



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and Inter-Fluve, Inc. Regarding “P10-002: Cottonwood ranch Off-Channel Sand and Water Habitat Final Design and Flow Consolidation Conceptual Design Project”

This First Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Inter-Fluve, Inc. (“Consultant”), a private consultant of Madison, Wisconsin, is made and entered into effective on the date of signing below and the final date of this Amendment will be April 1, 2013.

The purpose of this amendment is to:

- (1) Extend the Agreement between Foundation and Consultant to April 1, 2013 to provide the services as described in **Exhibit A**.
- (2) To provide Consultant with a total budget of **\$200,000** in approved and available FY 2012 Program budget line item PD-19 funds under this Amendment from May 2012 through April 2013 to perform the Cottonwood Ranch flow consolidation implementation design services as outlined in **Exhibit A**, with the budget to be expended in general conformance with the estimate and task outline also provided in **Exhibit A**.

Important Amendment notes:

- (1) This is the First Amendment to the Agreement. The signed Original Agreement is provided as **Exhibit B**.

All other terms of the original Agreement remain in effect as originally written in the Agreement dated June 1, 2010. The following parties agree to the terms of this Amendment and the original Agreement.

For the Consultant:

 Lon M. Mikkelsen,
 Principal
 Inter-Fluve, Inc.

 Date

For the Foundation:

 Diane M. Wilson
 Chief Financial & Administrative Officer
 Nebraska Community Foundation, Inc.

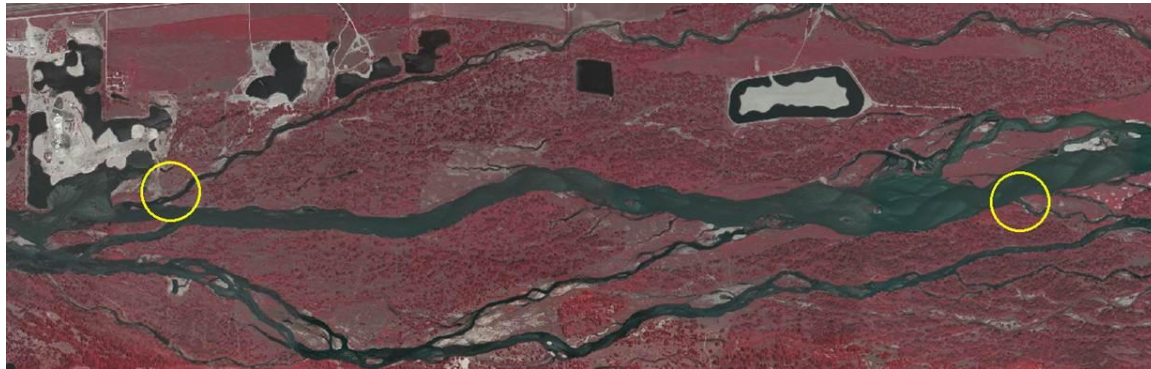
 Date



EXHIBIT A – AMMENDMENT 1 SCOPE OF SERVICES AND BUDGET

Scope of Work – Platte River, NE

Overview - Two distinct efforts are included in the scope below. The first (Item 1), titled Cottonwood Ranch Channel Maintenance involves two small scale projects, one on the north side of the channel and a second on the south, intended to direct flow back into historic channels, consistent with the overall management goals of the Program. The figure below indicates the location of these two areas.



The second effort (Item 2) is the Preliminary Design of Flow Consolidation at Cottonwood Ranch and is intended to follow the recommendations outlined in the Feasibility Phase for Flow Consolidation. The project will seek to define a scenario in which flow consolidation (main channel consolidation of 80% of the 8,000 cfs event) can be achieved in the main channel, utilizing water currently flowing in the south channel. Further, the investigation will seek to ensure that consolidation will establish un-vegetated mid-channel bars and the reinstatement of braided channel bed forms on the Platte through CWR. This effort is considered to be a Proof of Concept approach, similar to an ongoing effort at Elm Creek. This approach will be iterative in nature and require the collaboration of all team members, including Program staff to achieve a final product.

The approach features a team of 3 firms, all with a history of work on the Platte. Inter-Fluve will be the project manager for the overall effort, leading the design in Item 1 and overseeing the progress and deliverables for Item 2. Andy Selle will be the main point of contact for Inter-Fluve. Tetra Tech will be integral in Item 2, utilizing existing models of the Cottonwood Ranch area to inform and refine the approaches to the flow consolidation. Stu Trabant will be the Tetra Tech project manager for this effort. Finally, EA Science and Engineering will perform the integral permitting for Item 1 and will characterize the anticipated permitting scenarios as Item 2 progresses. Dan Bigbee will be the lead for EA Science and Engineering.

ITEM 1 – Cottonwood Ranch Channel Maintenance at 2 Locations

1. Project Management/Meetings

- 1.1. *Project Coordination* – Project management is an essential component for successful completion of this project. This task includes project planning, development of and maintenance of a project schedule, routine client communications, and response to the priority needs of the client.

Deliverables (Task 1):

- Maintenance of project schedule and budget, monthly invoices and communications with Program staff

Assumptions (Task 1):

- None

2. Design and Construction Documents

- 2.1. *Data Collection and Design* – Inter-Fluve will evaluate the site during a 1 day visit. If necessary, survey elevations will be gathered for design, and salient information associated with permit line work (wetland boundaries, high water marks etc) will be obtained. This information will be used to efficiently design solutions for the site, consistent with previous work done by the Program.
- 2.2. *Construction Documents* – Inter-Fluve will develop construction documents suitable for construction with oversight and to obtain necessary permits. A description of the anticipated drawing set is below.

Sheet 1 – Cover Sheet with quantities and bid list

Sheet 2 – Existing Site Plan

Sheet 3 – Grading and Construction Sections (site 1)

Sheet 4 – Grading and Construction Sections (site 2)

Deliverables (Task 2):

- Site Visit / Survey
- 90% Drawings for Review (electronic)
- 100% Stamped Plans, Specs (on plans), and Bid List (on plans) (engineer's estimate)
- Completed permit applications

Assumptions (Task 2):

- Specifications will be included on the Plan Set (not as a separate document)
- Due to the nature of the work, drawings will be suitable for construction with supervision
- This effort is assumed to be consistent with typical channel maintenance work performed by the Program, thus the intended solution is already known and simply needs to be formalized for permitting and bidding.

3. Permitting

- 3.1. *Agency Coordination* – EA Engineering, Science and Technology, Inc. (EA) will lead the effort to obtain permits for this project. The nature of the project should result in relatively minor permitting requirements. This task is the presentation of the project to the salient agency personnel for initial consultation and the formal submittal of permits.
- 3.2. *Permit Applications* – formal permit applications will be submitted to the following agencies for review:
 - ACOE- 404 permit - Coverage under Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities
 - State of NE- 401 Certification in association with the 404 permit
 - County – Flood Plain permit from Phelps/Dawson County

Deliverables (Task 3):

- Permit Coordination and Applications
- Issuance of Final Permits

Assumptions (Task 3):

- A wetland delineation will NOT be required for permitting
- One meeting will be conducted at the USACE office in Omaha
- General permits will be required with minor conditions expected, NOT individual permits with major conditions for construction.

4. Construction Oversight

- 4.1. *On-site Oversight* – Inter-Fluve will provide construction observation to ensure construction proceeds as outlined in the Plans. An as-built survey will be conducted if deemed necessary and a Set of Record Drawings will be supplied.

Deliverables (Task 4):

- Construction observation as described.
- As-built survey and record drawings

Assumptions (Task 4):

- The implementation of these projects is expected to be simple and to occur over a period of approximately 3 days. The level of effort for this task reflects this assumption of simplicity.
- Survey control is already established on site within a reasonable distance of the work area.
- Inter-Fluve will provide layout and staking for construction. Grades and surveying during construction will be the responsibility of the construction contractor.

ITEM 2 – Preliminary Design of Flow Consolidation at Cottonwood Ranch

1. Project Management/Meetings

- 1.1. *Project Coordination* – Project management is an essential component for successful completion of this project. This task includes project planning, development of and maintenance of a project schedule, routine client communications, and response to the priority needs of the client.
- 1.2. *Project kickoff and site visit* – The Inter-Fluve team will visit the site with the client to clarify project goals and discuss design options in the field. This visit will include a site walk and meeting time for planning and development of performance criteria. The project engineer will conduct site investigations necessary for proper design, including review of site access, staging, constructability, and potential soils investigation, infrastructure issues, hydraulic modeling requirements and survey limits. **NOTE:** for cost efficiency, we assume we would hold this trip during a visit for survey or construction oversight during the Channel Maintenance effort above.
- 1.3. *Conference Calls* – Four (4) conference calls are assumed for the project to be used to keep communication current regarding project progress, including the discussion of salient issues that arise during the investigation. The calls will be implemented as necessary during the project.

Deliverables (Task 1):

- Maintenance of project schedule and budget, monthly invoices and communications with Program staff
- Attendance and facilitation of an onsite kickoff meeting with client, permit agencies, and other stakeholders

Assumptions (Task 1):

- No assumptions

2. Management Option Review and Refinement

Summary – This task includes a review of the results of the investigation phase and the formulation of design and performance criteria to refine possible solutions. The investigation phase will include the suite of efforts investigated to date including studies on vegetation resistance, bar height, thresholds for braiding, sediment augmentation, SDHF, and possible flow consolidation approaches investigated by Inter-Fluve. Calibration of the two-dimensional (2-D) hydrodynamic model (which Tetra Tech is currently developing for the Sediment Augmentation Pilot Study), the primary tool for analysis, will be paramount to this effort. The end goal of this task is the definition of up to three likely scenarios to accomplish the intended goals of flow consolidation. These will be taken into task three for evaluation.

- 2.1. *2-D Hydrodynamic Model* – The 2-D hydrodynamic model that is currently being developed by Tetra Tech to assist the Program in evaluating the effects of the Sediment Augmentation Pilot Study will be used for this study. This model extends from the Cook Tract in the South Channel at Jefferys Island downstream to the Elm Creek Bridge; thus, it includes the entire CWR property. The mesh for the model includes rectangular and triangular elements with dimensions ranging from approximately 30 feet in the main channel and about 100 feet in the overbanks. The lateral extents of the mesh were set beyond the channel banks to insure that flows up to 8,000 cfs could be accurately modeled. The model is currently being calibrated for use in the Pilot Study using available measured water-surface elevations over a range of flows. Once calibrated, this model will be used to establish baseline hydraulic conditions for comparison of alternatives, and the baseline model will then be modified to incorporate the various elements associated with up to three flow consolidation alternatives. It should be noted that, because the model mesh for baseline and alternative conditions should have identical horizontal elements (with only the nodal elevations

adjusted to represent project conditions), it will likely be necessary to modify the mesh that is currently being developed for the Pilot Study. The models will be executed over a target short duration high flow (SDHF) hydrograph that ramps up from baseflow levels to a peak discharge of 8,000 cfs for 3 days, and then ramps back down to the pre-SDHF baseflow level. Comparison of the model results from the baseline and alternative models will then be used to assist in identifying the most beneficial alternative, as discussed below in the Probable Outcome Analysis Section.

- 2.2. *Review and Refinement of Anticipated Options* – options for flow consolidation at this point are assumed to be consistent with hydraulic controls proposed on the South channel in the earlier Concept Phase of this project performed by Inter-Fluve. The impact of these controls will be examined at a larger scale within the property and within the context of additional metrics related to bar height, vegetation scour, etc. to further define the efficacy of this approach. A non-structural approach may be examined as well, where flow consolidation may be accomplished through means other than channel manipulation with hydraulic controls. These two approaches appear to be reasonable at this scoping phase, and we have assumed a third will be developed to analyze in detail within task 3.
- 2.3. *Develop a Report for Selected Options* – a report detailing the methods, assumptions and results from Task 2 will be developed in DRAFT and FINAL form for review and input by Program Staff.

Deliverables (Task 2):

- DRAFT and FINAL report on selected options for analysis
- Calibrated 2-dimensional hydrodynamic model of the CWR reach

Assumptions (Task 2):

- Sediment transport impacts of the proposed alternatives will not be explicitly modeled with the mobile-boundary version of the 2-D model, but rather, will be inferred from hydraulic variables (changes in velocity, depth, shear etc.)
- We have assumed minimal calibration required for this effort since the CWR reach is included in the 2-D model that is currently being developed for the Sediment Augmentation Pilot Study.
- We assume the development of up to 3 alternatives for this task. Program staff are expected to play an active role in this task.

3. Statistical Analysis of Probable Outcomes

Summary – Specific scenarios outlined within Task 2 above and detailed in the report will be analyzed for their potential to meet performance criteria. Results from the 2-D hydrodynamic model, along with practical reasoning (experience and qualitative observations) based on the expected geomorphic implications of approaches to flow consolidation at the CWR property, will be used in the evaluation. Statistical evaluation will utilize already established design criteria related to bar height, shear for vegetation removal, and expected stage changes to test the probability of success in achieving these criteria. Statistical analysis will follow previous efforts undertaken by the Program (following a Monte Carlo simulation) and will rely on a statistical expert familiar with the project to ensure consistent methods are applied.

- 3.1. *Probable Outcome Analysis* – The probable outcome analysis will primarily involve comparison of the results from the 2-D hydrodynamic models for baseline and with-project conditions. In performing the evaluation, the topography and, if appropriate, hydraulic roughness in the calibrated baseline model will be adjusted to represent with-project conditions. The following items will be considered in assessing the model results to determine the probable outcome:
 1. Comparison of the flow distribution among the South and Main channels along the CWR reach. This comparison will identify the degree to which the flow consolidation objectives are met under rigid boundary conditions for each of the alternatives.

2. Hydraulic conditions

- The predicted hydraulic conditions will be used to identify a range of potential bar heights that would be produced by a full SDHF release under consolidated and unconsolidated conditions. The predictions will be based on the bar height-to-stage relationships that have been observed in the central Platte River in 2010 and 2011.
- The model results will also be used to assess the likelihood of increased vegetation scour associated with the flow consolidation using results from the Directed Vegetation Research Study (Bankhead, et.al., 2011).

3. Total in-channel capacity and overbank flow patterns, if they occur, will be compared at the larger magnitude discharges in the SDHF to assess any changes to flood potential that could result from the project.

Item 1 will be quantified using percentage of total flow, while Item 2 will be quantified on a unit area basis under baseline and alternative conditions for the statistical analysis of probable outcomes. Item 3 will also likely be quantified on a unit area basis, but will require input from Program Staff regarding species and age classes to be considered in the scour analysis.

3.2. *Report on Results* – Results of the analysis (statistical and otherwise) will be summarized in a report. A recommended solution will be proposed and the criteria and methods for monitoring success. The report will be presented in both DRAFT and FINAL form for Program review and input.

Deliverables (Task 3):

- Probable outcome analysis
- Report in DRAFT and FINAL form of Probable Outcome Analysis

Assumptions (Task 3):

- This task will be defined in further detail with Program staff as the project progresses. We anticipate an iterative approach to this task in particular, thus the scope noted above is likely to evolve. Similar efforts are nearing completion at Elm Creek and have been reviewed for guidance here.
- Program staff have performed statistical analyses previously utilizing George Oamek for this effort. We will endeavor to use these same resources for efficiency and consistency

4. **Civil Design**

Summary – the civil design component of the project will proceed to approximately a 30% completion level. The development of 30% plans and associated cost estimates will be the main product from the design team in this effort. A meeting with permitting agencies to present and discuss the efficacy of the 30% design and the potential challenges associated with implementation will complete this task. Support will be provided as necessary for any land acquisition or management agreements, the former expected to be minimal or perhaps absent from this process.

- 4.1. *30% Design Plans and Cost Estimate* – Plans will be developed to a 30% design level. This is expected to include plan views and typical drawings for areas of work, anticipated access routes, limits and areas of disturbance. The cost estimate will be consistent with a 30% design to bracket anticipated construction fees for the design.
- 4.2. *Permitting / Agency Review Meeting* - Conduct a project meeting at the USACE office to discuss the 30% design and possible buy-in from USACE to proceed further into design and permitting.

Deliverables (Task 4):

- USACE / Permit Coordination and Meeting
- 30% Plans and Cost Opinions


Assumptions (Task 4):

- A wetland delineation will NOT be required in the impacted areas.
- One project meeting with the USACE will be necessary.

Schedule

The tentative schedule is to complete Item 1 above by the end of summer 2012 and complete Item 2 above by the end of 2012.

Project Costs

								
Platte River, NE								
Flow Consolidation at Cottonwood Ranch								
Scope Item 1	Inter-Fluve		EA Science and Engineering		Tetra Tech		TOTAL HOURS	TOTAL FEES
	Hours	\$\$	Hours	\$\$	Hours	\$\$		
Task 1 - Project Management	23	\$2,631.00	0	\$0	0	\$0.00	23	\$2,631.00
Task 2 – Data collection	136	\$15,646.00	12	\$1,630	0	\$0.00	148	\$17,276.00
Task 3 - Permitting	12	\$1,276.00	63	\$6,655	0	\$0.00	75	\$7,931.00
Task 4 - Construction Oversight	60	\$8,920.00	10	\$1,400	0	\$0.00	70	\$10,320.00
FIRM TOTALS	231	\$28,473.00	85	\$9,685.00	0	\$0.00	316	\$38,158.00
Scope Item 2	Inter-Fluve		EA Science and Engineering		Tetra Tech		TOTAL HOURS	TOTAL FEES
	Hours	\$\$	Hours	\$\$	Hours	\$\$		
Task 1 - Project Management	89	\$11,141.00	0	\$0	94	\$14,023.60	183	\$25,164.60
Task 2 – Management Option Review and Refinement	239	\$31,313.00	8	\$920	356	\$38,490.00	603	\$70,723.00
Task 3 - Statistical Analysis of Possible Outcomes	197	\$23,519.00	8	\$920	148	\$16,700.40	353	\$41,139.40
Task 4 - Civil Design	195	\$21,545.00	31	\$3,270	0	\$0.00	226	\$24,815.00
FIRM TOTALS	720	\$87,518.00	47	\$5,110.00	598	\$69,214.00	1,365	\$161,842.00
GRAND TOTAL							1,681	\$200,000.00

References

Bankhead, N., Thomas, R., and Simon, A., 2010. Study Design for Directed Vegetation Research on the Platte River. Prepared for Platte River Recovery Implementation Program, Kearney, NE.

HDR, Mussetter Engineering, Inc., The Flatwater Group, Inc., and Dr. Mark Pegg, UNL, 2009. Lower Platte River Stage Change Study, Final Protocol Implementation Report. Prepared for Platte River Recovery Implementation Program, Kearney, NE. Version 1.0, December.



PRRIP – ED OFFICE FINAL

04/25/2012

EXHIBIT B – JUNE 1, 2010 CONTRACT BETWEEN NEBRASKA COMMUNITY FOUNDATION
AND INTER-FLUVE INC.



Inter-Fluve, Inc.
3602 Atwood Avenue, Suite 3
Madison, WI 53714
TIN# 81-0419872

Nebraska Community Foundation, Inc.
PO Box 83107
Lincoln, NE 68501-3107
TIN# 47-0769903

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Contract between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and Inter-Fluve, Inc.

P10-002: Cottonwood Ranch Off-Channel Sand and Water Habitat Final Design and Flow Consolidation Conceptual Design Project

1. **Parties.** This Contract is made and entered into by and between the Nebraska Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program ("Program") and Inter-Fluve, Inc. ("Consultant"). The following persons are authorized to represent the parties through this Contract: Diane Wilson of the Foundation, Dr. Jerry F. Kenny of the Program; and Lon M. Mikkelsen of the Consultant.

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 Consultant 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.

TERMS AND CONDITIONS

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. The term of this Contract is from May 1, 2010 through May 1, 2011. The services to be performed under this Contract will commence upon receipt of authorization to proceed. All services shall be completed during this term.

If the Consultant 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 Consultant may be granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the Program.

4. **Payment.**

A. **Reimbursement of Expenses.** The Program agrees to pay the Consultant an amount based on the approved budget depicted in Exhibit B and hourly rate and reimbursable expenses price schedules depicted in Exhibit C, attached to this Contract and incorporated by reference as part of this Contract, for the services described in Exhibit A, attached to this Contract and incorporated by reference as part of this Contract. Total payment under this Contract shall not exceed one hundred ninety-nine thousand, two hundred eighty-eight dollars (\$199,288.00).

B. **Project Budget.** The Project budget for each task included in Exhibit A is as follows:

<u>Task</u>	<u>Estimated Cost</u>
Phase I.	
Task 1 – Project Kickoff	\$8,033.82
Task 2 – Project Management and Meetings	\$11,315.36
Task 3 – Engineering Design and Cost Estimating	\$24,498.45
Task 4 – Permitting	\$7,746.95
Task 5 – Bid Package Development and Bid Letting	\$6,927.36
Task 6 – Construction Administration	\$31,980.55
<i>Subtotal Phase I</i>	<i>\$90,502.49</i>
Phase II.	
Task 1 – Alternatives Identification	\$13,190.00
Task 2 – Conceptual Design and Screening of Alternatives	\$60,795.00
Task 3 – Permitting Investigation	\$8,670.00
Task 4 – Summary Report	\$26,130.00
<i>Subtotal Phase II</i>	<i>\$108,785.00</i>
Total Project Cost	\$199,287.49

The amounts for each task are estimates only, but are not to be exceeded unless authorized in writing by the Program. The Contract total amount is controlling. Payment shall be made directly to the Consultant. The Consultant 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. A brief project progress report summarizing project activities in the billing period must be submitted with each billing.

C. Billing Procedures. The Consultant shall send billing reports for services performed for the various tasks outlined in Exhibit A to the ED Office (address included below). The Program's Executive Director, upon receiving the billing report, will approve the bill and submit the bill for payment. The submittal for payment will then be reviewed by the Signatory Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties. Payments of bills are due within 60 days after the billing date of the Consultant.

Billing Point of Contact (Program):

Dr. Jerry F. Kenny, Executive Director
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: kennyj@headwaterscorp.com

D. Money Withheld. When the Program has reasonable grounds for believing that the Consultant will be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the Program may withhold payment of such portion of any amount otherwise due and payable to the Consultant reasonably deemed appropriate to protect the Program against such loss. These amounts may be withheld until the cause for the withholding is cured to the Program's satisfaction or this Contract is terminated pursuant to Section 8U. Any amount so withheld may be retained by the Program for such period as it may deem advisable to protect the Program against any loss. This provision is intended solely for the benefit of the Program and no person shall have any right against the Program by reason of the Program's failure or refusal to withhold monies. No interest shall be payable by the Program on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the Program.

E. Withholding of Payment. If a work element has not been received by the Program by the dates established in Exhibit A, the Program may withhold all payments beginning with the month following that date until such deficiency has been corrected.

F. Final Completion and Payment. The final payment shall be made upon acceptance of the final report and receipt of the final billing.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under this Contract in a satisfactory and proper manner as outlined in Exhibit A. If there is

any conflict between this Contract and the provisions of the specific requirements of Exhibit A, the specific requirements shall prevail.

B. Personnel. All of the services required hereunder will be performed by the Consultant 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 Consultant 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 proposal and agreed to during negotiations or are specifically authorized by the Program during the performance of this Contract. The Consultant 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 Consultant from any responsibilities outlined in this Contract. The Consultant shall be responsible for the actions of the subcontractors, associates, and subconsultants.

(ii) Billings for Subcontractors. Billings for subcontractor, 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 Consultant. Subcontract costs will be documented by attaching subcontractor billings to the Consultant's billing submittals.

(iii) Copies of Subcontracts. The Consultant shall provide to the Program copies of each subcontractor contract immediately following execution with the subcontractor. All subcontracts between the Consultant 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 of any subcontract entered between the Consultant and a subcontractor.

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

E. Presentation of Data. The Consultant shall select and analyze all data in a systematic and meaningful manner so as to contribute directly in meeting the objectives of the Project, and shall present this information clearly and concisely, in a professional manner.

F. Draft of Final Report. The Consultant shall present the Program a draft of the final report covering all work elements of the Project including maps, charts, conclusions and recommendations prior to the publication of any final report and no later than the date specified in Exhibit A. Draft Reports will be provided to the Program in Microsoft Word format for distribution and review. The Program will respond with written comments to the Consultant as soon as possible. The Consultant will address the comments of the Program in the final report. Final Reports will be provided to the Program in Microsoft Word and PDF format.

G. Project Completion Report. A final project completion report in the form described in Exhibit A shall be submitted to the Program by the date specified in Exhibit A.

H. Reports, Maps, Plans, Models and Documents. One (1) copy of maps, plans, worksheets, logs, field notes and other reference or source documents prepared for or gathered under this Contract, and one (1) copy of each unpublished report prepared under this Contract shall be submitted to the Program. If the Consultant writes or uses a computer program or spreadsheet as a part of this project, the Consultant 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 Program in written and digital forms with the final report. Digital media shall be labeled by the Consultant to provide sufficient detail to access the information on the media. All user manuals shall be submitted by the Consultant to Program providing complete documentation of computer programs developed under this Contract. The user manual shall also specify the source code language and the type of computer equipment necessary to operate the program(s). Any programs or computer software generated as a part of this Contract shall be the sole property of the Program.

I. Inspection and Acceptance. All deliverables furnished by the Consultant shall be subject to rigorous review by the Program's 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 Consultant'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 Consultant. 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 Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

C. Review Reports. The ED Office shall examine all studies, reports, sketches, opinions of the construction costs, and other documents presented by the Consultant 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 Consultant for publication and use in connection with related work. Use of this work for publication and related work by the Consultant must be conducted with prior authorization from the Program's Technical Point of Contact.

C. Publicity. Any publicity or media contact associated with the Consultant's services and the result of those services provided under this Contract shall be the sole responsibility of the Program. Media requests of the Consultant 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 Consultant 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 Consultant personnel in every phase of performance of Contract related work.

D. Kickbacks. The Consultant 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 Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

E. Office Space, Equipment, and Supplies. The Consultant will supply its own office space, equipment, and supplies.

8. General Provisions.

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

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

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

D. Audit/Access to Records. The Program and any of its representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Contract. The Consultant shall, immediately upon receiving written instruction from the Program, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Contract. The Consultant shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Program.

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

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

G. Certificate of Good Standing. Consultant shall provide Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs prior to performing work under this Contract.

H. 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 Contract.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Contract shall be kept confidential by the Consultant unless written

permission is granted by the Program for its release.

J. Conflicts of Interest

(i) 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 Program or a disclosure which would adversely affect the interests of the Program. Consultant shall notify the Program of any potential or actual conflicts of interest arising during the course of the Consultant's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the contract is terminated under this provision, the Consultant shall take steps to insure that the file, evidence, evaluation and data are provided to the Program 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.

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

K. Entirety of Contract. This Contract, consisting of twelve (12) pages, Exhibit A, consisting of fifteen (15) pages, Exhibit B, consisting of one (1) page, and Exhibit C, consisting of three (3) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

L. Force Majeure. Neither party shall be liable for failure to perform under this Contract 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.

M. Indemnification. The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, 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.

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

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

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

Q. 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 Contract are at all times the property of the Program.

R. 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.

S. Proof of Insurance. The Consultant shall not commence work under this Contract until the Consultant has obtained the following insurance coverages and provided the corresponding certificates of insurance:

(i) **Commercial General Liability Insurance.** Consultant shall provide coverage during the entire term of the Contract 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 Five Hundred Thousand Dollars (\$500,000.00) per claimant and One Million Dollars (\$1,000,000.00) per occurrence.

(ii) **Business Automobile Liability Insurance.** Consultant shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage will include bodily injury and

property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles

(iii) **Workers' Compensation or Employers' Liability Insurance.** The Consultant shall provide proof of workers' compensation coverage. 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.

(iv) **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, Program and ED Office 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 One Million Dollars (\$1,000,000.00) per claim.

T. 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.

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 Consultant fails to perform in accordance with the terms of this Contract.

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.

9. Contacts.

Administrative Point of Contact (Foundation):

Diane M. Wilson
Chief Financial and Administrative Officer
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Fax: (402) 323-7349
Email: dwilson@nebcommfound.org

Technical Point of Contact (Program):

Jason Farnsworth, Dir. Tech. Support Services
Platte River Recovery Implementation Prog.
Headwaters Corporation
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Phone: (308) 237-5728
Fax: (308) 237-4651
Email: farnsworthj@headwaterscorp.com

Administrative Point of Contact (Consultant):

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Madison, WI 53714
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Admin. Point of Contact (Program):

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Headwaters Corporation
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Kearney, Nebraska 68845
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Fax: (308) 237-4651
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

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Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
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Fax: (308) 237-4651
Email: barronb@headwaterscorp.com

Technical Point of Contact (Consultant):

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Madison, WI 53714
Phone: (608) 441-0342
Fax: (608) 441-0218
Email: aselle@interfluve.com

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10. **Signatures.** By signing this Contract, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Contract, that they have the authority to sign it.

NEBRASKA COMMUNITY FOUNDATION

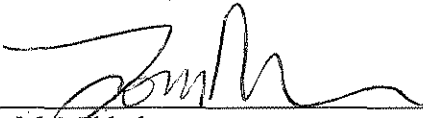


Diane M. Wilson
Chief Financial and Administrative Officer

6/10/2010

Date

INTER-FLUVE, INC.



Lon M. Mikkelsen,
Principal

6-7-2010

Date