



REQUEST FOR PROPOSALS (RFP)

Expanded Recapture Reconnaissance Study

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

June 15, 2023



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**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP -or- PROGRAM)
REQUEST FOR PROPOSALS (RFP)**

SUBJECT: Expanded Recapture Reconnaissance Study
REQUEST DATE: June 15, 2023
PRE-PROPOSAL MEETING: June 29, 2023
CLOSING DATE: July 18, 2023
POINT OF CONTACT: Seth Turner
Headwaters Corporation
(720) 524-6115
turners@headwaterscorp.com

I. OVERVIEW

The Platte River Recovery Implementation Program (Program or PRRIP) is a collaborative effort initiated on January 1, 2007 between the states of Nebraska, Wyoming, and Colorado and the Department of the Interior to address endangered species issues in the central and lower Platte River basin. Program “target species” include the whooping crane, piping plover, interior least tern (now de-listed), and pallid sturgeon.

A Governance Committee (GC) was established that 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. Headwaters Corporation provides the Executive Director and staff for the Program, collectively known as the Executive Director’s Office (EDO). Program staff are located in Nebraska and Colorado and are responsible for assisting in carrying out various Program-related activities.

The Program and State of Nebraska¹ seek to optimize the use of excess flow diversions into existing groundwater recharge projects to reduce deficits to [target flows](#) at the [Platte River near Grand Island, NE](#) gage. Elwood Reservoir groundwater recharge, Phelps County Canal groundwater recharge, and Cottonwood Ranch broad-scale recharge (BSR) (see **Figure 1**) are projects that can store/recharge large volumes of water. However, these projects are inefficient at reducing deficits to target flows defined by the U.S. Fish and Wildlife Service (USFWS) because baseflow returns from groundwater recharge occur on timescales of years to decades and do not always coincide with the timing of target flow deficits or other Program objectives. The Program and State of Nebraska seek to improve project utility to get more near-term and objective-optimized benefit out of the water purchased for recharge.

Stakeholders are seeking to increase efficiency by investing in infrastructure that allows the Program and State of Nebraska to better control the timing and rate of surface and groundwater return flows to the Platte River. This could be accomplished through some combination of (1) an outlet from Elwood

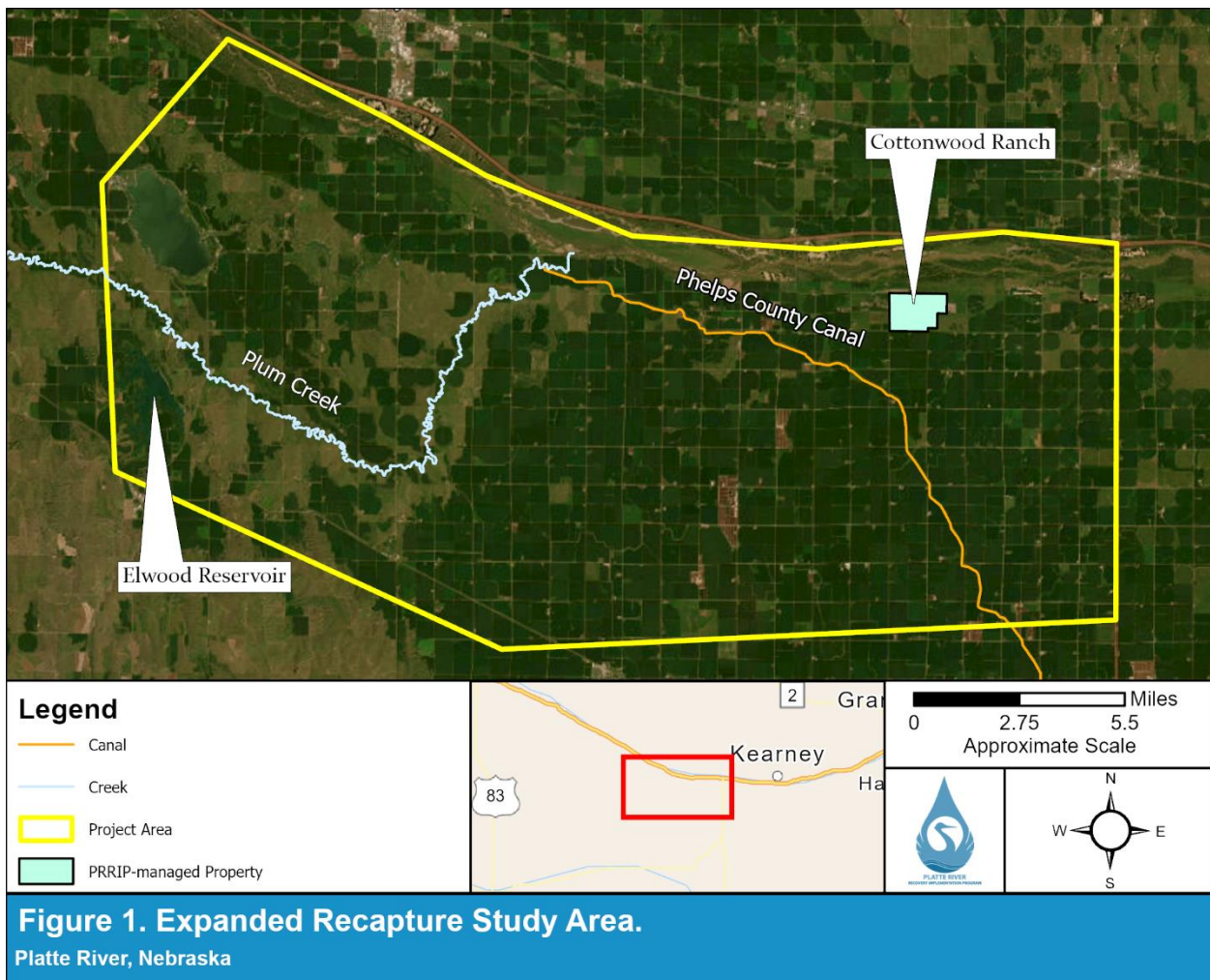
¹ Recharge capacity/operations in Elwood Reservoir and Phelps County Canal are split between the Program, the State of Nebraska, and the Tri-Basin Natural Resources District.

42 Reservoir to Plum Creek and (2) a wellfield to recapture groundwater and pump it into Plum Creek,
 43 groundwater drains and/or directly to the Platte River.

44
 45 *The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to provide*
 46 *engineering services to conduct a reconnaissance-level study to assess the feasibility, costs and benefits*
 47 *of different Elwood outlet and recapture wellfield configurations. The proposed Scope of Work is outlined*
 48 *in Section III of this RFP.*

49
 50 The term Consultant shall be used throughout this document to describe both potential RFP
 51 Respondents submitting a proposal and the successful Respondent performing the work upon award of
 52 the project.

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II. EXISTING PROGRAM RECHARGE AND RECAPTURE PROJECTS

Program water projects are evaluated in terms of capacity to reduce deficits (shortages) to USFWS target flows at Grand Island, NE. Groundwater recharge projects located south of the Platte River are



60 used by the Program, the State of Nebraska, and the Tri-Basin Natural Resources District (TBNRD) to
61 supplement baseflows of the Platte River by retiming flow from periods of excess (streamflow at Grand
62 Island > USFWS target flows) to periods of shortage (streamflow at Grand Island < USFWS target flows).
63 The Nebraska Department of Natural Resources (DNR) may declare excess flows available to divert into
64 recharge projects when streamflows are above USFWS targets at Grand Island **and** all existing water
65 rights are fulfilled, including instream flow water rights held by Central Platte Natural Resources District
66 (CPNRD) and Nebraska Game and Parks Commission (NGPC) at locations from Overton to Louisville.

67 Intentionally recharged water returns to the river channel as baseflow accretions at low rates over
68 periods of years to decades. These return flows are continuous, regardless of the current
69 excess/shortage status of the river at Grand Island. In this sense, recharge projects are considered to be
70 “uncontrollable.” While water that returns when there are not shortages to target flows still provides
71 benefits to the river and the Program’s target species, it does not count toward Program deficit-
72 reduction objectives. For recharge projects, normal and wet years present the most opportunities for
73 excess flow diversions and dry years are when deficit reductions are needed.

74 Existing projects involved in this expanded recapture study include (1) Elwood Reservoir groundwater
75 recharge, (2) Phelps County Canal groundwater recharge, and (3) Cottonwood Ranch broad-scale
76 recharge, all located south of the Platte River in Gosper and Phelps counties in central Nebraska.
77 Facilities owned and operated by the Central Nebraska Public Power and Irrigation District (CNPPID) are
78 used to convey water to these recharge projects, and CNPPID is the entity responsible for securing
79 annual permits from Nebraska DNR to divert excess flows for the purpose of groundwater recharge. The
80 State of Nebraska and TBNRD also utilize Phelps and Elwood for groundwater recharge and therefore
81 have a shared interest in the results of this study.

82 *Elwood Reservoir Groundwater Recharge*

83 Groundwater recharge in Elwood Reservoir for the Program began in May 2015, and excess flow
84 deliveries into Elwood averaged about 12,500 AF from 2015-2019. Deliveries since late 2019 were
85 limited due to both drought conditions and modified operations at Elwood while seepage issues near
86 the Pump Station Dam were diagnosed and an appropriate repair was designed. The Program has a
87 Water Service Agreement with CNPPID that reserves a minimum of 50% of Elwood Reservoir excess flow
88 diversions for the Program, up to a total of nearly 135,000 AF over the period 2023-2032. The remaining
89 allocation of Elwood Reservoir excess flow diversions is shared by the State of Nebraska and TBNRD.

90 The rate of seepage from Elwood Reservoir varies with the water level, but from May 2015-December
91 2021, seepage from Elwood for Program recharge was estimated at an average of about 22.6 AF/day. As
92 an example of the type of solutions envisioned from this study, at this rate about 8,250 AF could seep
93 into the underlying aquifer as recharge over the course of a year. With the anticipated average annual
94 diversions of about 13,500 AF, this would leave at least 5,250 AF of Program water that could potentially
95 be released from the reservoir each year through a new gravity outlet to Plum Creek. It is likely that the



96 balance of recharge and gravity release would be adjusted as needed to maximize deficit reductions at
97 Grand Island.

98 Releasing Program water from Elwood back to the river by surface conveyance would also allow
99 available storage capacity to be maximized each year, rather than carrying over thousands of acre-feet
100 from one year to the next while waiting for it to seep out as groundwater recharge. This may also help
101 to minimize evaporation losses. From 2015-2021, it is estimated that more than 6,000 AF of Program
102 water was lost to evaporation from Elwood Reservoir, representing more than 9% of the total excess
103 flow volume purchased by the Program for Elwood recharge during that time period.

104 *Phelps County Canal Groundwater Recharge*

105 The Program’s Phelps County Canal groundwater recharge project was initiated with a pilot study during
106 the 2011-2012 non-irrigation season. Operations were expanded to full-scale during 2012-2013, with
107 the canal checked at Mile Post (MP) 13.3 during this and all subsequent recharge periods. From 2011-
108 2021, Phelps recharge averaged nearly 3,200 AF per year based on excess flow diversions into the canal.
109 The Program has a Water Service Agreement with CNPPID that reserves a minimum of 75% of Phelps
110 County Canal excess flow diversions for the Program, up to a total of 50,000 AF over the period 2023-
111 2032. In the past, the other 25% share of Phelps County Canal excess flow diversions to MP 13.3 was
112 reserved for the State of Nebraska. The State of Nebraska and TBNRD also utilize the Phelps County
113 Canal below MP 13.3 for recharge and conveyance to other designated recharge areas.

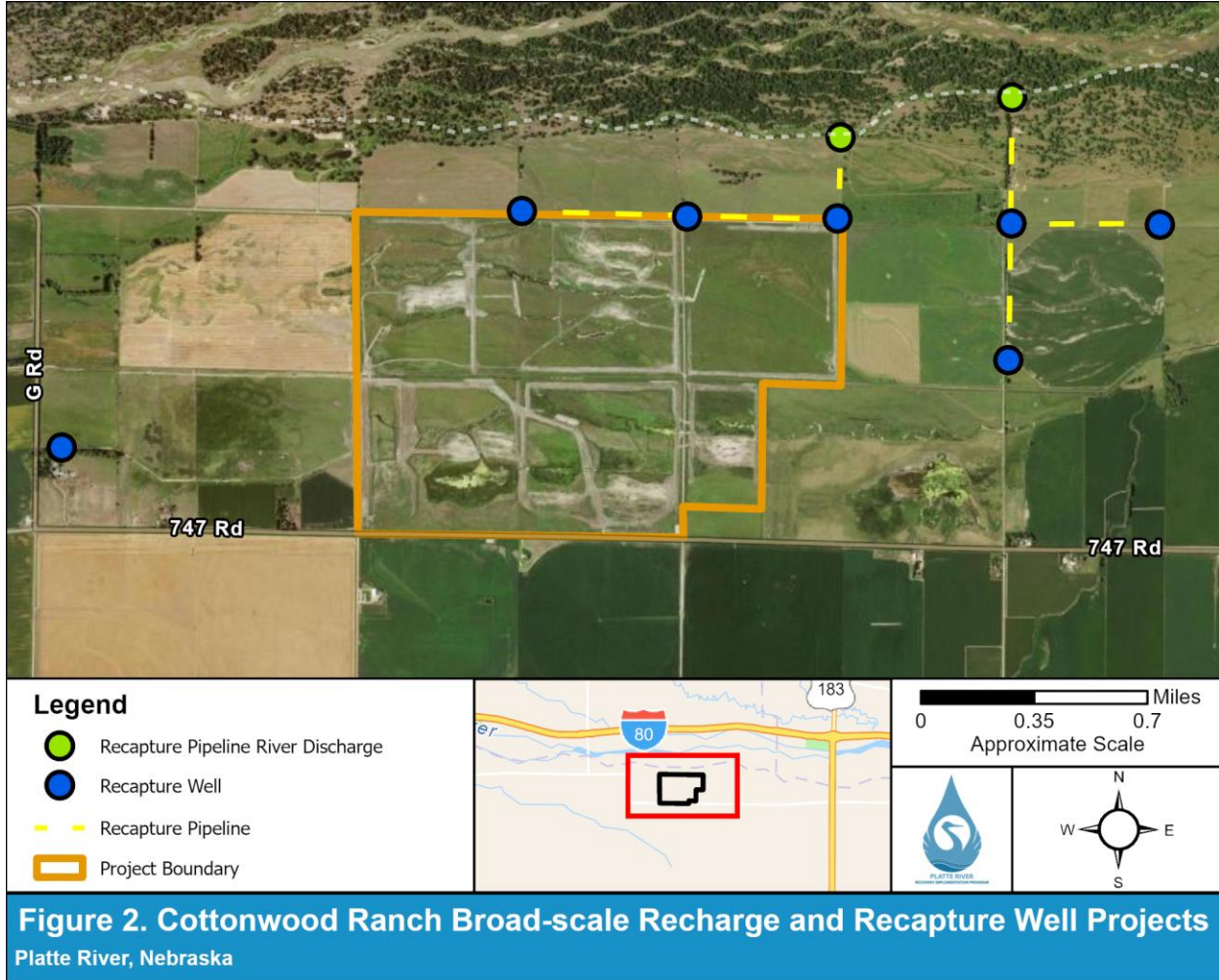
114 *Cottonwood Ranch Broad-Scale Recharge and Recapture Well Projects*

115 Constructed in 2019, the Cottonwood Ranch broad-scale recharge project (see **Figure 2**) utilizes shallow
116 pools in eight cells spread over about 400 acres of land to facilitate groundwater recharge. To date,
117 deliveries to the project for recharge have totaled only about 815 AF but several thousand AF of excess
118 flow deliveries are anticipated each year under normal to wet hydrologic conditions.

119 Recapture wells add a controllable element to recharge projects and are operated to “accelerate” the
120 river return of intentionally recharged groundwater by pumping that water directly to the river
121 specifically during periods of shortage. The Program has completed installation of 8 recapture wells,
122 including the Cook recapture well (2016) and a network of 7 recapture wells in the vicinity of
123 Cottonwood Ranch (2022). Of the 7 new recapture wells, 6 wells are organized into 2 separate
124 “networks” of 3 wells each; the wells in each network are located roughly ½ mile apart to avoid
125 interference (see **Figure 2**). Collectively, these wells can add about 10-15 cfs to the flow of the river
126 during periods of shortage. The existing recapture wells are operated and maintained through an
127 agreement between the Program and TBNRD.

128 As of December 31, 2021, it was estimated that the Program had more than 48,000 AF that was
129 recharged into the groundwater aquifer from all three (3) recharge projects south of the Platte River

130 that had not yet returned to the river by means of natural groundwater migration or recapture
 131 pumping. This represents a large reservoir that could be tapped by additional recapture wells.



132

133 **III. SCOPE OF WORK**

134

135 The selected Consultant will provide engineering services as needed for a reconnaissance-level
 136 evaluation of adding new controllable elements to Program recharge projects, including (1) construction
 137 of a gravity outlet from Elwood Reservoir to Plum Creek, (2) construction of additional recapture wells,
 138 and (3) combination(s) of both. Key tasks for the study are as follows:

139

140

1. Elwood Outlet:

141

a. Range of feasible outlet capacities (in conjunction with CNPPID).

142

b. Plum Creek capacity and potential impacts/mitigation: infrastructure and channel morphology.

143

144

c. Reconnaissance-level feasibility considerations: cost, land rights, permitting.



- 145 2. Recapture Wells:
- 146 a. Practical size and location constraints for recapture wellfield(s), including conveyance of
- 147 pumped water from wellfield(s) to river.
- 148 b. Wellfield efficiency – depletions and well interference.
- 149 c. Reconnaissance-level feasibility considerations: cost, land rights, permitting.
- 150
- 151 3. Trade-off Analysis:
- 152 a. Evaluation of potential combinations of Elwood outlet capacities and wellfield
- 153 size/locations to maximize efficiency in offsetting target flows (or support germination
- 154 suppression flows, river baseflows, etc.), maximize operational flexibility, minimize cost,
- 155 and/or other reconnaissance-level screening criteria.
- 156 b. Analysis constrained by estimates of excess flow availability and storage/recharge
- 157 capacity through time (wet/dry cycles likely important, will need to consider appropriate
- 158 study periods, e.g., OPSTUDY 1947-1994 or more current).
- 159

160 *Information of Note*

161

162 There is very little published work that evaluates the hydrology or geomorphology of Plum Creek. The

163 only active flow measurement is the [Plum Creek near Smithfield, NE](#) gage. Between Elwood Reservoir

164 and the Platte River confluence, Plum Creek crosses under at least 12 roadways and over the top of a

165 Phelps County Canal siphon. Channel incision and riparian vegetation cover vary widely along the flow

166 path of the creek.

167

168 It is not anticipated that development of complex groundwater models using MODFLOW will be

169 necessary. To the extent that groundwater analyses may be needed for this study, simpler tools such as

170 spreadsheet models or the Alluvial Water Accounting System (AWAS) should suffice.

171

172 The following areas of expertise may be necessary to complete the full scope of work:

173

- 174 • Civil engineering
 - 175 • Fluvial geomorphology
 - 176 • Surface water hydrology and hydraulics
 - 177 • Groundwater hydrology
 - 178 • Groundwater well design and construction
 - 179 • Structural engineering
 - 180 • Environmental permitting
- 181

182 **IV. PROJECT BUDGET**

183

184 The Program budget for this project is on the order of \$200,000. Consultant proposals should include a

185 budget spreadsheet with itemized employee roles, billing rates, and estimated hours for the tasks

186 outlined in the Scope of Work.



187 **V. CONTRACT TERMS**

188
189 The selected Consultant will be retained by:

190
191 Nebraska Community Foundation
192 PO Box 83107
193 Lincoln, NE 68501

194
195 Proposals should indicate whether the Consultant agrees to the contract terms as outlined in the
196 attached Program’s Consultant Contract (**Exhibit A**) or provide a clear description of any exceptions to
197 the terms and conditions.

198
199 The initial term of the contract will be for a one-year period beginning at the date of final signing of the
200 contract (September 2023 through August 2024). Contracted services will be performed on a time and
201 materials not to exceed basis. Under the final contract, a written Notice to Proceed from the EDO will
202 be required before work begins. All work will be contingent on availability of Program funding.

203
204 **The selected Consultant may be requested to negotiate additional services, with the option to**
205 **renew, re-compete, or cancel at the discretion of the GC.**

206
207 **VI. SUBMISSION REQUIREMENTS**

208
209 All interested parties having experience providing the services listed in this RFP are requested to submit
210 a proposal.

211
212 *Instructions for Submitting Proposals*

213
214 One (1) electronic (PDF) copy of your proposal must be submitted to Seth Turner by email at
215 turners@headwaterscorp.com no later than 5:00 PM Central Time on Tuesday July 18, 2023. The
216 maximum allowable proposal PDF size is 15MB, and proposals are to be limited to a total of 40 pages or
217 less. A proposal is late if received any time after 5:00 PM Central Time and will not be eligible for
218 consideration.

219
220 Questions regarding the information contained in this RFP should be submitted to Seth Turner at
221 turners@headwaterscorp.com. A list of compiled Consultant questions and responses will be
222 maintained on the Program web site (www.PlatteRiverProgram.org) in the same location as this RFP
223 solicitation.



224 RFP Schedule

225
226 The EDO expects to complete the selection process and award the work by August 24, 2023. The
227 following table represents the RFP schedule:
228

Description	Date	Time (Central)
Issue RFP	By June 15, 2023	n/a
Pre-proposal virtual meeting	June 29, 2023	12:00 PM
Last day for respondents to submit questions regarding the RFP	July 11, 2023	5:00 PM
Proposals due from Consultants	July 18, 2023	5:00 PM
Evaluation of Proposals	July 19-August 2, 2023	
Interviews	August 15-17, 2023	
Award of Work	On or before August 24, 2023	
Start of Work	Week of September 4, 2023	
Completion of Work	Approximately August 31, 2024	

229
230 Virtual Pre-Proposal Meeting

231
232 A **mandatory** virtual pre-proposal meeting of interested parties will be held on Thursday June 29, 2023
233 from 12:00-1:30 PM Central Time via Microsoft Teams for the purpose of familiarizing potential
234 Consultants with the Scope of Work and requirements included herein before submitting a response to
235 this RFP. To register, please email Seth Turner (turners@headwaterscorp.com) with names and email
236 addresses for the people from your firm and/or team expected to join the virtual pre-proposal meeting
237 by 5:00 PM Central Time on Wednesday June 28, 2023. A meeting invite with the Microsoft Teams link
238 will be forwarded to expected participants.

239
240 The meeting will include a brief overview by the EDO regarding the objectives of the project, the scope
241 of services, and the timeline. It is the Consultant’s responsibility, during the pre-proposal meeting, to ask
242 questions necessary to understand the RFP so the Consultant can submit a proposal that is complete
243 according to the RFP requirements. No minutes will be distributed by the EDO regarding the meeting.
244 Any proposals submitted by Consultants who did not register for and participate in the mandatory
245 virtual pre-proposal meeting will be rejected.

246
247 Proposal Content

248
249 Proposals should respond to the following general topics:

- 250
- 251 **1) Project understanding:** Discussion that demonstrates the Consultant’s understanding of key project
252 elements and operational goals and constraints.
- 253
- 254 **2) Project approach:** Discussion of the Consultant’s approach to providing the proposed
255 reconnaissance-level Scope of Work outlined in Section III of this RFP. This should be responsive to
256 all parts of the scope and should include detailed descriptions of the Consultant’s approach to each
257 task. Any critical issues, additional and/or alternative tasks, or other considerations that may have



258 shaped your approach should be addressed. Original thinking and/or discussion of improvements to
259 that approach are welcome and encouraged.

260
261 **3) Qualifications and project experience:** Provide project team organization, resumes/qualifications,
262 and responsibilities. Identify relevant project experience, particularly within the past five years,
263 including the name, location, and brief description of the projects; name, address, email, and phone
264 number for the primary client contact; and the involvement/role of the proposed team members in
265 those projects. A Nebraska licensed Professional Engineer is required.

266
267 **4) Rate schedule and budget:** Provide a schedule of standard hourly and reimbursable cost rates by
268 labor category. As stated in Section IV of this RFP, Consultant proposals should include a budget
269 spreadsheet with itemized employee roles, billing rates, and estimated hours to complete the Scope
270 of Work.

271
272 **5) Conflict of interest statement:** Consultant shall include a statement addressing whether or not any
273 potential conflict of interest exists between this project and other past or on-going projects,
274 including any projects currently being conducted for the Program.

275
276 **6) Confirmation of Insurance and Certificate of Good Standing:** The Program’s Consultant Contract
277 (**Exhibit A**) describes requirements for a Certificate of Good Standing (*Exhibit A, Section 8.G.*) and
278 Insurance (*Exhibit A, Section 8.S.*). Proof of a Certificate of Good Standing and all Insurance types
279 and coverage levels will be required before a contract is issued. The proposal should confirm the
280 Consultant’s ability to meet these requirements and provide such proof during contract
281 development.

282
283 **7) Acceptance of the terms and conditions** as outlined in the attached Program’s Consultant Contract,
284 or clear description of any exceptions to the terms and conditions.

285
286 **8) Affirmative Statement** that the firm and the principals of the firm (and any members of the team if
287 relevant) are NOT on the federal suspended and disbarred list. A DUNS² and SAM³ number are
288 required to assist in verification.

289
290 **9) Lobbying Certification** form to complete attached as **Exhibit B**. Signed certification does not count
291 towards the 40-page limit.

292
293 *Criteria for Evaluating Proposals*

294
295 The GC appointed a Proposal Selection Panel that will evaluate all proposals and select a Consultant
296 based on the following principal considerations:

- 297
298 1. The Consultant’s understanding of the overall project objectives, constraints, design elements,
299 operational scenarios, and existing associated groundwater recharge and recapture projects.

² <https://www.dnb.com/duns-number.html>

³ <https://federalcontractorregistry.com/>



- 300 2. The Consultant’s approach to each task in the outlined Scope of Work.
- 301
- 302 3. Qualifications and the relevant experience of the proposed project team members and firm.
- 303
- 304 4. The overall clarity and content of the Consultant’s proposal.
- 305

306 Consultant’s proposed budget will be a consideration for the Proposal Selection Panel, but contract will
307 be awarded primarily on the basis of consultant’s qualifications and project approach. Interviews may be
308 held if necessary, as determined by the Proposal Selection Panel.

309
310 Award Notice

311
312 After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal
313 Selection Panel will select a Consultant. That firm will negotiate with the EDO to establish a fair and
314 equitable contract. If an agreement cannot be reached, a second firm will be invited to negotiate and so
315 on. If the Program is unable to negotiate a mutually satisfactory contract with a Consultant, it may, at its
316 sole discretion, cancel and reissue a new RFP.

317
318 Program Perspective

319
320 The GC has the sole discretion and reserves the right to reject any and all proposals received in response
321 to this RFP and to cancel this solicitation if it is deemed in the best interest of the Program to do so.
322 Issuance of this RFP in no way constitutes a commitment by the Program to award a contract, or to pay
323 Consultant’s costs incurred either in the preparation of a response to his RFP or during negotiations, if
324 any, of a contract for services. The Program also reserves the right to make amendments to this RFP by
325 giving written notice to Consultants, and to request clarification, supplements, and additions to the
326 information provided by a Consultant.

327
328 By submitting a proposal in response to this solicitation, Consultants understand and agree that any
329 selection of a Consultant or any decision to reject any or all responses or to establish no contracts shall
330 be at the sole discretion of the Program. To the extent authorized by law, the Consultant shall
331 indemnify, save, and hold harmless the Nebraska Community Foundation, the states of Colorado,
332 Wyoming, and Nebraska, the Department of the Interior, members of the Governance Committee, and
333 the Executive Director’s Office, their employees, employers, and agents, against any and all claims,
334 damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of
335 any act or omission by the Consultant or its employees, agents, sub-Consultants, or assignees pursuant
336 to the terms of this project. Additionally, by submitting a proposal, Consultants agree that they waive
337 any claim for the recovery of any costs or expenses incurred in preparing and submitting a proposal.



1
2

EXHIBIT A
Standard Consulting Services Contract

1 EXHIBIT B – CONTRACT FORM

2
3 PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

4
5 Contract between Nebraska Community Foundation, Platte River Recovery Implementation Program,
6 and XXXXXXXXXX.

7
8 Expanded Recapture Reconnaissance Study

9
10 1. **Parties.** This Contract is made and entered into by and between Nebraska Community Foundation
11 (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery
12 Implementation Program (“Program”) and XXXXXXXXXX (“Contractor”). The following persons are
13 authorized to represent the parties through this Contract: Jason Kennedy of the Foundation; Jason
14 Farnsworth of the Program; and XXXXXXXXXX of the Contractor.

15
16 2. **Purpose of Contract.** The purpose of this Contract is to allow the Foundation, acting as the fiscal
17 agent for the Governance Committee (GC) of the Program, to retain the services of the Contractor to
18 render certain technical or professional services hereinafter described in connection with an undertaking
19 to be financed by the Program, and to delegate the Executive Director’s Office (“ED Office”) through its
20 Executive Director or his designee the authority to administer this Contract.

21
22 3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have
23 executed it and shall remain in effect through June 30, 2024 or until the contracted work is satisfactorily
24 completed, whichever occurs first. Work performed under this Contract shall occur from the date of final
25 signature below through June 30, 2024. Any extension of the contract term beyond June 30, 2024 must
26 be in writing and signed by all Parties in order to be valid.

27
28 If the Contractor has been delayed and as a result will be unable, in the opinion of the Program,
29 to complete performance fully and satisfactorily within this Contract period, the Contractor may be
30 granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the
31 Program. An extension of the contract term must be in writing, signed by both Parties in order for it to
32 be valid.

33
34 4. **Payment.**

35
36 A. **Reimbursement of Expenses.** The Program agrees to pay the Contractor an
37 amount based on the approved hourly rate and reimbursable expenses depicted in Exhibit B, attached to
38 and incorporated by reference as part of this Contract, for the services described in Exhibit A, attached to
39 and incorporated by reference as part of this Contract. Total Payment under this contract shall not exceed
40 \$XXX,XXX.

41
42 B. **Cost Rates.** The labor and equipment cost rates for each task included in Exhibit
43 A are as set forth on Exhibit B. These unit prices are not to be exceeded unless authorized in writing by
44 the Program. The contract total amount is controlling and is a ceiling price that contractor exceeds at its
45 own risk. Payment shall be made directly to the Contractor. The Contractor shall maintain hourly records
46 of time worked by its personnel to support any audits the Program may require. Billing reports shall be
47 submitted no more often than monthly for activities and costs accrued since the last billing report.

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

54
55 **Billing Point of Contact (Program):**

56 Mr. Jason Farnsworth, Executive Director
57 Platte River Recovery Implementation Program
58 Headwaters Corporation
59 4111 4th Avenue, Suite 6
60 Kearney, Nebraska 68845
61 Phone: (308) 237-5728
62 Fax: (308) 237-4651
63 Email: farnsworthj@headwaterscorp.com
64

65 **D. Withholding of Payment.**

66
67 (i) When the Program has reasonable grounds for believing that the Contractor will
68 be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the
69 Program may withhold payment of such portion of any amount otherwise due and payable to the
70 Contractor reasonably deemed appropriate to protect the Program against such loss. These amounts may
71 be withheld until the cause for the withholding is cured to the Program’s satisfaction or this Contract is
72 terminated pursuant to Section 8.U. Any amount so withheld may be retained by the Program for such
73 period as it may be deemed advisable to protect the Program against any loss. This provision is intended
74 solely for the benefit of the Program and no person shall have any right against the Program or Foundation
75 by reason of the Program's failure or refusal to withhold monies. No interest shall be payable by the
76 Program or Foundation on any amounts withheld under this provision. This provision is not intended to
77 limit or in any way prejudice any other right of the Program or Foundation.
78

79 (ii) If a work element has not been completed by the dates established in Exhibit A, the
80 Program may withhold all payments beginning with the month following that date until such deficiency
81 has been corrected.
82

83 **E. Final Completion and Payment.** The final payment shall be made upon
84 acceptance of the final report, receipt of the final billing, and if applicable, execution of the final contract
85 amendment documenting the final contract amount.
86

87 **5. Responsibilities of Contractor.**

88
89 **A. Scope of Services.** The Contractor shall perform the specific services required
90 under this Contract in a satisfactory and proper manner as outlined in Exhibit A. If there is any conflict
91 between this Contract and the provisions of the specific requirements of Exhibit A, the specific
92 requirements shall prevail.
93

94 **B. Personnel.** All of the services required hereunder will be performed by the
95 Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall

96 be authorized, licensed, or permitted under state law to perform such services, if state law requires such
97 authorization, license, or permit.

98
99 **C. Subcontracts.**

100
101 **(i) Approval Required for Subcontracts.** Any subcontractors and outside
102 associates or consultants required by the **Contractor** in connection with the services, work performed or
103 rendered under this Contract will be limited to such individuals or firms as were specifically identified in
104 the bid and agreed to during negotiations or are specifically authorized by the **Program** during the
105 performance of this Contract. The **Contractor** shall submit a list of the proposed subcontractors, associates
106 or consultants; the scope and extent of each subcontract; and the dollar amount of each subcontract prior
107 to Contract execution to the **Program** for approval. During the performance of the Contract, substitutions
108 in or additions to such subcontracts, associates, or consultants will be subject to the prior approval of the
109 **Program**. The **Program** approval of subcontractors will not relieve the **Contractor** from any responsibilities
110 outlined in this Contract. The **Contractor** shall be responsible for the actions of the subcontractors,
111 associates, and subconsultants.

112
113 **(ii) Billings for Subcontractors.** Billings for subcontractors, associates, or
114 subconsultants services will not include any mark up. The subcontract costs will be billed to the **Program**
115 at the actual costs as billed to the **Contractor**. Subcontract costs will be documented by attaching
116 subcontractor billings to the **Contractor's** billing submittals.

117
118 **(iii) Copies of Subcontracts.** The **Contractor** shall provide to the **Program**
119 copies of each subcontractor contract immediately following execution with the subcontractor. All
120 subcontracts between the **Contractor** and a subcontractor shall refer to and conform to the terms of this
121 Contract. However, nothing in this Contract shall be construed as making the **Program** a party to any
122 subcontract entered between the **Contractor** and a subcontractor.

123
124 **(iv) Contracts for Subcontractors.** All subcontracts that Contractor enters
125 into shall include any applicable provisions and certifications required by 2 CFR Part 200, including
126 Appendix II thereto, and any other federal, state or local laws or regulations.

127
128 **(v) Debarment and Suspension.** Contractor shall not enter into subcontracts
129 with any entity or individual that is suspended, debarred or otherwise excluded from participation in the
130 transaction covered by this Contract.

131
132 **D. Requests from the Program.** The **Contractor** shall be responsible and responsive
133 to the **Program** and the **ED Office** in their requests and requirements related to this Contract.

134
135 **E. Reports, Maps, Plans, Models and Documents.** One (1) copy of maps, plans,
136 worksheets, logs, field notes or other documents prepared under this Contract, and one (1) copy of each
137 unpublished report prepared under this Contract shall be submitted to the **Program**. If the **Contractor**
138 writes or uses a computer program or spreadsheet as a part of this project, the **Contractor** shall submit to
139 the **Program** for approval all proposed program names and data formats prior to beginning work on that
140 task. All data shall be submitted to the **Program** in written and digital forms. Digital media shall be labeled
141 by the **Contractor** to provide sufficient detail to access the information in the media.

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

144
145 **6. Responsibilities of the Program.**

146
147 **A. Designated Representative.** The Executive Director of the Program shall act as
148 the Program's administrative representative with respect to the Contractor's service to be performed
149 under this Contract and shall have complete authority to transmit instructions, receive information, and
150 interpret and define the Program's policies and decisions with respect to services covered by this Contract.

151
152 **B. Data to be Furnished to the Contractor.** All information, data, reports, and maps
153 as are available to the Program and necessary for the carrying out of the Scope of Services set forth herein
154 shall be furnished to the Contractor without charge and the ED Office shall cooperate with the Contractor
155 in every way possible in the carrying out of the project.

156
157 **C. Review Reports.** The ED Office shall examine all studies, reports, sketches,
158 opinions of construction costs, and other documents presented by the Contractor to the Program and
159 shall promptly render in writing the Program's decisions pertaining thereto within the time periods
160 specified in Exhibit A.

161
162 **D. Provide Criteria.** The ED Office shall provide all criteria and full information
163 regarding its requirements for the project.

164
165 **7. Special Provisions.**

166
167 **A. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee
168 related to the procurement of this Contract shall be paid by either party.

169
170 **B. Publication.** It is understood that the results of this work may be available to the
171 Contractor for publication and use in connection with related work. Use of this work for publication and
172 related work by the Contractor must be conducted with full disclosure to and coordination with the
173 Program's Technical Point of Contact.

174
175 **C. Publicity.** Any publicity or media contact associated with the Contractor's
176 services and the result of those services provided under this Contract shall be the sole responsibility of
177 the Program. Media requests of the Contractor should be directed to the Director of Outreach and
178 Operations in the ED Office.

179
180 **D. Monitor Activities.** The Program shall have the right to monitor all Contract-
181 related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the
182 right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate
183 completed work or work in progress, and to observe all Contractor personnel in every phase of
184 performance of Contract-related work.

185
186 **E. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or
187 contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or
188 other considerations made contingent upon the award of this Contract. If the Contractor breaches or
189 violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the

190 Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any
191 commission, percentage, brokerage, or contingency fee.

192
193 **F. Debarment and Suspension.** Contractor certifies by signing this Contract that
194 neither Contractor nor its principals are presently debarred, suspended, proposed for debarment,
195 declared ineligible or voluntarily excluded by any federal department or agency from participation in the
196 transaction covered by this Contract.

197
198 **G. Anti-Lobbying.** Contractor makes the representations set forth on the
199 Certification Regarding Lobbying, which is attached as Exhibit C and incorporated by reference as part of
200 this Contract. Contractor shall execute such Certification at the time of executing this Contract.

201
202 **H. Office Space, Equipment, and Supplies.** The Contractor will supply its own office
203 space, equipment, and supplies.

204
205 **8. General Provisions.**

206
207 **A. Amendments.** Any changes, modifications, revisions or amendments to this
208 Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written
209 instrument, executed and signed by all Parties to this Contract.

210
211 **B. Applicable Law/Venue.** The construction, interpretation and enforcement of this
212 Contract shall be governed by the laws of the State of Nebraska. The Courts of the State of Nebraska shall
213 have jurisdiction over this Contract and the parties.

214
215 **C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or
216 otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the
217 prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof,
218 as collateral for any financial obligation, without the prior written permission of the Program.

219
220 **D. Audit/Access to Records.** The Program, the Foundation and any of their
221 representatives shall have access to any books, documents, papers, and records of the Contractor which
222 are pertinent to this Contract. The Contractor shall, immediately upon receiving written instruction from
223 the Program or the Foundation, provide to the Foundation or any governmental entity, independent
224 auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor which
225 are pertinent to this Contract. The Contractor shall cooperate fully with the Foundation or any such
226 governmental entity, independent auditor, accountant, or accounting firm, during the entire course of
227 any audit authorized by or required of the Program.

228
229 **E. Availability of Funds.** Each payment obligation of the Program is conditioned
230 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
231 funds are not allocated and available for the continuance of the services performed by the Contractor,
232 the contract may be terminated by the Program at the end of the period for which the funds are available.
233 The Program shall notify the Contractor at the earliest possible time of the services which will or may be
234 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
235 exercised, and the Program shall not be obligated or liable for any future payments due or for any
236 damages as a result of termination under this section. This provision shall not be construed to permit the
237 Program to terminate this Contract to acquire similar services from another party.

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

241
242 **G. Certificate of Good Standing.** Contractor shall provide Certificate of Good
243 Standing verifying compliance with the unemployment insurance and workers' compensation programs
244 prior to performing work under this Contract.

245
246 **H. Compliance with Law.** The Contractor shall keep informed of and comply with all
247 applicable federal, state and local laws and regulations in the performance of this Contract.

248
249 **I. Confidentiality of Information.** All documents, data compilations, reports,
250 computer programs, photographs, and any other work provided to or produced by the Contractor in the
251 performance of this Contract shall be kept confidential by the Contractor unless written permission is
252 granted by the Program for its release.

253
254 **J. Conflicts of Interest**

255
256 **(i)** Contractor shall not engage in providing consultation to or
257 representation of clients, agencies or firms which may constitute a conflict of interest giving rise to a
258 disadvantage to the Program or a disclosure which would adversely affect the interests of the Program.
259 Contractor shall notify the Program of any potential or actual conflicts of interest arising during the course
260 of the Contractor's performance under this Contract. This Contract may be terminated in the event a
261 conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts.
262 In the event the contract is terminated under this provision, the Contractor shall take steps to ensure that
263 the file, evidence, evaluation and data are provided to the Program or its designee. This does not prohibit
264 or affect the Contractor's ability to engage in consultations, evaluations or representation under
265 agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

266
267 **(ii)** A conflict of interest warranting termination of the Contract includes, but
268 is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River
269 Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating
270 suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

271
272 **K. Entirety of Contract.** This Contract, consisting of thirteen (13) total pages
273 including Exhibit A (consisting of one (1) page), Exhibit B (consisting of one (1) page), and Exhibit C
274 (consisting of one (1) page), represents the entire and integrated Contract between the parties and
275 supersedes all prior negotiations, representations, and agreements, whether written or oral.

276
277 **L. Force Majeure.** Neither party shall be liable for failure to perform under this
278 Contract if such failure to perform arises out of causes beyond the control and without the fault or
279 negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or
280 the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually
281 severe weather. This provision shall become effective only if the party failing to perform immediately
282 notifies the other party of the extent and nature of the problem, limits delay in performance to that
283 required by the event, and takes all reasonable steps to minimize delays. This provision shall not be
284 effective unless the failure to perform is beyond the control and without the fault or negligence of the
285 nonperforming party.

286 **M. Indemnification.** The Contractor shall indemnify and hold harmless the
287 Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees
288 from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of
289 Contractor's duties and obligations hereunder or in connection with the negligent performance of
290 Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability
291 arising out of Contractor's malpractice. The obligations of this paragraph shall survive termination of this
292 Contract.

293
294 **N. Independent Contractor.** The Contractor shall function as an independent
295 contractor for the purposes of this Contract, and shall not be considered an employee of the Program,
296 Foundation, or ED Office for any purpose. The Contractor shall assume sole responsibility for any debts
297 or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be
298 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
299 Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or
300 employees to act as an agent or representative for or on behalf of the Foundation or the Program, or to
301 incur any obligation of any kind on the behalf of the Foundation or the Program. The Contractor agrees
302 that no health/hospitalization benefits, workers' compensation and/or similar benefits available to
303 Foundation, Program, or ED Office employees will inure to the benefit of the Contractor or the
304 Contractor's agents and/or employees as a result of this Contract.

305
306 **O. Notices.** All notices arising out of, or from, the provisions of this contract shall be
307 in writing and given to the parties at the address provided under this Contract, either by regular mail,
308 facsimile, e-mail, or delivery in person. Notice is effective upon delivery.

309
310 **P. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The
311 Contractor shall provide the Program with the earliest possible advance notice of any proposed sale or
312 transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be
313 provided in accordance with the notice provision of this Contract.

314
315 **Q. Ownership of Documents/Work Product/Materials.** All documents, reports,
316 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
317 this Contract are at all times the property of the Program.

318
319 **R. Patent or Copyright Protection.** The Contractor recognizes that certain
320 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
321 restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any
322 such restriction.

323
324 **S. Proof of Insurance.** The Contractor shall not commence work under this Contract
325 until the Contractor has obtained the following insurance coverages and provided the corresponding
326 certificates of insurance:

327
328 (i) Commercial General Liability Insurance. Contractor shall provide
329 coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage
330 to or destruction of the property of others, including loss of use thereof, and including products and
331 completed operations in an amount not less than Two Million Dollars (\$2,000,000.00) aggregate and One
332 Million Dollars (\$1,000,000.00) per occurrence. These minimum limits can be met by primary and umbrella

333 liability policies. Coverage shall include: Premises-Operations, Products/Completed Operations,
334 Contractual, Broad Form Property Damage, and Personal Injury.

335 (ii) Business Automobile Liability Insurance. Contractor shall maintain,
336 during the entire term of the Contract, automobile liability insurance in an amount not less than One
337 Million Dollars (\$1,000,000.00) per occurrence. Coverage will include bodily injury and property damage
338 covering all vehicles, including hired vehicles, owned and non-owned vehicles.
339

340 (iii) Workers' Compensation and Employers' Liability Insurance. The
341 Contractor shall provide proof of workers' compensation coverage. Contractor's insurance shall include
342 "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per
343 employee for each accident and disease.
344

345 (iv) Professional Liability Insurance. The Contractor shall provide proof of
346 Professional Liability insurance covering damages arising out of negligent acts, errors, or missions
347 committed by Contractor in the performance of this Agreement, with a liability limit of not less than One
348 Million Dollars (\$1,000,000) per claim. Contractor shall maintain this policy for a minimum of two (2) years
349 after completion of the work or shall arrange for a two-year extended discovery (tail) provision if the
350 policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the
351 performance of professional Services under this contract and caused by any error, omission, breach or
352 negligent act, including infringement of intellectual property (except patent or trade secret) of the
353 Contractor.
354

355 T. Taxes. The Contractor shall pay all taxes and other such amounts required by
356 federal, state and local law, including but not limited to federal and state income taxes, social security
357 taxes, workers' compensation, unemployment insurance and sales taxes.
358

359 U. Termination of Contract. This Contract may be terminated, without cause, by the
360 Program upon fifteen (15) days written notice. This Contract may be terminated immediately for cause if
361 the Contractor fails to perform in accordance with the terms of this Contract. In the event of a
362 termination, the Program shall pay Contractor for all reasonable work performed up to the effective date
363 of the termination.
364

365 V. Third Party Beneficiary Rights. The parties do not intend to create in any other
366 individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to
367 create such status. The rights, duties and obligations contained in this Contract shall operate only
368 between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract.
369 The provisions of this Contract are intended only to assist the parties in determining and performing their
370 obligations under this Contract.
371

372 W. Time is of the Essence. Time is of the essence in all provisions of the Contract.
373

374 X. Titles Not Controlling. Titles of paragraphs are for reference only and shall not be
375 used to construe the language in this Contract.
376

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

379 **9. Contacts.**

380

381 Administrative Point of Contact (Foundation):	Admin. Point of Contact (Program):
382 Jason Kennedy	Jason Farnsworth, Executive Director
383 Chief Financial & Administrative Officer	Platte River Recovery Implementation Prog.
384 Nebraska Community Foundation	Headwaters Corporation
385 PO Box 83107	4111 4 th Avenue, Suite 6
386 Lincoln, Nebraska 68501-3107	Kearney, Nebraska 68845
387 Phone: (402) 323-7330	Phone: (308) 237-5728
388 Fax: (402) 323-7349	Fax: (308) 237-4651
389 Email: jkennedy@nebcommfound.org	Email: farnsworthj@headwaterscorp.com

390

391 Technical Point of Contact (Program):	Media Point of Contact (Program):
392 Seth Turner, Water Plan Coordinator	Alicia Uribe, Executive Office Manager
393 Platte River Recovery Implementation Prog.	Platte River Recovery Implementation Prog.
394 Headwaters Corporation	Headwaters Corporation
395 4111 4 th Avenue, Suite 6	4111 4 th Avenue, Suite 6
396 Kearney, Nebraska 68845	Kearney, Nebraska 68845
397 Phone: (303) 204-8283	Phone: (308) 237-5728
398 Fax: (308) 237-4651	Fax: (308) 237-4651
399 Email: turners@headwaterscorp.com	Email: uribea@headwaterscorp.com

400

401 Administrative Point of Contact (Contractor):	Technical Point of Contact (Contractor):
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402 XXXX	XXXX
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403

404 **10. Signatures.** By signing this Contract, the undersigned certify that they have read and
405 understood it, that they have the authority to sign it, and that their respective Party agrees to be bound
406 by the terms of the Contract.
407

408 **NEBRASKA COMMUNITY FOUNDATION**

409
410
411
412

413 _____ Date _____
414 Jason D. Kennedy
415 Chief Financial and Administrative Officer

416 **CONTRACTOR**

417
418
419
420
421

422 _____ Date _____
423 **Name**
424 **Title**

425 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT**

426
427
428
429
430

I hereby certify that the Governance Committee of the Platte River Recovery Implementation Program
has authorized the Nebraska Community Foundation, acting as contracting agent for the Governance
Committee, to enter into this Agreement.

431
432
433
434

435 _____ Date _____
Jason M. Farnsworth
Executive Director

1
2
3
4
5
6
7

EXHIBIT "A"
SCOPE OF SERVICES

A. WORK DESCRIPTION

To be finalized with Selected Contractor, North Platte Chokepoint Planning Workgroup, and PRRIP Executive Director's Office.

EXHIBIT "B"
HOURLY RATE AND REIMBURSABLE EXPENSES
PRICE SCHEDULE

1
2
3
4
5

To be added from selected Contractor as approved by the Program.

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.

NAME OF BUSINESS ("CONTRACTOR")

By:

Name
Title

Date



1
2

EXHIBIT B
Certification Regarding Lobbying



EXHIBIT B
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.

NAME OF BUSINESS (“CONTRACTOR”)

By:

Name

Title

Date