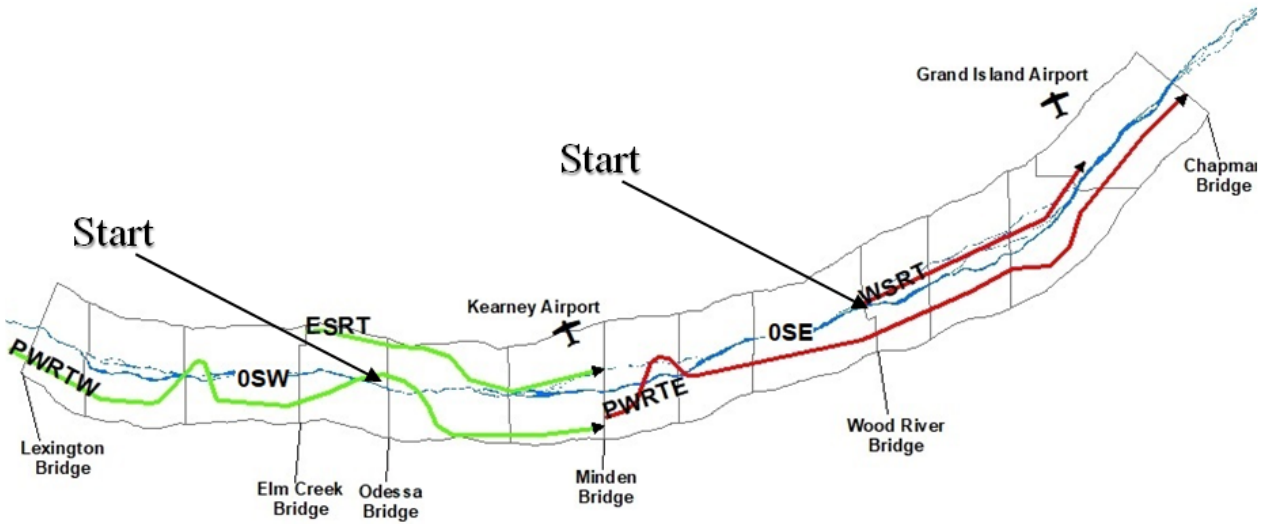
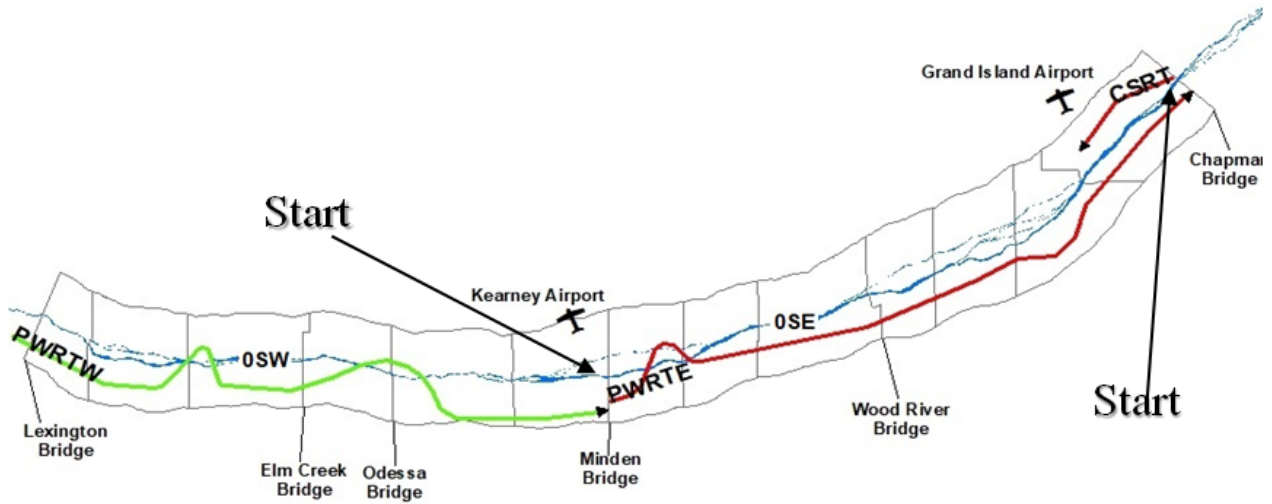




EXHIBIT A – CONTRACT TEMPLATE



190 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

191
192 **Contract between Nebraska Community Foundation, Platte River Recovery**
193 **Implementation Program, and XXXXXXXXXX.**

194
195 **Whooping Crane Monitoring Flights**

196
197
198 **1. Parties.** This Contract is made and entered into by and between Nebraska
199 Community Foundation (“**Foundation**”) of Lincoln, Nebraska, representing all signatories to the
200 Platte River Recovery Implementation Program (“**Program**”) and XXXXXXXXXX (“**Contractor**”).
201 The following persons are authorized to represent the parties through this Contract: Diane Wilson
202 of the Foundation; Jason Farnsworth of the **Program**; and XXXXXXXXXX of the **Contractor**.
203

204 **2. Purpose of Contract.** The purpose of this Contract is to allow the **Foundation**,
205 acting as the fiscal agent for the Governance Committee (GC) of the **Program**, to retain the services
206 of the **Contractor** to render certain technical or professional services hereinafter described in
207 connection with an undertaking to be financed by the **Program**, and to delegate the Executive
208 Director’s Office (“**ED Office**”) through its Executive Director or his designee the authority to
209 administer this Contract.
210

211 **3. Term of Contract and Required Approvals.** This Contract is effective when all
212 parties have executed it and shall remain in effect until November 15, 2022, or until the work
213 required is satisfactory completed, whichever occurs first. Work performed under this Contract
214 shall occur from *March 6, 2022* through *April 29, 2022* and *October 9, 2022* through *November*
215 *15, 2022*. Any extension of the contract term beyond November 15, 2022 must be in writing,
216 signed by both Parties in order to be valid.
217

218 If the **Contractor** has been delayed and as a result will be unable, in the opinion of the
219 **Program**, to complete performance fully and satisfactorily within this Contract period, the
220 **Contractor** may be granted an extension of time, upon submission of evidence of the causes of
221 delay satisfactory to the **Program**. An extension of the contract term must be in writing, signed by
222 both Parties in order to be valid.
223

224 **4. Payment.**

225
226 **A. Reimbursement of Expenses.** The **Program** agrees to pay the **Contractor**
227 an amount based on the approved hourly rate and reimbursable expenses depicted in Exhibit B,
228 attached to and incorporated by reference as part of this Contract, for the services described in
229 Exhibit A, attached to and incorporated by reference as part of this Contract. Total Payment under
230 this contract shall not exceed \$XXXXXX.
231

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



234
235 These unit prices are not to be exceeded unless authorized in writing by the **Program**. The contract
236 total amount is controlling, and is a ceiling price that contractor exceeds at its own risk. Payment
237 shall be made directly to the **Contractor**. The **Contractor** shall maintain hourly records of time
238 worked by its personnel to support any audits the **Program** may require. Billing reports shall be
239 submitted no more often than monthly for activities and costs accrued since the last billing report.
240 The **Contractor** shall use the billing form attached as Exhibit D.

241
242 **C. Billing Procedures.** The **Contractor** shall send billing reports for services
243 performed for the various tasks outlined in Exhibit A to the **ED Office** (address included below).
244 The Program’s Executive Director, upon receiving the billing report, will review the bill and
245 advance the invoice to the Bureau of Reclamation who will advise the **Foundation** of approval.
246 The **Foundation** will make payment of these funds directly to the **Contractor** within 30 days of
247 receiving notice of approval. Payments are due within 60 days after the billing date.

248
249 **Billing Point of Contact (Program):**
250 Mr. Jason Farnsworth, Executive Director
251 Platte River Recovery Implementation Program
252 Headwaters Corporation
253 4111 4th Avenue, Suite 6
254 Kearney, Nebraska 68845
255 Phone: (308) 237-5728
256 Fax: (308) 237-4651
257 Email: farnsworthj@headwaterscorp.com

258
259 **D. Withholding of Payment.**

260
261 (i) When the **Program** has reasonable grounds for believing that the **Contractor**
262 will be unable to perform this Contract fully and satisfactorily within the time fixed for
263 performance, then the **Program** may withhold payment of such portion of any amount otherwise
264 due and payable to the **Contractor** reasonably deemed appropriate to protect the **Program** against
265 such loss. These amounts may be withheld until the cause for the withholding is cured to the
266 **Program’s** satisfaction or this Contract is terminated pursuant to Section 8.U. Any amount so
267 withheld may be retained by the **Program** for such period as it may deem advisable to protect the
268 **Program** against any loss. This provision is intended solely for the benefit of the **Program** and no
269 person shall have any right against the **Program** or **Foundation** by reason of the **Program's** failure
270 or refusal to withhold monies. No interest shall be payable by the **Program** or **Foundation** on any
271 amounts withheld under this provision. This provision is not intended to limit or in any way
272 prejudice any other right of the **Program** or **Foundation**.

273
274 (ii) If a work element has not been completed by the dates established in Exhibit
275 A, the **Program** may withhold all payments beginning with the month following that date until
276 such deficiency has been corrected.

277



278 **E. Final Completion and Payment.** The final payment shall be made
279 upon acceptance of the final report, receipt of the final billing, and if applicable, execution of the
280 final contract amendment documenting the final contract amount.

281
282 **5. Responsibilities of Contractor.**

283
284 **A. Scope of Services.** The Contractor shall perform the specific services
285 required under this Contract in a satisfactory and proper manner as outlined in Exhibit A. If there
286 is any conflict between this Contract and the provisions of the specific requirements of Exhibit A,
287 the specific requirements shall prevail.

288
289 **B. Personnel.** All of the services required hereunder will be performed by the
290 Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified
291 and shall be authorized, licensed, or permitted under state law to perform such services, if state
292 law requires such authorization, license, or permit.

293
294 **C. Subcontracts.**

295
296 **(i) Approval Required for Subcontracts.** Any subcontractors and
297 outside associates or consultants required by the Contractor in connection with the services, work
298 performed or rendered under this Contract will be limited to such individuals or firms as were
299 specifically identified in the proposal and agreed to during negotiations or are specifically
300 authorized by the Program during the performance of this Contract. The Contractor shall submit
301 a list of the proposed subcontractors, associates or consultants; the scope and extent of each
302 subcontract; and the dollar amount of each subcontract prior to Contract execution to the Program
303 for approval. During the performance of the Contract, substitutions in or additions to such
304 subcontracts, associates, or consultants will be subject to the prior approval of the Program. The
305 Program approval of subcontractors will not relieve the Contractor from any responsibilities
306 outlined in this Contract. The Contractor shall be responsible for the actions of the subcontractors,
307 associates, and subconsultants.

308
309 **(ii) Billings for Subcontractors.** Billings for subcontractor, associates
310 or subconsultants services will not include any mark up. The subcontract costs will be billed to
311 the Program at the actual costs as billed to the Contractor. Subcontract costs will be documented
312 by attaching subcontractor billings to the Contractor's billing submittals.

313
314 **(iii) Copies of Subcontracts.** The Contractor shall provide to the
315 Program copies of each subcontractor contract immediately following execution with the
316 subcontractor. All subcontracts between the Contractor and a subcontractor shall refer to and
317 conform to the terms of this Contract. However, nothing in this Contract shall be construed as
318 making the Program a party to any subcontract entered between the Contractor and a subcontractor.

319
320 **(iv) Contracts for Subcontractors.** All subcontracts that Contractor
321 enters into shall include any applicable provisions and certifications required by 2 CFR



322 Part 200, including Appendix II thereto, and any other federal, state or local laws or
323 regulations.

324
325 (v) **Debarment and Suspension.** Contractor shall not enter into
326 subcontracts with any entity or individual that is suspended, debarred or otherwise excluded from
327 participation in the transaction covered by this Contract.

328
329 **D. Requests from the Program.** The Contractor shall be responsible and
330 responsive to the Program and the ED Office in their requests and requirements related to this
331 Contract.

332
333 **E. Reports, Maps, Plans, Models and Documents.** One (1) copy of maps,
334 plans, worksheets, logs, field notes or other documents prepared under this Contract, and one (1)
335 copy of each unpublished report prepared under this Contract shall be submitted to the Program.
336 If the Contractor writes or uses a computer program or spreadsheet as a part of this project, the
337 Contractor shall submit to the Program for approval all proposed program names and data formats
338 prior to beginning work on that task. All data shall be submitted to Program in written and digital
339 forms. Digital media shall be labeled by the Contractor to provide sufficient detail to access the
340 information on the media.

341
342 **F. Inspection and Acceptance.** All deliverables furnished by the Contractor
343 shall be subject to rigorous review by the ED Office prior to acceptance.

344
345 **6. Responsibilities of the Program.**

346
347 **A. Designated Representative.** The Executive Director of the Program shall
348 act as the Program's administrative representative with respect to the Contractor's service to be
349 performed under this Contract and shall have complete authority to transmit instructions, receive
350 information, and interpret and define the Program's policies and decisions with respect to services
351 covered by this Contract.

352
353 **B. Data to be Furnished to the Contractor.** All information, data, reports,
354 and maps as are available to the Program and necessary for the carrying out of the Scope of
355 Services set forth herein shall be furnished to the Contractor without charge and the ED Office
356 shall cooperate with the Contractor in every way possible in the carrying out of the project.

357
358 **C. Review Reports.** The ED Office shall examine all studies, reports,
359 sketches, opinions of construction costs, and other documents presented by the Contractor to the
360 Program and shall promptly render in writing the Program's decisions pertaining thereto within
361 the time periods specified in Exhibit A.

362
363 **D. Provide Criteria.** The ED Office shall provide all criteria and full
364 information regarding its requirements for the project.

365



366 7. Special Provisions.

367
368 A. **No Finder's Fees.** No finder's fee, employment agency fee, or other such
369 fee related to the procurement of this Contract shall be paid by either party.

370
371 B. **Publication.** It is understood that the results of this work may be available
372 to the Contractor for publication and use in connection with related work. Use of this work for
373 publication and related work by the Contractor must be conducted with full disclosure to and
374 coordination with the Program's Technical Point of Contact.

375
376 C. **Publicity.** Any publicity or media contact associated with the Contractor's
377 services and the result of those services provided under this Contract shall be the sole
378 responsibility of the Program. Media requests of the Contractor should be directed to the
379 Director of Outreach and Operations in the ED Office.

380
381 D. **Monitor Activities.** The Program shall have the right to monitor all
382 Contract-related activities of the Contractor and all subcontractors. This shall include, but not be
383 limited to, the right to make site inspections at any time, to bring experts and consultants on site
384 to examine or evaluate completed work or work in progress, and to observe all Contractor
385 personnel in every phase of performance of Contract-related work.

386
387 E. **Kickbacks.** The Contractor certifies and warrants that no gratuities,
388 kickbacks or contingency fees were paid in connection with this Contract, nor were any fees,
389 commissions, gifts, or other considerations made contingent upon the award of this Contract. If
390 the Contractor breaches or violates this warranty, the Program may, at its discretion, terminate this
391 Contract without liability to the Program, or deduct from the Contract price or consideration, or
392 otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

393
394 F. **Debarment and Suspension.** Contractor certifies by signing this Contract
395 that neither Contractor nor its principals are presently debarred, suspended, proposed for
396 debarment, declared ineligible or voluntarily excluded by any federal department or agency from
397 participation in the transaction covered by this Contract.

398
399 G. **Anti-Lobbying.** Contractor makes the representations set forth on the
400 Certification Regarding Lobbying, which is attached as Exhibit C and incorporated by reference
401 as part of this Contract. Contractor shall execute such Certification at the time of executing this
402 Contract.

403
404 H. **Office Space, Equipment, and Supplies.** The Contractor will supply its
405 own office space, equipment, and supplies.

406 8. General Provisions.

407 A. **Amendments.** Any changes, modifications, revisions or amendments to
408
409



410 this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated
411 by written instrument, executed and signed by all Parties to this Contract.

412
413 **B. Applicable Law/Venue.** The construction, interpretation and enforcement
414 of this Contract shall be governed by the laws of the State of Nebraska. The Courts of the State of
415 Nebraska shall have jurisdiction over this Contract and the parties.

416
417 **C. Assignment/Contract Not Used as Collateral.** Neither party shall assign
418 or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without
419 the prior written consent of the other party. The Contractor shall not use this Contract, or any
420 portion thereof, as collateral for any financial obligation, without the prior written permission of
421 the Program.

422
423 **D. Audit/Access to Records.** The Program, the Foundation and any of their
424 representatives shall have access to any books, documents, papers, and records of the Contractor
425 which are pertinent to this Contract. The Contractor shall, immediately upon receiving written
426 instruction from the Program or the Foundation, provide to the Foundation or any governmental
427 entity, independent auditor, accountant, or accounting firm, all books, documents, papers and
428 records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully
429 with the Foundation or any such governmental entity, independent auditor, accountant, or
430 accounting firm, during the entire course of any audit authorized by or required of the Program.

431
432 **E. Availability of Funds.** Each payment obligation of the Program is
433 conditioned upon the availability of funds and continuation of the Platte River Recovery
434 Implementation Program. If funds are not allocated and available for the continuance of the
435 services performed by the Contractor, the contract may be terminated by the Program at the end
436 of the period for which the funds are available. The Program shall notify the Contractor at the
437 earliest possible time of the services which will or may be affected by a shortage of funds. No
438 penalty shall accrue to the Program in the event this provision is exercised, and the Program shall
439 not be obligated or liable for any future payments due or for any damages as a result of termination
440 under this section. This provision shall not be construed to permit the Program to terminate this
441 Contract to acquire similar services from another party.

442
443 **F. Award of Related Contracts.** The Program may undertake or award
444 supplemental or successor contracts for work related to this Contract. The Contractor shall
445 cooperate fully with other contractors and the Program in all such cases.

446
447 **G. Certificate of Good Standing.** Contractor shall provide Certificate of
448 Good Standing verifying compliance with the unemployment insurance and workers'
449 compensation programs prior to performing work under this Contract.

450
451 **H. Compliance with Law.** The Contractor shall keep informed of and comply
452 with all applicable federal, state and local laws and regulations in the performance of this Contract.

453



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

458
459 **J. Conflicts of Interest**

460
461 (i) **Contractor** shall not engage in providing consultation to or
462 representation of clients, agencies or firms which may constitute a conflict of interest giving rise
463 to a disadvantage to the **Program** or a disclosure which would adversely affect the interests of the
464 **Program**. **Contractor** shall notify the **Program** of any potential or actual conflicts of interest arising
465 during the course of the **Contractor's** performance under this Contract. This Contract may be
466 terminated in the event a conflict of interest arises. Termination of the Contract will be subject to
467 a mutual settlement of accounts. In the event the contract is terminated under this provision, the
468 **Contractor** shall take steps to ensure that the file, evidence, evaluation and data are provided to the
469 **Program** or its designee. This does not prohibit or affect the **Contractor's** ability to engage in
470 consultations, evaluations or representation under agreement with other agencies, firms, facilities,
471 or attorneys so long as no conflict exists.

472
473 (ii) A conflict of interest warranting termination of the Contract
474 includes, but is not necessarily limited to, representing a client in a adversarial proceeding against
475 the Platte River Recovery Implementation Program, its signatories, boards, commissions, or the
476 Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of
477 prohibition or *quo warranto*.

478
479 **K. Entirety of Contract.** This Contract, consisting of eleven (11) pages,
480 Exhibit A, consisting of one (1) page, Exhibit B, consisting of one (1) page, and Exhibit C,
481 consisting of one (1) page represents the entire and integrated Contract between the parties and
482 supersedes all prior negotiations, representations, and agreements, whether written or oral.

483
484 **L. Force Majeure.** Neither party shall be liable for failure to perform under
485 this Contract if such failure to perform arises out of causes beyond the control and without the
486 fault or negligence of the nonperforming party. Such causes may include, but are not limited to,
487 acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight
488 embargoes, and unusually severe weather. This provision shall become effective only if the party
489 failing to perform immediately notifies the other party of the extent and nature of the problem,
490 limits delay in performance to that required by the event, and takes all reasonable steps to minimize
491 delays. This provision shall not be effective unless the failure to perform is beyond the control
492 and without the fault or negligence of the nonperforming party.

493
494 **M. Indemnification.** The **Contractor** shall indemnify and hold harmless the
495 **Foundation**, the **Program**, the **ED Office**, and their officers, agents, employees, successors and
496 assignees from any and all claims, lawsuits, losses and liability arising out of **Contractor's** failure
497 to perform any of **Contractor's** duties and obligations hereunder or in connection with the negligent



498 performance of Contractor’s duties or obligations, including but not limited to any claims,
499 lawsuits, losses or liability arising out of Contractor’s malpractice. The obligations of this
500 paragraph shall survive termination of this Contract.

501
502 **N. Independent Contractor.** The Contractor shall function as an independent
503 contractor for the purposes of this Contract, and shall not be considered an employee of the
504 Program, Foundation, or ED Office for any purpose. The Contractor shall assume sole
505 responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the
506 terms of this Contract, and shall be solely responsible for the payment of all federal, state and local
507 taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as
508 authorizing the Contractor or its agents and/or employees to act as an agent or representative for
509 or on behalf of the Foundation or the Program, or to incur any obligation of any kind on the behalf
510 of the Foundation or the Program. The Contractor agrees that no health/hospitalization benefits,
511 workers' compensation and/or similar benefits available to Foundation, Program, or ED Office
512 employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees
513 as a result of this Contract.

514
515 **O. Notices.** All notices arising out of, or from, the provisions of this contract
516 shall be in writing and given to the parties at the address provided under this Contract, either by
517 regular mail, facsimile, e-mail, or delivery in person. Notice is effective upon delivery.

518
519 **P. Notice and Approval of Proposed Sale or Transfer of the Contractor.**
520 The Contractor shall provide the Program with the earliest possible advance notice of any proposed
521 sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such
522 notice shall be provided in accordance with the notice provision of this Contract.

523
524 **Q. Ownership of Documents/Work Product/Materials.** All documents,
525 reports, records, field notes, data, samples, specimens, and materials of any kind resulting from
526 performance of this Contract are at all times the property of the Program.

527
528 **R. Patent or Copyright Protection.** The Contractor recognizes that certain
529 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other
530 similar restrictions, and warrants that no work performed by the Contractor or its subcontractors
531 will violate any such restriction.

532
533 **S. Proof of Insurance.** The Contractor shall not commence work under this
534 Contract until the Contractor has obtained the following insurance coverages and provided the
535 corresponding certificates of insurance:

536
537 **(i) Commercial General Liability Insurance.** Contractor shall provide
538 coverage during the entire term of the Contract against claims arising out of bodily injury, death,
539 damage to or destruction of the property of others, including loss of use thereof, and including
540 products and completed operations in an amount not less than One Million Dollars (\$1,000,000.00)
541 per claimant and One Million Dollars (\$1,000,000.00) per occurrence.



542
543 (ii) Business Automobile Liability Insurance. Contractor shall
544 maintain, during the entire term of the Contract, automobile liability insurance in an amount not
545 less than One Million Dollars (\$1,000,000.00) per occurrence. Coverage will include bodily injury
546 and property damage covering all vehicles, including hired vehicles, owned and non-owned
547 vehicles.

548
549 (iii) Workers' Compensation and Employers' Liability Insurance. The
550 Contractor shall provide proof of workers' compensation coverage. Contractor's insurance shall
551 include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars
552 (\$500,000.00) per employee for each accident and disease.

553
554 **T. Taxes.** The Contractor shall pay all taxes and other such amounts
555 required by federal, state and local law, including but not limited to federal and state income
556 taxes, social security taxes, workers' compensation, unemployment insurance and sales taxes.

557
558 **U. Termination of Contract.** This Contract may be terminated, without
559 cause, by the Program upon fifteen (15) days written notice. This Contract may be terminated
560 immediately for cause if the Contractor fails to perform in accordance with the terms of this
561 Contract. In the event of a termination, Program shall pay Contractor for all reasonable work
562 performed up to the effective date of the termination.

563
564 **V. Third Party Beneficiary Rights.** The parties do not intend to create in any
565 other individual or entity the status of third party beneficiary, and this Contract shall not be
566 construed so as to create such status. The rights, duties and obligations contained in this Contract
567 shall operate only between the parties to this Contract, and shall inure solely to the benefit of the
568 parties to this Contract. The provisions of this Contract are intended only to assist the parties in
569 determining and performing their obligations under this Contract.

570
571 **W. Time is of the Essence.** Time is of the essence in all provisions of the
572 Contract.

573
574 **X. Titles Not Controlling.** Titles of paragraphs are for reference only, and
575 shall not be used to construe the language in this Contract.

576
577 **Y. Waiver.** The waiver of any breach of any term or condition in this Contract
578 shall not be deemed a waiver of any prior or subsequent breach.

579



580 **9. Contacts.**

581
582 **Administrative Point of Contact (Foundation):**

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

Admin. Point of Contact (Program):

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

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

593 Mallory Jaymes, Wildlife Biologist
594 Platte River Recovery Implementation Prog.
595 Headwaters Corporation
596 4111 4th Avenue, Suite 6
597 Kearney, Nebraska 68845
598 Phone: (308) 237-5728
599 Fax: (308) 237-4651
600 Email: jaymesm@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

602 **Administrative Point of Contact (Contractor):**

603 XXXXXXXXXXXXXXX
604 XXXXXXXXXXXXXXX
605 XXXXXXXXXXXXXXX
606 XXXXXXXXXXXXXXX
607 XXXXXXXXXXXXXXX
608 XXXXXXXXXXXXXXX
609 XXXXXXXXXXXXXXX

Technical Point of Contact (Contractor):

SAME AS ADMIN POC

610
611
612
613
614 **THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**
615
616
617



618 **10. Signatures.** By signing this Contract, the undersigned certify that they have read
619 and understood it, that they have the authority to sign it, and that their respective Party
620 agrees to be bound by the terms of the Contract.
621

622
623

624 **NEBRASKA COMMUNITY FOUNDATION**

625
626
627

628 _____
Diane M. Wilson
629 Manager of Public/Private Partnerships

Date

630
631
632

633 XXXXXXXXXXXX

634
635

636 _____
XXXXXXXXXXXX

Date

637
638

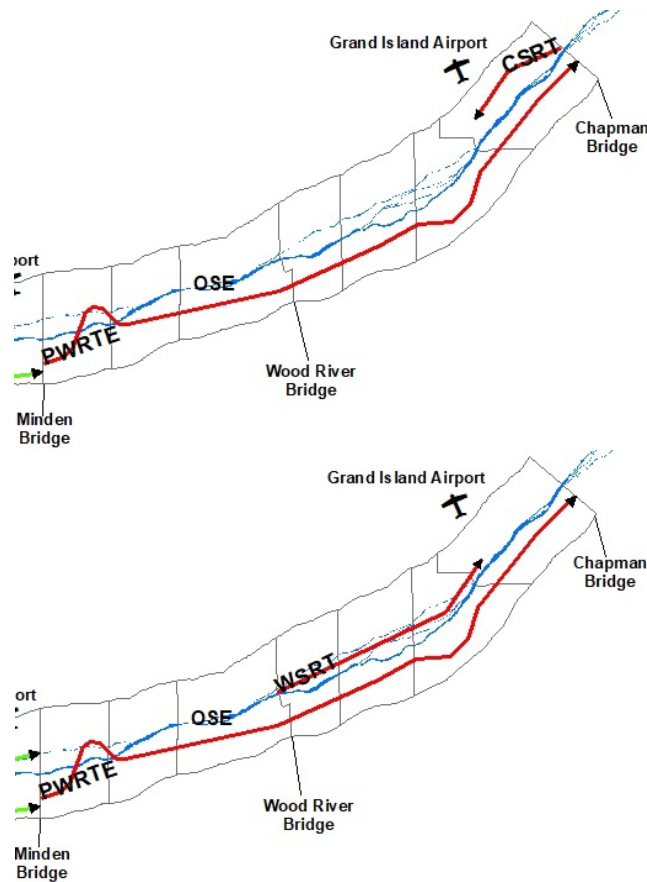


**EXHIBIT “A”
SCOPE OF SERVICES**

639
640
641
642
643
644
645
646
647
648
649
650
651
652

A. WORK DESCRIPTION

Activities in this project include providing a plane and pilot for use of flying program employees on the designated transects (shown below) to search for whooping cranes. Transects follow the Platte River between Chapman and Minden bridges every morning and then include a transect to return to the airport that alternates daily (shown in red). Deviations from transects can occur for purposes such as needs for positive identification of birds. Flights will occur from March 6th to April 29th and October 9th to November 15th. *Upon award of the contract, GPS coordinates for transects will be given to the contractor. Payment will be made on actual hours worked.*



655
656
657
658
659
660



661
662
663
664

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

Item No.	Description	Unit	Bid Unit Price
1	Aircraft	Hour	\$XXX
2	Pilot	Hour	\$XXX
3	Other-Specify	Hour	\$XXX

665
666
667
668



669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708

**EXHIBIT “C”
Certification Regarding Lobbying**

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

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

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

XXXXXXXXXXXX (“CONTRACTOR”)

By:

XXXXXXXXXXXX

Date