



DRAFT

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.



SCOPE OF WORK

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

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

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

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

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

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

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

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



- 2-D hydrodynamic modeling
- Sediment transport modeling
- Fluvial geomorphology
- Geospatial analysis/elevation data processing

PROJECT BUDGET

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

CONTRACT TERMS

The selected Consultant will be retained by:

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501

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

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

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

SUBMISSION REQUIREMENTS

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

Instructions for Submitting Proposals

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

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



RFP Schedule

The EDO expects to complete the selection process and award the work by August 22, 2023. The 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	

Virtual Pre-Proposal Meeting

A **mandatory** virtual pre-proposal meeting of interested parties will be held on June 20, 2023 from 12:00-1:00 PM Central Time via Microsoft Teams for the purpose of familiarizing potential Consultants with the Scope of Work and requirements included herein before submitting a response to this RFP. To register, please email Libby Casavant (casavantl@headwaterscorp.com) with names and email addresses for the people from your firm and/or team expected to join the virtual pre-proposal meeting by 12:00 PM Central Time on June 15, 2023. A meeting invite with the Microsoft Teams link will be forwarded to expected participants.

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

Proposal Content

Proposals should respond to the following general topics:

- 1) Project understanding:** Discussion that demonstrates the Consultant's understanding of key objectives, goals and constraints.
- 2) Project approach:** Discussion of the Consultant's approach to model development including critical issues, tasks, or considerations that may have shaped your approach. This section should not be a reiteration of the general scope of work presented in Section II of this RFP. That scope was provided as general guidance and original thinking and/or discussion of improvements to that approach are welcome and encouraged. Specific items that should be addressed in the approach include:
 - a. A plan for dealing with data limitations, mainly, the incomplete bathymetry data.
 - b. The preferred type of model to be used (proprietary or not)



- c. Given the required model resolution, computational load will likely be high. Discuss any concerns or suggestions given this constraint.
- d. Briefly discuss an appropriate calibration and validation procedure and expected tolerance.

- 3) Qualifications and project experience:** Provide project team organization, resumes/qualifications, and responsibilities. Identify relevant project experience, particularly within the past five years, including the name, location, and brief description of the projects; name, address, email, and phone number for the primary client contact; and the involvement/role of the proposed team members in those projects.
- 4) Rate Schedule:** Schedule of standard hourly and reimbursable cost rates by labor category.
- 5) Conflict of interest statement** addressing whether any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.
- 6) Confirmation of Insurance and Certificate of Good Standing:** The Program’s Consultant Contract (**Exhibit A**) describes requirements for a Certificate of Good Standing (*Exhibit A, Section 8.G.*) and Insurance (*Exhibit A, Section 8.S.*). Proof of a Certificate of Good Standing and all Insurance types and coverage levels will be required before a contract is issued. The proposal should confirm the Consultant’s ability to meet these requirements and provide such proof during contract development.
- 7) Acceptance of the terms and conditions** as outlined in the attached Program’s Consultant Contract, or clear description of any exceptions to the terms and conditions.
- 8) Affirmative Statement** – that the firm and the principals of the firm (and any members of the team if relevant) are NOT on the federal suspended and disbarred list. A DUNS¹ and SAM² number are required to assist in verification.
- 9) Lobbying Certification** – Form to complete attached as part of **Exhibit B**.

Criteria for Evaluating Proposals

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

1. The Consultant’s understanding of the overall project goals, constraints, design elements, and operational scenarios and project approach.
2. Qualifications and the relevant experience of the proposed project team members and firm, which may include:
 - a. Experience developing and calibrating 2-D hydraulic models of braided channels.
 - b. Experience leveraging data from multiple sources and gages to increase model accuracy and reliability.

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

² <https://federalcontractorregistry.com/>



- c. Experience working with large LiDAR datasets, including an understanding of common sources of error/inaccuracy, and dealing with incomplete data coverage.
- d. Familiarity with the project study site.

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

Award Notice

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

Program Perspective

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

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



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Exhibit A
PRRIP Standard Consulting Services Contract Form

EXHIBIT B – CONTRACT FORM

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

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

Lower Platte River Modeling

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

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

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

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

4. **Payment.**

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

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

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

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

C. Subcontracts.

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

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

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

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

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

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

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

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

6. **Responsibilities of the Program.**

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

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

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

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

7. **Special Provisions.**

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

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

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

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

E. **Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or 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

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

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

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

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

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

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

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

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

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

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

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 4th 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 Libby Casavant, Water Resources Engineer Alicia Uribe, Executive Office Manager
393 Platte River Recovery Implementation Prog. Platte River Recovery Implementation Prog.
394 Headwaters Corporation Headwaters Corporation
395 4111 4th Avenue, Suite 6 4111 4th Avenue, Suite 6
396 Kearney, Nebraska 68845 Kearney, Nebraska 68845
397 Phone: (319) 359-9183 Phone: (308) 237-5728
398 Fax: (308) 237-4651 Fax: (308) 237-4651
399 Email: casavantl@headwaterscorp.com Email: uribea@headwaterscorp.com

400
401 **Administrative Point of Contact (Contractor): Technical Point of Contact (Contractor):**
402 XXXX XXXX
403

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

NEBRASKA COMMUNITY FOUNDATION

Jason D. Kennedy
Chief Financial and Administrative Officer

Date

CONTRACTOR

Name
Title

Date

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM ACKNOWLEDGEMENT

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.

Jason M. Farnsworth
Executive Director

Date

1 **EXHIBIT "A"**
2 **SCOPE OF SERVICES**
3
4

5 **A. WORK DESCRIPTION**

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

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



1
2

EXHIBIT B
Certification Regarding Lobbying