



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and John M. Nestler 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 John M. Nestler (“Consultant”), a private consultant, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2013.

The purpose of this Amendment is to:

- (1) Extend the Agreement between the Foundation and the Consultant for service on the Program’s Independent Scientific Advisory Committee (“ISAC”) from the effective date of the Amendment through December 31, 2013.
- (2) To provide the Consultant with a 2013 stipend of **\$11,200** 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:
 - One (1) ISAC meeting (2013 AMP Reporting Session) x three-day meeting x \$1,400 per day = \$4,200
 - Five (5) days of mentoring new ISAC members and additional document review x \$1,400 per day = \$7,000

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

For the Consultant:

 John M. Nestler

 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 Nestler ISAC Agreement



Dr. John M. Nestler
Environmental and Fisheries Services
102 Lakewood Circle
Vicksburg, MS 39180

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 Dr. John M. Nestler

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 John M. Nestler ("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 John M. Nestler.

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 one-year (2012) commitment of service on the part of the Consultant.

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, 2012. 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 \$24,700 in 2012. 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.

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.
- **Per Diem** – Paid according to the prevailing General Services Administration rate at the location of the ISAC meeting.
- **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 (AMP Reporting Session, summer meeting, fall meeting) for one-third of the annual stipend plus any associated expenses to the Executive Director's Office ("ED Office"; address included below). The Program's Executive Director, upon receiving each invoice, will approve the invoice and submit the invoice for payment. The submittal for payment will then be reviewed by the Signatory Parties of the Program who will advise the Foundation of approval. The Foundation will make payment of these funds directly to the Consultant within 30 days of notice of approval by the Signatory Parties. Payments of invoices are due within 60 days after the billing date of the Consultant.

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 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.

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. 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 while this Agreement is in force. 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*.



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

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

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

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

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

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

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

231 **O. Termination of Agreement.** This Agreement may be terminated, without cause,
232 by the Program upon thirty (30) days written notice. This Agreement may be terminated immediately for
233 cause if the Consultant fails to perform in accordance with the terms of this Agreement. The Consultant
234 shall likewise have the right to unilaterally terminate the agreement for good cause.
235

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

Administrative and Technical Point of Contact (Consultant):

Dr. John M. Nestler
Environmental and Fisheries Services
102 Lakewood Circle
Vicksburg, MS 39180
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