



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. and Atkins North America, Inc. (formerly PBS&J) Regarding “Independent Science Review Services”

This Second Amendment to the Agreement between the Nebraska Community Foundation, Inc. (“Foundation”) of Lincoln, Nebraska, representing all signatories to the Platte River Recovery Implementation Program (“Program”), and Atkins (“Consultant”), a private consultant of Jacksonville, Florida, 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) To provide Consultant with a total additional budget of **\$45,000** in approved and available FY 2013 Program Budget Line Item PD-3 (“AMP and IMRP Peer Review”) funds under this Amendment from the date of signing below through December 31, 2013 to perform the Independent Science Review Services outlined in **Exhibit A**, with the budget to be expended in general conformance with the estimate and task outline provided in **Exhibit A**.

Important Amendment notes:

- (1) This is the Second Amendment to the Agreement. The First Amendment and original Agreement are included together as **Exhibit B**.
- (2) The Total Project Budget is **\$89,000** (Agreement + First Amendment + Second Amendment).

All other terms of the original Agreement remain in effect as written in the Agreement dated February 28, 2011. The following parties agree to the terms of this Amendment and the original Agreement.

For the Consultant:

Tom St. Clair, PhD
Group Manager

Date

For the Foundation:

Diane M. Wilson
Chief Operating Officer/Chief Financial Officer

Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

EXHIBIT A

2013 Atkins Tasks and Budget for PRRIP Independent Science Review Services

Platte River Recovery Implementation Program

Independent Science Support

Cost Estimate for 2013

Peer Review Support

Assumptions:

- 3 peer reviews to be performed; 6 candidates to be identified for each review
- Support to include recruitment of panel members, distribution of documents for review, facilitation of review process, preparation of summary report and development of a comment matrix
- Potential for conflict of interest to be determined for each panel member

Estimated cost:

- \$10,000 per review x 3 reviews = \$30,000

ISAC Member Replacement

Assumptions:

- 2 committee members to be replaced
- 3 candidates for each position to be identified
- A report similar to prior reports to be submitted

Estimated cost:

- \$15,000

2013 Estimated Cost - \$45,000



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

EXHIBIT B

Original Atkins Agreement (2011) for Independent Science Review Services and First Amendment (2012)

**PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM****First Amendment to the Agreement between the Nebraska Community Foundation, Inc. and Atkins North America, Inc. (formerly PBS&J) Regarding "Independent Science Review Services"**

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 Atkins ("Consultant"), a private consultant of Jacksonville, Florida, is made and entered into effective on the date of signing below and the final date of this Amendment will be December 31, 2013 (end date of original Agreement).

The purpose of this amendment is to:

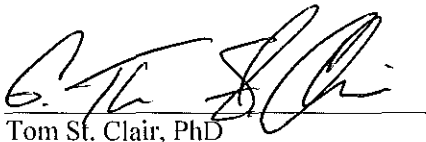
- (1) To provide Consultant with a total additional budget of **\$14,000** in approved and available FY 2012 Program budget line item PD-3 ("AMP and IMRP Peer Review") funds under this Amendment from May 2012 through August 2012 to perform the Independent Science Review Services (recommend two replacement members for the Independent Scientific Advisory Committee) as outlined in **Exhibit A**, with the budget to be expended in general conformance with the estimate and task outline provided in **Exhibit A**.

Important Amendment notes:

- (1) This is the First Amendment to the Agreement. The original Agreement is provided as **Exhibit B**.
- (2) The PRRIP entered into an IDIQ contract with Atkins in 2011 as per approval of and direction from the Governance Committee (GC). The background memo provided to the GC requesting the services of Atkins (formerly PBS&J) is provided as **Exhibit C**. If the PRRIP requires additional assistance from Atkins in 2012 or 2013 for peer review or other independent science review services, funding for completion of those tasks will be evaluated through the normal PRRIP review and approval process and will have to be secured by seeking Finance Committee approval of a Second Amendment to the Agreement.

All other terms of the original Agreement remain in effect as written in the Agreement dated February 28, 2011. The following parties agree to the terms of this Amendment and the original Agreement.

For the Consultant:



Tom St. Clair, PhD
Group Manager
Atkins

5/16/2012
Date

For the Foundation:



Diane M. Wilson
Chief Financial & Administrative Officer
Nebraska Community Foundation, Inc.

5/29/2012
Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

EXHIBIT A

2012 INDEPENDENT SCIENCE REVIEW SERVICES SCOPE OF WORK

Date: 18 April 2012

To: Chad Smith, Director of Natural Resources

Subject: Cost Extension Amendment and Justification for Atkins Support to the Platte River Recovery Implementation Program (PRRIP)

Year in Review (February 2011 – March 2012)

- Initial Funding: \$30,000
- Expended as of 15 April 2012 - \$25,000
- Remaining: \$5000
- Tasks Completed
 - *Pre-Peer Review Tasks*
 - Set-up document sharing website (www.box.net) for each peer review
 - Develop e-mail template for first contact with peer review panelists (could be used for all peer reviews with minor tweaks).
 - Develop biographical template for use when proposing peer review panelists
 - *Stage Change Peer Review* (May 2011 to October 2011) – suggested peer reviewers for 5-person peer review panel; served as point of contact, facilitated peer review and developed summary report (including development of comment-response table for PRRIP to track and respond to comments).
 - *Directed Vegetation Peer Review* (October 2011 to January 2012) – suggested peer reviewers for 3-person peer review panel; served as point of contact, facilitated peer review and developed summary report (including development of comment-response table for PRRIP to track and respond to comments).
 - *Sediment Augmentation Peer Review* (November 2011 to present¹) – suggested peer reviewers for 3-person peer review panel; served as point of contact, facilitated peer review and developed summary report (including development of comment-response table for PRRIP to track and respond to comments).

Scheduled Work for 2012-2013

- Tasks to Complete
 - Replacement ISAC Member – Applied Scientist
 - Replacement ISAC Member – Bird Ecologist
- Funding Requested: \$14,000

¹ The Sediment Augmentation Peer Review is still ongoing. The last review is due from John Gray on 4/22/12. The summary report and comment-response table when then be prepared and submitted to the PRRIP in early-May 2012. It is estimated that it will take the remaining \$5000 of the existing contract to finish this peer review.

- Timeline for Completion – Atkins to propose three replacement candidates for each ISAC position by end of May 2012; proposed ISAC members to be discussed at June 2012 Governance Committee Meeting.



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

EXHIBIT B

INDEPENDENT SCIENCE REVIEW SERVICES ORIGINAL AGREEMENT



PBS&J
701 San Marco Boulevard, Suite 1201
Jacksonville, FL 32207
TIN# 59-0896138

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 PBS&J.

Independent Science Review Services

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 PBS&J ("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 Charles Padera 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 January 1, 2011 through December 31, 2013. 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 thirty thousand dollars (\$30,000).

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



Task	Estimated Cost
Peer Review Panel for Lower Platte River Stage Change Study	\$5,000
Peer Review Panel for Flow-Sediment-Mechanical "Proof of Concept" Monitoring Protocol	\$5,000
Peer Review Panel for Sediment Augmentation Feasibility Analysis Report	\$5,000
Peer Review Panel for AMP Implementation Plan	\$5,000
Potential Peer Review Panel for additional PRRIP document	\$5,000
Potential assistance with replacing 1-3 current ISAC members	\$5,000
Total Project Cost	\$30,000

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. Responsibilities of Consultant.

A. **Scope of Services.** The Consultant shall perform the specific services required under this Contract to the standard of care of a reasonable Consultant performing the same or similar work at the same time or locality and under the same or similar conditions faced by a Consultant 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. 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 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. However, notwithstanding anything contained herein, either party may disclose information that is required to be disclosed in accordance with the order or decree of a court of component jurisdiction or by applicable law or regulation, provided that the party making the disclosure agrees to give the other party adequate advance notice prior to disclosure in order that it may seek a protective order or other appropriate relief.



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 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*.

K. Entirety of Contract. This Contract, consisting of ten (10) pages, Exhibit A, consisting of four (4) 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



326 incur any obligation of any kind on the behalf of the Foundation or the Program. The Consultant agrees
327 that no health/hospitalization benefits, workers' compensation and/or similar benefits available to
328 Foundation or Program employees will inure to the benefit of the Consultant or the Consultant's agents
329 and/or employees as a result of this Contract.

330
331 **O. Notices.** All notices arising out of, or from, the provisions of this contract shall
332 be in writing and given to the parties at the address provided under this Contract, either by regular mail,
333 facsimile, e-mail, or delivery in person.

334
335 **P. Notice and Approval of Proposed Sale or Transfer of the Consultant.** The
336 Consultant shall provide the Program with the earliest possible advance notice of any proposed sale or
337 transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be
338 provided in accordance with the notice provision of this Contract.

339
340 **Q. Ownership of Documents/Work Product/Materials.** All documents, reports,
341 records, field notes, data, samples, specimens, and materials of any kind resulting from performance of
342 this Contract are at all times the property of the Program.

343
344 **R. Patent or Copyright Protection.** The Consultant recognizes that certain
345 proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar
346 restrictions, and warrants that no work performed by the Consultant or its subcontractors will violate any
347 such restriction.

348
349 **S. Proof of Insurance.** The Consultant shall not commence work under this
350 Contract until the Consultant has obtained the following insurance coverage and provided the
351 corresponding certificates of insurance:

352
353 (i) **Commercial General Liability Insurance.** Consultant shall provide
354 coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage
355 to or destruction of the property of others, including loss of use thereof, and including products and
356 completed operations in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per
357 claimant and One Million Dollars (\$1,000,000.00) per occurrence.

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

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

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369 (iv) **Professional Liability or Errors and Omissions Liability Insurance.** The
370 Consultant shall provide proof of professional liability insurance or errors and omissions liability
371 insurance to protect the Foundation, Program and ED Office from any and all claims arising from the
372 Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional



373 duties in an amount not less than One Million Dollars (\$1,000,000.00) per claim.
374

375 **T. Taxes.** The Consultant shall pay all taxes and other such amounts required by
376 federal, state and local law, including but not limited to federal and social security taxes, workers'
377 compensation, unemployment insurance and sales taxes.
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379 **U. Termination of Contract.** This Contract may be terminated, without cause, by
380 the Program upon fifteen (15) days written notice. This Contract may be terminated immediately for
381 cause if the Consultant fails to perform in accordance with the terms of this Contract.
382

383 **V. Third Party Beneficiary Rights.** The parties do not intend to create in any
384 other individual or entity the status of third party beneficiary, and this Contract shall not be construed so
385 as to create such status. The rights, duties and obligations contained in this Contract shall operate only
386 between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract.
387 The provisions of this Contract are intended only to assist the parties in determining and performing their
388 obligations under this Contract.
389

390 **W. Time is of the Essence.** Time is of the essence in all provisions of the Contract.
391

392 **X. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not
393 be used to construe the language in this Contract.
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395 **Y. Waiver.** The waiver of any breach of any term or condition in this Contract shall
396 not be deemed a waiver of any prior or subsequent breach.
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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
Email: dwilson@nebcommfound.org

Technical Point of Contact (Program):

Chadwin Smith, Director of Natural Resources
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (402) 261-3185
Email: smithc@headwaterscorp.com

Administrative Point of Contact (Consultant):

Tom St Clair
Associate Vice President
PBS&J
701 San Marco Boulevard, Suite 1201
Jacksonville, Florida 32207
Phone: (904) 232-1774
Email: gstclair@pbsj.com

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
Email: kennyj@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
Email: barronb@headwaterscorp.com

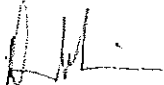
Technical Point of Contact (Consultant):

Eliza Hines
Program Manager
PBS&J
701 San Marco Boulevard, Suite 1201
Jacksonville, Florida 32207
Phone: (904) 232-2011
Email: ebhines@pbsj.com



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.

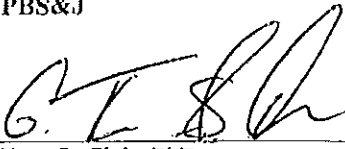
NEBRASKA COMMUNITY FOUNDATION


Diane M. Wilson
Chief Financial and Administrative Officer

2/23/2011

Date

PBS&J


Tom St Clair, PhD
Associate Vice President

2/23/2011
Date



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

EXHIBIT C

INDEPENDENT SCIENCE REVIEW SERVICES GC MEMO



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Justification for Non-Competitive Selection

TO: Governance Committee (GC)
FROM: ED Office
RE: PBS&J Peer Review Services
DATE: November 30, 2010

Recommendation

The ED Office requests the **GC approve** an Indefinite Delivery/Indefinite Quantity (IDIQ) contract for a period of one year (with an option to renew annually based on performance and need) with PBS&J to provide services to the Platte River Recovery Implementation Program (Program or PRRIP) for assembling and managing requested Peer Review Panels and generating final Peer Review Panel reports for the Program. The Program will budget \$5,000 per Peer Review Panel for PBS&J's services - in 2011, we anticipate the need for five (5) separate Peer review Panels at a cost of \$25,000 for PBS&J's services (\$5,000 per Peer Review Panel x 5 panels), plus \$5,000 for PBS&J's services to recommend potential new Independent Scientific Advisory Committee (ISAC) members. The estimated total cost for PBS&J's services in 2011 is \$30,000. Funding for this contract will come, if approved, from the FY2011 Budget Line Item PD-3, "AMP & IMRP Peer Review".

The Technical Advisory Committee (TAC) recommended this Justification for Non-Competitive Selection to the GC for approval on November 3, 2010. The Finance Committee (FC) recommended this Justification for Non-Competitive Selection to the GC for approval on November 23, 2010.

The final products of this effort in 2011 will be five (5) Peer Review Panels from which five (5) Peer Review Panel reports will be generated (summaries of comments from Peer Reviewers on the documents being reviewed). In addition, if necessary, PBS&J will recommend new members for the ISAC if any current ISAC members rotate out of service.

Program Need and Project Description

The PRRIP intends to utilize a robust program of independent science review for documents and other key products to ensure scientific integrity, soundness of methodology, and reasonableness of conclusions drawn in response to the results of particular Program monitoring or research activities. Utilizing a third-party neutral like PBS&J to assist the ED Office with assembling and managing Peer Review Panels would interject a necessary extra level of independence to our science review practices and would allow the Program to cast a much wider net in engaging a high level of independent scientific expertise. The Governance Committee (GC), through the ED Office, will continue to provide specific task orders and guidelines and retain full decision-making and policy interpretation authority.

The PBS&J contract would be for one year (2011) and the Scope of Work would resemble as follows:

- Solicit potential Peer Review Panel members for PRRIP documents and reports – discuss potential conflicts with PRRIP staff
- Recommend Peer Review Panelists for requested documents and report – deliver written summary, details on panel members, and conflict of interest statements
- Discuss recommendations with PRRIP staff and committee members as necessary
- Lead for communication with all Peer Review Panelists before and during peer review process



- Once Peer Review Panel members approved by GC, manage peer review process – PRRIP staff provide clear scope of work and documents for peer review effort; contractor delivers information to Peer Review Panel members; contractor serves as communication link between Peer Review Panel and PRRIP during review; contractor holds Peer Review Panel to deadlines and product delivery; contractor summarizes all peer review comments received (in color-coded spreadsheet or other format) and provides to PRRIP staff; PRRIP provides responses to comments; contractor assists with clarifying any remaining issues with Peer Review Panel members and provides final comments

Regarding the ISAC, each current ISAC member committed to a three-year term that concludes at the end of calendar year 2011. During 2011, the EDO, in conjunction with the TAC and GC, will assess current ISAC representation and determine if any current ISAC members will rotate out of service in 2012. If so, PBS&J will be asked to recommend replacement members utilizing the same process for current ISAC members – assess Program needs for areas of expertise, evaluate potential candidates, assemble background information, recommend candidates, and secure Conflict of Interest statements.

Ability to Provide Services

A sole-source contract to PBS&J to provide science review services can be justified based on both knowledge of the Platte River ecosystem and the Platte River Recovery Implementation Program (Program), previous performance in the same capacity for the Program, as well as similar past experience with other recovery/restoration programs. Under contract to the PRRIP in 2008-2009, PBS&J helped implement the selection process for the Program's Independent Scientific Advisory Committee (ISAC) as well as five (5) subject-specific peer review panels. PBS&J developed a process for identification, qualification, and documentation of peer review panel candidates and presented a suite of both potential panelists as well as alternates to the Program's Governance Committee. This provided valuable experience and allowed the PBS&J team to become familiar with both the Platte River ecosystem as well as the issues being tackled. By all accounts, PBS&J performed all tasks for the Program successfully and with a high-level of expertise and efficiency.

PBS&J has also provided similar science review services to other ecosystem restoration program across the country including the Missouri River Recovery Program (MRRP), the Comprehensive Everglades Restoration Plan (CERP), Yellowstone River Intake Dam Reconstruction Project and the Klamath River Restoration Program.

- PBS&J provides support to the MRRP Integrated Science Program (ISP) and is an active participant in the independent scientific review of the ISP and the ability of the existing monitoring program to meet legislative and biological/ecological goals and objectives; this review has used both in-house resources at the U.S. Army Corps of Engineers (USACE) as well experts from the U.S. Geological Survey (USGS) and other state and local agencies.
- PBS&J provides support for CERP, specifically the scientific arm of the program, Restoration Coordination and Verification (RECOVER). As contractor to the USACE, PBS&J has coordinated the independent peer review of the CERP Adaptive Management Strategy as well as numerous peer reviews of scientific/technical documents such as monitoring plans, sampling designs, and assessment reports (i.e., 2009 System Status Report).
- PBS&J has worked with the Bureau of Reclamation (Great Plains Region) to facilitate a science review process and critical evaluation of the science surrounding the Lower Yellowstone Intake Diversion Dam Reconstruction Project (Intake Project). This review specifically considered whether the information provided in the Draft Environmental Assessment, Biological Assessment, and responses to the questions provided by the Missouri River Restoration Implementation Committee



(MRRIC) use the best available science and support a conclusion that the Intake Project is a viable alternative with benefits for recovery of pallid sturgeon.

- PBS&J under a U.S. Department of the Interior IDIQ contract is currently facilitating a series of expert scientific panel sessions for the Fish & Wildlife Service to document and validate the current state of scientific knowledge associated with Klamath River Basin Restoration on different four topics: (1) lamprey, (2) Chinook salmon, (3) Coho salmon, and (4) resident fish populations. These scientific panels are being convened to assist the Secretary of the Interior make a determination if the removal of four dams on the Klamath River would benefit the restoration of fish in the Klamath Basin and is in the public interest. PBS&J is also coordinating a peer review of the technical summaries prepared by the scientific panels and other pertinent documents related to the science of the Klamath.

PBS&J has the experience and expertise to provide the services required. PBS&J has a unique set of qualifications that conforms to the requirements for the services needed.

Budget and Schedule

The IDIQ contract will be on a cost-not-to-exceed basis and PBS&J will invoice the Program upon completion of each peer review process. PBS&J estimated that their services will cost in the range of \$3,000-\$5,000 per Peer Review Panel; some panels will cost more, some less. The Program is budgeting \$5,000 per panel estimated to be necessary in 2011, so cost savings are a likely outcome as PBS&J will only invoice for the amount of work completed. Below are the documents expected to require peer review in 2011 and potential ISAC member replacement, amounting to an **estimated total cost for PBS&J's services of \$30,000**:

Document	# Reviewers	PBS&J Services
Lower Platte River Stage Change Study	5	\$5,000
FSM Proof of Concept Monitoring Protocol	3	\$5,000
Sediment Augmentation Feasibility Analysis Report	3	\$5,000
AMP Implementation Plan	3	\$5,000
Potential additional document review	3	\$5,000
Potential assistance with replacing ISAC members	1-3 new members	\$5,000
		\$30,000

PBS&J's Point of Contact for this project will be Tom St. Clair, the same Point of Contact for PBS&J's previous work for the Program. Mr. St. Clair agreed to make PBS&J's services available to the Program when necessary in 2011 and multiple peer reviews can be conducted simultaneously if necessary. The Program will develop specific guidelines for each peer review and will dictate the schedule for the process – approximately three months per review (one month for technical and administration processing, one month for the review, one month for reporting and responding to comments).

PBS&J can provide the services within the existing budget (if approved by the GC) and in an appropriate timeframe.