



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and
Edmund D. Andrews Regarding “Independent Scientific Advisory Committee”

This First Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Edmund D. Andrews (“Consultant”), a private consultant, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2015.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2015.
- (2) To provide the Consultant with a 2015 stipend of **\$26,250** in approved and available FY 2015 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2015 to provide services as outlined in **Exhibit A** and as detailed below. This 2015 stipend includes:
 - Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 13, 2014. The following parties agree to the terms of this Amendment and the original Agreement:

For the Consultant:

Edmund D. Andrews

Date

For the Foundation:

Diane M. Wilson
Chief Operating Officer/Chief Financial Officer
Nebraska Community Foundation, Inc.

Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
EXHIBIT A
PRRIP Signed 2014 Andrews ISAC Agreement**



1 Edmund D. Andrews, Ph.D.
2 Tenaya Water Resources, LLC.
3 766 Grant Place
4 Boulder, CO 80302

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

5
6 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
7 **Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation**
8 **Program, and Edmund D. Andrews**

9
10 **Independent Scientific Advisory Committee**

11
12 1. **Parties.** This Agreement is made and entered into by and between the Nebraska
13 Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte
14 River Recovery Implementation Program (“Program”) and Edmund D. Andrews (“Consultant”), a private
15 consultant. The following persons are authorized to represent the parties through this Agreement: Diane
16 Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Edmund Andrews.

17
18 2. **Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the
19 Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the
20 Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the
21 Consultant’s service as a member of the Program’s Independent Scientific Advisory Committee (ISAC).
22 This Agreement describes a three-year (2014-2016) commitment of service on the part of the Consultant.
23 The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be
24 developed through the course of the Program’s annual budget process and approved annually by the GC.

25
26 **TERMS AND CONDITIONS.**

27
28 3. **Term of Agreement.** This Agreement is effective when all parties execute it. The term
29 of this Agreement is from the date of signing through December 31, 2016. The services to be performed
30 under this Agreement will commence upon signing of this Agreement.

31
32 4. **Payment.**

33
34 **A. Stipend.** The Program agrees to pay the Consultant a stipend of \$26,250 in 2014.
35 The 2014 stipend includes the following:
36 • Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
37 • Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
38 • Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000
39 The Consultant’s annual stipend will be developed and approved annually by the GC in 2015 and 2016.
40 Annual Amendments will be used to update stipend amounts in this Agreement.

41
42 **B. Reimbursement of Expenses.** Expenses incurred by the Consultant in performing the
43 Scope of Work described in this Agreement will be reimbursed, unless the Consultant is reimbursed by
44 his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:
45 • **Mileage** – Paid according to the prevailing Federal rate.
46 • **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
47 • **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
48 • **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.



- 49 • **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable
50 and prudent rate verified by receipts.
51

52 **C. Billing Procedures.** The Consultant shall send an invoice after each ISAC
53 Meeting or web/conference call for the appropriate amount of the annual stipend, any associated expenses,
54 and any associated days of document review to the Executive Director's Office ("ED Office"; address
55 included below). The Program's Executive Director, upon receiving each invoice, will approve the invoice
56 and submit the invoice for payment. The submittal for payment will then be reviewed by the Signatory
57 Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of
58 these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties.
59 Payments of invoices are due within 60 days after the billing date of the Consultant.
60

61 **Billing Point of Contact (Program):**

62 Dr. Jerry F. Kenny, Executive Director
63 Platte River Recovery Implementation Program
64 Headwaters Corporation
65 4111 4th Avenue, Suite 6
66 Kearney, Nebraska 68845
67 Phone: (308) 237-5728
68 Email: kennyj@headwaterscorp.com
69

70 **C. Withholding of Payment.** If a work element has not been received by the
71 Program by the dates established in this Agreement, the Program may withhold all payments beginning
72 with the month following that date until such deficiency has been corrected.
73

74 **D. Final Completion and Payment.** The final payment shall be made upon
75 acceptance of all requested input and receipt of the final invoice.
76

77 **5. Responsibilities of Consultant.**
78

79 **A. Scope of Services.** The Consultant shall perform the specific services required
80 under this Agreement in a satisfactory and proper manner as outlined below:

- 81 • **AMP Reporting Session** in Omaha, NE in fall 2014 – ISAC interaction with EDO staff, Program
82 participants, and contractors; review and discussion of "State of the Platte" Report; review and
83 discussion of latest drafts of other AMP documents.
84 **ISAC meeting** in Omaha, NE in spring 2014 – field visits to comparative sites on lower Platte River;
85 focused discussion on tern/plover issues and other topics as directed by the Program.
86 • **Web/conference calls** as requested by the Program for focused discussion of selected topics.
87 • **Annual report (2014)** – contribute to development of 2014 ISAC report to the GC.
88 • **Additional document and/or issues review (2014)** – input on documents and/or issues as directed by
89 the GC.

90 Annual amendments will be used to update the Scope of Services in this Agreement if necessary.
91

92 **B. Requests from the Program.** The Consultant shall be responsible and responsive
93 to the Program and the ED Office in their requests and requirements related to the scope of this Agreement.
94

95 **C. Presentation of Information.** The Consultant shall compile and present all
96 information clearly and concisely, in a professional manner.



97 **D. Inspection and Acceptance.** All deliverables furnished by the Consultant shall
98 be subject to rigorous review by the Program and the ED Office prior to acceptance.
99

100 **6. Responsibilities of the Program.**

101
102 **A. Designated Representative.** The Executive Director of the Program shall act as
103 the Program’s administrative representative with respect to the Consultant’s service to be performed under
104 this Agreement and shall have complete authority to transmit instructions, receive information, and interpret
105 and define the Program’s policies and decisions with respect to services covered by this Agreement.
106

107 **B. Information to be Furnished to the Consultant.** All information as is available
108 to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be furnished
109 to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out
110 of the project.
111

112 **C. Review of Information.** The ED Office shall examine all information presented
113 by the Consultant and shall promptly render in writing the Program’s decisions pertaining thereto within
114 specified time periods.
115

116 **D. Provide Criteria.** The ED Office shall provide all criteria and full information
117 regarding its requirements for the services.
118

119 **7. Special Provisions.**

120
121 **A. Publication.** It is understood that the results of this work may be available to the
122 Consultant for publication and use in connection with related work. Use of this work for publication and
123 related work by the Consultant must be conducted with prior authorization from the Program’s Technical
124 Point of Contact.
125

126 **B. Publicity.** Any publicity or media contact associated with the Consultant’s
127 services and the result of those services provided under this Agreement shall be the sole responsibility of
128 the Program. Media requests of the Consultant should be directed to the Director of Outreach and
129 Operations in the ED Office.
130

131 **C. Office Space, Equipment, and Supplies.** The Consultant will supply all office
132 space, equipment, and supplies unless other mutually accepted agreements are made.
133

134 **8. General Provisions.**

135
136 **A. Amendments.** Any changes, modifications, revisions or amendments to this
137 Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by
138 written instrument, executed and signed by all parties to this Agreement.
139

140 **B. Applicable Law/Venue.** The construction, interpretation and enforcement of this
141 Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the State of
142 Nebraska shall have jurisdiction over this Agreement and the parties.
143

144 **C. Assignment/Agreement Not Used as Collateral.** Neither party shall assign or



145 otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the
146 prior written consent of the other party. The Consultant shall not use this Agreement, or any portion thereof,
147 for collateral for any financial obligation, without the prior written permission of the Program.

148
149 **D. Audit/Access to Records.** The Program and any of its representatives shall have
150 access to any books, documents, papers, and records of the Consultant which are pertinent to this
151 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program,
152 provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and
153 records of the Consultant which are pertinent to this Agreement. Reasonable costs for duplicating and
154 submitting identified books, documents, papers, and records of the Consultant to the Program shall be borne
155 by the Program. The Consultant shall cooperate fully with any such independent auditor, accountant, or
156 accounting firm, during the entire course of any audit authorized by the Program.

157
158 **E. Availability of Funds.** Each payment obligation of the Program is conditioned
159 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
160 funds are not allocated and available for the continuance of the services performed by the Consultant, the
161 Agreement may be terminated by the Program at the end of the period for which the funds are available.
162 The Program shall notify the Consultant at the earliest possible time of the services which will or may be
163 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
164 exercised, and the Program shall not be obligated or liable for any future payments due or for any damages
165 as a result of termination under this section. This provision shall not be construed to permit the Program to
166 terminate this Agreement to acquire similar services from another party.

167
168 **F. Confidentiality of Information.** All documents, data compilations, reports,
169 computer programs, photographs, and any other work provided to or produced by the Consultant in the
170 performance of this Agreement shall be kept confidential by the Consultant unless written permission is
171 granted by the Program for its release.

172
173 **G. Conflicts of Interest**

174
175 (i) Consultant shall not engage in providing consultation or representation of
176 clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the
177 Program or a disclosure which would adversely affect the interests of the Program. Consultant shall notify
178 the Program of any potential or actual conflicts of interest arising during the course of the Consultant's
179 performance under this Agreement. This Agreement may be terminated in the event a conflict of interest
180 arises. Termination of the Agreement will be subject to a mutual settlement of accounts. In the event the
181 Agreement is terminated under this provision, the Consultant shall take steps to insure that the file,
182 evidence, evaluation and data are provided to the Program or its designee. This does not prohibit or affect
183 the Consultant's ability to engage in consultations, evaluations or representation under agreement with other
184 agencies, firms, facilities, or attorneys so long as no conflict exists.

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

189
190 **H. Entirety of Agreement.** This Agreement, consisting of seven (7) pages,
191 represents the entire and integrated Agreement between the parties and supersedes all prior negotiations,
192 representations, and agreements, whether written or oral.



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

201
202 **J. Independent Consultant.** The Consultant shall function as an independent
203 consultant for the purposes of this Agreement, and shall not be considered an employee of the Program,
204 Foundation or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts or
205 liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement, and shall be
206 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
207 Agreement.

208
209 **K. Notices.** All notices arising out of, or from, the provisions of this Agreement shall
210 be in writing and given to the parties at the address provided under this Agreement, either by regular mail,
211 e-mail, or delivery in person.

212
213 **L. Ownership of Documents/Work Product/Materials.** All documents, reports,
214 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this
215 Agreement are at all times the property of the Program.

216
217 **M. Patent or Copyright Protection.** The Consultant recognizes that certain
218 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
219 restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such
220 restriction.

221
222 **N. Taxes.** The Consultant shall pay all taxes and other such amounts required by
223 federal, state and local law, including but not limited to federal and social security taxes, workers'
224 compensation, and unemployment insurance.

225
226 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
227 by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately
228 for cause if the Consultant fails to perform in accordance with the terms of this Agreement. The
229 Consultant shall likewise have the right to unilaterally terminate the agreement for good cause.

230
231 **P. Third Party Beneficiary Rights.** The parties do not intend to create in any other
232 individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to
233 create such status. The rights, duties and obligations contained in this Agreement shall operate only
234 between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement.
235 The provisions of this Agreement are intended only to assist the parties in determining and performing their
236 obligations under this Agreement.

237
238 **Q. Time.** The Consultant agrees to adhere to Agreement schedules for accomplishing
239 the tasks called for under the Agreement.

240
241 **R. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not



242 be used to construe the language in this Agreement.

243

244 **S. Waiver.** The waiver of any breach of any term or condition in this Agreement
 245 shall not be deemed a waiver of any prior or subsequent breach.

246

247 **9. Contacts.**

248

249 **Administrative Point of Contact (Foundation):**

250 Diane M. Wilson
 251 Chief Operating Officer/Chief Financial Officer
 252 Nebraska Community Foundation
 253 PO Box 83107
 254 Lincoln, Nebraska 68501-3107
 255 Phone: (402) 323-7330
 256 Email: dwilson@nebcommfound.org

257

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

259 Chadwin B. Smith, Director of Natural Resources
 260 Platte River Recovery Implementation Program
 261 Headwaters Corporation
 262 4111 4th Avenue, Suite 6
 263 Kearney, Nebraska 68845
 264 Phone: (308) 237-5728
 265 Cell: (402) 432-7950
 266 Email: smithc@headwaterscorp.com

267

268 **Administrative and Technical Point of Contact (Consultant):**

269 Edmund D. Andrews, Ph.D.
 270 Tenaya Water Resources LLC
 271 766 Grant Place
 272 Boulder, CO 80302
 273 Phone: (303) 939-9398
 274 Email: ned_andrews@att.net

Admin. Point of Contact (Program):

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

Media Point of Contact (Program):

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



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

278
279 **NEBRASKA COMMUNITY FOUNDATION**

280
281
282 
283 _____
284 Diane M. Wilson
285 Chief Operating Officer/Chief Financial Officer
286 Nebraska Community Foundation, Inc.

2/18/2014

Date

287
288
289 **CONSULTANT**

290
291 
292 _____
293 Edmund D. Andrews
294

Feb 9, 2014

Date

Tenaya Water Resources



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. and
Ecological Engineering International, LLC Regarding “Independent Scientific Advisory
Committee”

This Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Brian P. Bledsoe (“Consultant”), a private consultant representing Ecological Engineering International, LLC, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2015.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2015.
- (2) To provide the Consultant with a 2015 stipend of **\$26,250** in approved and available FY 2015 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2015 to provide services as outlined in **Exhibit A** and as detailed below. This 2015 stipend includes:
 - Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 11, 2013. The following parties agree to the terms of this Amendment and the original Agreement:

For the Consultant:

 Brian P. Bledsoe, President
 Ecological Engineering International, LLC

 Date

For the Foundation:

 Diane M. Wilson
 Chief Operating Officer/Chief Financial Officer
 Nebraska Community Foundation, Inc.

 Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
EXHIBIT A
PRRIP Signed 2013 Bledsoe ISAC Agreement**



1 Dr. Brian P. Bledsoe
2 Ecological Engineering International, LLC
3 1904 Mohawk St.
4 Fort Collins, CO 80525-1526

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

5
6 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
7 **Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation**
8 **Program, and Ecological Engineering International, LLC**

9
10 **Independent Scientific Advisory Committee**

11
12 **1. Parties.** This Agreement is made and entered into by and between the Nebraska
13 Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the
14 Platte River Recovery Implementation Program ("Program") and Ecological Engineering International,
15 LLC ("EEI"), a private consultant. The Parties intend that Dr. Brian P. Bledsoe shall be the "Consultant"
16 representing EEI pursuant to the terms of this Agreement. The following persons are authorized to
17 represent the Parties through this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the
18 Program, and Dr. Brian Bledsoe of EEI.

19
20 **2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the
21 Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the
22 Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the
23 Consultant's service as a member of the Program's Independent Scientific Advisory Committee (ISAC).
24 This Agreement describes a three-year (2013-2015) commitment of service on the part of the Consultant.
25 The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be
26 developed through the course of the Program's annual budget process and approved annually by the GC.

27
28 **TERMS AND CONDITIONS.**

29
30 **3. Term of Agreement.** This Agreement is effective when all parties execute it. The term
31 of this Agreement is from the date of signing through December 31, 2015. The services to be performed
32 under this Agreement will commence upon signing of this Agreement.

33
34 **4. Payment.**

35
36 **A. Stipend.** The Program agrees to pay the Consultant a stipend of **\$26,600** in 2013.
37 The 2013 stipend includes the following:

- 38 • Three (3) ISAC meetings x three-day meetings x \$1,400 per day = \$12,600
39 • Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000
40 The Consultant's annual stipend will be developed and approved annually by the GC in 2014 and 2015.
41 Annual amendments will be used to update stipend amounts in this Agreement.

42
43 **B. Reimbursement of Expenses.** Expenses incurred by the Consultant in performing
44 the Scope of Work described in this Agreement will be reimbursed, unless the Consultant is reimbursed
45 by his/her respective agency or institution. Reimbursements will be paid according to the following
46 guidelines:

- 47 • **Mileage** – Paid according to the prevailing Federal rate.
48 • **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.



- 49 • **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 50 • **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 51 • **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable
- 52 and prudent rate verified by receipts.

53

54

C. Billing Procedures. The Consultant shall send an invoice after each ISAC meeting (AMP Reporting Session, summer meeting, fall meeting) for one-third of the annual stipend plus any associated expenses to the Executive Director’s Office (“ED Office”; address included below). The Program’s Executive Director, upon receiving each invoice, will approve the invoice and submit the invoice for payment. The submittal for payment will then be reviewed by the Signatory Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties. Payments of invoices are due within 60 days after the billing date of the Consultant.

62

Billing Point of Contact (Program):

63 Dr. Jerry F. Kenny, Executive Director
64 Platte River Recovery Implementation Program
65 Headwaters Corporation
66 4111 4th Avenue, Suite 6
67 Kearney, Nebraska 68845
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C. 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.

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76

D. Final Completion and Payment. The final payment shall be made upon acceptance of all requested input and receipt of the final invoice.

78

79

5. Responsibilities of Consultant.

80

81

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

82

- 83 • **AMP Reporting Session** in Omaha, NE on April 22-23, 2013 – ISAC interaction with EDO staff, Program participants, and contractors; review and discussion of “State of the Platte” Report; review and discussion of latest drafts of AMP documents such as Synthesis Report.
- 84 • **Summer workshop** in Kearney, NE (June-July, 2013) – field visits to implementation sites; focused discussion on target flow issues or other topics as directed by the Program.
- 85 • **Fall meeting** in Denver, CO (October-December, 2013) – opportunity for ISAC to meet together to build 2013 ISAC Report to GC.
- 86 • **Annual report** (2013) – contribute to development of 2013 ISAC report to the GC.
- 87 • **Additional document and/or issues review** (2013) – input on documents and/or issues as directed by the GC.

88

Annual amendments will be used to update the Scope of Services in this Agreement if necessary.

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95 **B. Requests from the Program.** The Consultant shall be responsible and
96 responsive to the Program and the ED Office in their requests and requirements related to the scope of
97 this Agreement.

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100 information clearly and concisely, in a professional manner.

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103 be subject to rigorous review by the Program and the ED Office prior to acceptance.

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108 the Program’s administrative representative with respect to the Consultant’s service to be performed
109 under this Agreement and shall have complete authority to transmit instructions, receive information, and
110 interpret and define the Program’s policies and decisions with respect to services covered by this
111 Agreement.

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114 to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be
115 furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the
116 carrying out of the project.

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119 by the Consultant and shall promptly render in writing the Program’s decisions pertaining thereto within
120 specified time periods.

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123 regarding its requirements for the services.

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128 Consultant for publication and use in connection with related work. Use of this work for publication and
129 related work by the Consultant must be conducted with prior authorization from the Program’s Technical
130 Point of Contact.

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133 services and the result of those services provided under this Agreement shall be the sole responsibility of
134 the Program. Media requests of the Consultant should be directed to the Director of Outreach and
135 Operations in the ED Office.

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137 **C. Office Space, Equipment, and Supplies.** The Consultant will supply all office
138 space, equipment, and supplies unless other mutually accepted agreements are made.

139
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142



143 **8. General Provisions.**

144 **A. Amendments.** Any changes, modifications, revisions or amendments to this
 145 Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by
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 149 this Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the
 150 State of Nebraska shall have jurisdiction over this Agreement and the parties.
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 154 prior written consent of the other party. The Consultant shall not use this Agreement, or any portion
 155 thereof, for collateral for any financial obligation, without the prior written permission of the Program.
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 161 records of the Consultant which are pertinent to this Agreement. Reasonable costs for duplicating and
 162 submitting identified books, documents, papers, and records of the Consultant to the Program shall be
 163 borne by the Program. The Consultant shall cooperate fully with any such independent auditor,
 164 accountant, or accounting firm, during the entire course of any audit authorized by the Program.
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 167 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
 168 funds are not allocated and available for the continuance of the services performed by the Consultant, the
 169 Agreement may be terminated by the Program at the end of the period for which the funds are available.
 170 The Program shall notify the Consultant at the earliest possible time of the services which will or may be
 171 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
 172 exercised, and the Program shall not be obligated or liable for any future payments due or for any
 173 damages as a result of termination under this section. This provision shall not be construed to permit the
 174 Program to terminate this Agreement to acquire similar services from another party.
 175

176 **F. Confidentiality of Information.** All documents, data compilations, reports,
 177 computer programs, photographs, and any other work provided to or produced by the Consultant in the
 178 performance of this Agreement shall be kept confidential by the Consultant unless written permission is
 179 granted by the Program for its release.
 180

181 **G. Conflicts of Interest**

182 **(i)** Consultant shall not engage in providing consultation or representation
 183 of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to
 184 the Program or a disclosure which would adversely affect the interests of the Program. Consultant shall
 185 notify the Program of any potential or actual conflicts of interest arising during the course of the
 186 Consultant’s performance under this Agreement. This Agreement may be terminated in the event a
 187 conflict of interest arises. Termination of the Agreement will be subject to a mutual settlement of
 188 accounts. In the event the Agreement is terminated under this provision, the Consultant shall take steps to
 189
 190



191 insure that the file, evidence, evaluation and data are provided to the Program or its designee. This does
192 not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation
193 under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

194
195 (ii) A conflict of interest warranting termination of the Agreement includes,
196 but is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River
197 Recovery Implementation Program, its signatories, boards, commissions or initiating suits in equity
198 including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.

199
200 **H. Entirety of Agreement.** This Agreement, consisting of seven (7) pages,
201 represents the entire and integrated Agreement between the parties and supersedes all prior negotiations,
202 representations, and agreements, whether written or oral.

203
204 **I. Force Majeure.** Neither party shall be liable for failure to perform under this
205 Agreement if such failure to perform arises out of causes beyond the control and without the fault or
206 negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or
207 the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually
208 severe weather. This provision shall become effective only if the party failing to perform immediately
209 notifies the other party of the extent and nature of the problem, limits delay in performance to that
210 required by the event, and takes all reasonable steps to minimize delays. This provision shall not be
211 effective unless the failure to perform is beyond the control and without the fault or negligence of the
212 nonperforming party.

213
214 **J. Independent Consultant.** The Consultant shall function as an independent
215 consultant for the purposes of this Agreement, and shall not be considered an employee of the Program,
216 Foundation or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts
217 or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement, and shall be
218 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
219 Agreement.

220
221 **K. Notices.** All notices arising out of, or from, the provisions of this Agreement
222 shall be in writing and given to the parties at the address provided under this Agreement, either by regular
223 mail, e-mail, or delivery in person.

224
225 **L. Ownership of Documents/Work Product/Materials.** All documents, reports,
226 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
227 this Agreement are at all times the property of the Program.

228
229 **M. Patent or Copyright Protection.** The Consultant recognizes that certain
230 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
231 restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such
232 restriction.

233
234 **N. Taxes.** The Consultant shall pay all taxes and other such amounts required by
235 federal, state and local law, including but not limited to federal and social security taxes, workers'
236 compensation, and unemployment insurance.

237
238 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
239 by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately



240 for cause if the Consultant fails to perform in accordance with the terms of this Agreement. The
241 Consultant shall likewise have the right to unilaterally terminate the agreement for good cause.
242

243 **P. Third Party Beneficiary Rights.** The parties do not intend to create in any
244 other individual or entity the status of third party beneficiary, and this Agreement shall not be construed
245 so as to create such status. The rights, duties and obligations contained in this Agreement shall operate
246 only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this
247 Agreement. The provisions of this Agreement are intended only to assist the parties in determining and
248 performing their obligations under this Agreement.
249

250 **Q. Time.** The Consultant agrees to adhere to Agreement schedules for
251 accomplishing the tasks called for under the Agreement.
252

253 **R. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not
254 be used to construe the language in this Agreement.
255

256 **S. Waiver.** The waiver of any breach of any term or condition in this Agreement
257 shall not be deemed a waiver of any prior or subsequent breach.
258

259 **9. Contacts.**

261 **Administrative Point of Contact (Foundation):**

262 Diane M. Wilson
263 Chief Financial and Administrative Officer
264 Nebraska Community Foundation
265 PO Box 83107
266 Lincoln, Nebraska 68501-3107
267 Phone: (402) 323-7330
268 Email: dwilson@nebcommfound.org
269

261 **Admin. Point of Contact (Program):**

262 Dr. Jerry F. Kenny, Executive Director
263 Platte River Recovery Implementation Prog.
264 Headwaters Corporation
265 4111 4th Avenue, Suite 6
266 Kearney, Nebraska 68845
267 Phone: (308) 237-5728
268 Email: kennyj@headwaterscorp.com
269

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

271 Chadwin B. Smith, Director of Natural Resources
272 Platte River Recovery Implementation Prog.
273 Headwaters Corporation
274 4111 4th Avenue, Suite 6
275 Kearney, Nebraska 68845
276 Phone: (308) 237-5728
277 Cell: (402) 432-7950
278 Email: smithc@headwaterscorp.com
279

270 **Media Point of Contact (Program):**

271 Dr. Bridget Barron, Director of Outreach
272 Platte River Recovery Implementation Prog.
273 Headwaters Corporation
274 4111 4th Avenue, Suite 6
275 Kearney, Nebraska 68845
276 Phone: (308) 237-5728
277 Email: barronb@headwaterscorp.com
278

280 **Administrative and Technical Point of Contact (Consultant):**

281 Brian P. Bledsoe
282 Ecological Engineering International, LLC
283 1904 Mohawk St.
284 Fort Collins, CO 80525-1526
285 Phone: (970) 402-6100
286 Email: brian.bledsoe@colostate.edu
287
288



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

292
293

NEBRASKA COMMUNITY FOUNDATION

294
295
296
297

Diane M. Wilson
Chief Operating Officer/Chief Financial Officer
Nebraska Community Foundation, Inc.

2/11/2013

Date

301
302

CONSULTANT

303
304
305
306
307

Brian P. Bledsoe, President
Ecological Engineering International, LLC

1/3/13

Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. and
Adrian H. Farmer Regarding “Independent Scientific Advisory Committee”

This Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Adrian H. Farmer (“Consultant”), a private consultant, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2015.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2015.
- (2) To provide the Consultant with a 2015 stipend of **\$26,250** in approved and available FY 2015 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2015 to provide services as outlined in **Exhibit A** and as detailed below. This 2015 stipend includes:
 - Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 4, 2013. The following parties agree to the terms of this Amendment and the original Agreement:

For the Consultant:

 Adrian H. Farmer

 Date

For the Foundation:

 Diane M. Wilson
 Chief Operating Officer/Chief Financial Officer
 Nebraska Community Foundation, Inc.

 Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
EXHIBIT A
PRRIP Signed 2013 Farmer ISAC Agreement**



1 Adrian H. Farmer, Ph.D.
2 Wild Ecological Solutions
3 1509 Front Nine Drive
4 Fort Collins, CO 80525
5

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

6 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
7 **Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation**
8 **Program, and Adrian H. Farmer**

9
10 **Independent Scientific Advisory Committee**

11
12 1. **Parties.** This Agreement is made and entered into by and between the Nebraska
13 Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the
14 Platte River Recovery Implementation Program ("Program") and Adrian H. Farmer ("Consultant"), a
15 private consultant. The following persons are authorized to represent the parties through this Agreement:
16 Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Adrian Farmer.
17

18 2. **Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the
19 Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the
20 Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the
21 Consultant's service as a member of the Program's Independent Scientific Advisory Committee (ISAC).
22 This Agreement describes a three-year (2013-2015) commitment of service on the part of the Consultant.
23 The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be
24 developed through the course of the Program's annual budget process and approved annually by the GC.
25

26 **TERMS AND CONDITIONS.**
27

28 3. **Term of Agreement.** This Agreement is effective when all parties execute it. The term
29 of this Agreement is from the date of signing through December 31, 2015. The services to be performed
30 under this Agreement will commence upon signing of this Agreement.
31

32 4. **Payment.**
33

34 **A. Stipend.** The Program agrees to pay the Consultant a stipend of **\$30,500** in 2013.
35 The 2013 stipend includes the following:

- 36 • Three (3) ISAC meetings x three-day meetings x \$1,400 per day = \$12,600
- 37 • Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000
- 38 • October 2012 ISAC target flow workshop in Omaha, NE (two-day workshop and one day travel =
39 three days) x \$1,300 per day (2012 ISAC daily rate) = \$3,900

40 The Consultant's annual stipend will be developed and approved annually by the GC in 2014 and 2015.
41 Annual amendments will be used to update stipend amounts in this Agreement.
42

43 **B. Reimbursement of Expenses.** Expenses incurred by the Consultant in performing
44 the Scope of Work described in this Agreement will be reimbursed, unless the Consultant is reimbursed
45 by his/her respective agency or institution. Reimbursements will be paid according to the following
46 guidelines:

- 47 • **Mileage** – Paid according to the prevailing Federal rate.
- 48 • **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.



- 49 • **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 50 • **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 51 • **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable
- 52 and prudent rate verified by receipts.

53
54 **C. Billing Procedures.** The Consultant shall send an invoice after each ISAC
55 meeting (AMP Reporting Session, summer meeting, fall meeting) for one-third of the annual stipend plus
56 any associated expenses to the Executive Director’s Office (“ED Office”; address included below). The
57 Program’s Executive Director, upon receiving each invoice, will approve the invoice and submit the
58 invoice for payment. The submittal for payment will then be reviewed by the Signatory Parties of the
59 Program who will advise the Foundation of approval. The Foundation will make payment of these funds
60 directly to the Consultant within 30 days of notice of approval by the Signatory Parties. Payments of
61 invoices are due within 60 days after the billing date of the Consultant.

62
63 **Billing Point of Contact (Program):**
64 Dr. Jerry F. Kenny, Executive Director
65 Platte River Recovery Implementation Program
66 Headwaters Corporation
67 4111 4th Avenue, Suite 6
68 Kearney, Nebraska 68845
69 Phone: (308) 237-5728
70 Email: kennyj@headwaterscorp.com

71
72 **C. Withholding of Payment.** If a work element has not been received by the
73 Program by the dates established in this Agreement, the Program may withhold all payments beginning
74 with the month following that date until such deficiency has been corrected.

75
76 **D. Final Completion and Payment.** The final payment shall be made upon
77 acceptance of all requested input and receipt of the final invoice.

78 79 **5. Responsibilities of Consultant.**

80
81 **A. Scope of Services.** The Consultant shall perform the specific services required
82 under this Agreement in a satisfactory and proper manner as outlined below:

- 83 • **AMP Reporting Session** in Omaha, NE on April 22-23, 2013 – ISAC interaction with EDO staff,
84 Program participants, and contractors; review and discussion of “State of the Platte” Report; review
85 and discussion of latest drafts of AMP documents such as Synthesis Report.
- 86 • **Summer workshop** in Kearney, NE (June-July, 2013) – field visits to implementation sites; focused
87 discussion on target flow issues or other topics as directed by the Program.
- 88 • **Fall meeting** in Denver, CO (October-December, 2013) – opportunity for ISAC to meet together to
89 build 2013 ISAC Report to GC.
- 90 • **Annual report** (2013) – contribute to development of 2013 ISAC report to the GC.
- 91 • **Additional document and/or issues review** (2013) – input on documents and/or issues as directed
92 by the GC.

93 Annual amendments will be used to update the Scope of Services in this Agreement if necessary.



95 **B. Requests from the Program.** The Consultant shall be responsible and
96 responsive to the Program and the ED Office in their requests and requirements related to the scope of
97 this Agreement.

98
99 **C. Presentation of Information.** The Consultant shall compile and present all
100 information clearly and concisely, in a professional manner.

101
102 **D. Inspection and Acceptance.** All deliverables furnished by the Consultant shall
103 be subject to rigorous review by the Program and the ED Office prior to acceptance.

104
105 **6. Responsibilities of the Program.**

106
107 **A. Designated Representative.** The Executive Director of the Program shall act as
108 the Program’s administrative representative with respect to the Consultant’s service to be performed
109 under this Agreement and shall have complete authority to transmit instructions, receive information, and
110 interpret and define the Program’s policies and decisions with respect to services covered by this
111 Agreement.

112
113 **B. Information to be Furnished to the Consultant.** All information as is available
114 to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be
115 furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the
116 carrying out of the project.

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

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

124
125 **7. Special Provisions.**

126
127 **A. Publication.** It is understood that the results of this work may be available to the
128 Consultant for publication and use in connection with related work. Use of this work for publication and
129 related work by the Consultant must be conducted with prior authorization from the Program’s Technical
130 Point of Contact.

131
132 **B. Publicity.** Any publicity or media contact associated with the Consultant’s
133 services and the result of those services provided under this Agreement shall be the sole responsibility of
134 the Program. Media requests of the Consultant should be directed to the Director of Outreach and
135 Operations in the ED Office.

136
137 **C. Office Space, Equipment, and Supplies.** The Consultant will supply all office
138 space, equipment, and supplies unless other mutually accepted agreements are made.

139
140 **8. General Provisions.**

141
142 **A. Amendments.** Any changes, modifications, revisions or amendments to this



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

145
146 **B. Applicable Law/Venue.** The construction, interpretation and enforcement of
147 this Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the
148 State of Nebraska shall have jurisdiction over this Agreement and the parties.

149
150 **C. Assignment/Agreement Not Used as Collateral.** Neither party shall assign or
151 otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the
152 prior written consent of the other party. The Consultant shall not use this Agreement, or any portion
153 thereof, for collateral for any financial obligation, without the prior written permission of the Program.

154
155 **D. Audit/Access to Records.** The Program and any of its representatives shall have
156 access to any books, documents, papers, and records of the Consultant which are pertinent to this
157 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program,
158 provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and
159 records of the Consultant which are pertinent to this Agreement. Reasonable costs for duplicating and
160 submitting identified books, documents, papers, and records of the Consultant to the Program shall be
161 borne by the Program. The Consultant shall cooperate fully with any such independent auditor,
162 accountant, or accounting firm, during the entire course of any audit authorized by the Program.

163
164 **E. Availability of Funds.** Each payment obligation of the Program is conditioned
165 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
166 funds are not allocated and available for the continuance of the services performed by the Consultant, the
167 Agreement may be terminated by the Program at the end of the period for which the funds are available.
168 The Program shall notify the Consultant at the earliest possible time of the services which will or may be
169 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
170 exercised, and the Program shall not be obligated or liable for any future payments due or for any
171 damages as a result of termination under this section. This provision shall not be construed to permit the
172 Program to terminate this Agreement to acquire similar services from another party.

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174 **F. Confidentiality of Information.** All documents, data compilations, reports,
175 computer programs, photographs, and any other work provided to or produced by the Consultant in the
176 performance of this Agreement shall be kept confidential by the Consultant unless written permission is
177 granted by the Program for its release.

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179 **G. Conflicts of Interest**

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



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

195
196 **H. Entirety of Agreement.** This Agreement, consisting of *seven (7)* pages,
197 represents the entire and integrated Agreement between the parties and supersedes all prior negotiations,
198 representations, and agreements, whether written or oral.

199
200 **I. Force Majeure.** Neither party shall be liable for failure to perform under this
201 Agreement if such failure to perform arises out of causes beyond the control and without the fault or
202 negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or
203 the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually
204 severe weather. This provision shall become effective only if the party failing to perform immediately
205 notifies the other party of the extent and nature of the problem, limits delay in performance to that
206 required by the event, and takes all reasonable steps to minimize delays. This provision shall not be
207 effective unless the failure to perform is beyond the control and without the fault or negligence of the
208 nonperforming party.

209
210 **J. Independent Consultant.** The Consultant shall function as an independent
211 consultant for the purposes of this Agreement, and shall not be considered an employee of the Program,
212 Foundation or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts
213 or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement, and shall be
214 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
215 Agreement.

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217 **K. Notices.** All notices arising out of, or from, the provisions of this Agreement
218 shall be in writing and given to the parties at the address provided under this Agreement, either by regular
219 mail, e-mail, or delivery in person.

220
221 **L. Ownership of Documents/Work Product/Materials.** All documents, reports,
222 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
223 this Agreement are at all times the property of the Program.

224
225 **M. Patent or Copyright Protection.** The Consultant recognizes that certain
226 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
227 restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such
228 restriction.

229
230 **N. Taxes.** The Consultant shall pay all taxes and other such amounts required by
231 federal, state and local law, including but not limited to federal and social security taxes, workers'
232 compensation, and unemployment insurance.

233
234 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
235 by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately
236 for cause if the Consultant fails to perform in accordance with the terms of this Agreement. The
237 Consultant shall likewise have the right to unilaterally terminate the agreement for good cause.
238
239



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

246
 247 **Q. Time.** The Consultant agrees to adhere to Agreement schedules for
 248 accomplishing the tasks called for under the Agreement.

249
 250 **R. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not
 251 be used to construe the language in this Agreement.

252
 253 **S. Waiver.** The waiver of any breach of any term or condition in this Agreement
 254 shall not be deemed a waiver of any prior or subsequent breach.

255
 256 **9. Contacts.**

257
 258 **Administrative Point of Contact (Foundation):**

259 Diane M. Wilson
 260 Chief Financial and Administrative Officer
 261 Nebraska Community Foundation
 262 PO Box 83107
 263 Lincoln, Nebraska 68501-3107
 264 Phone: (402) 323-7330
 265 Email: dwilson@nebcommfound.org

258 **Admin. Point of Contact (Program):**

259 Dr. Jerry F. Kenny, Executive Director
 260 Platte River Recovery Implementation Prog.
 261 Headwaters Corporation
 262 4111 4th Avenue, Suite 6
 263 Kearney, Nebraska 68845
 264 Phone: (308) 237-5728
 265 Email: kennyj@headwaterscorp.com

266
 267 **Technical Point of Contact (Program):**

268 Chadwin B. Smith, Director of Natural Resources
 269 Platte River Recovery Implementation Prog.
 270 Headwaters Corporation
 271 4111 4th Avenue, Suite 6
 272 Kearney, Nebraska 68845
 273 Phone: (308) 237-5728
 274 Cell: (402) 432-7950
 275 Email: smithc@headwaterscorp.com

267 **Media Point of Contact (Program):**

268 Dr. Bridget Barron, Director of Outreach
 269 Platte River Recovery Implementation Prog.
 270 Headwaters Corporation
 271 4111 4th Avenue, Suite 6
 272 Kearney, Nebraska 68845
 273 Phone: (308) 237-5728
 274 Email: barronb@headwaterscorp.com

275
 276
 277 **Administrative and Technical Point of Contact (Consultant):**

278 Adrian H. Farmer, Ph.D.
 279 Wild Ecological Solutions
 280 1509 Front Nine Drive
 281 Fort Collins, CO 80525
 282 Phone: (970) 631-3134
 283 Email: apfarmer@comcast.net



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

291

292 **NEBRASKA COMMUNITY FOUNDATION**

293

294

295

296

297 Diane M. Wilson
298 Chief Operating Officer/Chief Financial Officer
299 Nebraska Community Foundation, Inc.

2/04/2013
Date

300

301

302 **CONSULTANT**

303

304

305

306

307

Adrian H. Farmer

31 Jan 2013
Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Third Amendment to the Agreement between the Nebraska Community Foundation, Inc. and
David L. Galat Regarding “Independent Scientific Advisory Committee”

This Third Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and David L. Galat (“Consultant”), a private consultant, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2015.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2015.
- (2) To provide the Consultant with a 2015 stipend of **\$26,250** in approved and available FY 2015 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2015 to provide services as outlined in **Exhibit A** and as detailed below. This 2015 stipend includes:
 - Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated March 8, 2012. The following parties agree to the terms of this Amendment and the original Agreement:

For the Consultant:

 David L. Galat

 Date

For the Foundation:

 Diane M. Wilson
 Chief Operating Officer/Chief Financial Officer
 Nebraska Community Foundation, Inc.

 Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
EXHIBIT A
PRRIP Signed 2012 Galat ISAC Agreement**



1 Dr. David L. Galat
2 3951 County Road 259
3 Fulton, MO 65251-3042

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

6 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
7 **Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation**
8 **Program, and David L. Galat**

9
10 **Independent Scientific Advisory Committee**

11
12 **1. Parties.** This Agreement is made and entered into by and between the Nebraska
13 Community Foundation, Inc. ("Foundation") of Lincoln, Nebraska, representing all signatories to the
14 Platte River Recovery Implementation Program ("Program") and David L. Galat ("Consultant"), a private
15 consultant. The following persons are authorized to represent the parties through this Agreement: Diane
16 Wilson of the Foundation, Dr. Jerry Kenny of the Program, and David Galat.

17
18 **2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the
19 Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the
20 Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the
21 Consultant's service as a member of the Program's Independent Scientific Advisory Committee (ISAC).
22 This Agreement describes a three-year (2012-2014) commitment of service on the part of the Consultant.
23 The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be
24 developed through the course of the Program's annual budget process and approved annually by the GC.

25
26 **TERMS AND CONDITIONS.**

27
28 **3. Term of Agreement.** This Agreement is effective when all parties execute it. The term
29 of this Agreement is from the date of signing through December 31, 2014. The services to be performed
30 under this Agreement will commence upon signing of this Agreement.

31
32 **4. Payment.**

33
34 **A. Stipend.** The Program agrees to pay the Consultant a stipend of \$24,700 in 2012.
35 The 2012 stipend includes the following:

- 36 • Three ISAC meetings x three-day meetings x \$1,300 per day = \$11,700.
37 • Ten days of additional document review x \$1,300 per day = \$13,000.
38 The Consultant's annual stipend will be developed and approved annually by the GC in 2013 and 2014.
39 Annual amendments will be used to update stipend amounts in this Agreement.

40
41 **B. Reimbursement of Expenses.** Expenses incurred by the Consultant in performing
42 the Scope of Work described in this Agreement will be reimbursed, unless the Consultant is reimbursed
43 by his/her respective agency or institution. Reimbursements will be paid according to the following
44 guidelines:

- 45 • **Mileage** – Paid according to the prevailing Federal rate.
46 • **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
47 • **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
48 • **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.



- 49 • **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable
50 and prudent rate verified by receipts.

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Billing Point of Contact (Program):

62

Dr. Jerry F. Kenny, Executive Director

63

Platte River Recovery Implementation Program

64

Headwaters Corporation

65

4111 4th Avenue, Suite 6

66

Kearney, Nebraska 68845

67

Phone: (308) 237-5728

68

Email: kennyj@headwaterscorp.com

69

70

71

C. 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.

72

73

74

D. Final Completion and Payment. The final payment shall be made upon acceptance of all requested input and receipt of the final invoice.

75

76

77

5. Responsibilities of Consultant.

78

79

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

80

81

• **AMP Reporting Session** in Denver, CO on March 27-28, 2012 – ISAC interaction with EDO staff, Program participants, and contractors; review and discussion of “State of the Platte” Report; review and discussion of latest drafts of AMP documents such as Synthesis Report.

82

83

84

• **Summer workshop** in Kearney, NE (June-July, 2012) – field visits to implementation sites; focused discussion on Q1.5 flow issues or other topics as directed by the Program.

85

86

• **Fall meeting** in Denver, CO (October-December, 2012) – opportunity for ISAC to meet together to build 2012 ISAC Report to GC.

87

88

• **Annual report (2012)** – contribute to development of 2012 ISAC report to the GC.

89

• **Platte River caddisfly** (February-June 2012) – input on caddisfly and Program management actions as directed by the GC.

90

91

• **Additional document and/or issues review (2012)** – input on documents and/or issues as directed by the GC.

92

93

Annual amendments will be used to update the Scope of Services in this Agreement.

94



95 **B. Requests from the Program.** The Consultant shall be responsible and
96 responsive to the Program and the ED Office in their requests and requirements related to the scope of
97 this Agreement.

98
99 **C. Presentation of Information.** The Consultant shall compile and present all
100 information clearly and concisely, in a professional manner.

101
102 **D. Inspection and Acceptance.** All deliverables furnished by the Consultant shall
103 be subject to rigorous review by the Program and the ED Office prior to acceptance.

104
105 **6. Responsibilities of the Program.**

106
107 **A. Designated Representative.** The Executive Director of the Program shall act as
108 the Program's administrative representative with respect to the Consultant's service to be performed
109 under this Agreement and shall have complete authority to transmit instructions, receive information, and
110 interpret and define the Program's policies and decisions with respect to services covered by this
111 Agreement.

112
113 **B. Information to be Furnished to the Consultant.** All information as is available
114 to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be
115 furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the
116 carrying out of the project.

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

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

124
125 **7. Special Provisions.**

126
127 **A. Publication.** It is understood that the results of this work may be available to the
128 Consultant for publication and use in connection with related work. Use of this work for publication and
129 related work by the Consultant must be conducted with prior authorization from the Program's Technical
130 Point of Contact.

131
132 **B. Publicity.** Any publicity or media contact associated with the Consultant's
133 services and the result of those services provided under this Agreement shall be the sole responsibility of
134 the Program. Media requests of the Consultant should be directed to the Director of Outreach and
135 Operations in the ED Office.

136
137 **C. Office Space, Equipment, and Supplies.** The Consultant will supply all office
138 space, equipment, and supplies unless other mutually accepted agreements are made.

139
140 **8. General Provisions.**

141
142 **A. Amendments.** Any changes, modifications, revisions or amendments to this



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

145
146 **B. Applicable Law/Venue.** The construction, interpretation and enforcement of
147 this Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the
148 State of Nebraska shall have jurisdiction over this Agreement and the parties.

149
150 **C. Assignment/Agreement Not Used as Collateral.** Neither party shall assign or
151 otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the
152 prior written consent of the other party. The Consultant shall not use this Agreement, or any portion
153 thereof, for collateral for any financial obligation, without the prior written permission of the Program.

154
155 **D. Audit/Access to Records.** The Program and any of its representatives shall have
156 access to any books, documents, papers, and records of the Consultant which are pertinent to this
157 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program,
158 provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and
159 records of the Consultant which are pertinent to this Agreement. Reasonable costs for duplicating and
160 submitting identified books, documents, papers, and records of the Consultant to the Program shall be
161 borne by the Program. The Consultant shall cooperate fully with any such independent auditor,
162 accountant, or accounting firm, during the entire course of any audit authorized by the Program.

163
164 **E. Availability of Funds.** Each payment obligation of the Program is conditioned
165 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
166 funds are not allocated and available for the continuance of the services performed by the Consultant, the
167 Agreement may be terminated by the Program at the end of the period for which the funds are available.
168 The Program shall notify the Consultant at the earliest possible time of the services which will or may be
169 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
170 exercised, and the Program shall not be obligated or liable for any future payments due or for any
171 damages as a result of termination under this section. This provision shall not be construed to permit the
172 Program to terminate this Agreement to acquire similar services from another party.

173
174 **F. Confidentiality of Information.** All documents, data compilations, reports,
175 computer programs, photographs, and any other work provided to or produced by the Consultant in the
176 performance of this Agreement shall be kept confidential by the Consultant unless written permission is
177 granted by the Program for its release.

178
179 **G. Conflicts of Interest**

180
181 (i) Consultant shall not engage in providing consultation or representation
182 of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to
183 the Program or a disclosure which would adversely affect the interests of the Program. Consultant shall
184 notify the Program of any potential or actual conflicts of interest arising during the course of the
185 Consultant's performance under this Agreement. This Agreement may be terminated in the event a
186 conflict of interest arises. Termination of the Agreement will be subject to a mutual settlement of
187 accounts. In the event the Agreement is terminated under this provision, the Consultant shall take steps to
188 insure that the file, evidence, evaluation and data are provided to the Program or its designee. This does
189 not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation
190 under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.



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

195
196 **H. Entirety of Agreement.** This Agreement, consisting of *seven (7)* pages,
197 represents the entire and integrated Agreement between the parties and supersedes all prior negotiations,
198 representations, and agreements, whether written or oral.

199
200 **I. Force Majeure.** Neither party shall be liable for failure to perform under this
201 Agreement if such failure to perform arises out of causes beyond the control and without the fault or
202 negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or
203 the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually
204 severe weather. This provision shall become effective only if the party failing to perform immediately
205 notifies the other party of the extent and nature of the problem, limits delay in performance to that
206 required by the event, and takes all reasonable steps to minimize delays. This provision shall not be
207 effective unless the failure to perform is beyond the control and without the fault or negligence of the
208 nonperforming party.

209
210 **J. Independent Consultant.** The Consultant shall function as an independent
211 consultant for the purposes of this Agreement, and shall not be considered an employee of the Program,
212 Foundation or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts
213 or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement, and shall be
214 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
215 Agreement.

216
217 **K. Notices.** All notices arising out of, or from, the provisions of this Agreement
218 shall be in writing and given to the parties at the address provided under this Agreement, either by regular
219 mail, e-mail, or delivery in person.

220
221 **L. Ownership of Documents/Work Product/Materials.** All documents, reports,
222 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
223 this Agreement are at all times the property of the Program.

224
225 **M. Patent or Copyright Protection.** The Consultant recognizes that certain
226 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
227 restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such
228 restriction.

229
230 **N. Taxes.** The Consultant shall pay all taxes and other such amounts required by
231 federal, state and local law, including but not limited to federal and social security taxes, workers'
232 compensation, and unemployment insurance.

233
234 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
235 by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately
236 for cause if the Consultant fails to perform in accordance with the terms of this Agreement. The
237 Consultant shall likewise have the right to unilaterally terminate the agreement for good cause.

238
239 **P. Third Party Beneficiary Rights.** The parties do not intend to create in any



240 other individual or entity the status of third party beneficiary, and this Agreement shall not be construed
241 so as to create such status. The rights, duties and obligations contained in this Agreement shall operate
242 only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this
243 Agreement. The provisions of this Agreement are intended only to assist the parties in determining and
244 performing their obligations under this Agreement.

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Q. Time. The Consultant agrees to adhere to Agreement schedules for accomplishing the tasks called for under the Agreement.

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

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

9. Contacts.

Administrative Point of Contact (Foundation):

Diane M. Wilson

Chief Financial and Administrative Officer

Nebraska Community Foundation

PO Box 83107

Lincoln, Nebraska 68501-3107

Phone: (402) 323-7330

Fax: (402) 323-7349

Email: dwilson@nebcommfound.org

266

Technical Point of Contact (Program):

Chadwin B. Smith, Director of Natural Resources

Platte River Recovery Implementation Prog.

Headwaters Corporation

4111 4th Avenue, Suite 6

Kearney, Nebraska 68845

Phone: (308) 237-5728

Cell: (402) 432-7950

Email: smithc@headwaterscorp.com

276

Administrative and Technical Point of Contact (Consultant):

David L. Galat

3951 County Road 259

Fulton, Missouri 65251-3042

Phone: (573) 642-0523

Cell: (573) 303-6914

Email: galatd@missouri.edu

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287

Admin. Point of Contact (Program):

Dr. Jerry F. Kenny, Executive Director

Platte River Recovery Implementation Prog.

Headwaters Corporation

4111 4th Avenue, Suite 6

Kearney, Nebraska 68845

Phone: (308) 237-5728

Fax: (308) 237-4651

Email: kennyj@headwaterscorp.com

266

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Outreach

Platte River Recovery Implementation Prog.

Headwaters Corporation

4111 4th Avenue, Suite 6

Kearney, Nebraska 68845

Phone: (308) 237-5728

Fax: (308) 237-4651

Email: barronb@headwaterscorp.com



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

291
292
293

294 **NEBRASKA COMMUNITY FOUNDATION**

295
296
297
298

299 _____
300 Diane M. Wilson
301 Chief Financial and Administrative Officer

3/08/2012

Date

302
303

304 **CONSULTANT**

305
306
307
308

309 _____

1 March 2012

Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and
Jennifer A. Hoeting Regarding “Independent Scientific Advisory Committee”**

This First Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Jennifer A. Hoeting (“Consultant”), a private consultant, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2015.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2015.
- (2) To provide the Consultant with a 2015 stipend of **\$26,250** in approved and available FY 2015 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2015 to provide services as outlined in **Exhibit A** and as detailed below. This 2015 stipend includes:
 - Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000

All other terms of the original Agreement remain in effect as originally written in the signed Agreement dated February 13, 2014. The following parties agree to the terms of this Amendment and the original Agreement:

For the Consultant:

Jennifer A. Hoeting

Date

For the Foundation:

Diane M. Wilson
Chief Operating Officer/Chief Financial Officer
Nebraska Community Foundation, Inc.

Date



**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
EXHIBIT A
PRRIP Signed 2014 Hoeting ISAC Agreement**



1 Jennifer A. Hoeting, Ph.D.
2 4913 Hinsdale Drive
3 Fort Collins, CO 80526
4
5

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

6 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**
7 **Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation**
8 **Program, and Jennifer A. Hoeting**
9

10 **Independent Scientific Advisory Committee**
11

12 **1. Parties.** This Agreement is made and entered into by and between the Nebraska
13 Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte
14 River Recovery Implementation Program (“Program”) and Jennifer A. Hoeting (“Consultant”), a private
15 consultant. The following persons are authorized to represent the parties through this Agreement: Diane
16 Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Dr. Jennifer Hoeting.
17

18 **2. Purpose of Agreement and Authority.** The purpose of this Agreement is to allow the
19 Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the
20 Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the
21 Consultant’s service as a member of the Program’s Independent Scientific Advisory Committee (ISAC).
22 This Agreement describes a three-year (2014-2016) commitment of service on the part of the Consultant.
23 The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be
24 developed through the course of the Program’s annual budget process and approved annually by the GC.
25

26 **TERMS AND CONDITIONS.**
27

28 **3. Term of Agreement.** This Agreement is effective when all parties execute it. The term
29 of this Agreement is from the date of signing through December 31, 2016. The services to be performed
30 under this Agreement will commence upon signing of this Agreement.
31

32 **4. Payment.**
33

34 **A. Stipend.** The Program agrees to pay the Consultant a stipend of \$26,250 in 2014.
35 The 2014 stipend includes the following:

- 36 • Two (2) ISAC meetings x four-day meetings x \$1,400 per day = \$11,200
 - 37 • Up to three (3) web/conference call meetings x two-hour meetings x \$175/hour = \$1,050
 - 38 • Ten (10) days of additional document review and/or meeting attendance x \$1,400 per day = \$14,000
- 39 The Consultant’s annual stipend will be developed and approved annually by the GC in 2015 and 2016.
40 Annual Amendments will be used to update stipend amounts in this Agreement.
41

42 **B. Reimbursement of Expenses.** Expenses incurred by the Consultant in performing the
43 Scope of Work described in this Agreement will be reimbursed, unless the Consultant is reimbursed by
44 his/her respective agency or institution. Reimbursements will be paid according to the following guidelines:

- 45 • **Mileage** – Paid according to the prevailing Federal rate.
- 46 • **Airfare and Baggage Fees** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 47 • **Lodging** – Actual expenses at a reasonable and prudent rate verified by receipts.
- 48 • **Rental Car** – Actual expenses at a reasonable and prudent rate verified by receipts.



- 49 • **Meals, Taxis, Parking, and Other Associated Travel Expenses** – Actual expenses at a reasonable
50 and prudent rate verified by receipts.
51

52 **C. Billing Procedures.** The Consultant shall send an invoice after each ISAC
53 Meeting or web/conference call for the appropriate amount of the annual stipend, any associated expenses,
54 and any associated days of document review to the Executive Director's Office ("ED Office"; address
55 included below). The Program's Executive Director, upon receiving each invoice, will approve the invoice
56 and submit the invoice for payment. The submittal for payment will then be reviewed by the Signatory
57 Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of
58 these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties.
59 Payments of invoices are due within 60 days after the billing date of the Consultant.
60

61 **Billing Point of Contact (Program):**

62 Dr. Jerry F. Kenny, Executive Director
63 Platte River Recovery Implementation Program
64 Headwaters Corporation
65 4111 4th Avenue, Suite 6
66 Kearney, Nebraska 68845
67 Phone: (308) 237-5728
68 Email: kennyj@headwaterscorp.com
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70 **C. Withholding of Payment.** If a work element has not been received by the
71 Program by the dates established in this Agreement, the Program may withhold all payments beginning
72 with the month following that date until such deficiency has been corrected.
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74 **D. Final Completion and Payment.** The final payment shall be made upon
75 acceptance of all requested input and receipt of the final invoice.
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77 **5. Responsibilities of Consultant.**
78

79 **A. Scope of Services.** The Consultant shall perform the specific services required
80 under this Agreement in a satisfactory and proper manner as outlined below:

- 81 • **AMP Reporting Session** in Omaha, NE in fall 2014 – ISAC interaction with EDO staff, Program
82 participants, and contractors; review and discussion of "State of the Platte" Report; review and
83 discussion of latest drafts of other AMP documents.
84 **ISAC meeting** in Omaha, NE in spring 2014 – field visits to comparative sites on lower Platte River;
85 focused discussion on tern/plover issues and other topics as directed by the Program.
86 • **Web/conference calls** as requested by the Program for focused discussion of selected topics.
87 • **Annual report (2014)** – contribute to development of 2014 ISAC report to the GC.
88 • **Additional document and/or issues review (2014)** – input on documents and/or issues as directed by
89 the GC.

90 Annual amendments will be used to update the Scope of Services in this Agreement if necessary.
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92 **B. Requests from the Program.** The Consultant shall be responsible and responsive
93 to the Program and the ED Office in their requests and requirements related to the scope of this Agreement.
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96 information clearly and concisely, in a professional manner.



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98 be subject to rigorous review by the Program and the ED Office prior to acceptance.
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102 the Program’s administrative representative with respect to the Consultant’s service to be performed under
103 this Agreement and shall have complete authority to transmit instructions, receive information, and interpret
104 and define the Program’s policies and decisions with respect to services covered by this Agreement.
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107 to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be furnished
108 to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out
109 of the project.
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112 by the Consultant and shall promptly render in writing the Program’s decisions pertaining thereto within
113 specified time periods.
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118 **7. Special Provisions.**

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120 Consultant for publication and use in connection with related work. Use of this work for publication and
121 related work by the Consultant must be conducted with prior authorization from the Program’s Technical
122 Point of Contact.
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126 the Program. Media requests of the Consultant should be directed to the Director of Outreach and
127 Operations in the ED Office.
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130 space, equipment, and supplies unless other mutually accepted agreements are made.
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135 written instrument, executed and signed by all parties to this Agreement.
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138 Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the State of
139 Nebraska shall have jurisdiction over this Agreement and the parties.
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150 access to any books, documents, papers, and records of the Consultant which are pertinent to this
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152 provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and
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154 submitting identified books, documents, papers, and records of the Consultant to the Program shall be borne
155 by the Program. The Consultant shall cooperate fully with any such independent auditor, accountant, or
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159 upon the availability of funds and continuation of the Platte River Recovery Implementation Program. If
160 funds are not allocated and available for the continuance of the services performed by the Consultant, the
161 Agreement may be terminated by the Program at the end of the period for which the funds are available.
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163 affected by a shortage of funds. No penalty shall accrue to the Program in the event this provision is
164 exercised, and the Program shall not be obligated or liable for any future payments due or for any damages
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166 terminate this Agreement to acquire similar services from another party.
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170 performance of this Agreement shall be kept confidential by the Consultant unless written permission is
171 granted by the Program for its release.
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175 (i) Consultant shall not engage in providing consultation or representation of
176 clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the
177 Program or a disclosure which would adversely affect the interests of the Program. Consultant shall notify
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179 performance under this Agreement. This Agreement may be terminated in the event a conflict of interest
180 arises. Termination of the Agreement will be subject to a mutual settlement of accounts. In the event the
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182 evidence, evaluation and data are provided to the Program or its designee. This does not prohibit or affect
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187 but is not necessarily limited to, representing a client in an adversarial proceeding against the Platte River
188 Recovery Implementation Program, its signatories, boards, commissions or initiating suits in equity
189 including injunctions, declaratory judgments, writs of prohibition or *quo warranto*.
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191 **H. Entirety of Agreement.** This Agreement, consisting of seven (7) pages,
192 represents the entire and integrated Agreement between the parties and supersedes all prior negotiations,



193 representations, and agreements, whether written or oral.

194
195 **I. Force Majeure.** Neither party shall be liable for failure to perform under this
196 Agreement if such failure to perform arises out of causes beyond the control and without the fault or
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198 public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe
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200 other party of the extent and nature of the problem, limits delay in performance to that required by the event,
201 and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure
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204 **J. Independent Consultant.** The Consultant shall function as an independent
205 consultant for the purposes of this Agreement, and shall not be considered an employee of the Program,
206 Foundation or ED Office for any purpose. The Consultant shall assume sole responsibility for any debts or
207 liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement, and shall be
208 solely responsible for the payment of all federal, state and local taxes which may accrue because of this
209 Agreement.

210
211 **K. Notices.** All notices arising out of, or from, the provisions of this Agreement shall
212 be in writing and given to the parties at the address provided under this Agreement, either by regular mail,
213 e-mail, or delivery in person.

214
215 **L. Ownership of Documents/Work Product/Materials.** All documents, reports,
216 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this
217 Agreement are at all times the property of the Program.

218
219 **M. Patent or Copyright Protection.** The Consultant recognizes that certain
220 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
221 restrictions, and pledges that no work performed by the Consultant or its contractors will violate any such
222 restriction.

223
224 **N. Taxes.** The Consultant shall pay all taxes and other such amounts required by
225 federal, state and local law, including but not limited to federal and social security taxes, workers'
226 compensation, and unemployment insurance.

227
228 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
229 by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately
230 for cause if the Consultant fails to perform in accordance with the terms of this Agreement. The
231 Consultant shall likewise have the right to unilaterally terminate the agreement for good cause.

232
233 **P. Third Party Beneficiary Rights.** The parties do not intend to create in any other
234 individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to
235 create such status. The rights, duties and obligations contained in this Agreement shall operate only
236 between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement.
237 The provisions of this Agreement are intended only to assist the parties in determining and performing their
238 obligations under this Agreement.

239
240 **Q. Time.** The Consultant agrees to adhere to Agreement schedules for accomplishing
241 the tasks called for under the Agreement.



242 **R. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not
243 be used to construe the language in this Agreement.
244

245 **S. Waiver.** The waiver of any breach of any term or condition in this Agreement
246 shall not be deemed a waiver of any prior or subsequent breach.
247

248 **9. Contacts.**
249

250 **Administrative Point of Contact (Foundation):**

251 Diane M. Wilson
252 Chief Operating Officer/Chief Financial Officer
253 Nebraska Community Foundation
254 PO Box 83107
255 Lincoln, Nebraska 68501-3107
256 Phone: (402) 323-7330
257 Email: dwilson@nebcommfound.org
258

Admin. Point of Contact (Program):

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

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

260 Chadwin B. Smith, Director of Natural Resources
261 Platte River Recovery Implementation Program
262 Headwaters Corporation
263 4111 4th Avenue, Suite 6
264 Kearney, Nebraska 68845
265 Phone: (402) 432-7950
266 Email: smithc@headwaterscorp.com
267

Media Point of Contact (Program):

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

268 **Administrative and Technical Point of Contact (Consultant):**

269 Jennifer A. Hoeting, Ph.D.
270 4913 Hinsdale Drive
271 Fort Collins, CO 80526
272 Phone: (970) 988-1184
273 Email: jennifer.hoeting@gmail.com



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

277

278 **NEBRASKA COMMUNITY FOUNDATION**

279

280

281

282

283 
284 Diane M. Wilson
285 Chief Operating Officer/Chief Financial Officer
286 Nebraska Community Foundation, Inc.

2/13/2014
Date

286

287

288 **CONSULTANT**

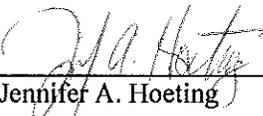
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Jennifer A. Hoeting

2-11-14
Date