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

Independent Scientific Advisory Committee

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

2. Purpose of Agreement and Authority. The purpose of this Agreement is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, and the Consultant to enter into a an Agreement for payment of a stipend and expenses associated with the Consultant’s service as a member of the Program’s Independent Scientific Advisory Committee (ISAC). This Agreement describes a three-year (2015-2017) commitment of service on the part of the Consultant. The three-year term of service is at the discretion of the GC, and the amount of the annual stipend will be developed through the course of the Program’s annual budget process and approved annually by the GC.

TERMS AND CONDITIONS.

3. Term of Agreement. This Agreement is effective when all parties execute it. The term of this Agreement is from the date of signing through December 31, 2017. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend. The Program agrees to pay the Consultant a stipend of **\$40,250** in 2015. The 2015 stipend includes the following:

- 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
- Ten (10) days of additional document review and report preparation as ISAC Chair = \$14,000

The Consultant’s annual stipend will be developed and approved annually by the GC in 2016 and 2017. Annual Amendments will be used to update stipend amounts in this Agreement.

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

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



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

C. Billing Procedures. The Consultant shall send an invoice after each ISAC Meeting or web/conference call for the appropriate amount of the annual stipend, any associated expenses, and any associated days of document review 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.

Billing Point of Contact (Program):

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

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.

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

5. Responsibilities of Consultant.

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

- **AMP Reporting Session** in Denver, CO in fall 2015 – 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 other AMP documents.
- **ISAC meeting** in Kearney, NE in summer 2015 – field visits; focused discussion on sediment augmentation, geomorphology monitoring, and other topics as directed by the Program.
- **Web/conference calls** as requested by the Program for focused discussion of selected topics.
- **Annual report** (2015) – develop 2015 ISAC report to the GC and/or documents responding to specific questions from the Program (questions presented to the ISAC for the summer 2015 ISAC meeting and the 2015 AMP Reporting Session)
- **Additional document and/or issues review** (2015) – input on documents and/or issues as directed by the GC.

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

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



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

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

6. Responsibilities of the Program.

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

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

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

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

7. Special Provisions.

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

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

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

8. General Provisions.

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

B. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by applicable federal and Nebraska law. The Federal Courts of the State of



Nebraska shall have jurisdiction over this Agreement and the parties.

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

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

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

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

G. Conflicts of Interest

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

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



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

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

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

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

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

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

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

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

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



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 Operating Officer/Chief Financial Officer
Nebraska Community Foundation
PO Box 83107
Lincoln, Nebraska 68501-3107
Phone: (402) 323-7330
Email: dwilson@nebcommfound.org

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

Technical Point of Contact (Program):

Chadwin B. Smith, Director of Natural Resources
Platte River Recovery Implementation Program
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (402) 432-7950
Email: smithc@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

Administrative and Technical Point of Contact (Consultant):

David Marmorek, President
ESSA Technologies Ltd.
600 - 2695 Granville St.
Vancouver, B.C., Canada V6H 3H4
Phone: 604-733-2996 Ext. 557
Email: dmarmorek@essa.com



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

NEBRASKA COMMUNITY FOUNDATION

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

Date

CONSULTANT

David R. Marmorek

Date