



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and the
U.S. Geological Survey 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 the U.S. Geological Survey (“USGS”), a bureau of the Department of Interior, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2013.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the USGS for Dr. Robert B. Jacobson’s (“Consultant”) service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2013.
- (2) To provide the Consultant with a 2013 stipend of **\$26,600** in approved and available FY 2013 Program Budget Line Item ISAC-1 funds under this Amendment from the effective date of this Amendment through December 31, 2013 to provide services as outlined in **Exhibit A**. This 2013 stipend includes:
 - Three (3) ISAC meetings x three-day meetings x \$1,400 per day = \$12,600
 - 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 April 11, 2012. The following parties agree to the terms of this Amendment and the original Agreement:

For the USGS:

 Rip S. Shively
 Center Director
 USGS Columbia Environmental Research Center

 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 Jacobson ISAC Agreement



Dr. Robert B. Jacobson
U.S. Geological Survey – CERC
4200 New Haven Road
Columbia, MO 65201

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

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Agreement between Nebraska Community Foundation, Inc., Platte River Recovery Implementation
Program, and the U.S. Geological Survey

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 the U.S. Geological Survey ("USGS"), a bureau of the Department of Interior. The Parties intend that Dr. Robert B. Jacobson shall be the "Consultant" representing USGS pursuant to the terms of this Agreement. The following persons are authorized to represent the parties through this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program, and Robert Jacobson and Rip Shively of the USGS.

2. Purpose of Agreement and Authority. The USGS has a mission to apply science to the restoration and adaptive management of impaired ecosystems. The purpose of this Agreement for the Foundation, acting as the fiscal agent for the Governance Committee (GC) of the Program, is to engage the USGS as a member of the Program's Independent Scientific Advisory Committee (ISAC) and utilize its advisory expertise on restoring impaired ecosystems. This Agreement describes a two-year (2012-2013) commitment of service on the part of the Consultant. The two-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. There is a mutual benefit to both the Program and the USGS by accomplishing scientific research objectives of interest to both parties.

The authority of the USGS to participate in this Agreement is 43 USC 36c.

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, 2013. The services to be performed under this Agreement will commence upon signing of this Agreement.

4. Payment.

A. Stipend and Expenses. The Program agrees to pay the USGS \$24,700 in 2012 for the Consultant's stipend. This stipend will be invoiced by the USGS and paid by the Program in advance installments. The 2012 stipend includes the following:

- Three ISAC meetings x three-day meetings x \$1,300 per day = \$11,700.
- Ten days of additional document review x \$1,300 per day = \$13,000.
- The Consultant's 2013 stipend will be developed and approved by the GC in late 2012. An amendment will be used to update stipend amounts in this Agreement.



- USGS will also invoice and the Program will pay \$3,600 in advance for estimated expenses to be incurred performing the modified Scope of Work in 2012. Advance payment of estimated expenses will occur in April 2012.

B. Any advance payment of the stipend made pursuant to this Agreement shall be refunded to the extent the Consultant does not perform any part of the Scope of Work for any applicable Fiscal Year. Any advance payment for any expenses shall be refunded if the expenses are not incurred.

C. Advance payments for the activities of the Consultant shall go to the USGS's Financial Point of Contact (FPC; identified below). The Program's Technical Point of Contact will develop and distribute to the USGS FPC forms for advance payments. These forms 106 (invoices) will be submitted to the Program's Billing Point of Contact (contact information below). Upon receiving an invoice from the Consultant or the USGS, the Program's Billing Point of Contact will advise the Foundation of approval. The Foundation will make payment of these funds directly to the USGS, also providing a notification to Consultant, within 30 days. As noted, payments to the USGS shall be in advance of services but the USGS shall provide verification in the form of receipts, wherever possible, within 30 days after the travel is completed.

D. Should USGS work begin before an advance payment is received, invoices not paid within 60 days of receipt will bear interest at the rate established by the U.S. Treasury pursuant to 31 USC 3717.

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

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 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.
- **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.
- **Fall meeting** in Denver, CO (October-December, 2012) – opportunity for ISAC to meet together to build 2012 ISAC Report to GC.
- **Annual report** (2012) – contribute to development of 2012 ISAC report to the GC.
- **Platte River caddisfly** (February-June 2012) – input on caddisfly and Program management actions as directed by the GC.
- **Additional document and/or issues review** (2012) – input on documents and/or issues as directed by the GC.

An amendment will be used to update the Scope of Services in this Agreement.



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

97
98 **C. Presentation of Information.** The Consultant shall compile and present all
99 information clearly and concisely, in a professional manner.

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

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103 **6. Responsibilities of the Program.**

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

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

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

119
120 **D. Provide Criteria.** The ED Office shall provide all criteria and full information
121 regarding its requirements for the services.

122
123 **7. Special Provisions.**

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

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

134
135 **C. Office Space, Equipment, and Supplies.** The Consultant will supply all office
136 space, equipment, and supplies unless other mutually accepted agreements are made.

137
138 **8. General Provisions.**

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



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

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

151 **D. Audit/Access to Records.** The Program and any of its representatives shall have
152 access to any books, documents, papers, and records of the Consultant which are pertinent to this
153 Agreement. The Consultant shall, immediately upon receiving written instruction from the Program,
154 provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and
155 records of the Consultant which are pertinent to this Agreement. The Consultant shall cooperate fully
156 with any such independent auditor, accountant, or accounting firm, during the entire course of any audit
157 authorized by the Program.
158

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

169 **F. Confidentiality of Information.** All documents, data compilations, reports,
170 computer programs, photographs, and any other work provided to the Consultant by the Foundation in the
171 course of the Agreement shall be kept confidential by the Consultant unless written permission is granted
172 by the Program for its release. The parties understand that the USGS, as a federal entity, will furnish
173 otherwise confidential information in response to Federal legal requirements such as the Freedom of
174 Information Act where the information is not protectable by an Exemption or otherwise.
175

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

189 (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 Party. The Foundation and the USGS are independent parties. As a Federal bureau, the USGS is not a taxable entity, nor is it eligible for any benefits provided by the Foundation other than payment for its services.

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, data compilations, reports, computer models, photographs, and any other work produced by the Consultant in the performance of this Agreement may be published by the USGS and used in related work as indicated in Paragraph 7A, above. The Program's Technical Point of Contact will be provided the opportunity, prior to publication, to review and comment on any reports or materials resulting from work covered by this agreement.

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.

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 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):

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

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

Technical Point of Contact (USGS):

Dr. Robert B. Jacobson, Research Hydrologist
U.S. Geological Survey
4200 New Haven Road
Columbia, MO 65201
Phone: (573) 876-1844
Email: rjacobson@usgs.gov

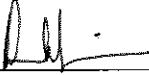
Administrative Point of Contact (USGS):

Ms. Lori D. Buitink
U.S. Geological Survey
4200 New Haven Road
Columbia, MO 65201
Phone: (573) 876-1892
Email: lbuitink@usgs.gov



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

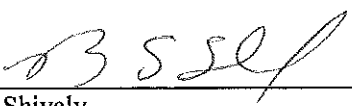
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293 **NEBRASKA COMMUNITY FOUNDATION**

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297 _____
298 Diane M. Wilson
299 Chief Financial and Administrative Officer

4/11/2012

Date

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302
303 **UNITED STATES GEOLOGICAL SURVEY, COLUMBIA ENVIRONMENTAL RESEARCH**
304 **CENTER**

305
306
307 
308 _____
309 Rip S. Shively

4-9-12

Date