



REQUEST FOR PROPOSALS (RFP)

Lower Platte River Hydraulic Modeling Services

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

May 31, 2023



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

SUBJECT: Lower Platte Hydraulic Modeling Services
REQUEST DATE: May 31, 2023
PRE-PROPOSAL MEETING: June 20, 2023
CLOSING DATE: June 30, 2023
POINT OF CONTACT: Libby Casavant
Headwaters Corporation
(319) 359-9183
casavantl@headwaterscorp.com

OVERVIEW

The Platte River Recovery Implementation Program (Program) 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) has been 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.

Pallid sturgeon (PS) are known to occur in the Lower Platte River, downstream of Columbus, NE. The Program is learning more about PS habitat through collaborative research with the University of Nebraska at Lincoln (UNL). Once suitable habitat characteristics are identified, the Program will leverage hydraulic modeling to identify the spatial distribution of potential habitat in the Lower Platte. The creation of a 2-D hydraulic model will enable systematic evaluation of depth, velocity, and other hydraulic metrics across the Lower Platte at various discharges, providing a means of quantifying habitat availability through space and time as a function of flow.

The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to provide hydraulic modeling services in support of PS research on the Lower Platte River. The full scope and appropriate methods for performing analyses will be developed collaboratively by the EDO, Consultant and UNL after selection and prior to model development.

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



43 **SCOPE OF WORK**

44 The selected Consultant will provide hydraulic modeling services that will be used in conjunction with
45 UNL PS research to quantify the spatial and temporal distribution of PS habitat on the Lower Platte
46 River.

47
48 The Program’s objective is to obtain 2-D hydraulic modeling results that allow for quantification of water
49 coverage, depth, velocity, and other hydraulic metrics at various flow levels on the Lower Platte River for
50 the purpose of better understanding pallid sturgeon habitat. The spatial extent of modeling is the active
51 channel and major tributary confluences extending from the Loup River confluence near Columbus, NE
52 downstream to the confluence of the Platte and Missouri Rivers near Plattsmouth, NE. Flows of interest
53 range from a two-year peak discharge (50,000 cfs at the Louisville gage) to a low-flow condition under
54 which habitat connectivity is limited (< 500 cfs at Louisville gage). In addition to flow from the Central
55 Platte, the Loup River, Loup Canal Return, Elkhorn River, and Salt Creek flows should be included in
56 model boundary conditions. Other tributaries or losses may be incorporated to achieve desired
57 calibration goals. Model resolution may vary but should generally be sufficient to quantify differences in
58 hydraulic metrics at a sandbar scale.

59
60 LiDAR topographic and partial bathymetric data were collected in August, 2022 for use in creating a 2-D
61 computational mesh. Data coverage extends from just upstream of Columbus, NE to the confluence of
62 the Lower Platte and the Missouri River near Omaha, NE. The horizontal resolution of elevation raster
63 product is 3 ft by 3ft. The horizontal accuracy is < 60cm RMSE and the vertical accuracy is < 9.2cm RMSE.
64 No data is available for the parts of the river channel where flow depth and turbidity inhibited LiDAR
65 penetration. Consultants are encouraged to suggest methods for filling in the gaps in this dataset. The
66 resulting mesh does not need to perfectly replicate the riverbed on the date of LiDAR collection, but it
67 does need to be a realistic approximation of elevations. Samples from the LiDAR dataset are available
68 for download and inspection at the same location as this RFP.

69
70 The specific scope of work to achieve these study objectives will be determined once a Consultant is
71 selected based on experience and qualifications, but a general description of the anticipated progression
72 of the study is provided below.

73
74 Once selected, the Consultant, EDO, and UNL will work collaboratively to:

- 75 • Perform an initial review of available hydrologic and hydraulic data.
- 76 • Determine additional data needs.
- 77 • Determine the best methodology to address the missing LiDAR data areas within the channel.
- 78 • Select the type of modeling software, minimum and maximum resolution, and any other
79 parameters.
- 80 • Select scenarios to model and obtain proper boundary conditions.

81
82 The consultant must present a plan for calibrating and validating the model and propose acceptable
83 tolerance limits. Once the model is shown to perform within these limits, the selected suite of scenarios
84 will be run and results reported. The report, model(s), and results for each scenario and discharge in a
85 georeferenced format will be the final deliverable of this project.

86
87 The following areas of expertise may be necessary to complete the full scope of work:



- 88
- 89
- 90
- 91
- 92
- 2-D hydrodynamic modeling
 - Sediment transport modeling
 - Fluvial geomorphology
 - Geospatial analysis/elevation data processing

93

94 **PROJECT BUDGET**

95 The Program budget for this project is on the order of \$250,000. However, an estimated project
96 budget should **NOT** be submitted in the proposal and proposals will not be evaluated based on
97 cost. A final scope of work and budget will be negotiated prior to commencement of work.

98

99 **CONTRACT TERMS**

100 The selected Consultant will be retained by:

101

102 Nebraska Community Foundation
103 PO Box 83107
104 Lincoln, NE 68501

105

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

109

110 The initial term of the contract is expected to be for a one-year period beginning at the date of final
111 signing of the contract (mid-2023 through mid-2024). Actual contract schedule will be developed with
112 the Consultant and incorporated into the contract. Contracted services will be performed on a time and
113 materials not to exceed basis. Under the final contract, a written Notice to Proceed from the EDO will
114 be required before work begins. All work will be contingent on availability of Program funding.

115

116 **The selected Consultant may be requested to negotiate additional services, with the option to**
117 **extend, re-compete, or cancel at the discretion of the GC.**



118 **SUBMISSION REQUIREMENTS**

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

121
122 Instructions for Submitting Proposals

123 One (1) electronic (PDF) copy of your proposal must be submitted to Libby Casavant by email at
124 casavantl@headwaterscorp.com no later than 5:00 PM Central Time on Tuesday, June 30, 2023. The
125 maximum allowable proposal PDF size is 15MB, and proposals are to be limited to a total of 50 pages or
126 less. A proposal is late if received any time after 5:00 PM Central Time and will not be eligible for
127 consideration.

128
129 Questions regarding the information contained in this RFP should be submitted to Libby Casavant at
130 casavantl@headwaterscorp.com. A list of compiled Consultant questions and responses will be
131 maintained on the Program web site (www.PlatteRiverProgram.org) in the same location as this RFP
132 solicitation. The last day to accept questions is June 26, 2023.

133
134 RFP Schedule

135 The EDO expects to complete the selection process and award the work by August 22, 2023. The
136 following table represents the RFP schedule:

Description	Date	Time (Central)
Issue RFP	By May 31, 2023	n/a
Pre-proposal virtual meeting	June 20, 2023	12:00 PM
Last day for respondents to submit questions regarding the RFP	June 26, 2023	5:00 PM
Proposals due from Consultants	June 30, 2023	5:00 PM
Evaluation of Proposals	July 3 through July 20, 2023	
Interviews	Week of August 7, 2023	
Award of Work	On or before August 22, 2023	
Start of Work	Mid- to late September, 2023	
Completion of Work	Approximately August 22, 2024	

137
138
139 Virtual Pre-Proposal Meeting

140 A **mandatory** virtual pre-proposal meeting of interested parties will be held on June 20, 2023 from
141 12:00-1:00 PM Central Time via Microsoft Teams for the purpose of familiarizing potential Consultants
142 with the Scope of Work and requirements included herein before submitting a response to this RFP. To
143 register, please email Libby Casavant (casavantl@headwaterscorp.com) with names and email addresses
144 for the people from your firm and/or team expected to join the virtual pre-proposal meeting by 12:00
145 PM Central Time on June 16, 2023. A meeting invite with the Microsoft Teams link will be forwarded to
146 expected participants.

147
148 The meeting will include a brief overview by the EDO regarding the objectives of the project, the scope
149 of services, and the timeline. It is the Consultant’s responsibility, during the pre-proposal meeting, to
150 ask questions necessary to understand the RFP so the Consultant can submit a proposal that is complete
151 according to the RFP requirements. No minutes will be distributed by the EDO regarding the meeting.



152 Any proposals submitted by Consultants who did not register for and participate in the mandatory
153 virtual pre-proposal meeting will be rejected.

154
155 Proposal Content

156 Proposals should respond to the following general topics:

- 157
- 158 **1) Project understanding:** Discussion that demonstrates the Consultant’s understanding of key
159 objectives, goals and constraints.
 - 160
 - 161 **2) Project approach:** Discussion of the Consultant’s approach to model development including critical
162 issues, tasks, or considerations that may have shaped your approach. This section should not be a
163 reiteration of the general scope of work presented in Section II of this RFP. That scope was provided
164 as general guidance and original thinking and/or discussion of improvements to that approach are
165 welcome and encouraged. Specific items that should be addressed in the approach include:
 - 166 a. A plan for dealing with data limitations, mainly, the incomplete bathymetry data.
 - 167 b. The preferred type of model to be used (proprietary or not)
 - 168 c. Given the required model resolution, computational load will likely be high. Discuss any
169 concerns or suggestions given this constraint.
 - 170 d. Briefly discuss an appropriate calibration and validation procedure and expected tolerance.
 - 171
 - 172 **3) Qualifications and project experience:** Provide project team organization, resumes/qualifications,
173 and responsibilities. Identify relevant project experience, particularly within the past five years,
174 including the name, location, and brief description of the projects; name, address, email, and phone
175 number for the primary client contact; and the involvement/role of the proposed team members in
176 those projects.
 - 177
 - 178 **4) Rate Schedule:** Schedule of standard hourly and reimbursable cost rates by labor category.
 - 179
 - 180 **5) Conflict of interest statement** addressing whether any potential conflict of interest exists between
181 this project and other past or on-going projects, including any projects currently being conducted for
182 the Program.
 - 183
 - 184 **6) Confirmation of Insurance and Certificate of Good Standing:** The Program’s Consultant Contract
185 (**Exhibit A**) describes requirements for a Certificate of Good Standing (*Exhibit A, Section 8.G.*) and
186 Insurance (*Exhibit A, Section 8.S.*). Proof of a Certificate of Good Standing and all Insurance types
187 and coverage levels will be required before a contract is issued. The proposal should confirm the
188 Consultant’s ability to meet these requirements and provide such proof during contract
189 development.
 - 190
 - 191 **7) Acceptance of the terms and conditions** as outlined in the attached Program’s Consultant Contract,
192 or clear description of any exceptions to the terms and conditions.
 - 193



194 **8) Affirmative Statement** – that the firm and the principals of the firm (and any members of the team if
195 relevant) are NOT on the federal suspended and disbarred list. A DUNS¹ and SAM² number are
196 required to assist in verification.

197
198 **9) Lobbying Certification** – Form to complete attached as part of **Exhibit A**.

199
200 Criteria for Evaluating Proposals

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

- 203 1. The Consultant’s understanding of the overall project goals, constraints, design elements, and
204 operational scenarios and project approach.
- 205
- 206 2. Qualifications and the relevant experience of the proposed project team members and firm, which
207 may include:
- 208 a. Experience developing and calibrating 2-D hydraulic models of braided channels.
 - 209 b. Experience leveraging data from multiple sources and gages to increase model accuracy and
210 reliability.
 - 211 c. Experience working with large LiDAR datasets, including an understanding of common
212 sources of error/inaccuracy, and dealing with incomplete data coverage.
 - 213 d. Familiarity with the project study site.
- 214

215 Interviews may be held if necessary, as determined by the Proposal Selection Panel.

216
217 Award Notice

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

223
224 Program Perspective

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

232
233 By submitting a proposal in response to this solicitation, Consultants understand and agree that any
234 selection of a Consultant or any decision to reject any or all responses or to establish no contracts shall
235 be at the sole discretion of the Program. To the extent authorized by law, the Consultant shall
236 indemnify, save, and hold harmless the Nebraska Community Foundation, the states of Colorado,

¹ <https://www.dnb.com/duns-number.html>

² <https://federalcontractorregistry.com/>



237 Wyoming, and Nebraska, the Department of the Interior, members of the Governance Committee, and
238 the Executive Director’s Office, their employees, employers, and agents, against any and all claims,
239 damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of
240 any act or omission by the Consultant or its employees, agents, sub-Consultants, or assignees pursuant
241 to the terms of this project. Additionally, by submitting a proposal, Consultants agree that they waive
242 any claim for the recovery of any costs or expenses incurred in preparing and submitting a proposal



1
2
3

EXHIBIT A
Standard Consulting Services Contract & Certification Regarding Lobbying

1 EXHIBIT A – 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 North Platte Chokepoint Engineering Services

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. The
48 Contractor shall use the billing form attached as Exhibit D.

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

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

57 Mr. Jason Farnsworth, Executive Director
58 Platte River Recovery Implementation Program
59 Headwaters Corporation
60 4111 4th Avenue, Suite 6
61 Kearney, Nebraska 68845
62 Phone: (308) 237-5728
63 Fax: (308) 237-4651
64 Email: farnsworthj@headwaterscorp.com
65

66 **D. Withholding of Payment.**

67
68 (i) When the Program has reasonable grounds for believing that the Contractor will
69 be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the
70 Program may withhold payment of such portion of any amount otherwise due and payable to the
71 Contractor reasonably deemed appropriate to protect the Program against such loss. These amounts may
72 be withheld until the cause for the withholding is cured to the Program’s satisfaction or this Contract is
73 terminated pursuant to Section 8.U. Any amount so withheld may be retained by the Program for such
74 period as it may be deemed advisable to protect the Program against any loss. This provision is intended
75 solely for the benefit of the Program and no person shall have any right against the Program or Foundation
76 by reason of the Program’s failure or refusal to withhold monies. No interest shall be payable by the
77 Program or Foundation on any amounts withheld under this provision. This provision is not intended to
78 limit or in any way prejudice any other right of the Program or Foundation.
79

80 (ii) If a work element has not been completed by the dates established in Exhibit A, the
81 Program may withhold all payments beginning with the month following that date until such deficiency
82 has been corrected.
83

84 **E. Final Completion and Payment.** The final payment shall be made upon
85 acceptance of the final report, receipt of the final billing, and if applicable, execution of the final contract
86 amendment documenting the final contract amount.
87

88 **5. Responsibilities of Contractor.**

89
90 **A. Scope of Services.** The Contractor shall perform the specific services required
91 under this Contract in a satisfactory and proper manner as outlined in Exhibit A. If there is any conflict
92 between this Contract and the provisions of the specific requirements of Exhibit A, the specific
93 requirements shall prevail.
94

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

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

99
100 **C. Subcontracts.**

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

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

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

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

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

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

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

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

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

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

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

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

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

165
166 **7. Special Provisions.**

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

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

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

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

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

191 [Program](#), or deduct from the Contract price or consideration, or otherwise recover, the full amount of any
192 commission, percentage, brokerage, or contingency fee.

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

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

202
203 **H. Office Space, Equipment, and Supplies.** The [Contractor](#) will supply its own office
204 space, equipment, and supplies.

205
206 **8. General Provisions.**

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

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

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

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

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

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

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

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

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

254
255 **J. Conflicts of Interest**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

380 **9. Contacts.**

381

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

391

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

401

402 Administrative Point of Contact (Contractor):	Technical Point of Contact (Contractor):
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403 XXXX	XXXX
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404

405 **10.** Signatures. By signing this Contract, the undersigned certify that they have read and
406 understood it, that they have the authority to sign it, and that their respective Party agrees to be bound
407 by the terms of the Contract.
408

409 **NEBRASKA COMMUNITY FOUNDATION**
410
411
412

413 _____ Date _____
414 Jason D. Kennedy
415 Chief Financial and Administrative Officer
416
417

418 **CONTRACTOR**
419
420
421

422 _____
423 Name _____ Date _____
424 Title
425
426

427 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT**
428

429 I hereby certify that the Governance Committee of the Platte River Recovery Implementation Program
430 has authorized the Nebraska Community Foundation, acting as contracting agent for the Governance
431 Committee, to enter into this Agreement.
432
433

434 _____
435 Jason M. Farnsworth Date _____
436 Executive Director

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2
3
4
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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.

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2
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5

EXHIBIT "B"
HOURLY RATE AND REIMBURSABLE EXPENSES
PRICE SCHEDULE

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