



Dr. Edmund D. Andrews
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Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation
Program, and Edmund D. Andrews
Independent Scientific Advisory Committee

1. Parties. This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Edmund D. Andrews (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Ned Andrews.

2. Purpose of Agreement and Authority. The purpose of this Agreement 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 as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

TERMS AND CONDITIONS.

3. Term of Agreement. This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend. The Program agrees to pay Consultant **\$26,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

B. Expenses. Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.



- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

D. Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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
Email: kennyj@headwaterscorp.com

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

F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under this Agreement as noted in the Scope of Work in a satisfactory and proper manner.

B. Personnel. All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts. Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.

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



E. Presentation of Information. The Consultant shall compile and present all information clearly and concisely in a professional manner.

F. Inspection and Acceptance. All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

B. Information to be furnished to the Consultant. All information as is available to the Program and necessary for the carrying out of the Scope of Work 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 of Information. The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

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 Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

D. Monitor Activities. The Program shall have the right to monitor all Contract-related activities of Consultant. 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.

E. 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.

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

G. Anti-Lobbying. Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

H. 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 Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

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

C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, 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, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of 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 Agreement and/or applicable task order 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 Agreement 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. 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.
- H. 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 Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.
- I. Conflicts of Interest**
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies or firms which may constitute a conflict of interest giving rise to 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 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 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 Agreement includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.
- J. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- K. 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.
- L. 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. The obligations of this paragraph shall survive termination of this Contract.

M. 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, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.

N. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.

O. Notice 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 Agreement.

P. 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 Program.

Q. 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 pledges that no work performed by the Consultant or its contractors will violate any such restriction.

R. 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 state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.

S. Termination of Agreement. This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.

T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.



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

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

W. 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
Manager of Public/Private Partnerships
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: dwilson@nebcommfound.org

Administrative 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
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: barronb@headwaterscorp.com

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources Decision Support
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: smithc@headwaterscorp.com

Administrative and Technical Point of Contact (Consultant):

Dr. Edmund D. Andrews
766 Grant Place



Boulder, CO 80302
Phone: (303) 939-9398
Email: ned_andrews@att.net

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

Edmund D. Andrews

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant 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.

CONSULTANT

By: Edmund D. Andrews

Edmund D. Andrews

Date



Dr. Brian P. Bledsoe
1341 Arizona Bend
Watkinsville, GA 30766

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation
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Independent Scientific Advisory Committee

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

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- J. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- K. 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.
- L. 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. The obligations of this paragraph shall survive termination of this Contract.

- M. 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, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice 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 Agreement.
- P. 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 Program.
- Q. 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 pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. 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 state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.



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

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

W. 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
Manager of Public/Private Partnerships
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: dwilson@nebcommfound.org

Administrative 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
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: barronb@headwaterscorp.com

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources Decision Support
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: smithc@headwaterscorp.com

Administrative and Technical Point of Contact (Consultant):

Dr. Brian P. Bledsoe
1341 Arizona Bend



Watkinsville, GA 30766
Phone: (970) 402-6100
Email: bbledsoe@uga.edu

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

Brian P. Bledsoe
DUNS# 831871533

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant 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.

CONSULTANT

By: Brian P. Bledsoe

Brian P. Bledsoe

Date



Dr. Adrian H. Farmer
1509 Front Nine Drive
Fort Collins, CO 80525

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation
Program, and Adrian H. Farmer
Independent Scientific Advisory Committee

1. Parties. This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Adrian H. Farmer (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Adrian Farmer.

2. Purpose of Agreement and Authority. The purpose of this Agreement 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 as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

TERMS AND CONDITIONS.

3. Term of Agreement. This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend. The Program agrees to pay Consultant **\$26,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

B. Expenses. Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.



- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

D. Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

Billing Point of Contact (Program):

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

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

F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under this Agreement as noted in the Scope of Work in a satisfactory and proper manner.

B. Personnel. All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts. Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.

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



E. Presentation of Information. The Consultant shall compile and present all information clearly and concisely in a professional manner.

F. Inspection and Acceptance. All deliverables furnished by the Consultant shall be subject to rigorous review by the Program and 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 Consultant's service to be performed under this Agreement 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 Agreement.

B. Information to be furnished to the Consultant. All information as is available to the Program and necessary for the carrying out of the Scope of Work 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 of Information. The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

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 Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

D. Monitor Activities. The Program shall have the right to monitor all Contract-related activities of Consultant. 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.

E. 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.

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

G. Anti-Lobbying. Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

H. 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 Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

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

C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, 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, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of 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 Agreement and/or applicable task order 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 Agreement 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. 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.
- H. 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 Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.
- I. Conflicts of Interest**
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies or firms which may constitute a conflict of interest giving rise to 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 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 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 Agreement includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.
- J. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- K. 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.
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N. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.

O. Notice 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 Agreement.

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Manager of Public/Private Partnerships
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Phone: (402) 323-7330
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Administrative Point of Contact (Program):

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Headwaters Corporation
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Phone: (308) 237-5728
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Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
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Email: smithc@headwaterscorp.com

Administrative and Technical Point of Contact (Consultant):

Dr. Adrian H. Farmer
1509 Front Nine Drive



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Phone: (970) 631-3134
Email: apfarmer@comcast.net

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

Adrian H. Farmer
DUNS# 828576566

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant is receiving monies.

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CONSULTANT

By: Adrian H. Farmer

Adrian H. Farmer

Date



Dr. David L. Galat
3951 County Road 259
Fulton, MO 65251-3042

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation Program, and David L. Galat
Independent Scientific Advisory Committee

1. Parties. This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and David L. Galat (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. David Galat.

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Billing Point of Contact (Program):

Dr. Jerry F. Kenny, Executive Director
Platte River Recovery Implementation Program
Headwaters Corporation
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Phone: (308) 237-5728
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B. Personnel. All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts. Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.

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



E. Presentation of Information. The Consultant shall compile and present all information clearly and concisely in a professional manner.

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

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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 Agreement 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 Agreement.

B. Information to be furnished to the Consultant. All information as is available to the Program and necessary for the carrying out of the Scope of Work 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 of Information. The ED Office shall examine all information presented by the Consultant and shall promptly render in writing the Program's decisions pertaining thereto within specified time periods.

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

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 Agreement shall be the sole responsibility of the Program. Media requests of the Consultant should be directed to the Director of Operations, Administration, and Human Dimensions in the EDO.

D. Monitor Activities. The Program shall have the right to monitor all Contract-related activities of Consultant. 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.

E. 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.

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

G. Anti-Lobbying. Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.

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8. General Provisions.

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

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

C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, 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, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of 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 Agreement and/or applicable task order 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 Agreement to acquire similar services from another party.



- 195 **F. Award of Related Contracts.** The Program may undertake or award supplemental or successor
196 contracts for work related to this Contract. The Consultant shall cooperate fully with other contractors
197 and the Program in all such cases.
198
- 199 **G. Compliance with Law.** The Consultant shall keep informed of and comply with all applicable federal,
200 state and local laws and regulations in the performance of this Contract.
201
- 202 **H. Confidentiality of Information.** All documents, data compilations, reports, computer programs,
203 photographs, and any other work provided to or produced by the Consultant in the performance of this
204 Agreement shall be kept confidential by the Consultant unless written permission is granted by the
205 Program for its release.
206
- 207 **I. Conflicts of Interest**
208
- 209 (i) Consultant shall not engage in providing consultation to or representation of clients, agencies
210 or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program
211 or a disclosure which would adversely affect the interests of the Program. Consultant shall
212 notify the Program of any potential or actual conflicts of interest arising during the course of
213 the Consultant's performance under this Agreement. This Agreement may be terminated in
214 the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual
215 settlement of accounts. In the event the Agreement is terminated under this provision, the
216 Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to
217 the Program or its designee. This does not prohibit or affect the Consultant's ability to engage
218 in consultations, evaluations or representation under agreement with other agencies, firms,
219 facilities, or attorneys so long as no conflict exists.
220
- 221 (ii) A conflict of interest warranting termination of the Agreement includes, but is not necessarily
222 limited to, representing a client in an adversarial proceeding against the Platte River Recovery
223 Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating
224 suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo*
225 *warranto*.
226
- 227 **J. Entirety of Agreement.** This Agreement, consisting of nine (9) pages, represents the entire and
228 integrated Agreement between the Parties and supersedes all prior negotiations, representations, and
229 agreements, whether written or oral.
230
- 231 **K. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure
232 to perform arises out of causes beyond the control and without the fault or negligence of the
233 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy,
234 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This
235 provision shall become effective only if the party failing to perform immediately notifies the other party
236 of the extent and nature of the problem, limits delay in performance to that required by the event, and
237 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to
238 perform is beyond the control and without the fault or negligence of the nonperforming party.
239
- 240 **L. Indemnification.** The Consultant shall indemnify and hold harmless the Foundation, the Program, the
241 ED Office, and their officers, agents, employees, successors and assignees from any and all claims,
242 lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties
243 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. The obligations of this paragraph shall survive termination of this Contract.

- M. 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, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice 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 Agreement.
- P. 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 Program.
- Q. 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 pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. 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 state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.



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

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

W. 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
Manager of Public/Private Partnerships
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: dwilson@nebcommfound.org

Administrative 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
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: barronb@headwaterscorp.com

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources Decision Support
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: smithc@headwaterscorp.com

Administrative and Technical Point of Contact (Consultant):

Dr. David L. Galat
3951 County Road 259



Fulton, MO 65251-3042
Phone: (573) 303-6914
Email: galatd@missouri.edu

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

David L. Galat

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant 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.

CONSULTANT
By: David L. Galat

David L. Galat

Date



Dr. Jennifer A. Hoeting
4913 Hinsdale Drive
Fort Collins, CO 80526

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation
Program, and Jennifer A. Hoeting
Independent Scientific Advisory Committee

1. Parties. This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Jennifer A. Hoeting (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Jennifer Hoeting.

2. Purpose of Agreement and Authority. The purpose of this Agreement 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 as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

TERMS AND CONDITIONS.

3. Term of Agreement. This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend. The Program agrees to pay Consultant **\$26,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.

B. Expenses. Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.



- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

D. Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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
Email: kennyj@headwaterscorp.com

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

F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under this Agreement as noted in the Scope of Work in a satisfactory and proper manner.

B. Personnel. All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts. Consultant may not engage any subcontractors, outside associates, or consultants for any part of the work to be performed pursuant to this Agreement.

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obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice. The obligations of this paragraph shall survive termination of this Contract.

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O. Notice 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 Agreement.

P. 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 Program.

Q. 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 pledges that no work performed by the Consultant or its contractors will violate any such restriction.

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9. Contacts.

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Diane M. Wilson
Manager of Public/Private Partnerships
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PO Box 83107
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Phone: (402) 323-7330
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Administrative 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
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
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Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: barronb@headwaterscorp.com

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources Decision Support
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: smithc@headwaterscorp.com

Administrative and Technical Point of Contact (Consultant):

Dr. Jennifer A. Hoeting
4913 Hinsdale Drive



Fort Collins, CO 80526
Phone: (970) 988-1184
Email: jennifer.hoeting@gmail.com

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

Jennifer A. Hoeting

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant 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.

CONSULTANT

By: Jennifer A. Hoeting

Jennifer A. Hoeting

Date



David R. Marmorek, President
ESSA Technologies, Ltd.
600-2695 Granville St.
Vancouver, B.C., Canada V6H 3H4

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501-3107

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between the Nebraska Community Foundation, Platte River Recovery Implementation
Program, and David R. Marmorek

Independent Scientific Advisory Committee

1. Parties. This Agreement is made and entered into by and between the Nebraska Community Foundation (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and David R. Marmorek (“Consultant”), a private consultant. The following persons are authorized to represent the parties through execution of this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and David Marmorek.

2. Purpose of Agreement and Authority. The purpose of this Agreement 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 as member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC and the amount of the annual payment to the Consultant under this Agreement will be developed through the course of the Program’s annual budget process and approved annually by the GC. This Agreement supersedes all previous and current related Agreements and Amendments.

TERMS AND CONDITIONS.

3. Term of Agreement. This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through the later of December 31, 2019 or any extension approved in writing. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend. The Program agrees to pay Consultant **\$40,600** for the following services to be performed in 2017:

- GC Pallid Sturgeon Workshop – 4-day meeting x \$1,400 per day = \$5,600
- 2017 AMP Reporting Session – 4-day meeting x \$1,400 per day = \$5,600
- Conference Calls/WebEx – 2-hour meeting x 4 calls x \$350 per call = \$1,400
- Document review – 10 days of review x \$1,400/day = \$14,000
- ISAC Chair – ISAC coordination and preparation of reports for the GC (10 days x \$1,400/day) = \$14,000

The amounts for each task are estimates only but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling and is a ceiling price that Consultant exceeds at its own risk. Payment shall be made directly to Consultant.



B. Expenses. Expenses incurred by Consultant in performing the services described in 4(A) will be reimbursed, unless Consultant is reimbursed by his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- **Mileage** – Paid according to the prevailing Federal rate.
- **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable and prudent rate verified by receipts.

C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 4(A) and 4(B):

- **Invoice #1** – One-half the 2017 stipend (\$20,300) plus actual expenses submitted immediately after the GC Pallid Sturgeon Workshop.
- **Invoice #2** – One-half the 2017 stipend (\$20,300) plus actual expenses submitted immediately after the 2017 AMP Reporting Session.

D. Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program’s Executive Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the Foundation of approval. The Foundation will make payment of these funds directly to Consultant within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date.

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
Email: kennyj@headwaterscorp.com

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

F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, if applicable, execution of the final amendment to the Agreement documenting the final contract amount.

5. Responsibilities of Consultant.

A. Scope of Services. The Consultant shall perform the specific services required under this Agreement as noted in the Scope of Work in a satisfactory and proper manner.

B. Personnel. All services required hereunder will be performed by Consultant and Consultant shall be fully qualified and authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.



95 **C. Subcontracts.** Consultant may not engage any subcontractors, outside associates, or consultants for
96 any part of the work to be performed pursuant to this Agreement.

97
98 **D. Requests from the Program.** The Consultant shall be responsible and responsive to the Program and
99 the ED Office in their requests and requirements.

100
101 **E. Presentation of Information.** The Consultant shall compile and present all information clearly and
102 concisely in a professional manner.

103
104 **F. Inspection and Acceptance.** All deliverables furnished by the Consultant shall be subject to rigorous
105 review by the Program and the ED Office prior to acceptance.

106
107 **6. Responsibilities of the Program.**

108
109 **A. Designated Representative.** The Executive Director of the Program shall act as the Program's
110 administrative representative with respect to the Consultant's service to be performed under this
111 Agreement and shall have complete authority to transmit instructions, receive information, and interpret
112 and define the Program's policies and decisions with respect to services covered by this Agreement.

113
114 **B. Information to be furnished to the Consultant.** All information as is available to the Program and
115 necessary for the carrying out of the Scope of Work shall be furnished to the Consultant without charge
116 and the ED Office shall cooperate with the Consultant in the carrying out of the project.

117
118 **C. Review of Information.** The ED Office shall examine all information presented by the Consultant and
119 shall promptly render in writing the Program's decisions pertaining thereto within specified time
120 periods.

121
122 **D. Provide Criteria.** The ED Office shall provide all criteria and full information regarding its
123 requirements for the services.

124
125 **7. Special Provisions.**

126
127 **A. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement
128 of this Contract shall be paid by either party.

129
130 **B. Publication.** It is understood that the results of this work may be available to the Consultant for
131 publication and use in connection with related work. Use of this work for publication and related work
132 by the Consultant must be conducted with prior authorization from the Program's Technical Point of
133 Contact.

134
135 **C. Publicity.** Any publicity or media contact associated with the Consultant's services and the result of
136 those services provided under this Agreement shall be the sole responsibility of the Program. Media
137 requests of the Consultant should be directed to the Director of Operations, Administration, and Human
138 Dimensions in the EDO.

139
140 **D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of
141 Consultant. This shall include, but not be limited to, the right to make site inspections at any time, to
142 bring experts and consultants on site to examine or evaluate completed work or work in progress, and
143 to observe all Consultant personnel in every phase of performance of Contract-related work.



- E. 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.
- F. Debarment and Suspension.** Consultant certifies by signing this Contract that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participation in the transaction covered by this Contract.
- G. Anti-Lobbying.** Consultant makes the representations set forth on the Certification Regarding Lobbying, which is attached as Exhibit A and incorporated by reference as part of this Contract. Consultant shall execute such Certification at the time of executing this Agreement.
- H. 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 Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.
- B. Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Nebraska. The Courts of the State of Nebraska shall have jurisdiction over this Agreement and the parties.
- C. Assignment/Agreement 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 Agreement without the prior written consent of the other party. The Consultant shall not use this Agreement, 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, the Foundation, and any of their representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by or required of 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 Agreement and/or applicable task order 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 Agreement 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. 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.

H. 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 Agreement shall be kept confidential by the Consultant unless written permission is granted by the Program for its release.

I. Conflicts of Interest

(i) Consultant shall not engage in providing consultation to or representation of clients, agencies or firms which may constitute a conflict of interest giving rise to 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 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 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 Agreement includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River Recovery Implementation Program, its signatories, boards, commissions, or the Foundation, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

J. Entirety of Agreement. This Agreement, consisting of nine (9) pages, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

K. 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.



- L. 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. The obligations of this paragraph shall survive termination of this Contract.
- M. 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, Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.
- N. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Notice is effective upon delivery.
- O. Notice 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 Agreement.
- P. 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 Program.
- Q. 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 pledges that no work performed by the Consultant or its contractors will violate any such restriction.
- R. 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 state income taxes, social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- S. Termination of Agreement.** This Agreement may be terminated, without cause by Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if Consultant fails to perform in accordance with the terms of this Agreement. Consultant shall likewise have the right to unilaterally terminate the agreement for cause. In the event of termination, Program shall pay Consultant for all reasonable work performed up to the effective date of the termination.
- T. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the



parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

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

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

W. 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
Manager of Public/Private Partnerships
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: dwilson@nebcommfound.org

Administrative 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
Email: kennyj@headwaterscorp.com

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: barronb@headwaterscorp.com

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources Decision Support
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Email: smithc@headwaterscorp.com



Administrative and Technical Point of Contact (Consultant):

David R. Marmorek, President
ESSA Technologies Ltd.
600 - 2695 Granville St.
Vancouver, B.C., Canada V6H 3H4
Phone: (604) 677-9557
Email: dmarmorek@essa.com

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

NEBRASKA COMMUNITY FOUNDATION

Diane M. Wilson
Manager of Public/Private Partnerships
TIN# 47-0769903

Date

CONSULTANT

David R. Marmorek
DUNS# 241645779

Date



EXHIBIT A
Certification Regarding Lobbying

The undersigned certifies, on behalf of Consultant, 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 Consultant, 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 Consultant with respect to the federal grant or cooperative agreement under which the Consultant is receiving monies.

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CONSULTANT

By: David. R. Marmorek

David R. Marmorek

Date