

AMENDMENT 1
to the
2011-2013 TERN AND PLOVER MONITORING AND RESEARCH AGREEMENT
between
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM,
NEBRASKA COMMUNITY FOUNDATION, AND
UNITED STATES GEOLOGICAL SURVEY (USGS-NPWRC)

Pursuant to the 2011-2013 Tern and Plover Monitoring and Research Agreement between the United States Geological Survey, Platte River Recovery Implementation Program, and Nebraska Community Foundation, the Agreement for FY2013 is hereby amended to add \$98,000 to Phase III funding (changed from the originally planned \$158,000 to \$256,000) with the Project Scope, Requirements, Deliverables, and Timeframes to remain the same as originally agreed. By adding this \$98,000, the Total Project Budget is also hereby amended to increase total payment under the Agreement from \$450,000 to \$548,000.

The following Sections are hereby amended:

‘B. Project Budget’

<u>Task</u>	<u>Estimated Cost</u>
Phase I. (2011 Tern and Plover Monitoring and Research)	
Subtotal Phase I	\$142,000
Phase II. (2012 Tern and Plover Monitoring and Research)	
Subtotal Phase II (<i>Projected Budget</i>)	\$150,000
Phase III. (2013 Tern and Plover Monitoring and Research)	
Subtotal Phase III (<i>Projected Budget</i>)	\$256,000
Total Project Cost**	\$548,000

‘EXHIBIT B’

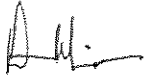
USGS will provide one (1) GS-6 crew leader and nine (9) GS-5 Biological Science Technicians as well as accommodations (housing, transportation, etc.) necessary to support the additional 4 crew members during 2013.

The Study Objectives, Scope of Services, Project Description, Project Requirements, and Contacts Sections remain unchanged.

12/19/2012

Signatures. By signing this Amendment to the 2011-2013 Tern and Plover Monitoring and Research Agreement, the parties certify that they have read and understand the Agreement as well as Amendments to the Agreement contained herein, that they agree to be bound by the amended terms of the Agreement, and that they have the authority to sign this Amendment.

NEBRASKA COMMUNITY FOUNDATION



Diane M. Wilson
Chief Financial and Administrative Officer

12/27/2012

Date

UNITED STATES GEOLOGICAL SURVEY (USGS-NPWRC)



Robert Gleason, Center Director

21 Dec 2012

Date

Platte River Least Tern and Piping Plover Productivity Study Budget

FY13 Revised Budget

10 January 2013

Platte River Recovery Implementation Program Funds

	2013		
	Rate	#	Total
Salaries			
<i>Seasonal & Term Staff</i>			
Crew Chief (GS-7, 17 pp)	\$ 34,000.00	1	\$ 34,000.00
Crew Leader (GS-6; 8.5 pp)	\$ 16,500.00	1	\$ 16,500.00
Biological Science Technician (GS-5, 8.5 pp)	\$ 14,500.00	8	\$ 116,000.00
Salary Total			\$ 166,500.00
Vehicles & Travel			
<i>Trucks & Aircraft</i>			
Fuel (3 4x4 Pickups)	\$ 7,000.00	1	\$ 7,000.00
<i>Travel</i>			
PI Travel	\$ 1,500.00	1	\$ 1,500.00
Technician Travel	\$ 3,000.00	1	\$ 3,000.00
Vehicles & Travel Total			\$ 11,500.00
Equipment & Supplies			
<i>Sampling Equipment</i>			
Equipment Repairs & Maintenance	\$ 1,000.00	1	\$ 1,000.00
Field Equipment & Supplies	\$ 2,500.00	1	\$ 2,500.00
Equipment & Supplies Total			\$ 3,500.00
Subtotal Fixed Costs			\$ 181,500.00
Facilities Overhead			\$ 19,239.00
Cost Center Overhead			\$ 27,769.50
Subtotal			\$ 228,508.50
Bureau Overhead			\$ 27,421.02
Total			\$ 255,929.52

USGS Northern Prairie Wildlife Research Center Funds

	2013		
	Rate	#	Total
Salaries			
<i>Permanent and Term Staff</i>			
Shaffer, Terry	\$ 6,384.00	2	\$ 12,768.00
Stucker, Jennifer	\$ 4,185.00	2	\$ 8,370.00
Ring, Megan	\$ 1,884.00	9	\$ 16,956.00
Wiltermuth, Mark	\$ 2,721.00	1	\$ 2,721.00
Dovichin, Colin	\$ 2,801.00	5	\$ 14,005.00
Salary Total			\$ 54,820.00
Vehicles & Travel			
<i>Travel & Housing</i>			
Cell Phones	\$ 1,000.00	1	\$ 1,000.00
Fuel	\$ 7,000.00	1	\$ 7,000.00
Vehicles & Travel Total			\$ 8,000.00
Subtotal Fixed Costs			\$ 62,820.00
Cost Center Overhead			\$ 7,664.04
Total			\$ 70,484.04



USGS
Northern Prairie Wildlife Research Center (NPWRC)
8711 37 Street SE
Jamestown, ND 58401
DUNS# 037424111

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 United States Geological Survey

2011–2013 Tern and Plover Monitoring and Research

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 United States Geological Survey (“USGS”). The following persons are authorized to represent the parties through this Agreement: Diane Wilson of the Foundation, Dr. Jerry Kenny of the Program; and Dr. Mark Sherfy of the USGS.

2. **Purpose of Agreement and USGS Authorities.** 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 USGS to enter into a firm fixed price Agreement for the project “2011–2013 Tern and Piping Plover Monitoring and Research.” The authority permitting the USGS to enter into this Agreement is 16 USC 661.

Authority to Publish: It is understood that the results of this work will be available to the USGS for publication and use in connection with related work. Use of this work for publication and related work by the USGS must be conducted with full disclosure to and coordination with Program Technical Point of Contact.

TERMS AND CONDITIONS

3. **Term of Agreement and Required Approvals.** This Agreement is effective when all parties execute it and all required approvals are been granted. The term of this Agreement is from the date of signing through 1 May, 2014. The services to be performed under this Agreement will commence upon receipt of authorization to proceed. All services shall be completed during this term.

If the USGS has been delayed and as a result will be unable, in the opinion of the Program, to complete performance fully and satisfactorily within this Agreement period, the USGS 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 USGS an amount based on the approved budget depicted in Exhibit B for the services described in Exhibit A, attached to this Agreement and incorporated by reference as part of this Agreement. Total payment under this Agreement shall not exceed four hundred fifty thousand dollars (\$450,000) unless agreed upon by the Program. Billings shall be rendered quarterly. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the then-current Treasury rate for each 30 day period, or portion thereof, that payment is delayed beyond the due date (see 31 USC 3717).

B. Project Budget. The Project budget for tasks outlined in Exhibit A are as follows:

Task	Estimated Cost
Phase I. (2011 Tern and Plover Monitoring and Research)	
Subtotal Phase I	\$142,000
Phase II. (2012 Tern and Plover Monitoring and Research)	
Subtotal Phase II (<i>Projected Budget</i>)	\$150,000
Phase III. (2013 Tern and Plover Monitoring and Research)	
Subtotal Phase III (<i>Projected Budget</i>)	\$158,000
Total Project Cost**	\$450,000

**** Total Project Cost will depend on annual scopes of work and budgets for FY2012 and FY2013 which will be negotiated and agreed upon by the Program and USGS by 31 December, 2011 and 2012, respectively.**

The amounts for each task are estimates only, but are not to be exceeded unless authorized in writing by the Program. The Agreement total amount is controlling unless amended in writing by the Program. Payment shall be made directly to the USGS. The USGS shall maintain hourly records of time worked by its personnel to support any audits the Program may require. Billing reports shall be submitted quarterly for activities and level of expenditures incurred 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 USGS shall send billing reports for services performed for the various tasks outlined in Exhibit A to the Executive Director's Office ("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 USGS within 30 days of notice of approval by the Signatory Parties. Payments of bills are due within 60 days after billing date of the USGS.

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 USGS will be unable to perform this Agreement 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 USGS 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 Agreement is terminated pursuant to Section 8U. Any amount so withheld will be paid if satisfactory performance is achieved on or before the Effective Date of Termination. 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 Annual Report and receipt of the final billing.

5. Responsibilities of USGS.

A. Scope of Services. The USGS shall perform the specific services required under this Agreement in a satisfactory and proper manner as outlined in Exhibit A. If there is any conflict between this Agreement 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 USGS 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. All personnel engaging in field work are required to successfully pass an approved Mine Safety and Health Administration Training session and an approved Bird Monitoring/Handling training session.

C. Contractors of the USGS.

(i) Approval Required for Contractors of the USGS. Any contractors of the USGS and outside associates or consultants required by the USGS in connection with the services, work performed or rendered under this Agreement 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 Agreement. The USGS shall submit a list of its proposed contractors, associates or consultants; the scope and extent of each Contract; and the dollar amount of each Contract prior to Contract execution to the Program for approval. During the performance of the Contract, substitutions in or additions to such contractors, associates, or consultants will be subject to the prior approval of the Program. The Program approval of contractors will not relieve the USGS from any responsibilities outlined in this Agreement. The USGS shall be responsible for the actions of contractors of the USGS, associates, and consultants.

(ii) Billings for Contractors of the USGS. Billings for contractors of the USGS, associates or consultants services will not include any mark up. The USGS's contractor costs will be billed to the Program at the actual costs as billed to the USGS. USGS's contractor costs will be documented by attaching contractor billings to the USGS's billing submittals.

(iii) **Copies of contracts made by USGS.** The USGS shall provide to the Program copies of each contractor contract immediately following execution with USGS's contractors. All contracts between the USGS and its contractors shall refer to and conform to the terms of this Agreement. However, nothing in this Agreement shall be construed as making the Program a party of any Contract entered between the USGS and its contractors.

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

E. Presentation of Data. The USGS, in conjunction with ED Office staff, shall collect, compile, 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. Annual Reports. ED Office staff, in conjunction with the USGS, shall present the Program Annual Reports covering all work elements of the Project including maps, charts, conclusions and recommendations prior to the publication of any Final Annual 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 as soon as possible and the ED Office staff and USGS will address the comments of the Program in the Final Annual Reports. Final Annual Reports will be provided to the Program in Microsoft Word and PDF format.

G. 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 Agreement, and one (1) copy of each unpublished report prepared under this Agreement shall be submitted to the Program. If the USGS writes or uses a computer program or spreadsheet as a part of this project, the USGS 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 Annual Reports. Digital media shall be labeled by the USGS to provide sufficient detail to access the information on the media. All user manuals shall be submitted by the USGS to Program providing complete documentation of computer programs developed under this Agreement. 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 Agreement shall be the sole property of the Program.

H. Inspection and Acceptance. All deliverables furnished by the USGS 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 USGS'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. Data to be Furnished to the USGS. 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 USGS without charge and the ED Office shall cooperate with the USGS 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 USGS 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 Agreement shall be paid by either party.

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

C. Publicity. Any publicity or media contact associated with the USGS's services and the result of those services provided under this Agreement shall be the sole responsibility of the Program. Media requests of the USGS 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 Agreement related activities of the USGS and all its contractors. 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 USGS personnel in every phase of performance of Agreement related work.

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

E. Office Space, Equipment, and Supplies. The USGS will supply its own 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 USGS 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 USGS which are pertinent to this Agreement. The USGS 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 USGS which are pertinent to this Agreement. The USGS 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 USGS, 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 USGS 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. Award of Related Contracts. The Program may undertake or award supplemental or successor contracts for work related to this Agreement. The USGS shall cooperate fully with other contractors and the Program in all such cases.

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

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

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the USGS in the performance of this Agreement shall be kept confidential by the USGS unless written permission is granted by the Program for its release. The parties understand that the USGS, as a federal entity, is subject to federal law with respect to the disclosure of information and will comply with disclosure requirements mandated by the Freedom of Information Act and other applicable federal statutes.

J. Conflicts of Interest

(i) USGS 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. USGS shall notify the Program of any potential or actual conflicts of interest arising during the course of the USGS'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 USGS 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 USGS'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*.

K. Entirety of Agreement. This Agreement, consisting of ten (10) pages, Exhibit A, consisting of six (6) pages, and Exhibit B, consisting of one (1) page, represents the entire and integrated Agreement 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 Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

M. USGS Liability. The USGS agrees to be responsible for damage to persons or property caused by the negligent or wrongful acts or omissions of USGS employees or its contractors acting within the scope of their employment in accordance with the Federal Tort Claims Act, 28 USC 2671 et seq.

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

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

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

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

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

S. Proof of Insurance. The USGS is self-insured and its employees are compensated for work-related illnesses or disease by the Federal Employees Compensation Act, codified at 5 USC 8101 et seq.

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

U. Termination of Agreement. This Agreement may be terminated, without cause, by the Program upon fifteen (15) days written notice. This Agreement may be terminated immediately for cause if the USGS fails to perform in accordance with the terms of this Agreement. The USGS shall likewise have the right to unilaterally terminate the agreement for good cause.

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

W. Time. The USGS agrees to adhere to Agreement schedules for accomplishing the tasks called for under the Agreement.

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

Y. 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

Technical Point of Contact (Program):

Dr. David Baasch, Wildlife Biologist
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 390-0456
Fax: (308) 237-4651
Email: baaschd@headwaterscorp.com

Administrative Point of Contact (USGS):

Stephanie Manz, Administrative Officer
United States Geological Survey (NPWRC)
8711 37th Street SE
Jamestown, North Dakota 58401
Phone: (701) 253-5504
Fax: (701) 253-5553
Email: smanz@usgs.gov

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

Media Point of Contact (Program):

Dr. Bridget Barron, Director of Outreach
Platte River Recovery Implementation Prog.
Headwaters Corporation
4111 4th Avenue, Suite 6
Kearney, Nebraska 68845
Phone: (308) 237-5728
Fax: (308) 237-4651
Email: barronb@headwaterscorp.com

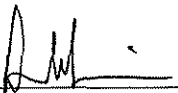
Technical Point of Contact (USGS):

Dr. Mark Sherfy
United States Geological Survey (NPWRC)
8711 37th Street SE
Jamestown, North Dakota 58401
Phone: (701) 253-5504
Fax: (701) 253-5553
Email: msherfy@usgs.gov

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

NEBRASKA COMMUNITY FOUNDATION




Diane M. Wilson
Chief Financial and Administrative Officer

4/11/2011

Date

UNITED STATES GEOLOGICAL SURVEY (NPWRC)



Robert Gleason, Center Director

1 April 2011

Date

EXHIBIT "A"
SCOPE OF SERVICES

Primary responsibilities of the USGS will be to: 1) hire research technicians to assist the Program's Technical Point of Contact with implementation of the Program's Annual Tern and Plover Monitoring Work Plans (see the FY2011 Work Plan below); 2) implement Annual Tern and Plover Work Plans assembled by ED Office staff and provide weekly updates of nesting activities that occur within Program Associated Habitats; and 3) compile paper and electronic copies of tern and plover data collected each year, assist ED Office staff with producing Annual Reports, and submit this information to the Program annually. It is important to note that Annual Work Plans, including FY2011 Work Plans, will be reviewed by personnel from U.S. Fish and Wildlife Service, Nebraska Game and Parks Commission, and the Program's Technical Advisory Committee and may change between the time annual budgets are developed and the subsequent nesting season. Budget implications related to changes in Annual Work Plans will be negotiated and agreed upon by the USGS and the Program prior to the respective nesting season.

A. PROJECT DESCRIPTION

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
2011 Central Platte River Tern and Plover Monitoring and Research Work Plan

INTRODUCTION

During 2010, the Platte River Recovery Implementation Program (PRRIP or Program) revised the Program's Tern and Plover Monitoring Protocol entitled 'Monitoring the Abundance, Distribution, Reproductive Success, and Reproductive Habitat Parameters of Least Terns and Piping Plovers on the Central Platte River' (2010 Monitoring Protocol) primarily to: 1) increase the timeframe for conducting tern and plover surveys at all sites from 15 May – 15 July to 1 May – 1 August; 2) increase the frequency of surveys at potential nesting areas; 3) clarify or further define terms within the original Monitoring Protocol; and 4) allow for on-site collection of habitat parameters believed to influence reproductive success of terns and plovers within Program Associated Habitats. The Program initiated a pilot-year research study entitled '2010 Parameter-based Research on Nest-site Selection and Reproductive Success of Interior Least Terns and Piping Plovers on the Central Platte River, Nebraska' (2010 Research Protocol) to learn more about habitat parameters that influence nest placement and nest and brood survival within Program Associated Habitats. The Program also consulted with the U.S. Geological Survey, Northern Prairie Wildlife Research Center (USGS) to implement a 2-year Foraging Habits study that concluded in 2010.

Activities proposed for 2011 include the collection of data outlined in the Program's 2010 Monitoring Protocol as well as collecting additional data at nesting sites and documenting the return of banded tern and plover adults and chicks from the previous 2 years. Data collected at nesting sites during 2011 will be utilized to determine effects and relationships that relate back to priority hypotheses outlined in the Program's Adaptive Management Plan (AMP), the two management strategies identified in the AMP, and overall AMP implementation. Information obtained through past banding efforts will allow us to obtain better estimates of adult and chick survival and overall reproductive success of these species and will enable us to begin to discern how a portion of each population interacts with riverine and sandpit habitats.

DESIGN CONSIDERATIONS AND SPECIFICATIONS

Area of Interest

The area of interest consists of the Platte River beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, Nebraska, and extending eastward to Chapman, Nebraska. This includes approximately 90 miles of the Platte River and sandpits within 3.5 miles of the main channel or within 2 miles of a side channel if the side channel extends beyond 3.5 miles of the main channel.

Survey Design

The design consists of two main components: 1) semimonthly river surveys and 2) semimonthly sandpit surveys. Each sandpit and constructed, managed, or naturally existing river island designated as suitable habitat will be monitored for tern and plover adults, nests, broods, and fledglings from outside as well as from within the nesting area as described in the methods section below. Least tern or piping plover nests or chicks observed during any survey will be monitored twice/week from outside and/or inside the nesting area to evaluate their status. Data collected will be used to make informed judgments regarding trends in least tern and piping plover reproductive parameters associated with Program effects on habitat.

Semimonthly River Surveys

Airboat surveys of the entire 90-mile study area between Lexington and Chapman, Nebraska will be conducted on or about 1 and 15 May, June, and July and 1 August as outlined in the Program's Monitoring Protocol. Nebraska Public Power District personnel (NPPD; i.e., Jim Jenniges) will survey potential nesting habitat between the Lexington Bridge and the J-2 Return (i.e., Lexington Island). Program staff and USGS personnel will survey the Platte River between the J-2 Return and the Alda Bridge. U.S. Fish and Wildlife Service personnel will conduct surveys between the Alda and Chapman Bridges when possible, otherwise Program staff and USGS personnel will conduct these surveys. If nesting occurs on a river island between the Alda and Chapman Bridges, Program staff and USGS personnel will monitor nests and broods as outlined below.

Semimonthly Sandpit Surveys

All sandpits that have areas of bare sand (<25% vegetative cover) greater than 1.5 acres, and for which access can be gained, will be surveyed for active tern and plover colonies on or about 1 and 15 May, June, and July and 1 August as outlined in the Program's Monitoring Protocol. NPPD will conduct these surveys at the Lexington, Johnson, and Blue Hole Sandpits. Program staff and USGS personnel will conduct these surveys at the Dyer, Cottonwood Ranch, Broadfoot South, and Newark Sandpits. Central Platte Natural Resources District (CPNRD; i.e., Mark Czaplewski) will conduct these surveys at all sandpits, except Newark Sandpit, located between the Minden (HWY 10) and Chapman Bridges.

METHODS

Field Techniques

Standard field methods will be used during each visit to a nesting area and information such as: date; time of day (arrival and departure); weather conditions; number of adults, nests, chicks, and fledglings present; and other species of wildlife present in area will be recorded. We will conduct independent surveys of adults, nests, chicks, and fledglings from both outside and within the nesting area, and when possible will conduct these surveys during the same day. Observations of adults, nests, chicks, and fledglings collected from outside and inside the nesting area will be documented on separate data sheets; final counts reported will represent the maximum number of adults, nests, chicks, and fledglings counted by either method of observation during each site visit. Conducting independent surveys will allow us to address issues related to observer bias and biases associated with field techniques used.

Outside Survey/Monitoring: Outside surveys will be performed on or about 1 and 15 May, June, and July and 1 August as outlined in the Program's Monitoring Protocol. When active nests or broods are present at a site, the

site will be monitored from outside the nesting colony twice/week as outlined in the *Nest and Brood Monitoring* Section below. Observations will be conducted using binoculars and/or spotting scopes at a distance great enough to not cause disturbance to nesting birds (usually >165 ft, but closer or farther as terrain dictates) and for at least 1/2 hour. Observations will be conducted from multiple locations to provide as complete of coverage of the site as possible. Observers will scan the area using binoculars and/or a spotting scope at least five times and will record the number and/or status of adults, nests, chicks, and fledglings observed as well as any other pertinent information.

Inside Survey/Monitoring: Inside surveys at sandpit sites will be performed twice/week using a systematic grid-search pattern which is the most commonly used method for nest searching (Figure 1) on or about the same days outside searches are conducted. To initiate this search method, investigators will form a straight line on the edge of and parallel to the waterline of a sandpit pond (see Figure 1). Investigators will be evenly spaced and the distance between individuals will not exceed 10 yards. The spacing will be adjusted to ensure that all nests can be detected while not pushing chicks out of their territory. For example, if visibility is low because of vegetation or other factor, then the distance between technicians will be decreased; however, this distance will be increased when chicks are encountered to allow chicks to move between observers.

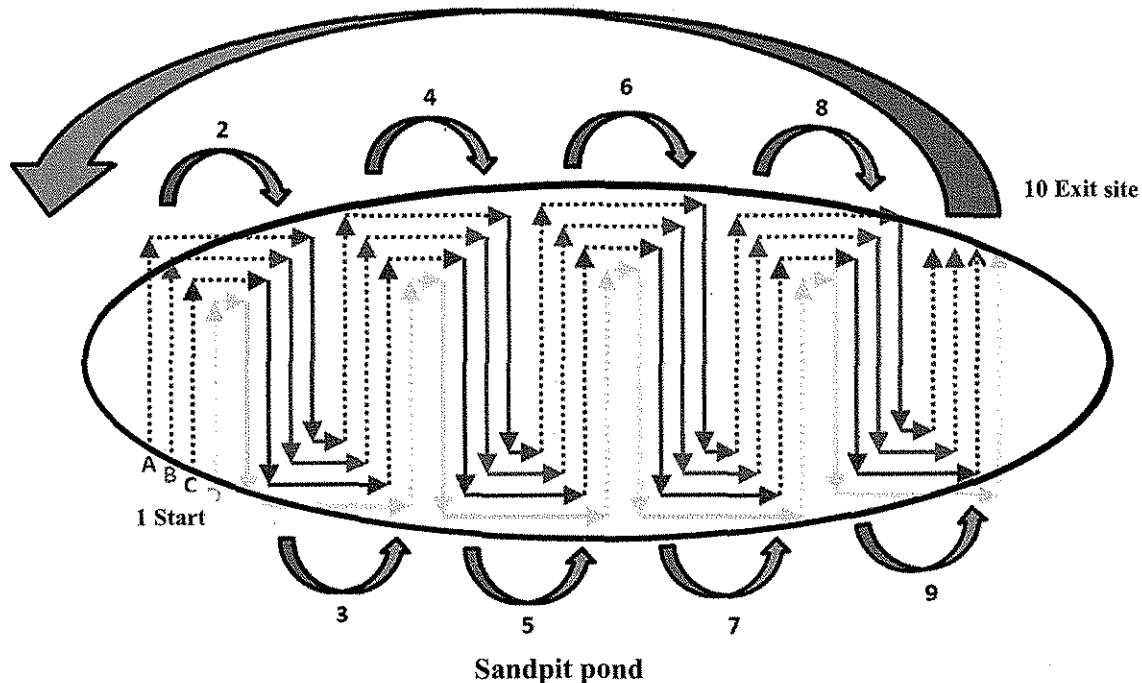


Figure 1. Systematic grid-search pattern used to locate nests and broods while conducting inside surveys of suitable nesting sites

On riverine sites, surveys will be conducted 'within' nesting areas on a weekly basis (i.e., no more frequently than once per week) either: (1), via airboat or canoes during semimonthly surveys of all riverine sites or, (2) by having two people walk in the river channel alongside sandbar islands during weeks that semimonthly surveys are not conducted. Semimonthly surveys of all riverine sites will be conducted on or about 1 and 15 May, June, and July and 1 August via airboat or canoe regardless of interior least tern or piping plover presence; however, we will perform 'inside surveys' of riverine sites between semimonthly boat surveys only if adult interior least terns or piping plovers are present and first observed from outside the site. When active nests or broods are

present at a riverine site, the site will be monitored twice/week; once from outside the nesting area only, and once from outside and then 'within' the site as described in (2), above.

Surveys within riverine and sandpit sites will be conducted no more than one and two times during a seven-day period, respectively; activity within the nesting areas will be limited so that individual adults are not kept off their nest or away from their brood for >20 minutes (unless further restricted by the Program's State or Federal permit). To reduce stress and mortality to eggs and chicks, all within-site nest visits will be conducted when wind speeds are <25mph and sand is not blowing around, it is not precipitating, and the temperature is >40°F (4°C) and <90°F (32°C).

Adult and Chick Band Observations: When previously marked tern and plover adults and chicks are observed, we will record as complete a band combination as possible to enable us to link each bird to the river system, site within the system, and possibly the specific nest they hatched from if banded as a chick or the nest they were banded on if banded as an adult.

Nest and Brood Monitoring: To confirm their status, active nests and broods at sandpit sites will be monitored twice a week using both survey methods outlined above. Active nests and broods at riverine sites will be monitored twice/week as well; however, to confirm their status they will be monitored from outside the nesting area twice/week and will be monitored from 'within' the nesting area, (i.e., via (1) or (2), above) no more than once/week. Regardless of survey method used, new nests will be approached when encountered or suspected to confirm their status and to collect habitat measurements outlined below. Nests/chicks will be monitored until the nests/chicks become inactive either through success (hatch/fledge) or failure. If no activity is observed at formerly active nests, the nests will be approached close enough to assess nest fate. The fate of each nest and brood, including an estimate of the number of hatched eggs and fledged chicks will be documented. An estimate of the number of successfully fledged chicks will be based on age and date chicks were last observed or will be directly counted if chicks are observed flying from natal areas. Each site will be monitored twice a week until nests and chicks are no longer observed at the natal area.

HABITAT MEASUREMENTS

On-site Data Collection

When a new nest is observed, we will document the presence of adults tending each nest, document management activities applied to the nest (elevating, caging, etc), collect a GPS location of the nest, mark nests with a numbered nest marker, float eggs, take a photograph of the nest, and proceed to collect additional habitat measurements as outlined below. Numbered nest markers (e.g., tongue depressor or paint stir-stick) will be placed 10 feet north of each nest at a maximum height of 6 inches to allow observers to easily locate and identify nests during subsequent visits. To determine the initiation date, we will float all eggs present in the bowl following methods of Hays and LeCroy (1971) and outlined in the U.S. Army Corps of Engineers' *Least Tern and Piping Plover Monitoring Handbook*. In order to minimize the amount of time spent at nests and within the nesting colony, we will use a digital camera to collect information at each nest. The camera will be placed on a tripod stand set at a standardized height that results in a 1-yd² area field of view centered on the nest at ground level. Prior to collecting the image, we will place a 3×5-inch card, uniquely identifying each nest, in the camera's field of view to ensure images collected at each nest are properly identified. While at the nest, we will also determine the maximum height of living or current-year vegetation within a 1-yd² area centered on the nest. At riverine sites, we will use a laser range finder to measure distances to predator perch, non-suitable nesting habitat excluding water (e.g., vegetated patch or bank line), and the wetted width of the channels on each side of the nesting area and will classify % bare sand area at each nesting site. We will also collect a GPS location at the waterline nearest the nest and perpendicular to flow at riverine sites to determine distance to and elevation above the waterline for each nest. At sandpit sites, we will use a GPS unit or GIS to

delineate the waterline, mark predator perches, and mark non-suitable nesting habitat present so that these distance measures can be determined off-site using a GIS.

Off-site Data Collection

We will document site-level management activities (pre-emergent herbicide, predator fence, disking, etc) applied to each suitable nesting site in the study area. Information such as number of eggs, % canopy cover, substrate size, distance to nearest current year vegetation >6 inches tall within a 1-yd² area, and the presence/absence of nest furniture will be determined off-site through visual examination of images taken at each nest. A GIS will be used to measure the elevation of each nest above the waterline, distance to the nearest conspecific and other species' nest located at each site, active channel width at suitable riverine nesting sites (width at 1,200cfs including land), and pond size at sandpit sites. Throughout the nesting season, we will also obtain and record data such as maximum and minimum daily precipitation, temperature, and river flows between observation periods to evaluate their influence on nest and brood survival.

DATA PROCESSING AND REPORTING

Data Collection and Entry

USGS, under the direction of ED Office staff, will be responsible for all data collection and entry outlined in Section A of the Scope of Services. Program datasheets will be provided and used to record data in the field and all data will be entered, as it is collected, into Microsoft Excel or a similar format that can be uploaded into the Program's database. A copy of all raw and an electronic version of the data shall be submitted to the Program upon completion of each Final Annual Report. Techniques used to collect data outlined above may at anytime be modified by the Program so long as the workload is not substantially increased by such modifications. Work plans for FY2012 and FY2013 will be organized and submitted to the USGS by 1 November each year to allow time for the Program and USGS to negotiate a budget by 31 December for the subsequent year's work.

Data Analysis and Reporting

The USGS will be responsible for distributing email updates to notify ED Office staff and Program partners of reproductive activities observed each week. Ed Office staff, with assistance from the USGS's Crew Leader, will be responsible for analyzing data and preparing drafts of the Annual Tern and Plover Monitoring and Research Report by 31 December each year; Annual Reports will be reviewed and finalized prior to the Program's Adaptive Management Reporting Session (~ 1 March) each year. Primary responsibilities of the USGS's Crew Leader will be to assist ED Office staff with compiling data, producing figures and tables, and reviewing the report for accuracy and completeness.

B. PROJECT REQUIREMENTS

1. Monthly Progress Reports and Billing Statements

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

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

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

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

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

- * Include in the Annual Reports a section describing the assumptions and methodology used by the USGS in generating the data and conclusions contained in that chapter.

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

3. Final Annual Reports

ED Office staff and the USGS shall use the Program's 2010 Interior Least Tern and Piping Plover Monitoring Report as the outline for Draft and Final Annual Tern and Plover Monitoring and Research Reports so that USGS compliance with Agreement provisions can be verified.

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

4. Project Access

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

5. Stand-By Time

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

EXHIBIT "B"
TERN AND PLOVER MONITORING AND RESEARCH BUDGET
Platte River Least Tern and Piping Plover Monitoring and Research Budget
FY 2011

Platte River Recovery Implementation Program Funds			
		2011	
	Rate	#	Total
Salaries			
<i>Seasonal & Term Staff</i>			
Crew Leader (GS-6, 26 pp)	\$ 49,590.00	1	\$ 49,590.00
Biological Science Technician (GS-5, 8.5 pp)	\$ 10,710.00	4	\$ 42,840.00
Salary Total			\$ 92,430.00
Vehicles & Travel			
<i>Trucks & Aircraft</i>			
Fuel (3 4x4 Pickups)	\$ 2,400.00	3	\$ 7,200.00
<i>Travel</i>			
Technician Travel	\$ 1,000.00	3.5	\$ 3,500.00
Vehicles & Travel Total			\$ 10,700.00
Equipment & Supplies			
Cell Phones	\$ 500.00	1	\$ 500.00
Equipment & Supplies Total			\$ 500.00
Subtotal Fixed Costs			\$ 103,630.00
Facilities Overhead			\$ 10,245.90
Cost Center Overhead			\$ 12,642.86
Subtotal			\$ 126,518.76
Bureau Overhead			\$ 15,182.25
Total			\$ 141,701.01

USGS Northern Prairie Wildlife Research Center Funds			
		2010	
	Rate	#	Total
Salaries			
<i>Permanent and Term Staff</i>			
Sherfy, Mark	\$ 4,850.00	2	\$ 9,700.00
Shaffer, Terry	\$ 6,404.00	2	\$ 12,808.00
Stucker, Jennifer	\$ 3,958.00	2.1	\$ 8,311.80
Anteau, Mike	\$ 4,279.00	2	\$ 8,558.00
Wiltermuth, Mark	\$ 2,481.00	2	\$ 4,962.00
Dovichin, Colin	\$ 2,647.00	10.1	\$ 26,734.70
Salary Total			\$ 71,074.50
Vehicles & Travel			
<i>Travel & Housing</i>			
PI Travel	\$ 1,000.00	5	\$ 5,000.00
Vehicles & Travel Total			\$ 5,000.00
Subtotal Fixed Costs			\$ 76,074.50
Cost Center Overhead			\$ 9,281.09
Total			\$ 85,355.59

* Projected Budget Estimates for FY2012 and FY2013 are provided in Section 4B; however, scope of work and final budgets will be negotiated and mutually agreed upon by the Program and USGS prior to 31 December, 2011 and 2012, respectively.