REQUEST FOR PROPOSAL

Platte River Recovery Implementation Program
Grassland Vegetation Monitoring Design and Implementation RFP

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Office of the Executive Director
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845

January 24, 2013

Contents

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
REQUEST FOR PROPOSALS

SUBJECT: **Grassland Vegetation Survey Design and Monitoring**

REQUEST DATE: February X, 2013
PRE-PROPOSAL MEETING: February X, 2013
CLOSING DATE: February X, 2013
POINT OF CONTACT: David Baasch
Headwaters Corporation
(308) 390-0456
baaschd@headwaterscorp.com

I. OVERVIEW

The Platte River Recovery Implementation Program (Program) was initiated on January 1, 2007 between Nebraska, Wyoming, Colorado, and the Department of the Interior (DOI) to address endangered species issues in the central and lower Platte River basin. The species considered in the Program, referred to as "target species", are the whooping crane, piping plover, interior least tern, and pallid sturgeon. Program participants have reached an agreement for participation in the First Increment of the Program for the period from 2007 through 2019.

A Governance Committee (GC) reviews, directs, and provides oversight for activities undertaken during the Program. The GC is comprised of one representative from each of the three states, three water user representatives, two representatives from environmental groups, and two members representing federal agencies. The GC has named Dr. Jerry Kenny to serve as the Program Executive Director (ED). Dr. Kenny established Headwaters Corporation as the staffing mechanism for the Program. Program staff are located in Nebraska and Colorado and are responsible for assisting in carrying out Program-related activities.

The Program's long-term goal is to improve and maintain the associated habitats. This goal includes: 1) improving and maintaining migrational habitat for whooping cranes and reproductive habitat for least terns and piping plovers; 2) reducing the likelihood of future listings of other species found in this area; and 3) testing the assumption that managing flow in the central Platte River also improves the pallid sturgeon's lower Platte River habitat. The DOI and states commit to achieving the following objectives by the end of the First Increment of the Program: protecting, restoring where appropriate, and maintaining at least 10,000 acres of habitat in the central Platte River area between Lexington and Chapman, Nebraska. The Program's management objectives are to: 1) improve survival of whooping cranes during migration; 2) improve least tern and piping plover production; 3) avoid adverse impacts on pallid sturgeon in the Lower Platte River; and 4) within overall objectives 1-3, provide benefits to non-target listed species and non-listed species of concern and reduce likelihood of future listing.

As outlined in the Program's Land Plan, the initial focus of the acquisition process has been on obtaining interests in and protecting wet meadow and channel habitat between Lexington and

Chapman, Nebraska which are suitable for development into "habitat complexes." A "habitat complex" consists of wet meadows, channel areas, and buffers. "Channel area" is the portion of the river that conducts flow and is bounded on either side by stable banks or permanent islands with vegetation that obstructs view. At low flows it includes interconnected small channels and exposed sand or gravel bars and non-permanent islands. "Wet meadows" are areas with a generally level or low-lying undulating surface consisting of a mosaic of swales with wetland soils and vegetation and ridges with upland native or restored grasslands. "Buffer" is used to shield wet meadow or channel habitat areas from potential disturbances and may include an extended wet meadow or channel area, upland grassland, pasture, hay land, cropland, palustrine wetland, woodland, managed sandpits, or a combination of these and other compatible land features. In developing parcel-specific management plans, the Program selects restoration, maintenance and other management measures believed to provide benefit to the target species or that do not harm or may benefit other Program "species of concern," when such activities are consistent with the needs of the target species. Management activities conducted on Program owned or managed grassland or wet meadow habitat areas generally include, but are not limited to grazing, haying, prescribed burns, and tree and noxious weed removal.

The GC submits this Request for Proposals (RFP) to solicit proposals from Consultants to provide technical services in support of the development and implementation of a vegetation monitoring protocol on Program owned or managed grassland and wet meadow habitat areas. The scope of services includes the development and implementation of a vegetation monitoring protocol that will provide the Program an inventory of the vegetation communities and plant species compositions on all Program owned or managed grassland and wet meadow habitat areas. The term Consultant shall be used throughout this document to describe both the RFP Respondent providing the proposal and Consultant (the successful Respondent) who would be performing the work upon award of the project.

II. PROJECT DESCRIPTION

In 2007, the Program began acquiring and securing land through management agreements along the central Platte River. Much of the 3,629 acres of grassland or wet meadow area that will be monitored in 2013 was grassland when acquired; however, some parcels have recently been converted from agricultural cropland to grassland. Program owned and managed grasslands were acquired or secured to provide benefits to whooping cranes and increase whooping crane use along the central Platte River and as such, are managed to ensure a portion of these properties provide short- structured grassland vegetation during the spring (March-April) and fall (October-November) whooping crane migration seasons. Management for this purpose, however, is believed to have the potential to result a shift in vegetation communities and/or plant species composition over time.

III. SCOPE OF WORK

The Consultant will be responsible for the development and implementation of a vegetation monitoring protocol that will provide the Program an inventory of the vegetation communities and plant species compositions on Program owned or managed grassland habitat areas. General Consultant services to be completed for this RFP are as follows:

1) Protocol Development
    - Develop a Vegetation Monitoring Protocol that will provide the Program an inventory of the vegetation communities (mapped) and plant species compositions on Program owned or managed grassland and wet meadow habitat areas.
    - The Vegetation Monitoring Protocol should contain sufficient detail to allow suitably skilled ecologists to implement the protocol and obtain comparable results.
2) Vegetation Monitoring
    - Implement the Vegetation Monitoring Protocol on Program owned or managed grassland habitat areas during 2013.
3) Reporting
    - Develop an annual summary report that includes parcel-specific maps of vegetation communities as well as detailed accounts of species occurrence and abundance within the areas sampled.

This contract will be on a one year basis, with the option to renew, re-compete, or cancel at the discretion of the Program.

Vegetation monitoring conducted within the scope of this project will be conducted on all Program owned or managed grassland or wet meadow habitat areas identified in Attachment 1 and delineated in Attachment 2. The objectives for vegetation monitoring include:

- Objective 1: Inventory natural vegetation communities and plant species composition on Program owned or managed grassland and wet meadow areas.
    - Scale – All Program owned or managed grassland areas specified in Attachment 1 and delineated in Attachment 2.
    - Focus – Vegetation communities and general plant species composition
    - Timeline – 25 June – 15 July, 2013
    - Reference – Terrestrial Ecological Systems and Natural Communities of Nebraska (Version IV – March 9, 2010)
- Objective 2: Identify invasive/noxious vegetation and Program species of concern on Program owned or managed grassland areas.
    - Scale – All Program owned or managed grassland areas specified in Attachment 1 and identified in Attachment 2.
    - Timeline – 25 June – 15 July, 2013
    - Reference – Nebraska state listed noxious weeds and Program species of concern

IV. PROJECT BUDGET

An estimated project budget should be submitted in the proposal. Proposals will be evaluated based on project design and completeness, Consultant qualification, and cost. A final scope of work and project budget will be negotiated prior to commencement of work.

V. CONTRACT TERMS

The selected Consultant will be retained by:

Nebraska Community Foundation
PO Box 83107
Lincoln, NE 68501

Proposal should indicate whether the Consultant agrees to the contract terms as outlined in the attached Program's Consultant Contract (Attachment 3), or provide a clear description of any exceptions to the terms and conditions.

The term of the contract will be for a period beginning March X, 2013 and terminating December X, 2013 with an option to renew at the sole discretion of the GC. Contracted services will be performed on a time and material not to exceed basis. Under the final contract, written Notice to Proceed from the Executive Director will be required before works begins. All work will be contingent on availability of Program funding.

VI. SUBMISSION REQUIREMENTS

All interested parties having experience providing the services listed in this RFP are requested to submit a proposal.

Instructions for Submitting Proposals

One paper copy and one electronic (PDF) copy of your proposal must be submitted to David Baasch at the Program office in Kearney Nebraska *no later than 5:00 p.m. Central time on March X, 2013*. Maximum allowable proposal PDF size is 8MB, and proposals are to be limited to a total of 50 pages or less. A proposal is late if received by the office any time after 5:00 p.m. Central time and will not be eligible for consideration.

Questions regarding the information contained in this RFP should be submitted to David Baasch at *baaschd@headwaterscorp.com*. A list of compiled Consultant questions and responses will be maintained on the Program web site (*www.PlatteRiverProgram.org*) in the same location as this RFP solicitation.

RFP Schedule

The ED Office expects to complete the selection process and award the work by approximately March X, 2013. The following table represents the RFP schedule:

Description	Date	Time (Central)
Issue RFP	February X, 2013	NA
Pre-proposal meeting	February X, 2013	2:00 PM
Last day for respondents to submit questions regarding the RFP	March X, 2013	5:00 PM
Proposals due from respondents	March X, 2013	5:00 PM
Evaluation of proposals	March X, 2013 thru March X, 2013	
Award of Work	On or before March X, 2013	
Start of Work	On or before April X, 2013	
Completion of Work	On or before December X, 2013	

Pre-Proposal Meeting

A mandatory pre-proposal meeting of interested parties will be held on February X, 2013 from 2:00 to 3:30 p.m. Central Time via conference call for the purpose of familiarizing the respondents with the work scope and requirements included herein before submitting a response to this RFP. Please email David Baasch at *baaschd@headwaterscorp.com* for the conference call dial-in information along with a list of people from your party expected to join in the pre-proposal conference call by 3:00 p.m. Central Time on February X, 2013.

The meeting will include a brief overview by the ED Office regarding the objectives of the project, the scope of services, and the timeline. It is the respondent's responsibility, while at the pre-proposal meeting/conference call, to ask questions necessary to understand the RFP so the respondent can submit a proposal that is complete and according to the RFP requirements. No minutes will be distributed by the ED Office regarding the meeting.

Proposal Content

Proposals should respond to the following general topics:

1) **Project understanding:** Discussion that demonstrates the Consultant's understanding of common vegetation sampling methods related to the Program's vegetation monitoring needs. Multiple sampling methods may be included in the proposal, but each approach will require a separate budget estimate.

2) **Project approach:** Discussion of the Consultant's approach to achieving the monitoring objectives of this project including critical issues, tasks, or considerations that may have shaped your approach. This section should not be a reiteration of the general scope of work presented in Section III of this RFP. That scope was provided as general guidance and original thinking and/or discussion of ways to meet Program objectives are welcome.

3) **Qualifications and project experience:** Provide project team organization, resumes/qualifications, and responsibilities. Identify relevant project experience including the involvement/role of the proposed team in those projects.

4) **Schedule:** Identify general schedule and critical issues for tasks in 2013. Given that the final scope will be developed following Consultant selection, the schedule discussion should focus on critical tasks such as timing of protocol development, data collection, and report writing. The Program will need a minimum of 30 days to review and approve the monitoring protocol prior to implementation as well as a minimum of 30 days to review the draft and final reports so plan the schedule accordingly.

5) **Conflict of interest statement** addressing whether or not any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for the Program.

6) **Description of insurance** shall be provided with the proposal. Proof of insurance will be required before a contract is issued. Minimum insurance requirements are described in the attached Program's Consultant Contract (Attachment A).

7) **Acceptance of the terms and conditions** as outlined in the attached Program's Consultant Contract, or clear description of any exceptions to the terms and conditions.

Criteria for Evaluating Proposals

The Governance Committee appointed a Proposal Selection Panel that will evaluate all proposals and select a Consultant based on the following principal considerations:

1. The Consultant's understanding of the Program's vegetation monitoring needs.

2. The Consultant's approach to meeting the objectives of this project including identification of and addressing critical project tasks and issues.

3. Qualifications and the relevant experience of the proposed project team members and firm.

Award Notice

After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal Selection Panel will select a Consultant. That firm will negotiate with the ED Office to establish a fair and equitable contract. If an agreement cannot be reached, a second firm will be invited to negotiate and so on. If the Program is unable to negotiate a mutually satisfactory contract with a Consultant, it may, at its sole discretion, cancel and reissue a new RFP.

Program Perspective

The Governance Committee of the Program has the sole discretion and reserves the right to reject any and all proposals received in response to this RFP and to cancel this solicitation if it is deemed in the best interest of the Program to do so. Issuance of this RFP in no way constitutes a commitment by the Program to award a contract, or to pay Consultant's costs incurred either in the preparation of a response to his RFP or during negotiations, if any, of a contract for services. The Program also reserves the right to make amendments to this RFP by giving written notice to Consultants, and to request clarification, supplements, and additions to the information provided by a Consultant.

By submitting a proposal in response to this solicitation, Consultants understand and agree that any selection of a Consultant or any decision to reject any or all responses or to establish no contracts shall be at the sole discretion of the Program. To the extent authorized by law, the Consultant shall indemnify, save, and hold harmless the Nebraska Community Foundation, the states of Colorado, Wyoming, and Nebraska, the Department of the Interior, members of the Governance Committee, and the Executive Director's Office, their employees, employers, and agents, against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Consultant or its employees, agents, sub-Consultants, or assignees pursuant to the terms of this project. Additionally, by submitting a proposal, Consultants agree that they waive any claim for the recovery of any costs or expenses incurred in preparing and submitting a proposal.

VII. AVAILABLE INFORMATION

The following pertinent Program-related documents can be accessed from the Program web site (*www.PlatteRiverProgram.org*):

- *Platte River Recovery Implementation Program, Final Program Document*. October 24, 2006.
- *Platte River Recovery Implementation Program*, *Attachment 3, Adaptive Management Plan*. October 24, 2006.
- *Platte River Recovery Implementation Program*, *Attachment 4, Land Plan*. December 7, 2005.

Attachment 1

List of Program owned or managed grassland areas to be surveyed

Map	Site	Acres	Tentative Management Plan for 2013
1	Cook Hay Meadow	61	Hay after July 15
1	Dyer Grassland	125	Potential burn in spring 2013; no grazing tenant identified; evaluate success/failure of 2010 broadcast seeding
2	CWR North 1 & 2	81	Reduced stocking rate for 2013 (not yet set); grazing period is typically May 1 - October 15
2	CWR East Loyd Island	252	Reduced stocking rate for 2013 (not yet set); grazing period is typically May 1 - October 15
2	CWR East	92	Grazing period is typically February - April
2	Morse N	166	4-pasture rotation with CWR SW and Morse SW & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	Morse Hay N	12	Hay after July 15
2	Morse Middle	135	4-pasture rotation with CWR SW and Morse N & SW. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	Morse Hay S	44	Hay after July 15; potential spring 2013 Rx Fire; potential late season haying
2	Morse Crop	30	Broadcast seeded in winter of 2011 with local ecotype mix; potential spring 2013 Rx Fire; potential late season haying; need to evaluate success/failure of 2011 broadcast seeding
2	Morse SW	153	4-pasture rotation with CWR SW and Morse N & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	CWR SW	128	4-pasture rotation with Morse N, SW, & Middle. Potential for Rx Fire in 1 of these 4 pastures spring 2013.
2	CWR NW	145	Season long grazing from April 15- August 15; 60 AU's?
2	CWR NE	150	Season long grazing from April 15- October 15; 30 AU's?

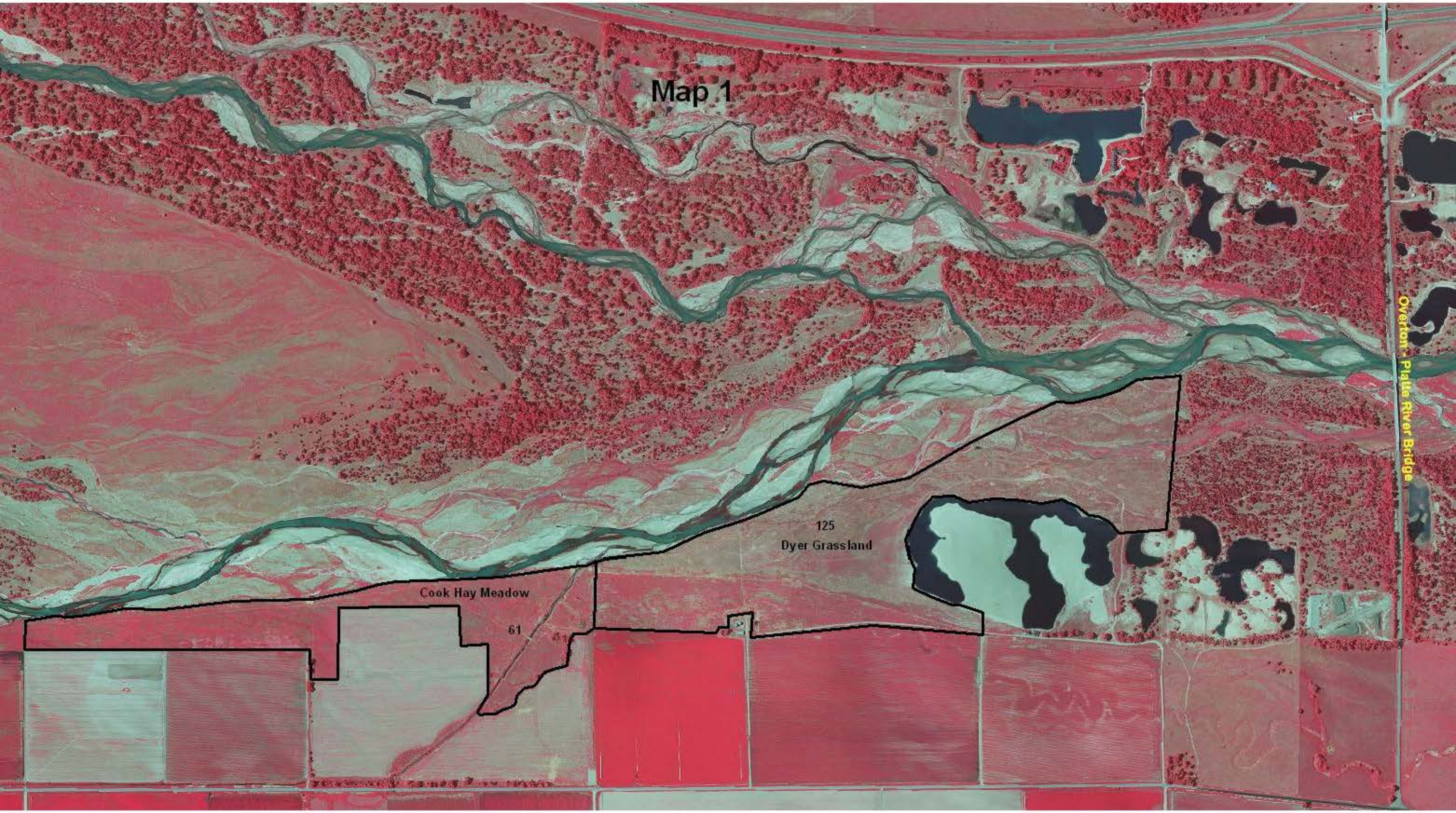
* Maps of each property are included in Attachment 2

Map	Site	Acres	Tentative Management Plan for 2013
3	Johns North Wet Meadow	381	Continue with May 1- September 30 grazing; potential to reduce stocking rate; potential burn in spring 2013
3	Johns South Wet Meadow	182	Continue with May 1 - September 30 grazing; potential to reduce stocking rate; potential burn in spring 2013
3	Sullwald Hay meadow	36	Hay after July 15; potential burn in spring 2013
3	McCormick North Island	34	Defer late spring and summer. Graze 1 month- heavy (Sep 15- Oct 15) or spilt into 2, 2 week grazing periods in early spring and late fall.
3	McCormick South Meadow	42	Defer late spring and summer. Graze 1 month- heavy (Sep 15- Oct 15) or spilt into 2, 2 week grazing periods in early spring and late fall.
4	WY South Meadow	118	Season-long grazing May 1 - September 30
4	Hostetler Crop	222	Broadcast seeded in winter of 2011 with commercial mix; hayed in late Fall of 2012; potential spring 2013 Rx Fire; potential late season haying; evaluate success/failure of 2011 broadcast seeding
5	Binfield North Meadow	223	Season long grazing from May 1- October 15; Reduced stocking from 2012 not yet set
5	Binfield North Hay Meadow	66	Hay after July 15
5	Binfield South Hay Meadow	30	Hay after July 15
5	Binfield South Meadow	57	Season long grazing from May 1- October 15; Potentially reduce stocking from 2012
5	Binfield East Meadow	179	Season long grazing from May 1- October 15; Potentially reduce stocking from 2012; Potential burn in spring 2013
5	Binfield West Meadow	361	Season long grazing from May 1- October 15; Reduced stocking from 2012 not yet set; potential burn in spring 2013
5	Binfield West Hay Meadow	124	Hay after July 15

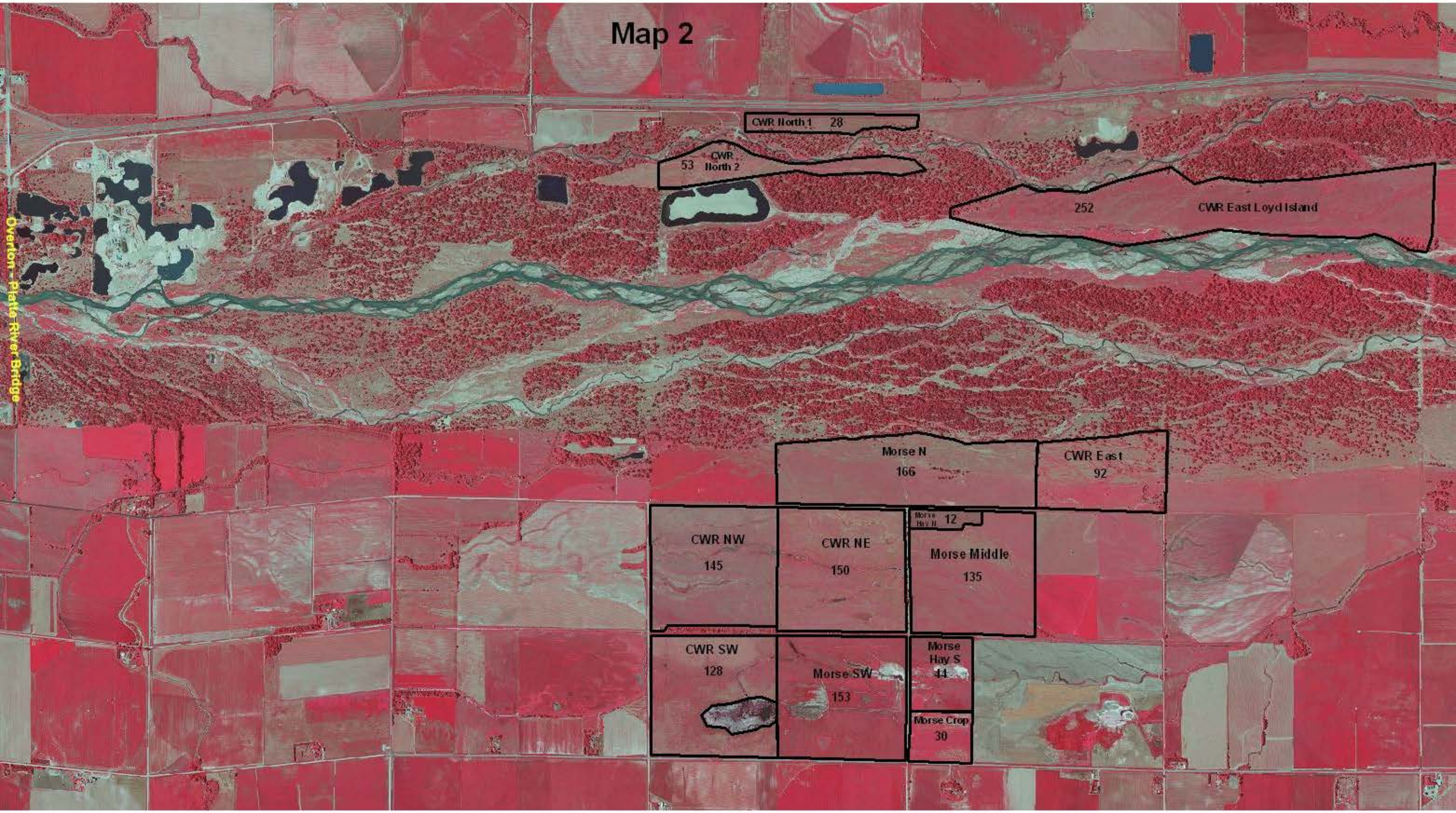
28 Properties – 3629 Acres

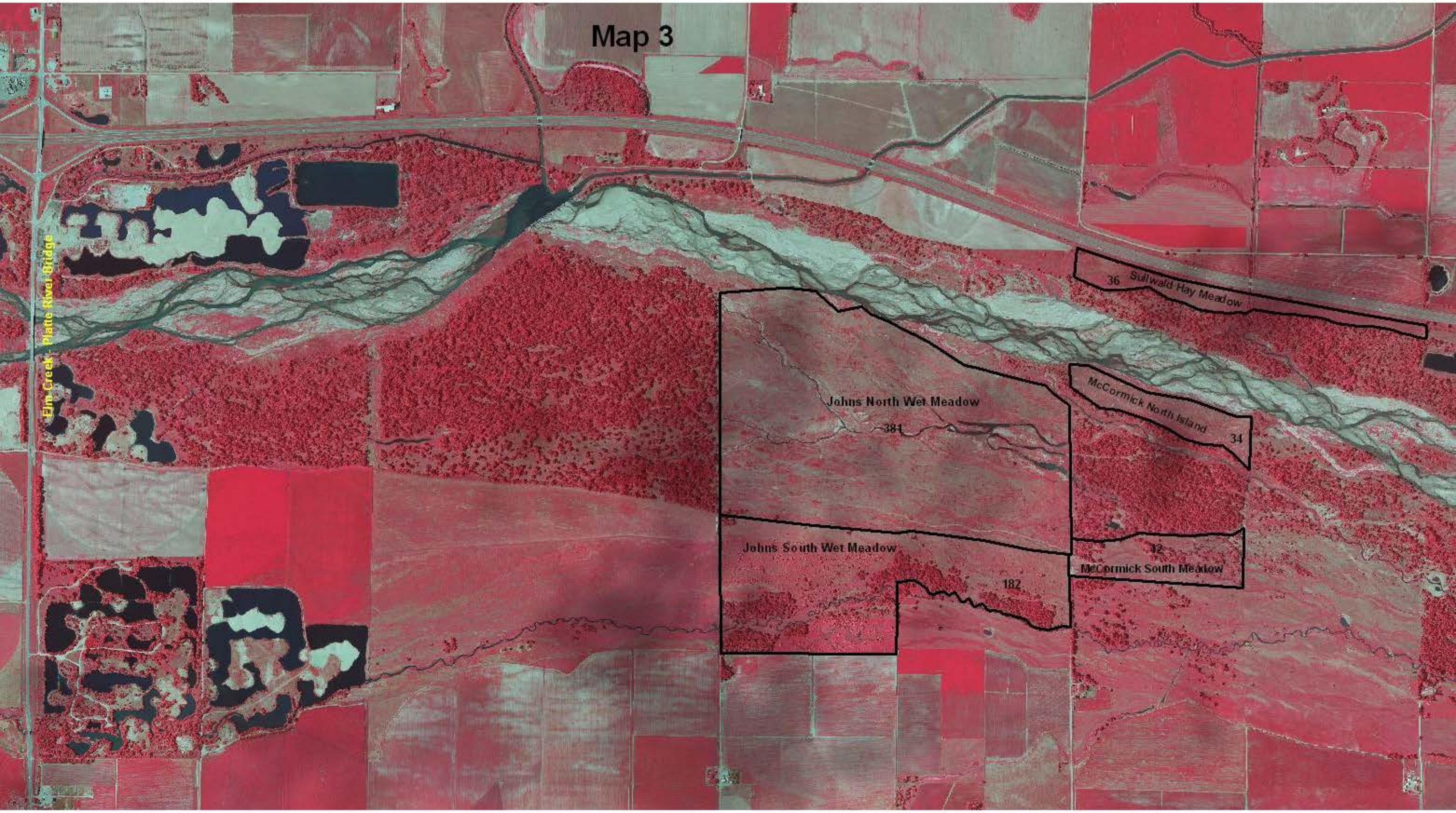
Attachment 2

Maps of Program owned or managed grassland areas to be surveyed

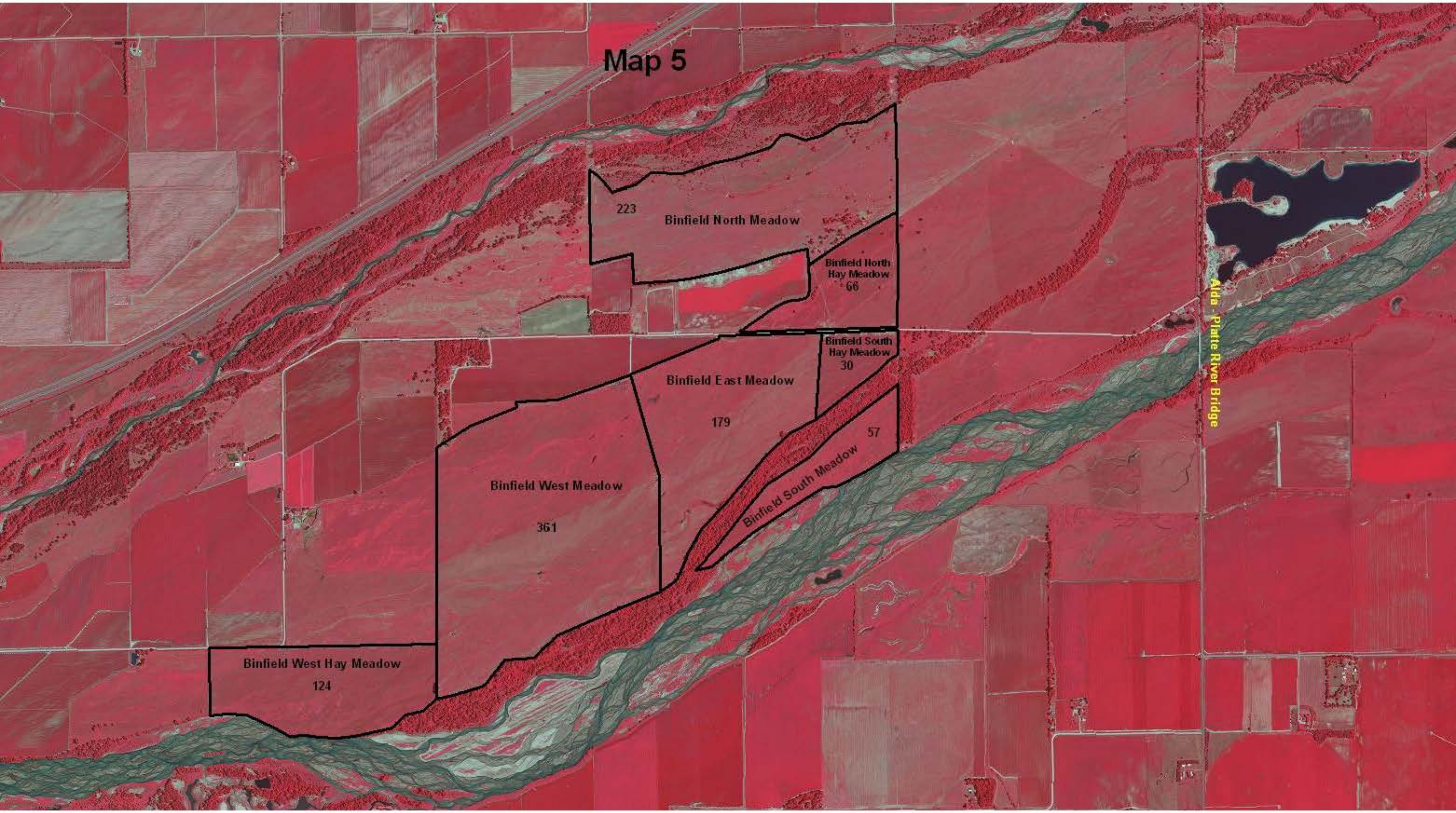


Map 1
125
Dyer Grassland
Cook Hay Meadow
61
Overton - Platte River Bridge


Map 2
CWR North 1 28
53 CWR North 2
252 CWR East Loyd Island
Overton - Platte River Bridge
Morse N 166
CWR East 92
Morse Hay N 12
CWR NW 145
CWR NE 150
Morse Middle 135
CWR SW 128
Morse SW 153
Morse Hay S 44
Morse Crop 30


Map 3
Elm Creek - Platte River Bridge
Johns North Wet Meadow
381
Johns South Wet Meadow
182
36
Sullwald Hay Meadow
McCormick North Island
34
42
McCormick South Meadow


Map 4
Hostetler Cropland Conversion
222
Wyoming
South Meadow
118
Kearney - Platte River Bridge
HWY 10 - Platte River Bridge


Map 5
223
Binfield North Meadow
Binfield North Hay Meadow
66
Binfield South Hay Meadow
30
Binfield East Meadow
179
57
Binfield South Meadow
Binfield West Meadow
361
Binfield West Hay Meadow
124
Alda - Platte River Bridge

Attachment 3

Standard Consultant Contract

Company
Address 1
Address 2
TIN# 00-0000000

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

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Contract between Nebraska Community Foundation, Inc., Platte River Recovery Implementation Program, and [Company].

[Project Name]

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

2. Purpose of Contract. The purpose of this Contract is to allow the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, to retain the services of the Consultant to render certain technical or professional services hereinafter described in connection with an undertaking to be financed by the Program, and to delegate the Executive Director's Office ("ED Office") through its Executive Director or his designee the authority to administer this Contract.

TERMS AND CONDITIONS

3. Term of Contract and Required Approvals. This Contract is effective when all parties have executed it and all required approvals have been granted. The term of this Contract is from *(contract initiation date)*_ through _*(contract expiration date)*_. The services to be performed under this Contract will commence upon receipt of authorization to proceed. All services shall be completed during this term.

If the Consultant has been delayed and as a result will be unable, in the opinion of the Program, to complete performance fully and satisfactorily within this Contract period, the Consultant may be granted an extension of time, upon submission of evidence of the causes of delay satisfactory to the Program.

4. Payment.

A. Reimbursement of Expenses. The Program agrees to pay the Consultant an amount based on the approved budget depicted in Exhibit B and hourly rate and reimbursable expenses price schedules depicted in Exhibit C, attached to this Contract and incorporated by reference as part of this Contract, for the services described in Exhibit A, attached to this Contract and incorporated by reference as part of this Contract. Total payment under this Contract shall not exceed ___________________ dollars ($___________).

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

Task	Estimated Cost
Phase I.	
Subtotal Phase I	
Phase II.	
Subtotal Phase II	
Total Project Cost	

The amounts for each task are estimates only, but are not to be exceeded unless authorized in writing by the Program. The Contract total amount is controlling. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Billing reports shall be submitted no more often than monthly for activities and costs accrued since the last billing report. A brief project progress report summarizing project activities in the billing period must be submitted with each billing.

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

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

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

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

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

5. <u>Responsibilities of Consultant</u>.

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

B. Personnel. All of the services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services, if state law requires such authorization, license, or permit.

C. Subcontracts.

(i) Approval Required for Subcontracts. Any subcontractors and outside associates or consultants required by the Consultant in connection with the services, work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the proposal and agreed to during negotiations or are specifically authorized by the Program during the performance of this Contract. The Consultant shall submit a list of the proposed subcontractors, associates or consultants; the scope and extent of each subcontract; and the dollar amount of each subcontract prior to Contract execution to the Program for approval. During the performance of the Contract, substitutions in or additions to such subcontracts, associates, or consultants will be subject to the prior approval of the Program. The Program approval of subcontractors will not relieve the Consultant from any responsibilities outlined in this Contract. The Consultant shall be responsible for the actions of the subcontractors, associates, and subconsultants.

(ii) Billings for Subcontractors. Billings for subcontractor, associates or subconsultants services will not include any mark up. The subcontract costs will be billed to the Program at the actual costs as billed to the Consultant. Subcontract costs will be documented by attaching subcontractor billings to the Consultant's billing submittals.

(iii) Copies of Subcontracts. The Consultant shall provide to the Program copies of each subcontractor contract immediately following execution with the subcontractor. All subcontracts between the Consultant and a subcontractor shall refer to and conform to the terms of this Contract. However, nothing in this Contract shall be construed as making the Program a party of any subcontract entered between the Consultant and a subcontractor.

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

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

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

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

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

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

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

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

B. Data to be Furnished to the Consultant. All information, data, reports, and maps as are available to the Program and necessary for the carrying out of the Scope of Services set forth herein shall be furnished to the Consultant without charge and the ED Office shall cooperate with the Consultant in the carrying out of the project.

C. Review Reports. The ED Office shall examine all studies, reports, sketches, opinions of the construction costs, and other documents presented by the Consultant to the Program and shall promptly render in writing the Program's decisions pertaining thereto within the time periods specified in Exhibit A.

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

7. Special Provisions.

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

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

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

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

D. Kickbacks. The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the Program may, at its discretion, terminate this Contract without liability to the Program, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

8. General Provisions.

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

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

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

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

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

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

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

H. Compliance with Law. The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

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

J. Conflicts of Interest

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

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

K. Entirety of Contract. This Contract, consisting of *_(example)_twelve_ (__12)* pages, Exhibit A, consisting of *_______eleven (__11)* pages, Exhibit B, consisting of *_______one (__1)* page, and Exhibit C, consisting of *______one (__1)* page, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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

M. Indemnification. The Consultant shall indemnify and hold harmless the Foundation, the Program, the ED Office, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations hereunder or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's malpractice.

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

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

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

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

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

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

(i) Commercial General Liability Insurance. Consultant shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per claimant and One Million Dollars ($1,000,000.00) per occurrence.

(ii) Business Automobile Liability Insurance. Consultant shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per occurrence. Coverage will include bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles

(iii) Workers' Compensation or Employers' Liability Insurance. The Consultant shall provide proof of workers' compensation coverage Consultant's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per employee for each accident and disease.

(iv) Professional Liability or Errors and Omissions Liability Insurance. The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the Foundation, Program and ED Office from any and all claims arising from the Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties in an amount not less than One Million Dollars ($1,000,000.00) per claim.

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

U. Termination of Contract. This Contract may be terminated, without cause, by the Program upon fifteen (15) days written notice. This Contract may be terminated immediately for cause if the Consultant fails to perform in accordance with the terms of this Contract.

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

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

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

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

9. <u>Contacts</u>.

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

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

Technical Point of Contact (Program):
Name, Title
Platte River Recovery Implementation Prog.
Headwaters Corporation
Address 1
City, State ZIP
Phone: (000) 000-0000
Fax: (000) 000-0000
Email: email

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

Administrative Point of Contact (Consultant):
Name, Title
Company
Address 1
City, State ZIP
Phone: (000) 000-0000
Fax: (000) 000-0000
Email: email

Technical Point of Contact (Consultant):
Name, Title
Company
Address 1
City, State ZIP
Phone: (000) 000-0000
Fax: (000) 000-0000
Email: email

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

NEBRASKA COMMUNITY FOUNDATION

____ ____________________

Diane M. Wilson Date

Chief Financial and Administrative Officer

[***CONSULTANT***]

____ ____________________

[*Name, Title*] Date

EXHIBIT "A"
SCOPE OF SERVICES

A. PROJECT DESCRIPTION

1. Location: *[Text]*

2. Purpose: *[Text]*

3. History: [*Text*]

B. PROJECT REQUIREMENTS

1. Monthly Progress Reports and Billing Statements

The Consultant shall submit a brief monthly progress report outlining the study status, progress, and results to date, regardless of whether or not a billing statement is submitted, on or before the last working day of the month. The progress report will also show the percentage of the job completed by task and the percentage of budget spent. The progress report will also include a billing projection for the upcoming month for the purpose of Program reimbursement request planning.

Each billing statement must include a task-by-task report justifying the cost items contained in the billing statement. The monthly progress report may be used as the justification for the billing statement as long as all cost items covered in the billing statement are addressed in the progress report.

2. Computer Models, Statement of Assumptions, Project Work File

a. If the Consultant writes or uses a computer program or spreadsheet as a part of this project, the Consultant shall submit to the Program for approval all proposed program names and data formats prior to beginning work on that task. All data shall be submitted to the Program in written and digital forms with the final report. Digital media shall be labeled by the Consultant to provide sufficient detail to access the information on the media. User manuals shall be submitted by the Consultant to the Program providing complete documentation of computer programs developed under this project. The user manuals shall also contain the source code language and the type of computer equipment necessary to operate the program(s). The computer programs and spreadsheets (written and digital forms) are due on the same date as the final report, which contains the information generated by the programs.

b. To facilitate the Program's accurate evaluation of the Consultant's work product, computations, conclusions and recommendations, the Consultant shall:

* Include in the final report a section describing the assumptions and methodology used by the Consultant in generating the data and conclusions contained in that chapter.

* Maintain a project work file containing the materials used in project analysis. This file will be available for review by the Program and should be organized in such a way as to allow replication of the steps and procedures used by the Consultant to reach the conclusions described in the study.

* Prepare a project notebook containing a description of the assumptions and methodologies used in the project analysis. The notebook shall be organized in such a way as to allow replication of the steps, calculations, and procedures used by the Consultant to reach conclusions, described in the draft final report. The project notebook shall be submitted with the draft final report.

3. Final Report

The Consultant shall use the Contract Scope of Services as the outline for draft and final reports so that Consultant compliance with Contract provisions can be verified. If the final report contains information of an engineering nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by a Professional Engineer licensed in the State of Nebraska or other state if appropriate to location of project site. If the final report contains information of a geologic nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by a Professional Geologist licensed in the State of Nebraska. If the final report contains information of both an engineering and geologic nature, the cover of the final report, all plates, and the executive summary must be stamped and signed by both a Professional Engineer and a Professional Geologist licensed in the State of Nebraska. At a minimum, the reproducible original to be submitted as part of the deliverables required herein must utilize an original seal(s) and original signature(s).

4. Final Report - Digital Format

In addition to the paper submittal described in Section C.4 above, the Consultant shall also provide the final documents and related materials in a digital format. This digital report shall, to the extent feasible, be assembled into one file rather than separate files for text, tables, graphics, etc. This digital report shall be contained on a CD(s) or DVD(s), and shall be in both Word and Adobe Acrobat format. Any plates, figures, etc. not suitable for Word shall be in AutoCAD, ArcGIS, Adobe Acrobat, or compatible format. Other formats may be used if approved in advance by the ED Office. The final documents will also be provided fully assembled into one file, in a complete “internet ready” digital format to facilitate their distribution via the Office website.

5. Project Access

The ED Office shall be responsible for obtaining access as required for project tasks.

6. Stand-By Time

The Program will not reimburse the Consultant for stand-by time charges for the Consultant's supervisory personnel.

SCOPE OF SERVICES

EXHIBIT “B”
BUDGET

EXHIBIT "C"
HOURLY RATE AND REIMBURSABLE EXPENSES
PRICE SCHEDULE 2013