

Agreement between Nebraska Community Foundation and Headwaters Corporation, Private Consultant

A. Parties. This Agreement is between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, the Platte River Recovery Implementation Program Fund (“Fund”), a designated fund of the Foundation, and Headwaters Corporation, a private consultant (“Consultant”) of Kearney, Nebraska. The following persons are authorized to represent the parties through this Agreement: Diane Wilson of the Foundation and Dr. Bridget Barron of Headwaters Corporation.

B. Purpose. The purpose of this Agreement is to allow the Foundation to act as the contracting agent for the Executive Director’s contract on behalf of the Governance Committee (“GC”) of the Platte River Recovery Implementation Program (“Program”).

C. Terms and Conditions

C1. Scope of Services. The Consultant will perform the scope of services described in **Exhibit A**, attached to and incorporated by reference as part of the Agreement. The Consultant will provide the Executive Director, Deputy Executive Director, and staff for the PRRIP as described in **Exhibit B**. The Consultant shall not redirect funds to work items not listed in Exhibit A without proper written approval of the GC. Any modifications proposed by the Consultant to Exhibit A shall be approved in advance in writing by the GC.

This Agreement is for five-year contract from January 1, 2019 through December 31, 2023 and is entered into in accordance with the Program Agreement (“Program Agreement”) between the Foundation, the Bureau of Reclamation (Agreement No. 99-FC-60-11970), and the states of Colorado, Nebraska, and Wyoming. The Foundation shall be responsible only for the financial aspects of the EDO’s relationship with the GC; the GC shall retain all supervisory and related responsibilities.

C2. Compensation. The Foundation agrees to compensate the Consultant in 2019 in accordance with the budget and approved hourly rate and reimbursable expenses price schedules depicted in **Exhibit C**, attached to and incorporated by reference as a part of this Agreement, for a twelve-month term beginning January 1, 2019. Budget and rates will be renegotiated at the end of each twelve-month period and the new rates and budget will take effect the subsequent January 1 of each of the remaining years of the five-year contract.

Documented and authorized expenses will be fully reimbursed. Requests for payment shall be provided in writing on at least a monthly basis and shall be accompanied by appropriate documentation regarding hours, expenses, and approval by the Parties to the Program Agreement. Foundation will provide these funds directly to the Consultant within 30 days of receipt and approval by the Parties to the Program Agreement.

Total Year 1 compensation under this Agreement through December 31, 2019 shall not exceed \$2,400,000.00 without consent of the GC.

C3. Other space, equipment and supplies. The Foundation agrees to provide funding for office space, equipment, and supplies as described in Exhibit B.

C4. Amendments and Termination. This Agreement may be amended by mutual written agreement of the parties pursuant to the Program Agreement. This Agreement may be terminated with 30 days’ notice by any of the parties.

C5. Agreement contingent upon available funding. This Agreement is contingent upon funding availability. This Agreement may be terminated due to insufficient project funding.

C6. Subcontracts. Any subcontractors and outside associates or consultants required by the Consultant in connection with the services, work performed or rendered under this Agreement must be approved by the GC.

D. Time Frame. The initial date of the Agreement shall be January 1, 2019. The final date of the Agreement is December 31, 2023. The Agreement may be extended upon mutual agreement of the parties and pursuant to the Program Agreement.

E. Independent Contractor. The parties intend that the Consultant will not be considered an employee of the Foundation but will act as an independent contractor for the Foundation. As an independent contractor, the Consultant will be responsible for all applicable taxes and is not eligible for any benefits provided by the Foundation.

F. Designate a Representative. The GC shall designate the Chair of the Committee to act as the its representative with respect to the Consultant's service to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, and interpret and define the GC's policies and decisions with respect to services covered by this Agreement.

G. Conflict of Interest.

G1. Consultant shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the Foundation or GC or a disclosure which would adversely affect the interests of the Foundation or the GC. Consultant shall notify the Foundation or GC of any potential or actual conflicts of interest arising during the course of the Consultant's performance under this Agreement. This Agreement may be terminated in the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual settlement of accounts. In the event the Agreement is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to the GC or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

G2. A conflict of interest warranting termination of the Agreement includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Foundation or GC, its agencies, boards, commissions, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

H. Insurance. The Consultant shall obtain the following insurance coverages and provide the corresponding certificates of insurance:

H.1 Commercial General Liability Insurance. Consultant shall provide coverage during the entire term of the Agreement against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per claimant and Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

H.2 Business Automobile Liability Insurance. Consultant shall maintain, during the entire term of the Agreement, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

H.3 Workers' Compensation or Employers' Liability Insurance. The Consultant shall provide proof of workers' compensation coverage pursuant to the Nebraska Workers' Safety and Compensation program, if statutorily required, or such other workers' compensation insurance as appropriate. Consultant's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident and disease.

H.4 Professional Liability or Errors and Omissions Liability Insurance. The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the Foundation and GC from any and all claims arising from the Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).

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

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

K. Indemnification. The Consultant shall indemnify and hold harmless the Foundation and GC, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice.

L. Ownership of Documents/Work Product/Materials. All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the GC.

M. Patent or Copyright Protection. The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Consultant or its subcontractors will violate any such restriction.

N. Compliance with Law. The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

O. Entirety of Contract. This Contract, consisting of four (4) pages, Exhibit A, consisting of two (2) pages, Exhibit B, consisting of one (1) page, and Exhibit C, consisting of two (2) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

October 30, 2018

P. Contacts.

Diane M. Wilson
Manager of Private/Public Partnerships & Senior Advisor
Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107
Office: (402) 323-7330 | Direct: (402) 323-7326 | Mobile: (402) 730-2427 | Fax: (402) 323-7349
dwilson@nebcommfound.org

Dr. Bridget M. Barron
President & CEO
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, NE 68845
Office: (308) 237-9464 | Fax: (308) 237-4651
barronb@headwaterscorp.com

The following parties agree to the terms of this Agreement:

For the **Consultant**:

Bridget M. Barron, Ph.D.
President and CEO
Headwaters Corporation
Federal Tax ID: 26-0298666

For the **Foundation**:

Diane M. Wilson
Manager of Private/Public Partnerships & Senior Advisor
Nebraska Community Foundation

Exhibit A

Scope of Services

Platte River Recovery Implementation Program

Executive Director, Deputy Executive Director, and Staff

Task 1. Basic Duties – Maintain the Office of the Executive Director (EDO) in Central Nebraska (4111 4th Avenue, Suite 6, Kearney, Nebraska 68845) and provide the managerial, administrative, and technical assistance required of the Governance Committee (GC) to implement the Platte River Recovery Implementation Program (PRRIP). This includes providing the Executive Director (ED), Deputy Executive Director (DED), and staff to perform all PRRIP functions as directed by the GC.

Task 2. 2018 Work Plan Items – The Executive Director, Deputy Executive Director, and staff are responsible for implementation, either directly or through oversight, of activities as defined in the 2019 Work Plan. The following lists provide an overview summary of the activities that the EDO will perform in 2019.

Provide direction and oversight and review work progress for contract conformance and payment approval for on-going work by contractors and consultants including:

- All species and physical process monitoring activities.
- Sediment augmentation activities.
- Permit activities for in-channel work.
- Directed research activities for Adaptive Management Plan requirements.
- Database management system development and maintenance activities.
- ISAC and peer review activities.
- Structured Decision-Making process for updating the Adaptive Management Plan.
- Water Action Plan feasibility studies, design studies, and implementation actions including Broad-Scale Recharge on Cottonwood Ranch and Slurry Wall Storage – Lakeside Projects.
- Ground water recharge and management investigations and implementation activities.
- Directed investigations for Water Plan requirements.
- Choke point investigations and project design, permitting, and implementation activities.
- Routine operations and maintenance of facilities, agricultural and range activities, and basic land management.
- Land management and habitat rehabilitation projects.
- Recreational Access program activities.
- Special advisor activities as assigned by ED, DED, or EDO.

Provide services as appropriate in the following Program areas:

- Engineering, hydraulic, and hydrologic analyses in support of Water and Adaptive Management Plans.
- Engineering, hydrologic, and geohydrologic analyses and land acquisition for development and implementation of broad-scale recharge, slurry-wall storage, acquire and retire, and other water action plan projects.
- Water project scoring analyses and documentation.
- Develop hydrologic conditions report monthly or in prescribed time period blocks
- Develop water purchase and lease agreements with various entities including NPPD, CPNRD, NPNRD, and CNPPID.
- Land evaluation and acquisition services.
- Land management services including oversight of tenants and agricultural operations.

- Implementation of Good Neighbor Policy.
- Monitoring, data analysis, and reporting of wet meadow hydrology investigations.
- Monitoring, design, and construction monitoring on Broad-scale Recharge construction activities on Cottonwood Ranch Complex.
- Water accounting and operation of recapture wells and other water related facilities.
- Operation of wetland wells and other facilities during whooping crane migration season.
- Site preparation and spring/summer monitoring activities for terns and plovers.
- Decoy placement and associated activities for whooping crane migration seasons.
- Analyze and synthesize physical process and species monitoring data for whooping cranes and for terns & plovers, drawing conclusions, developing supporting documentation, and presenting results in written reports and oral presentations
- Develop information gathering and hypothesis testing approaches for pallid sturgeon in lower Platte system.
- Develop priority list of lands for each type of experiment and integrate with other ongoing efforts and proceed with implementation.
- Coordinate, attend, and provide support for scheduled meetings of Governance and Finance Committees, Land, Water, Technical, and Independent Science Advisory Committees, and other ad hoc committees or working groups as they occur.

Task 3. Project Library/Archive — Maintain a library and archive of materials generated for project, collection may include hard copy and electronic materials. The materials in the archive/library will include documents and other materials from the Cooperative Agreement, the First Increment, and the First Increment Extension scheduled to begin in 2020.

Task 4. Other Duties — Perform other duties of the Office of the Executive Director, such as:

- Coordination and communication among Program participants.
- Distribution of materials to participants.
- Communication with state, federal, and local organizations as appropriate.
- Outreach and communication with the various stakeholder groups and various publics touched by the Program.
- Prepare work plan and budget for review by the Finance Committee and approval by the Governance Committee.
- Prepare agreements/contracts and amendments.
- Process contractor invoices.
- Coordination with Nebraska Community Foundation on contractual and financial matters.
- Coordination with Platte River Recovery Implementation Foundation on land interest holding matters.
- Prepare and provide outreach/public education activities for the Program.
- Provide a review of Program tasks and periodically report on the status and progress of each task to the Governance Committee.

Exhibit B

2019 Headwaters EDO Staffing Plan

This structure details a Headwaters Corporation Team of 18 staff members functioning as the Program EDO. Headwaters staff categories and organization of the EDO correspond to the central components of the Program: Water Plan, Land Plan, and Adaptive Management Plan. Management and oversight of Program implementation will be the responsibility of Farnsworth and Smith. Together, they will be responsible for all decision-making that has been delegated to the EDO. Headwaters will continue to maintain the central office in Kearney, NE; a support office in Lakewood, CO; the Program library; and all equipment, electronic records, and other materials necessary for the continued management and implementation of the Program.

Name	Title	% Time	% Program
SENIOR LEADERSHIP			
J. Farnsworth	Executive Director (ED)	100%	100%
C. Smith	Deputy Executive Director (DED)	100%	95%
WATER RESOURCES			
C. Black	Senior Level Technical Support Water Resources	80%	75%
S. Griebing	Senior Level Technical Support Water Resources	80%	95%
S. Turner	Senior Level Technical Support Water Resources	100%	80%
ECONOMICS & ACQUISITIONS			
B. Sackett	Director of Land Acquisition	100%	100%
G. Oamek	Senior Economist	100%	50%
ADAPTIVE MANAGEMENT, RIVER & RIPARIAN RESTORATION, ENDANGERED SPECIES, & CONSERVATION BIOLOGY			
Biological and Ecological Services			
D. Baasch	Director of Biological and Ecological Services	100%	100%
P. Farrell	Assistant Level Technical Support – Ecological Statistics	100%	95%
M. Irvine	Assistant Level Technical Support Biology	100%	100%
K. Keldsen	Assistant Level Technical Support Biology	100%	100%
K. Mohlman	Assistant Level Technical Support Biology	100%	100%
Habitat Management and Rehabilitation Services			
J. Brei	Senior Level Technical Support Engineering	100%	70%
T. Smrdel	Senior Level Technical Support Geomorphology	100%	85%
T. Tunnell	Senior Land Manager	100%	100%
K. Werbylo	Assistant Level Technical Support Engineering	100%	85%
OUTREACH & OPERATIONS			
B. Barron	Director of Operations, Administration, and Human Dimensions	100%	80%
J. Liakos	Administrative Assistant – Clerical	80%	70%

Exhibit C

2019 EDO Budget with Approved Hourly Rate & Reimbursable Expenses Price Schedules

2019 Labor Costs				
Position	No. Staff	Average Billing Rate	Total Hours	Cost
Executive Director	1	\$ 132.00	1,800	\$ 237,600.00
Deputy Executive Director	1	\$ 132.00	1,710	\$ 225,720.00
Senior Directors	3	\$ 83.53	5,220	\$ 436,026.60
Senior Staff	8	\$ 73.01	11,214	\$ 818,734.14
Junior and Administrative Staff	5	\$ 37.63	8,118	\$ 305,480.34
Subtotal Labor Costs	18		28,062	\$ 2,023,561.08
2019 Other Direct Costs (ODC)				
Item	Unit Rate	Months or Units	Cost	
Office Rent	\$ 13,000.00	12	\$ 156,000.00	
Phones and Utilities	\$ 4,500.00	12	\$ 54,000.00	
Equipment/Misc. Expenses	\$ 1,000.00	12	\$ 12,000.00	
Travel/Meeting Expenses	\$ 8,000.00	12	\$ 96,000.00	
Misc. Services (acct., payroll, legal)	\$ 3,000.00	12	\$ 36,000.00	
Subtotal Other Direct Costs			\$ 354,000.00	
Total 2019 EDO Budget (Labor Costs + ODC)				\$ 2,377,561.08
Approved Hourly Rate Price Schedule				
Category	Approved Maximum Billing Rate			
Senior Leadership	\$ 145.00			
Senior Directors	\$ 110.00			
Senior Staff	\$ 100.00			
Junior/Support Staff	\$ 60.00			

Note: Direct costs such as rent, utilities, and insurance shown above represent the proportionate share of total such costs attributable to PRRIP based primarily on fee distribution amongst all of Headwaters Corporation's clients. In the case of shared resources, proportionate factors which provide a conservative buffer to all clients is used to ensure that no client pays a disproportionate share of billable direct costs.

Rates include salary, vacation, holiday, professional development, health insurance, dental insurance, vision insurance, life insurance, FICA, retirement, unemployment insurance and other similar items, and profit.

The billing rates will remain under the caps established by category but will be set and reported on an individual basis by employee. Invoices will provide detail of hours expended during billing period and applicable billing rate by individual.

B. Reimbursable Expenses Price Schedule

All direct costs will be supported by invoice and billed at actual cost.

There will be no charges for computer usage and related technology.

Mileage will be charged at a rate of \$0.555 per mile or the IRS approved rate for Business.