



City of Grand Island

Tuesday, August 12, 2008

Council Session

Item G18

#2008-213 - Approving Contract with the USDA Natural Resources Conservation Service for Wildlife Habitat Incentives Program (WHIP) at the Heartland Public Shooting Park

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian

Meeting: December 5, 2006

Subject: Approving Contract with USDA Natural Resource Conservation Service

Item #'s: G-18

Presenter(s): Steve Paustian

Background

The Loup Platte Chapter of Pheasants Forever approached the Heartland Public Shooting Park asking to be involved in habitat development on certain undeveloped areas of the Park. One of the options was to work with the USDA and sign up for a conservation program called the WHIP Program (see attached agreement). This five year commitment provides for the majority of funding, planning and technical assistance to create optimal habitat for pheasant and quail production.

Discussion

Staff has determined that enrollment in the program would be of significant value to the Park and would not conflict with existing uses of the facility. Additional pheasant and quail production could work hand in hand with our youth/mentor hunts and other opportunities that may arise from the increased bird density the program should help develop.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council enter into an agreement with the USDA to enroll in the WHIP Program.

Sample Motion

Motion to enter into a contract with the USDA for participation in the WHIP program.

WHIP and the Heartland Public Shooting Park

What is the Wildlife Habitat Incentives Program?

The Wildlife Habitat Incentives Program, or WHIP, is a program administered by the Natural Resources Conservation Service (NRCS) of the USDA. This program provides cost-share reimbursement to landowners for many wildlife practices that create or enhance wildlife habitat. Many practices are covered, such as planting of native grasses and wildflowers/forbs, killing non-wildlife friendly invasive grass species, prescribed burning, removing invasive tree species, and installing wildlife friendly shrubs and trees (among many other practices).

Many large wildlife projects, and especially the installation of certain practices, can be very expensive. Most landowners can not complete these types of projects and intensive follow-up management without some type of assistance. By entering into a WHIP contract, landowners can receive technical assistance on how to manage their property and what practices should be installed. They also receive financial assistance through cost-share reimbursement.

Landowners enter into 5 to 10 year contracts with the NRCS that outline what practices will be implemented, how many acres they will be applied on, and how much cost-share reimbursement will be awarded for each practice. Since this program is focused on wildlife habitat, usually a wildlife biologist is involved with the contract writing process, and also formulates a wildlife management plan that the NRCS contract and conservation plan is based on, which requires a lot of pre-planning.

The Nebraska NRCS only receives a limited amount of funding each year for WHIP contracts. To receive funding for cost-share, landowners must first sign an application. Their project must then go through a ranking process. After a draft wildlife management plan is written outlining the practices to be implemented on a piece of property, the project will then be ranked according to the practices in the plan. The highest ranking projects in Nebraska are then funded and moved to contracts. A NRCS contract (Form NRCS-CPA-1202) and a conservation plan (Form NRCS-CPA-1155) based on the wildlife management plan are written and must be signed by the landowner before the funds are obligated to that contract. The ranking sheet must also be signed, and a direct deposit form for the cost-share reimbursement must be filled out.

What is WHIP Contract Funding Based On?

Cost-share reimbursements are based on the type of practice being implemented, and range from approximately 50% to 75% of the installation costs. Most practices that provide exceptional wildlife benefits, such as a new native grass planting, receive approximately 75% cost-share. A few practices, which are more associated with projects that help agricultural operations but also have good wildlife benefits, only provide about 50% cost-share reimbursement. One example is brush management, which is the

removal of invasive tree species such as cedar and locust, usually occurring on grazing lands.

The amount of money paid for each practice is based on the NRCS cost docket. Each year, as landowners who have contracts with NRCS install practices, they turn in receipts for cost-share reimbursement. These receipts are used to calculate the average amount it costs to install each practice, and sets how much contract holders will be reimbursed for that same practice the next year. For example, for contracts written in 2008, NRCS reimburses landowners \$66.50 per acre for what they refer to as a complex grass mixture for Upland Wildlife Habitat Management. When seeding a grass mix, landowners have to buy the grass and wildflower seed mix, rent a grassland no-till drill to plant the mix, and possibly prepare the seedbed by disking or spraying herbicide. According to receipts received in 2007, it cost an average of \$88.67 per acre to do all these things in Nebraska. 75% of \$88.67 is \$66.50, so landowners are reimbursed a set amount of \$66.50 per acre for installing a complex wildlife grass mix, no matter what it actually costs. This payment usually doesn't include the added expense if the landowner has to hire a contractor to complete the work, and also doesn't account for an increase in prices (such as grass seed) from the year the contract was written. The landowner will only get \$66.50 per acre back, so the actual percent that the landowner receives depends on how much they actually spend. Planting a more expensive grass mix than what most people plant, but has better wildlife benefits, means more out-of-pocket expense.

To receive cost-share, the practice must be in the WHIP contract. The landowner or their agent, completes all work associated with that practice and pays for all the costs upfront. The landowner then turns in all receipts, along with other required documentation, to the NRCS office administering the contract. The office completes a cost-share reimbursement form that the landowner must sign, which is then faxed into the state NRCS office for payment. Payment is direct deposited into the customer's checking account that they designated with the direct deposit form, which usually takes 4 to 6 weeks.

The Heartland Public Shooting Park Project

In winter 2003 / spring 2004, approximately 115 acres of cropland on the Heartland Public Shooting Park was seeded to wildlife friendly grass/wildflower mixtures. All seeding was paid for by Pheasants Forever, a total of \$7,406.60. This seeding has already had a positive impact for a number of wildlife species, especially upland game birds such as Northern bobwhite quail and ring-necked pheasant.

In November of 2007, Jason Sykes (Pheasants Forever Farm Bill Wildlife Biologist) met with Steve Paustian (City of Grand Island Parks and Recreation Director) to discuss possible options of converting the remaining crop fields and managing the habitat already established. The local chapter of Pheasants Forever in Hall County, the Loup/Platte Ringnecks chapter, was also eager to participate in a habitat improvement program. Heartland Public Shooting Park presents a unique opportunity to demonstrate

the very best wildlife management on an area that receives a high volume of traffic, with many of those people involved in hunting or interested in wildlife management. Since public hunting is not allowed on Heartland, the main benefit of the project to the chapter would be to demonstrate the best wildlife management practices, and the results that can come from it, especially in an area that is very agriculture intensive.

By entering into a WHIP contract, the City of Grand Island will have the majority of the costs for implementing the wildlife management plan repaid through cost-share. The remainder of the costs will be paid by the Loup / Platte Ringnecks Chapter of PF. To accomplish an intensive wildlife management plan, it would cost approximately \$43,000. About \$30,000 of this would be paid by the WHIP contract, leaving about \$13,000 to be paid by the chapter. It would be very difficult for the Loup / Platte Ringnecks chapter to pay for the all costs associated with the project without the WHIP contract, and this also allows them to save money to be spent on other Hall County and state projects. The contract will last 5 years, and the practices will be spread out over the first 4 years of the contract (most will be completed in the first 3 years). By spreading the practices over several years, this decreases the amount of funds that each party has to budget during each fiscal year to fully pay for practice installation. At the end of the WHIP contract, the City of Grand Island will have spent no net funds (because they will be reimbursed fully by either WHIP cost-share or the PF chapter), and will have completed a \$43,000 project.

Conservation Plan Map

Wildlife Habitat Incentives Program (WHIP)



Customer(s): CITY OF GRAND ISLAND

District: Central Platte NRD

Approximate Acres: 225.6

Land Units: Farm: 4946; Tract: 4770; Field(s): WH1 - WH4

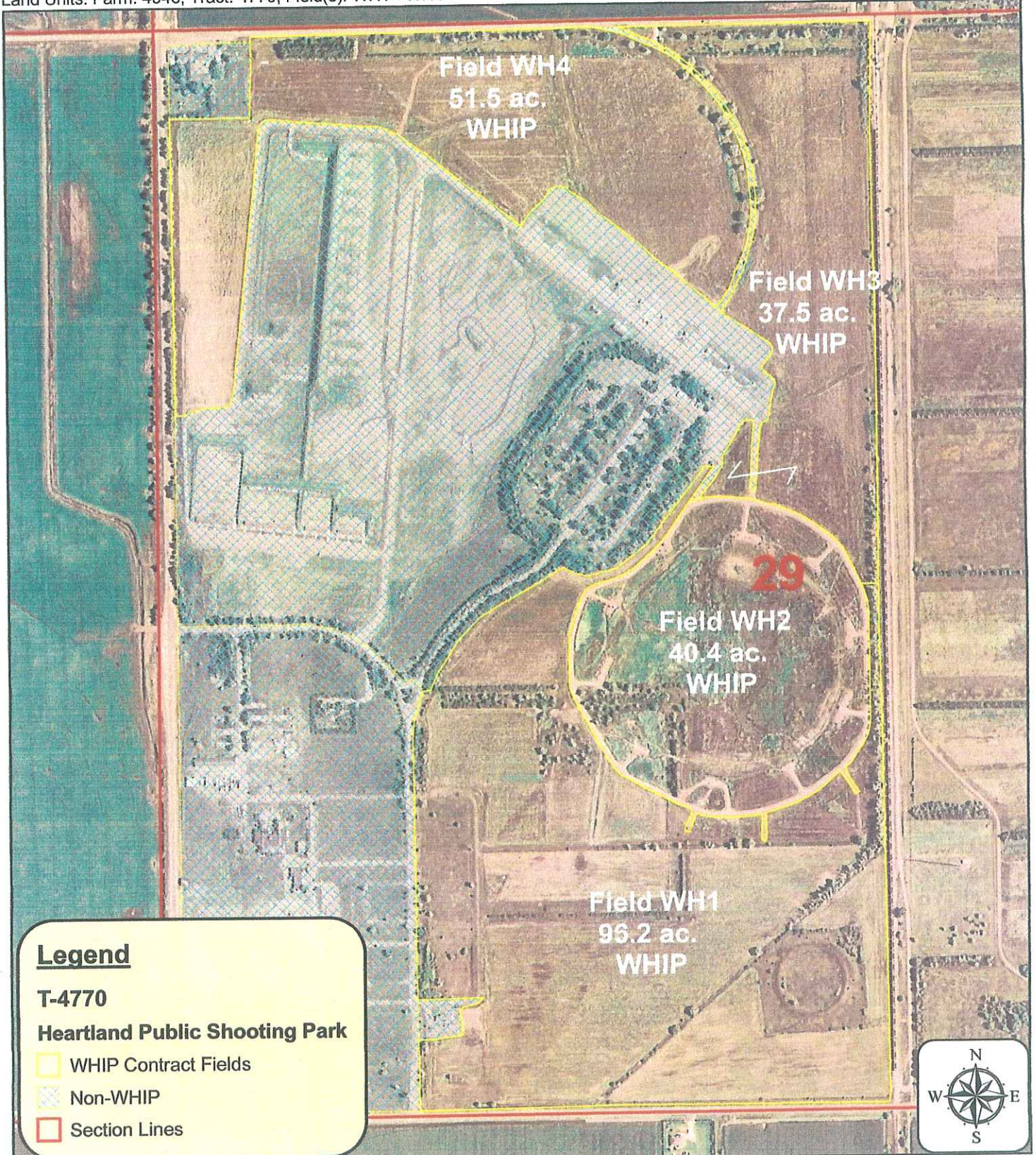
Field Office: Grand Island Service Center

Agency: NRCS

Assisted By: Sykes, Jason T

State and County: NE, Hall Co.

Legal Description: Section 29 T-11-N R-10-W





Legend

T-4770

Heartland Public Shooting Park

 WHIP Contract Fields

 Non-WHIP

 Section Lines



480 0 480 920 1,380 1,840

CONSERVATION PROGRAM CONTRACT

Participant: CITY OF GRAND ISLAND	Program and Contract Number: WHIP 7265260838K
County and State: HALL County, NE	Subaccount: WHIP FA
Watershed: Middle Platte-Prairie	This agreement is effective on the date signed by the Natural Resources Conservation Service approving official and extends through 7/31/2014

1. The undersigned participants enter into this contract with the Natural Resources Conservation Service (NRCS) to implement and or maintain specific conservation practices, as set forth in the Conservation Plan or Schedule of Operations (NRCS-CPA-1155), on the property as identified on the plan map. In consideration for the implementation and or maintenance of the practices, the NRCS will make payments to the participant(s) in the amount(s) described in the Schedule of Operations as outlined in the appendix.
2. This agreement is comprised of this Conservation Program Contract form NRCS-CPA-1202, NRCS-CPA-1202 Appendix; NRCS-CPA-1155 Conservation Plan or Schedule of Operations and plan map which are fully incorporated by reference into this document and are binding upon the participant(s). The NRCS-CPA-1155 may be modified (NRCS-CPA-1156) upon agreement of NRCS and the participant and becomes a part of the contract when signed by the NRCS approving official.
3. The participant(s) agree: A) to implement and maintain conservation practices identified on the plan map in compliance with the plan or schedule of operations (NRCS-CPA-1155) and in accordance with the standards, specifications, and other special program criteria obtained from the local field office of the NRCS; B) to forfeit further payments under this agreement and refund the United States, in amounts determined by NRCS, payments received hereunder upon NRCS determination that participant(s) have violated the material terms of this agreement or accept such payment adjustments as NRCS may deem appropriate if NRCS decides that the participant's violation does not warrant termination of the agreement; and C) to forfeit all rights to further payments under the agreement and refund to the United States, in amounts determined by NRCS, payments received hereunder if the subject land is transferred to a non-participant during the term of this agreement, unless the third party agrees to assume this agreement, and the NRCS consents to the modification.

4. CONTRACT PARTICIPANTS

Name, Address, Telephone CITY OF GRAND ISLAND 100 E 1ST ST GRAND ISLAND, NE 68801	SSN or TAX ID if applicable
Signature	Payment Shares 100.00%
Date	AGI Eligible Payment Shares 0.00%
Signature required for modifications <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Signature acceptable for payments <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

One or more members of the entity or joint operation requesting this contract is currently ineligible based on a failure to meet the Adjusted Gross Income requirements. All contract payments will be reduced commensurate with the ownership shares attributed to ineligible members.

5. CONTRACT OBLIGATIONS

2008	2009	2010	2011	2012						Total
\$0	\$12,305	\$15,820	\$779	\$765						\$29,669
										\$29,669

6. NRCS APPROVING OFFICIALS

Application Approval	Contract Obligation
Date:	Date:

CONSERVATION PROGRAM CONTRACT

Participant: CITY OF GRAND ISLAND	Program and Contract Number: WHIP 7265260838K
---	---

OMB DISCLOSURE STATEMENT

According to the Paper Work Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0013. The time required to complete this information collection is estimated to average 0.69 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other state or federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

NONDISCRIMINATION STATEMENT

The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964.

U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

**APPENDIX TO FORM NRCS-CPA-1202
CONSERVATION PROGRAM CONTRACT**

1 PROGRAM ELIGIBILITY REQUIREMENTS

- A** The Participant must complete and file Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification) and meet the requirements set forth therein, in accordance with the Food Security Act of 1985, as amended. By signing this Conservation Program Contract (Contract), the Participant certifies that the Participant has completed and filed the AD-1026 and meets the requirements set forth in the highly erodible land conservation-wetland conservation (HELC-WC) provisions.
- B** The Participant must complete and file Form CCC-526 (Payment Eligibility Average Adjusted Gross Income Certification) and meet the requirements therein. By signing this Contract, the Participant certifies that the Participant has completed and submitted Form CCC-526 and meets the requirements therein.
- C** The Participant must complete and file Form CCC-501A (Member's Information), or its equivalent, if he or she represents a business classified as an entity or joint operation by the U.S. Department of Agriculture (USDA) under 7 CFR part 1400.
- D** The Participant must have control of the land for this Contract period. By signing this Contract, the Participant certifies that the Participant will control the land subject to this Contract for the terms of this Contract period and shall, upon request, provide evidence to Commodity Credit Corporation (CCC) demonstrating that such Participant will control the land for that period. Where applicable, the Bureau of Indian Affairs and the Natural Resources Conservation Service (NRCS) will determine Tribal land eligibility.
- E** The Participant shall not be eligible for Contract payments for: (1) practices that are required to meet HELC and WC compliance requirements found in 7 CFR part 12, (2) practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to participation, (3) a non-land based structure that is not integral to a land based practice, or (4) practices that were applied with financial assistance through any other USDA conservation program.
- F** Land otherwise eligible for the program shall not be eligible if the land is subject to a deed or other restriction prohibiting the application of the conservation plan and associated practices or where a benefit has or will be obtained from a Federal agency in return for the Participant's agreement not to implement the conservation plan and associated practices on the land during the same time as the land would be enrolled in this Contract. By applying for the program contract, the Participant certifies as a condition for payment that no such restrictions apply to the subject land.

- G** The Participant is responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in accordance with applicable laws and regulations. A Participant must comply with all laws and is responsible for all effects or actions resulting from the Participant's performance under this Contract.

2 SELECTING OFFERS FROM APPLICANTS

All applications will be evaluated using a selection process developed by the State Conservationist (STC), or Designated Conservationist, with advice from the State Technical Committee or Local Work Group. Form NRCS-CPA-1200, Conservation Program Contract Application, and this NRCS-CPA-1202-CPC (Appendix) represent a request to enter into the program under the terms specified in this Contract.

3 AGREEMENT

A The Participant agrees to:

- (1) Place eligible land into the program for the period of time as specified on Form NRCS-CPA-1202 beginning on the date this Contract is executed by CCC;
- (2) Not start any financially assisted practice or activity or engage the reimbursable services of a certified Technical Service Provider (TSP) before this Contract is executed by CCC. The Participant may request, in writing, a waiver of this requirement for financially assisted practices by the NRCS STC, or designee;
- (3) Secure funding for the desired services of a TSP through contract development or contract modification with NRCS before engaging the services of a TSP;
- (4) Apply or commence a financially assisted practice within the first 12 months from the date this Contract is signed by NRCS. The participant may request, in writing, a waiver of this requirement from the NRCS STC, or designee for circumstances beyond the Participant's control;
- (5) Complete all cost-share practices at least one year before the expiration date of the Contract;
- (6) Establish conservation practices or activities described in this Contract as scheduled, to operate and maintain these practices or activities for the intended purpose for the life span or "period of adoption" identified in this Contract, and to comply with the terms and conditions of this Contract and all applicable Federal, State, Tribal, and local laws;
- (7) Share responsibility for ensuring that Form NRCS-CPA-1155, Contract Plan Schedule of Operations, is accurate and complete. The NRCS has no authority to compensate participants for practices and/or activities that are not in the Contract at the time of obligation;

- (8) Not undertake any action on land under the Participant's control which tends to defeat the purposes of the program, as determined by CCC;
- (9) Discontinue work in the general area of the site and notify NRCS immediately if during the construction of any practice a previously unidentified endangered species, archeological or historical site is encountered;
- (10) Provide receipts, as necessary, as proof of payments, and to maintain proof of payment documentation for three (3) years after the end of the fiscal year in which the practice or activity was completed, and to present this documentation to CCC within 30 days if selected for administrative compliance check;
- (11) Allow access to the land under Contract to the CCC representative for monitoring progress on this Contract;
- (12) Supply records and information as required by CCC to determine compliance with the Contract and requirements of the program within 30 days of request;
- (13) Develop and implement all practices identified in a comprehensive nutrient management plan in those contracts that include a waste storage or treatment facility for contracts funded under 16 U.S.C. 3839; and
- (14) In the event of land transfer, notify NRCS within 60 days of the transfer of interest to an eligible transferee who accepts the contract's terms and conditions, or the contract will be terminated.

4 CONSERVATION PLAN

A By signing the Contract, the Participant agrees:

- (1) That the conservation plan is hereby incorporated as a part of the Contract; and
- (2) To implement and maintain the practices and activities as identified and scheduled in the conservation plan.

5 PAYMENTS

A Subject to the availability of funds, CCC will make payments at the rates specified in this Contract after a determination by CCC that an eligible conservation practice or activity has been established in compliance with the conservation plan, and in accordance with appropriate standards and specifications. In order to receive payments, the Participant, upon technical certification of the completed practice or activity, must execute and file with CCC a Form NRCS-CPA-1245, Practice Approval and Payment Application, along with any receipts, as necessary.

- B** Payments will be issued based on the unit rates provided in Form NRCS-CPA-1155, Conservation Plan Schedule of Operations. Payment amounts on Form NRCS-CPA-1155 reflect payment rates in effect for the year of Contract obligation. **Subject to the availability of funds**, payments for a practice implemented according to or ahead of schedule will be updated to reflect an indexed payment based on the Engineering News Review Construction Index in effect for the year the practice is completed. A conservation practice that requires modification to delay application will not receive the updated payment, but will be paid based on the indexed rate applicable to the originally scheduled year.
- C** In order to be reimbursed for technical services approved under this agreement and performed by a certified TSP hired by the Participant, a Participant must execute a request for payment on Form NRCS-CPA-1245. The Participant must also submit to CCC an invoice from the TSP for the work performed, as well as any documentation CCC may require in order to ensure that the technical services were carried out in accordance with NRCS requirements.

It is the Participant's responsibility to ensure that the technical services obtained from a TSP hired by the Participant meet program requirements. CCC will not reimburse the Participant if the technical services provided by the TSP do not meet the program requirements. If CCC terminates this Contract as provided under paragraph 10 of this appendix, CCC may seek reimbursement of any TSP payments made to the Participant.

- D** All payments received as part of a Contract are reported to the United States Internal Revenue Service. For information related to tax liabilities, consult with a tax accountant or refer to IRS publication 225, Farmers Tax Guide.
- E** Payments will only be issued for practices or activities that meet or exceed the practice standards described in the NRCS Field Office Technical Guide.
- F** Collection of amounts due from a Participant for improper payment will follow procedures of the Debt Collection Improvement Act of 1996. NRCS will notify the Participant to identify the reason for the improper payment and the amount owed. Collections not received within 30 calendar days will be entered into the National Finance Center Internet Billing System. Unpaid bills accrue interest beginning 30 days after the billing date.
- G** Any Participant that will receive financial benefit from the implementation of this Contract must be a signatory on the Contract. Unless signature authority is not granted or assigned on the Contract, any Participant on the Contract may approve payment applications for the Contract.

6 PROVISIONS RELATING TO TENANTS AND LANDLORDS

- A** No payment will be approved for the current year if CCC determines that any of the following conditions exist:
- (1) The landlord or operator has not given the tenants that have an interest in the unit of concern covered by the conservation stewardship plan, or that have a lease that runs through this Contract period at the time of sign-up, an opportunity to participate in the benefits of the program.

- (2) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded with interest and no further payments shall be made.

7 MISREPRESENTATION AND SCHEME OR DEVICE

- A** A Participant who is determined to have erroneously represented any fact affecting a determination with respect to this Contract and the regulations applicable to this Contract, adopted any scheme or device which tends to defeat the purposes of this Contract, or made any fraudulent representation with respect to this Contract, will not be entitled to payments or any other benefits made under this Contract. The Participant must refund to CCC all payments received plus interest. In addition, CCC will terminate the Participant's interest in all program contracts.
- B** CCC will charge interest on monies it determines to be due and owing to CCC under this Contract. Under debt collection procedures, unpaid bills accrue interest beginning 30 days after the billing date. The interest rate will be determined using the current value of funds rate, published annually in the Federal Register by the United States Department of Treasury.
- C** The provisions of paragraph 7A of this Appendix shall be applicable in addition to any other criminal and civil fraud statutes.

8 CHANGES TO TERMS AND CONDITIONS OF THIS CONTRACT

- A** If any changes to the terms and conditions of this Contract become necessary prior to the date that this Contract is approved on behalf of CCC, CCC will notify, in writing, the Applicant signing the NRCS-CPA-1202 of such change and such person(s) will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from this Contract request. The Applicant agrees to notify, in writing, the CCC of an intention to withdraw the program participation request within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.
- B** CCC may unilaterally modify this Contract when the installed practice would cause adverse impacts to significant cultural and/or environmental resources without mitigation action.
- C** Subject to the availability of funds, CCC may unilaterally modify this Contract when the amount of payment for a single contract item (practice or activity) increases by not more than one-thousand dollars (\$1,000) as the result of an increase in the number of units performed (quantity variation) by the Participant.

- D** The Participant and CCC may modify this Contract by mutual agreement when:
- (1) Both the Participant and the appropriate approving authority (STC, or Designated Conservationist) agree to this modification;
 - (2) At the request of the Participant, and upon approval of CCC, the modification is consistent with the purposes of the program;
 - (3) A transfer of this Contract occurs, provided CCC approval is obtained, and an eligible transferee accepts all terms and responsibilities under this Contract including operation and maintenance of those practices already installed or to be installed.
- E** The Participant and CCC may modify this Contract by mutual agreement to revise or add to those practices already installed, provided that such revisions or additions are within the general scope of this Contract. If any such changes cause an increase in the cost of performance of any part of the work under the Contract, the authorized CCC official shall make an equitable adjustment in the total contract payment and shall modify the contract.
- F** All modifications to this Contract processed through paragraph 8D must be approved in writing by the authorized CCC official and the Participant or an individual granted signature authority through a valid Power of Attorney filed in the local Service Center. Unless signature authority is not granted or assigned on the Contract, any Participant on the Contract may approve modifications for the Contract.

9 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in this Contract.

10 CONTRACT TERMINATION

- A** If a Participant fails to carry out the terms and conditions of this Contract, CCC may terminate this Contract or determine that such failure does not warrant termination. In either case, CCC may require the Participant(s) to refund payments received under this Contract, or require the Participant(s) to accept such adjustments in subsequent payments as are determined to be appropriate by CCC.

Refunds determined by CCC to be due and owing to CCC under this provision will accrue interest at the current value of funds rate, published annually in the Federal Register by the United States Department of Treasury. Under debt collection procedures, unpaid bills accrue interest beginning 30 days after the billing date.

- B** The CCC may terminate this Contract, in whole or in part, without liability, if CCC determines that continued operation of this Contract will result in the violation of a Federal statute or regulation, or if CCC determines that termination would be in the public interest.

11 RECOVERY OF COST

- A** In the event an Environmental Quality Incentives Program (EQIP) Participant violates the terms of this Contract, the Participant voluntarily terminates this Contract before any contractual payments have been made, or this Contract is terminated with cause by CCC, the CCC will incur substantial costs in administering this Contract which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments plus interest due as set forth in paragraph 10, the EQIP Participant agrees to pay liquidated damages up to an amount equal to 20 percent of the total financial assistance obligated to the Participant in this Contract, at the time of termination [not applicable to a Wildlife Habitat Incentives Program (WHIP) participant]. This liquidated damages payment is for recovery of administrative costs and technical services and is not a penalty.
- B** The Participant may be required by the CCC to refund all or a portion of any assistance earned under the program if the Participant sells or loses control of the land under this Contract and the new owner or transferee is not eligible for the program, or refuses to assume responsibility under the Contract.

12 EFFECTIVE DATE

This Contract is effective when signed by the Participant and an authorized representative of CCC. Except as otherwise provided for herein, this Contract may not be terminated or modified unless by mutual agreement between the parties. Within the dates established by CCC, this Contract must be signed by all required Participants. In the event that a statute is enacted during the period of this Contract which would materially change the terms and conditions of this Contract, the CCC may require the Participant to elect between modifying this Contract consistent with the provisions of such statute or Contract termination.

13 GENERAL TERMS

- A** The regulations in 7 CFR part 636 for WHIP, and 7 CFR part 1466 for EQIP are incorporated, by reference, herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.
- B** This Contract shall be carried out in accordance with all applicable Federal statutes and regulations. Any ambiguities in this Contract and questions as to the validity of any of its specific provisions shall be resolved in favor of CCC so as to give maximum effect to the conservation purposes of this Contract.
- C** NRCS is administering this Contract on behalf of the CCC. Therefore, where this Contract refers to "CCC", NRCS may act on its behalf for the purposes of administering this Contract. When the term "Participant" is used in this Contract, it shall be construed to mean all Participants signing this Contract. Likewise, when the term "Applicant" is used in this Contract, it means all Applicants signing the program application.
- D** Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions (7 CFR part 3017).

- (1) The Participant certifies to the best of the Participant's knowledge and belief, that the Participant and his or her principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within the three-year period preceding this agreement had a criminal conviction or civil judgment rendered against them for commission of fraud in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local government) Contract, including violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses set forth above in paragraph 13D(1)(b) of this certification; and
 - (d) Have not within the three-year period preceding this agreement had one or more public Contracts (Federal, State or local) terminated for cause or default.
- (2) If the Participant is unable to certify to any of the statements set forth in paragraph 13D (1), the Participant shall attach an explanation to this agreement.

E This Contract is a financial assistance agreement, not a procurement contract and is governed by the terms set forth herein.

F The term "contract" as used in this Appendix means the program documents, including:

- Conservation Program Contract, Form NRCS-CPA-1202;
- Appendix to Form NRCS-CPA-1202, Form NRCS-CPA-1202-CPC (Appendix);
- Conservation Plan Schedule of Operations, Form NRCS-CPA-1155; and
- Revision of Conservation Plan/Schedule of Operations, Form NRCS-CPA-1156.

Such contract shall set forth the terms and conditions for Conservation Program participation and receipt of Conservation Program payments.

14 RIGHTS TO APPEAL AND REQUEST EQUITABLE RELIEF

A The Participant may appeal an adverse decision under this Contract in accordance with the appeal procedures set forth at 7 CFR part 11, Subpart A, and part 614. Pending the resolution of an appeal, no payments shall be made under this agreement. Before a Participant seeks judicial review, the Participant must exhaust all appeal rights granted within these regulations.

B The Participant may also request equitable relief as provided under 7 U.S.C. 7996 and 7 CFR 635 with the requirements of that provision.

15 EXAMINATION OF RECORDS

The Participant agrees to give the CCC or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Contract. The Participant agrees to retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable Office of Management and Budget circular.

16 DRUG-FREE WORKPLACE (7 CFR part 3021)

By signing this Contract, the Participant certifies that the Participant will comply with the requirements of 7 CFR part 3021. If it is later determined that the Participant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 7 CFR part 3021,) CCC, in addition to any other remedies available to the United States, may take action authorized under the Drug-Free Workplace Act.

17 CERTIFICATION REGARDING LOBBYING (7 CFR part 3018) (Applicable if this agreement exceeds \$100,000)

- A** The Participant certifies, to the best of the Participant's knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Participant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 - (3) The Participant shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

18 CERTIFICATION AND ASSURANCES REGARDING COMPLIANCE WITH PROVISIONS APPLICABLE TO FINANCIAL ASSISTANCE (See generally 7 CFR parts 3015, 3016, and 3019)

- A** As a condition of this Contract, the Participant certifies and assures that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3115.205(b) applicable to non-profit institutions, which are hereby incorporated into this Contract by reference, and such other regulatory and statutory provisions as are specifically set forth herein.
- B** Without limiting the general applicability of paragraph A above, the Participant, if it is a non-profit, further agrees to comply with the provisions of 7 CFR part 3019, including the contract provisions required at Appendix A.

The following Participants by entering their signature acknowledge receipt of this Form NRCS-CPA-1202-CPC (Appendix) and agree to its terms and conditions thereof. Further, if the undersigned are succeeding to an existing Contract, the undersigned agree and certify that no agreement exists or will be entered into between the undersigned, the previous owner and operator of the property, or mortgage holder that would, maintain or create an interest in the property for any previous Participant on this Contract for that property, or to receive payments under the contracts.

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

RESOLUTION 2008 - 213

WHEREAS, the City of Grand Island desires to develop habitat at the Heartland Public Shooting Park; and

WHEREAS, it is anticipated that 224.6 acres will be managed as wildlife habitat; and

WHEREAS, the City applied for and received a grant to develop this property into wildlife habitat; and

WHEREAS, an agreement with the Natural Resources Conservation Service is required to proceed with this project, known as WHIP 72652608381K; and

WHEREAS, federal funds will cover project costs up to a maximum of \$29,669.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Natural Resources Conservation Service is hereby approved for the development of wildlife habitat at the Heartland Public Shooting Park.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, August 12, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
August 7, 2008	☐ City Attorney