Dr. Edmund D. Andrews

2 766 Grant Place

3 Boulder, CO 80302

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01/16/2017

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

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, 17 acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the 18 Consultant as member of the Program's Independent Scientific Advisory Committee (ISAC). This 19 Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The 20 three-year term of service is at the discretion of the GC and the amount of the annual payment to the 21 Consultant under this Agreement will be developed through the course of the Program's annul budget 22 process and approved annually by the GC. This Agreement supersedes all previous and current related 23 Agreements and Amendments. 24

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26 **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.

33 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
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- 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.

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Airfare and Baggage Fees – Actual expenses at a reasonable and prudent rate verified by receipts.

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- **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.
- 68 **Billing Point of Contact (Program):**
- 69 Dr. Jerry F. Kenny, Executive Director
- 70 Platte River Recovery Implementation Program
- 71 Headwaters Corporation
- 72 4111 4th Avenue, Suite 6
- 73 Kearney, Nebraska 68845
- 74 Phone: (308) 237-5728
- 75 Email: <u>kennyj@headwaterscorp.com</u>
- 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.
- 85 5. <u>Responsibilities of Consultant</u>.
- 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.

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- **E. Presentation of Information.** The Consultant shall compile and present all information clearly and concisely in a professional manner.
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 and the ED Office shall cooperate with the Consultant in the carrying out of the project.
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 periods.
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 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
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- **D. Monitor Activities.** The Program shall have the right to monitor all Contract-related activities of
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 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

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- Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount ofany 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.

161 8. <u>General Provisions</u>.

- 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 176 access to any books, documents, papers, and records of the Consultant which are pertinent to this 177 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or 178 Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or 179 accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this 180 Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, 181 independent auditor, accountant, or accounting firm, during the entire course of any audit authorized 182 by or required of the Program. 183
- 184
- E. Availability of Funds. Each payment obligation of the Program is conditioned upon the availability 185 of funds and continuation of the Platte River Recovery Implementation Program. If funds are not 186 allocated and available for the continuance of the services performed by the Consultant, the Agreement 187 and/or applicable task order may be terminated by the Program at the end of the period for which the 188 funds are available. The Program shall notify the Consultant at the earliest possible time of the services 189 which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the 190 event this provision is exercised, and the Program shall not be obligated or liable for any future 191 payments due or for any damages as a result of termination under this section. This provision shall not 192 be construed to permit the Program to terminate this Agreement to acquire similar services from another 193 party. 194

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- 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.
- 207 I. Conflicts of Interest
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies 209 or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program 210 or a disclosure which would adversely affect the interests of the Program. Consultant shall 211 notify the Program of any potential or actual conflicts of interest arising during the course of 212 the Consultant's performance under this Agreement. This Agreement may be terminated in 213 the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual 214 settlement of accounts. In the event the Agreement is terminated under this provision, the 215 Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to 216 the Program or its designee. This does not prohibit or affect the Consultant's ability to engage 217 in consultations, evaluations or representation under agreement with other agencies, firms, 218 facilities, or attorneys so long as no conflict exists. 219
- (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 <u>nine (9)</u> 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 231 to perform arises out of causes beyond the control and without the fault or negligence of the 232 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, 233 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This 234 provision shall become effective only if the party failing to perform immediately notifies the other party 235 of the extent and nature of the problem, limits delay in performance to that required by the event, and 236 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to 237 perform is beyond the control and without the fault or negligence of the nonperforming party. 238
- 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



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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.

- **M.** Independent Contractor. The Consultant shall function as an independent contractor for the purposes 247 of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for 248 any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be 249 incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for 250 the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in 251 this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as 252 an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation 253 of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no 254 health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, 255 Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents 256 and/or employees as a result of this Contract. 257
- 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.

01/16/2017

- 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.

300 **9.** <u>Contacts</u>.

302 Administrative Point of Contact (Foundation):

- 303 Diane M. Wilson
- 304 Manager of Public/Private Partnerships
- 305 Nebraska Community Foundation
- 306 PO Box 83107
- 307 Lincoln, Nebraska 68501-3107
- 308 Phone: (402) 323-7330
- 309 Email: <u>dwilson@nebcommfound.org</u>
- 310

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- 312 Dr. Jerry F. Kenny, Executive Director
- 313 Platte River Recovery Implementation Program
- 314 Headwaters Corporation
- 315 4111 4th Avenue, Suite 6
- 316 Kearney, Nebraska 68845
- 317 Phone: (308) 237-5728
- 318 Email: <u>kennyj@headwaterscorp.com</u>
- 319

320 Media Point of Contact (Program):

- 321 Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
- 322 Platte River Recovery Implementation Program
- 323 Headwaters Corporation
- 324 4111 4th Avenue, Suite 6
- 325 Kearney, Nebraska 68845
- 326 Phone: (308) 237-5728
- 327 Email: barronb@headwaterscorp.com
- 328

329 Technical Point of Contact (Program):

- 330 Chadwin Smith, Director of Natural Resources Decision Support
- 331 Platte River Recovery Implementation Program
- 332 Headwaters Corporation
- 333 4111 4th Avenue, Suite 6
- 334 Kearney, Nebraska 68845
- 335 Phone: (308) 237-5728
- 336 Email: <u>smithc@headwaterscorp.com</u>
- 337

338 Administrative and Technical Point of Contact (Consultant):

- 339 Dr. Edmund D. Andrews
- 340766 Grant Place

PRRIP – ED OFFICE DRAFT	01/16/20
Boulder, CO 80302	
Phone: (303) 939-9398	
Email: <u>ned_andrews@att.net</u>	
10. Signatures. By signing this Agreement	t, the undersigned certify that they have read and understo
	this Agreement, that they have the authority to sign it, a
that their respective Party agrees to be bound by	
unat them respective runty agrees to be bound by	y the terms of the Agreement.
NEBRASKA COMMUNITY FOUNDATIO	N
	Date
	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Diane M. Wilson Manager of Public/Private Partnerships TIN# 47-0769903 CONSULTANT	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date



367		EXHIBIT A
368		Certification Regarding Lobbying
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370	Th	e undersigned certifies, on behalf of Consultant, that to the best of his or her knowledge and belief:
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372 373 374 375	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
376 377 378		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.
379 380 381 382	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.
383 384 385 386 387 388	wa tra by	is certification is a material representation of fact upon which reliance was placed when this transaction as made or entered into. Submission of this certification is a prerequisite for making or entering into this insaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty not less than \$10,000 and not more than \$100,000 for each such failure.
389	CO	ONSULTANT
390		: Edmund D. Andrews
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395	Ed	Imund D. Andrews Date

Dr. Brian P. Bledsoe

1341 Arizona Bend

Watkinsville, GA 30766



01/16/2017

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

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- D. Audit/Access to Records. The Program, the Foundation, and any of their representatives shall have 176 access to any books, documents, papers, and records of the Consultant which are pertinent to this 177 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or 178 Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or 179 accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this 180 Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, 181 independent auditor, accountant, or accounting firm, during the entire course of any audit authorized 182 by or required of the Program. 183
- 184
- E. Availability of Funds. Each payment obligation of the Program is conditioned upon the availability 185 of funds and continuation of the Platte River Recovery Implementation Program. If funds are not 186 allocated and available for the continuance of the services performed by the Consultant, the Agreement 187 and/or applicable task order may be terminated by the Program at the end of the period for which the 188 funds are available. The Program shall notify the Consultant at the earliest possible time of the services 189 which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the 190 event this provision is exercised, and the Program shall not be obligated or liable for any future 191 payments due or for any damages as a result of termination under this section. This provision shall not 192 be construed to permit the Program to terminate this Agreement to acquire similar services from another 193 party. 194

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- (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 <u>nine (9)</u> 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 231 to perform arises out of causes beyond the control and without the fault or negligence of the 232 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, 233 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This 234 provision shall become effective only if the party failing to perform immediately notifies the other party 235 of the extent and nature of the problem, limits delay in performance to that required by the event, and 236 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to 237 perform is beyond the control and without the fault or negligence of the nonperforming party. 238
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 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



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- 304 Manager of Public/Private Partnerships
- 305 Nebraska Community Foundation
- 306 PO Box 83107
- 307 Lincoln, Nebraska 68501-3107
- 308 Phone: (402) 323-7330
- 309 Email: <u>dwilson@nebcommfound.org</u>
- 310

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- 317 Phone: (308) 237-5728
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- 325 Kearney, Nebraska 68845
- 326 Phone: (308) 237-5728
- 327 Email: barronb@headwaterscorp.com
- 328

329 **Technical Point of Contact (Program):**

- 330 Chadwin Smith, Director of Natural Resources Decision Support
- 331 Platte River Recovery Implementation Program
- 332 Headwaters Corporation
- 333 4111 4th Avenue, Suite 6
- 334 Kearney, Nebraska 68845
- 335 Phone: (308) 237-5728
- 336 Email: <u>smithc@headwaterscorp.com</u>
- 337

338 Administrative and Technical Point of Contact (Consultant):

- 339 Dr. Brian P. Bledsoe
- 340 1341 Arizona Bend

PRRIP – ED OFFICE DRAFT	01/
Watkinsville, GA 30766	
Phone: (970) 402-6100	
Email: <u>bbledsoe@uga.edu</u>	
10. Signatures. By signing this Agreem	ent, the undersigned certify that they have read and unde
	of this Agreement, that they have the authority to sign
that their respective Party agrees to be bound	by the terms of the Agreement.
	by the terms of the Agreement.
that their respective Party agrees to be bound	by the terms of the Agreement.
that their respective Party agrees to be bound	by the terms of the Agreement.
that their respective Party agrees to be bound	by the terms of the Agreement.
that their respective Party agrees to be bound NEBRASKA COMMUNITY FOUNDAT Diane M. Wilson	by the terms of the Agreement.
that their respective Party agrees to be bound NEBRASKA COMMUNITY FOUNDAT Diane M. Wilson Manager of Public/Private Partnerships	ON
that their respective Party agrees to be bound NEBRASKA COMMUNITY FOUNDAT Diane M. Wilson	ON
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that their respective Party agrees to be bound NEBRASKA COMMUNITY FOUNDAT Diane M. Wilson Manager of Public/Private Partnerships TIN# 47-0769903	ON



368		EXHIBIT A
369		Certification Regarding Lobbying
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371	Th	ne undersigned certifies, on behalf of Consultant, that to the best of his or her knowledge and belief:
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373	1.	
374		person for influencing or attempting to influence an officer or employee of any federal agency, a
375		Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in
376		connection with the awarding of any federal contract, the making of any federal grant, the making of
377		any federal loan, the entering into of any cooperative agreement, or the extension, continuation,
378		renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
379	2	No registrant under the Labbring Disclosure A at of 1005 has made any labbring contacts on babalf of
380 381	۷.	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
382		is receiving monies.
383		is receiving momes.
384	Th	is certification is a material representation of fact upon which reliance was placed when this transaction
385		as made or entered into. Submission of this certification is a prerequisite for making or entering into this
386		insaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited
387		Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty
388	of	not less than \$10,000 and not more than \$100,000 for each such failure.
389		
390	CO	ONSULTANT
391	By	v: Brian P. Bledsoe
392		
393		
394		
395 396	Br	ian P. Bledsoe Date
-		

Dr. Adrian H. Farmer

1509 Front Nine Drive

Fort Collins, CO 80525



01/16/2017

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

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, 17 acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the 18 Consultant as member of the Program's Independent Scientific Advisory Committee (ISAC). This 19 Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The 20 three-year term of service is at the discretion of the GC and the amount of the annual payment to the 21 Consultant under this Agreement will be developed through the course of the Program's annul budget 22 process and approved annually by the GC. This Agreement supersedes all previous and current related 23 Agreements and Amendments. 24

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26 **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.

33 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. 50 Lodging – Actual expenses at a reasonable and prudent rate verified by receipts. • 51 • Rental Car – Actual expenses at a reasonable and prudent rate verified by receipts. 52 Meals, Taxis, Parking, and Other Associated Travel Expenses – Actual expenses at a reasonable • 53 and prudent rate verified by receipts. 54 55 C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 56 4(A) and 4(B): 57 Invoice #1 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 58 • the GC Pallid Sturgeon Workshop. 59 Invoice #2 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 60 the 2017 AMP Reporting Session. 61 62 **D.** Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program's Executive 63 Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the 64 Foundation of approval. The Foundation will make payment of these funds directly to Consultant 65 within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date. 66 67 **Billing Point of Contact (Program):** 68 Dr. Jerry F. Kenny, Executive Director 69 Platte River Recovery Implementation Program 70 Headwaters Corporation 71 4111 4th Avenue, Suite 6 72 Kearney, Nebraska 68845 73 Phone: (308) 237-5728 74 Email: kennyj@headwaterscorp.com 75 76 E. Withholding of Payment. If a work element has not been received by the Program by the dates 77 established in this Agreement, the Program may withhold all payments beginning with the month 78 following that date until such deficiency has been corrected. 79 80 F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, 81 if applicable, execution of the final amendment to the Agreement documenting the final contract 82
- 8485 5. Responsibilities of Consultant.

amount.

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- **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.

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- **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.

104 6. <u>Responsibilities of the Program</u>.

- 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.

122 **7.** <u>Special Provisions</u>.

- 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.
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- **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

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- Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount ofany 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.

161 8. <u>General Provisions</u>.

- 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.
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- 323 Headwaters Corporation
- 324 4111 4th Avenue, Suite 6
- 325 Kearney, Nebraska 68845
- 326 Phone: (308) 237-5728
- 327 Email: barronb@headwaterscorp.com
- 328

329 Technical Point of Contact (Program):

- 330 Chadwin Smith, Director of Natural Resources Decision Support
- 331 Platte River Recovery Implementation Program
- 332 Headwaters Corporation
- 333 4111 4th Avenue, Suite 6
- 334 Kearney, Nebraska 68845
- 335 Phone: (308) 237-5728
- 336 Email: <u>smithc@headwaterscorp.com</u>
- 337

338 Administrative and Technical Point of Contact (Consultant):

- 339 Dr. Adrian H. Farmer
- 340 1509 Front Nine Drive

PRRIP – ED OFFICE DRAFT	01/16/2017
Fort Collins, CO 80525	
Phone: (970) 631-3134	
mail: apfarmer@comcast.net	
	ent, the undersigned certify that they have read and understood of this Agreement, that they have the authority to sign it, and by the terms of the Agreement.
NEBRASKA COMMUNITY FOUNDATI	ON
Diane M. Wilson	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships FIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Diane M. Wilson Manager of Public/Private Partnerships TIN# 47-0769903 CONSULTANT	Date
Manager of Public/Private Partnerships FIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date



368		EXHIBIT A
369		Certification Regarding Lobbying
370		
371	Th	e undersigned certifies, on behalf of Consultant, that to the best of his or her knowledge and belief:
372		
373	1.	
374		person for influencing or attempting to influence an officer or employee of any federal agency, a
375		Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in
376		connection with the awarding of any federal contract, the making of any federal grant, the making of
377		any federal loan, the entering into of any cooperative agreement, or the extension, continuation,
378		renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
379	\mathbf{r}	No registrant under the Labbring Disclosure A at of 1005 has made any labbring contacts on babalf of
380 381	۷.	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
382		is receiving monies.
383		is receiving momes.
384	Th	is certification is a material representation of fact upon which reliance was placed when this transaction
385		as made or entered into. Submission of this certification is a prerequisite for making or entering into this
386		insaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited
387		Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty
388	of	not less than \$10,000 and not more than \$100,000 for each such failure.
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390		ONSULTANT
391	By	v: Adrian H. Farmer
392		
393		
394		
395 396	$\overline{\Delta c}$	drian H. Farmer Date
030	110	



01/16/2017

1	Dr. David L. Galat	Nebraska Community Foundation	
2	3951 County Road 259	PO Box 83107	
3	Fulton, MO 65251-3042	Lincoln, NE 68501-3107	
4		ΙΟΙ ΕΜΕΝΤΑΤΙΩΝΙ ΟΡΩΩΡΑΜ	
5	PLATTE RIVER RECOVERY IN		
6	Agreement between the Nebraska Community For		
7	Program, and D	vavid L. Galat	
8			
9	Independent Scientific	Advisory Committee	
10	1 Douting This Association mode and anter	and into has and hatman the Naharaka Community	
11	1. Parties. This Agreement is made and enter Foundation ("Foundation") of Lincoln, Nebraska, repr	red into by and between the Nebraska Community	
12			
13	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		
14	Wilson of the Foundation, Dr. Jerry Kenny of the Prog	· · · ·	
15	witson of the Foundation, D1. Jerry Kenny of the Flog	grani, and Dr. David Galat.	
16 17	2. Purpose of Agreement and Authority. The p	purpose of this Agreement is to allow the Foundation,	
17	acting as the fiscal agent for the Governance Committ		
19	Consultant as member of the Program's Independ		
20	Agreement describes a three-year (2017-2019) comm		
21	three-year term of service is at the discretion of the	*	
22	Consultant under this Agreement will be developed		
23	process and approved annually by the GC. This Agr		
24	Agreements and Amendments.	comone supersoues un previous une current relateu	
25			
26	TERMS AND CONDITIONS.		
27	3. Term of Agreement. This Agreement is eff	active when all neutice evenues it. The terms of this	
28	Agreement is from the date of signing through the late	ective when all parties execute it. The term of this	
29 20	in writing. The services to be performed under this	• •	
30 31	Agreement.	, Agreement will commence upon signing of this	
32	Agreement.		
33	4. Payment.		
34	I ayment.		
35	A. Stipend. The Program agrees to pay Consultant \$	26.600 for the following services to be performed in	
36	2017:		
37	• GC Pallid Sturgeon Workshop – 4-day meetin	$\log x \$1 400 \text{ per day} = \$5 600$	
38	 2017 AMP Reporting Session – 4-day meeting 		
39	 Conference Calls/WebEx – 2-hour meeting x 		
40	 Document review – 10 days of review x \$1,40 	-	
40 41		-0/4ay = 0.14,000	
42	The amounts for each task are estimates only but	are not to be exceeded unless authorized in writing	
43		s controlling and is a ceiling price that Consultant	
44	exceeds at its own risk. Payment shall be made di		
45			
46	B. Expenses. Expenses incurred by Consultant in	performing the services described in 4(A) will be	
47		by his/her respective agency or institution.	
48	Reimbursements will be paid according to the foll		
49	• Mileage – Paid according to the prevailing Fe		
-			



- Airfare and Baggage Fees Actual expenses at a reasonable and prudent rate verified by receipts. 50 Lodging – Actual expenses at a reasonable and prudent rate verified by receipts. • 51 • Rental Car – Actual expenses at a reasonable and prudent rate verified by receipts. 52 Meals, Taxis, Parking, and Other Associated Travel Expenses – Actual expenses at a reasonable • 53 and prudent rate verified by receipts. 54 55 C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 56 4(A) and 4(B): 57 **Invoice** #1 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 58 • the GC Pallid Sturgeon Workshop. 59 Invoice #2 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 60 the 2017 AMP Reporting Session. 61 62 **D.** Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program's Executive 63 Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the 64 Foundation of approval. The Foundation will make payment of these funds directly to Consultant 65 within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date. 66 67 **Billing Point of Contact (Program):** 68 Dr. Jerry F. Kenny, Executive Director 69 Platte River Recovery Implementation Program 70 Headwaters Corporation 71 4111 4th Avenue, Suite 6 72 Kearney, Nebraska 68845 73 Phone: (308) 237-5728 74 Email: kennyj@headwaterscorp.com 75 76 E. Withholding of Payment. If a work element has not been received by the Program by the dates 77 established in this Agreement, the Program may withhold all payments beginning with the month 78 following that date until such deficiency has been corrected. 79 80 F. Final Completion and Payment. Final payment shall be made upon receipt of the final invoice and, 81 if applicable, execution of the final amendment to the Agreement documenting the final contract 82 amount.
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5. <u>Responsibilities of Consultant</u>.

- 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.

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- **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.

104 6. <u>Responsibilities of the Program</u>.

- 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.

122 **7.** <u>Special Provisions</u>.

- 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.
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- **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

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- Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount ofany 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.

161 8. <u>General Provisions</u>.

- 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 176 access to any books, documents, papers, and records of the Consultant which are pertinent to this 177 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or 178 Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or 179 accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this 180 Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, 181 independent auditor, accountant, or accounting firm, during the entire course of any audit authorized 182 by or required of the Program. 183
- 184
- E. Availability of Funds. Each payment obligation of the Program is conditioned upon the availability 185 of funds and continuation of the Platte River Recovery Implementation Program. If funds are not 186 allocated and available for the continuance of the services performed by the Consultant, the Agreement 187 and/or applicable task order may be terminated by the Program at the end of the period for which the 188 funds are available. The Program shall notify the Consultant at the earliest possible time of the services 189 which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the 190 event this provision is exercised, and the Program shall not be obligated or liable for any future 191 payments due or for any damages as a result of termination under this section. This provision shall not 192 be construed to permit the Program to terminate this Agreement to acquire similar services from another 193 party. 194

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- 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.
- 207 I. Conflicts of Interest
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies 209 or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program 210 or a disclosure which would adversely affect the interests of the Program. Consultant shall 211 notify the Program of any potential or actual conflicts of interest arising during the course of 212 the Consultant's performance under this Agreement. This Agreement may be terminated in 213 the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual 214 settlement of accounts. In the event the Agreement is terminated under this provision, the 215 Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to 216 the Program or its designee. This does not prohibit or affect the Consultant's ability to engage 217 in consultations, evaluations or representation under agreement with other agencies, firms, 218 facilities, or attorneys so long as no conflict exists. 219
- (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 <u>nine (9)</u> 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 231 to perform arises out of causes beyond the control and without the fault or negligence of the 232 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, 233 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This 234 provision shall become effective only if the party failing to perform immediately notifies the other party 235 of the extent and nature of the problem, limits delay in performance to that required by the event, and 236 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to 237 perform is beyond the control and without the fault or negligence of the nonperforming party. 238
- 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



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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.

- **M.** Independent Contractor. The Consultant shall function as an independent contractor for the purposes 247 of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for 248 any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be 249 incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for 250 the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in 251 this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as 252 an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation 253 of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no 254 health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, 255 Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents 256 and/or employees as a result of this Contract. 257
- 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.

01/16/2017

- 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.

300 **9.** <u>Contacts</u>.

302 Administrative Point of Contact (Foundation):

- 303 Diane M. Wilson
- 304 Manager of Public/Private Partnerships
- 305 Nebraska Community Foundation
- 306 PO Box 83107
- 307 Lincoln, Nebraska 68501-3107
- 308 Phone: (402) 323-7330
- 309 Email: <u>dwilson@nebcommfound.org</u>
- 310

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311 Administrative Point of Contact (Program):

- 312 Dr. Jerry F. Kenny, Executive Director
- 313 Platte River Recovery Implementation Program
- 314 Headwaters Corporation
- 315 4111 4th Avenue, Suite 6
- 316 Kearney, Nebraska 68845
- 317 Phone: (308) 237-5728
- 318 Email: <u>kennyj@headwaterscorp.com</u>
- 319

320 Media Point of Contact (Program):

- 321 Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
- 322 Platte River Recovery Implementation Program
- 323 Headwaters Corporation
- 324 4111 4th Avenue, Suite 6
- 325 Kearney, Nebraska 68845
- 326 Phone: (308) 237-5728
- 327 Email: barronb@headwaterscorp.com
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- 330 Chadwin Smith, Director of Natural Resources Decision Support
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- 335 Phone: (308) 237-5728
- 336 Email: <u>smithc@headwaterscorp.com</u>
- 337

338 Administrative and Technical Point of Contact (Consultant):

- 339 Dr. David L. Galat
- 340 3951 County Road 259

PRRIP – ED OFFICE DRAFT	01/16/2
Fulton, MO 65251-3042	
Phone: (573) 303-6914	
Email: galatd@missouri.edu	
	it, the undersigned certify that they have read and underst this Agreement, that they have the authority to sign it, by the terms of the Agreement.
NEBRASKA COMMUNITY FOUNDATIO	PN
NEBRASKA COMMUNITY FOUNDATIO	DN
Diane M. Wilson	D ate
Diane M. Wilson Manager of Public/Private Partnerships	
Diane M. Wilson	
Diane M. Wilson Manager of Public/Private Partnerships	
Diane M. Wilson Manager of Public/Private Partnerships TIN# 47-0769903	
Diane M. Wilson Manager of Public/Private Partnerships	



 Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress connection with the awarding of any federal contract, the making of any federal grant, the making 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. No registrant under the Lobbying Disclosure Act of 1995 has made any lobbying contacts on behalf 	367		EXHIBIT A
 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 an person for influencing or attempting to influence an officer or employee of any federal agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress connection with the awarding of any federal contract, the making of any federal grant, the making 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 the Consultant with respect to the federal grant or cooperative agreement under which the Consultat 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 the transaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibities by Section 1 above or who fails to file or amend the required certification shall be subject to a civil penal of not less than \$10,000 and not more than \$100,000 for each such failure. CONSULTANT By: David L. Galat 	368		Certification Regarding Lobbying
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390 By: David L. Galat 391	383 384 385 386 387	wa tra by	as made or entered into. Submission of this certification is a prerequisite for making or entering into this nsaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty
390 By: David L. Galat 391		CO	ONSULTANT
392 393 394	390	By	y: David L. Galat
393 394	391		
394	392		
		Da	avid L. Galat Date

Dr. Jennifer A. Hoeting

Fort Collins, CO 80526

4913 Hinsdale Drive



01/16/2017

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

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, 17 acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the 18 Consultant as member of the Program's Independent Scientific Advisory Committee (ISAC). This 19 Agreement describes a three-year (2017-2019) commitment of service on the part of the Consultant. The 20 three-year term of service is at the discretion of the GC and the amount of the annual payment to the 21 Consultant under this Agreement will be developed through the course of the Program's annul budget 22 process and approved annually by the GC. This Agreement supersedes all previous and current related 23 Agreements and Amendments. 24

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26 **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.

33 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.

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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. • 51 • Rental Car – Actual expenses at a reasonable and prudent rate verified by receipts. 52 Meals, Taxis, Parking, and Other Associated Travel Expenses – Actual expenses at a reasonable • 53 and prudent rate verified by receipts. 54 55 C. Invoices. Consultant shall submit two (2) invoices in 2017 for the services and expenses described in 56 4(A) and 4(B): 57 **Invoice** #1 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 58 • the GC Pallid Sturgeon Workshop. 59 Invoice #2 – One-half the 2017 stipend (\$13,300) plus actual expenses submitted immediately after 60 the 2017 AMP Reporting Session. 61 62 **D.** Billing Procedures. Consultant shall submit invoices as described in 4(C) to the Program's Executive 63 Director (ED). Upon receiving an invoice, the ED will review and approve the invoice and advise the 64 Foundation of approval. The Foundation will make payment of these funds directly to Consultant 65 within 30 days of receiving notice of approval. Payments are due within 60 days after the billing date. 66 67 **Billing Point of Contact (Program):** 68
- 69 Dr. Jerry F. Kenny, Executive Director
- 70 Platte River Recovery Implementation Program
- 71 Headwaters Corporation
- 72 4111 4th Avenue, Suite 6
- 73 Kearney, Nebraska 68845
- 74 Phone: (308) 237-5728
- 75 Email: <u>kennyj@headwaterscorp.com</u>
- 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.
- 85 5. <u>Responsibilities of Consultant</u>.
- 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.

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- **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.

104 6. <u>Responsibilities of the Program</u>.

- 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.

122 **7.** <u>Special Provisions</u>.

- 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.
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- **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

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- Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount ofany 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.

161 8. <u>General Provisions</u>.

- 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 176 access to any books, documents, papers, and records of the Consultant which are pertinent to this 177 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or 178 Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or 179 accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this 180 Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, 181 independent auditor, accountant, or accounting firm, during the entire course of any audit authorized 182 by or required of the Program. 183
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- E. Availability of Funds. Each payment obligation of the Program is conditioned upon the availability 185 of funds and continuation of the Platte River Recovery Implementation Program. If funds are not 186 allocated and available for the continuance of the services performed by the Consultant, the Agreement 187 and/or applicable task order may be terminated by the Program at the end of the period for which the 188 funds are available. The Program shall notify the Consultant at the earliest possible time of the services 189 which will or may be affected by a shortage of funds. No penalty shall accrue to the Program in the 190 event this provision is exercised, and the Program shall not be obligated or liable for any future 191 payments due or for any damages as a result of termination under this section. This provision shall not 192 be construed to permit the Program to terminate this Agreement to acquire similar services from another 193 party. 194

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- 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.
- 207 I. Conflicts of Interest
- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies 209 or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program 210 or a disclosure which would adversely affect the interests of the Program. Consultant shall 211 notify the Program of any potential or actual conflicts of interest arising during the course of 212 the Consultant's performance under this Agreement. This Agreement may be terminated in 213 the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual 214 settlement of accounts. In the event the Agreement is terminated under this provision, the 215 Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to 216 the Program or its designee. This does not prohibit or affect the Consultant's ability to engage 217 in consultations, evaluations or representation under agreement with other agencies, firms, 218 facilities, or attorneys so long as no conflict exists. 219
- (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 <u>nine (9)</u> 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 231 to perform arises out of causes beyond the control and without the fault or negligence of the 232 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, 233 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This 234 provision shall become effective only if the party failing to perform immediately notifies the other party 235 of the extent and nature of the problem, limits delay in performance to that required by the event, and 236 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to 237 perform is beyond the control and without the fault or negligence of the nonperforming party. 238
- 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



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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.

- **M.** Independent Contractor. The Consultant shall function as an independent contractor for the purposes 247 of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for 248 any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be 249 incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for 250 the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in 251 this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as 252 an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation 253 of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no 254 health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, 255 Program, or ED Office employees will inure to the benefit of the Consultant or the Consultant's agents 256 and/or employees as a result of this Contract. 257
- 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.

01/16/2017

- 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.

300 **9.** <u>Contacts</u>.

302 Administrative Point of Contact (Foundation):

- 303 Diane M. Wilson
- 304 Manager of Public/Private Partnerships
- 305 Nebraska Community Foundation
- 306 PO Box 83107
- 307 Lincoln, Nebraska 68501-3107
- 308 Phone: (402) 323-7330
- 309 Email: <u>dwilson@nebcommfound.org</u>
- 310

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311 Administrative Point of Contact (Program):

- 312 Dr. Jerry F. Kenny, Executive Director
- 313 Platte River Recovery Implementation Program
- 314 Headwaters Corporation
- 315 4111 4th Avenue, Suite 6
- 316 Kearney, Nebraska 68845
- 317 Phone: (308) 237-5728
- 318 Email: <u>kennyj@headwaterscorp.com</u>
- 319

320 Media Point of Contact (Program):

- 321 Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
- 322 Platte River Recovery Implementation Program
- 323 Headwaters Corporation
- 324 4111 4th Avenue, Suite 6
- 325 Kearney, Nebraska 68845
- 326 Phone: (308) 237-5728
- 327 Email: barronb@headwaterscorp.com
- 328

329 Technical Point of Contact (Program):

- 330 Chadwin Smith, Director of Natural Resources Decision Support
- 331 Platte River Recovery Implementation Program
- 332 Headwaters Corporation
- 333 4111 4th Avenue, Suite 6
- 334 Kearney, Nebraska 68845
- 335 Phone: (308) 237-5728
- 336 Email: <u>smithc@headwaterscorp.com</u>
- 337

338 Administrative and Technical Point of Contact (Consultant):

- 339 Dr. Jennifer A. Hoeting
- 340 4913 Hinsdale Drive

PRRIP – ED OFFICE DRAFT	01/16/
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 underst
	his Agreement, that they have the authority to sign it,
that their respective Party agrees to be bound by	
, j.g.	6 · · · · ·
NEBRASKA COMMUNITY FOUNDATION	1
Diana M. Wilson	
Diane M. Wilson	Date
Manager of Public/Private Partnerships	Date
	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
Manager of Public/Private Partnerships TIN# 47-0769903	Date
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Manager of Public/Private Partnerships TIN# 47-0769903	Date



edge and belief: f Consultant, to any ny federal agency, a ember of Congress in grant, the making of ension, continuation, erative agreement.				
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contacts on behalf of				
which the Consultant				
when this transaction				
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				
•				

David R. Marmorek, President

2 ESSA Technologies, Ltd.

3 600-2695 Granville St.

4 Vancouver, B.C., Canada V6H 3H4 5

01/16/2017

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

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- ISAC Chair ISAC coordination and preparation of reports for the GC (10 days x \$1,400/day) = \$14,000
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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.

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- 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:
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 Dimensions in the EDO.
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- **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 178 access to any books, documents, papers, and records of the Consultant which are pertinent to this 179 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program or 180 Foundation, provide to the Foundation or any governmental entity, independent auditor, accountant, or 181 accounting firm, all books, documents, papers and records of the Consultant which are pertinent to this 182 Agreement. The Consultant shall cooperate fully with the Foundation or any such governmental entity, 183 independent auditor, accountant, or accounting firm, during the entire course of any audit authorized 184 by or required of the Program. 185
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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

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- 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.

210 I. Conflicts of Interest

- (i) Consultant shall not engage in providing consultation to or representation of clients, agencies 212 or firms which may constitute a conflict of interest giving rise to a disadvantage to the Program 213 or a disclosure which would adversely affect the interests of the Program. Consultant shall 214 notify the Program of any potential or actual conflicts of interest arising during the course of 215 the Consultant's performance under this Agreement. This Agreement may be terminated in 216 the event a conflict of interest arises. Termination of the Agreement will be subject to a mutual 217 settlement of accounts. In the event the Agreement is terminated under this provision, the 218 Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to 219 the Program or its designee. This does not prohibit or affect the Consultant's ability to engage 220 in consultations, evaluations or representation under agreement with other agencies, firms, 221 facilities, or attorneys so long as no conflict exists. 222
- (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 <u>nine (9)</u> 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 234 to perform arises out of causes beyond the control and without the fault or negligence of the 235 nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, 236 fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This 237 provision shall become effective only if the party failing to perform immediately notifies the other party 238 of the extent and nature of the problem, limits delay in performance to that required by the event, and 239 takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to 240 perform is beyond the control and without the fault or negligence of the nonperforming party. 241



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- 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 249 of this Contract, and shall not be considered an employee of the Program, Foundation, or ED Office for 250 any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be 251 incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for 252 the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in 253 this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as 254 an agent or representative for or on behalf of the Foundation or the Program, or to incur any obligation 255 of any kind on the behalf of the Foundation or the Program. The Consultant agrees that no 256 health/hospitalization benefits, workers' compensation and/or similar benefits available to Foundation, 257 258 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. 259
- 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.
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- 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

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- 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.

303 9. <u>Contacts</u>.

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305 Administrative Point of Contact (Foundation):

- 306 Diane M. Wilson
- 307 Manager of Public/Private Partnerships
- 308 Nebraska Community Foundation
- 309 PO Box 83107
- 310 Lincoln, Nebraska 68501-3107
- 311 Phone: (402) 323-7330
- 312 Email: <u>dwilson@nebcommfound.org</u>
- 313

314 Administrative Point of Contact (Program):

- 315 Dr. Jerry F. Kenny, Executive Director
- 316 Platte River Recovery Implementation Program
- 317 Headwaters Corporation
- 318 4111 4th Avenue, Suite 6
- 319 Kearney, Nebraska 68845
- 320 Phone: (308) 237-5728
- 321 Email: <u>kennyj@headwaterscorp.com</u>
- 322

323 Media Point of Contact (Program):

- 324 Dr. Bridget Barron, Director of Operations, Administration, and Human Dimensions
- 325 Platte River Recovery Implementation Program
- 326 Headwaters Corporation
- 327 4111 4th Avenue, Suite 6
- 328 Kearney, Nebraska 68845
- 329 Phone: (308) 237-5728
- 330 Email: barronb@headwaterscorp.com
- 331

332 Technical Point of Contact (Program):

- 333 Chadwin Smith, Director of Natural Resources Decision Support
- 334 Platte River Recovery Implementation Program
- 335 Headwaters Corporation
- 336 4111 4th Avenue, Suite 6
- 337 Kearney, Nebraska 68845
- 338 Phone: (308) 237-5728
- 339 Email: <u>smithc@headwaterscorp.com</u>

2017-2019 Marmorek Agreement for Service

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340	Administrative and Technical Point of Con	itact (Consultant):			
341	David R. Marmorek, President				
342	2 ESSA Technologies Ltd.				
343 600 - 2695 Granville St.					
344	Vancouver, B.C., Canada V6H 3H4				
345	45 Phone: (604) 677-9557				
346	46 Email: <u>dmarmorek@essa.com</u>				
347					
348					
349 350 351 352 353		ent, the undersigned certify that they have read and understood of this Agreement, that they have the authority to sign it, and by the terms of the Agreement.			
353 354 355	NEBRASKA COMMUNITY FOUNDATIO	ON			
356					
357					
358					
359	Diane M. Wilson	Date			
360	Manager of Public/Private Partnerships	Dutt			
361	TIN# 47-0769903				
362					
363					
364	CONSULTANT				
365					
366					
367					
368					
369 370	David R. Marmorek DUNS# 241645779	Date			



371		EXHIBIT A			
372	Certification Regarding Lobbying				
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374	Th	ne undersigned certifies, on behalf of Consultant, that to the best of his or her knowledge and belief:			
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376	1.				
377		person for influencing or attempting to influence an officer or employee of any federal agency, a			
378 379		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			
380		any federal loan, the entering into of any cooperative agreement, or the extension, continuation,			
381		renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.			
382					
383	2.	No registrant under the Lobbying Disclosure Act of 1995 has made any lobbying contacts on behalf of			
384		the Consultant with respect to the federal grant or cooperative agreement under which the Consultant			
385		is receiving monies.			
386	-				
387	This certification is a material representation of fact upon which reliance was placed when this transaction				
388		as made or entered into. Submission of this certification is a prerequisite for making or entering into this insaction imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited			
389 390		Section 1 above or who fails to file or amend the required certification shall be subject to a civil penalty			
391	•	not less than \$10,000 and not more than \$100,000 for each such failure.			
392	01				
393	CO	ONSULTANT			
394	By	y: David. R. Marmorek			
395					
396					
397					
398	<u>–</u>				
399	Da	avid R. Marmorek Date			