

Appendix C

**Template Landowner Management Agreement and
Certificate of Inclusion—Candidate Conservation
Agreement with Assurances Program**

1.0 Cooperator Information

Cooperator Name:

Address:

Phone:

Email:

2.0 Covered Species

- Alligator snapping turtle (*Macrochelys temminckii*)
- Plains minnow (*Hybognathus placitus*)
- Silver chub (*Macrhybopsis storeriana*)
- Hornyhead chub (*Nocomis biguttatus*)
- Butterfly mussel (*Ellipsaria lineolata*)
- Fluted shell (*Lasmigona costata*)
- Cylindrical papershell (*Anodontoides ferussacianus*)
- Flat floater (*Andonota suborbiculata*)
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(Fill in with species' common and scientific name if covered species became federally listed after Programmatic Safe Harbor Agreement and Candidate Conservation Agreement with Assurances [SHA/CCAA Agreement] finalization)

(Fill in with species' common and scientific name if covered species became federally listed after SHA/CCAA Agreement finalization)

3.0 Description of Enrolled Lands

[Include a written legal description of the enrolled property. If a portion of the property is enrolled, include both a legal description of the entire parcel and a description and/or map of the portion of the property enrolled. See Section 5.0 of the SHA/CCAA Agreement for further guidance]

4.0 Existing Conditions for the Covered Species

[Describe the habitat and population existing conditions of the property at time of enrollment as described in Section 7.0, Baseline or Existing Conditions, of the SHA/CCAA Agreement.]

5.0 Existing Conditions for Current Land Use

[Include a description of current land use practices on the property as described in Section 7.3, Other Relevant Baseline or Existing Conditions, of the SHA/CCAA Agreement that are relevant to the covered species.]

6.0 Covered Activities

[This section will include a description of those actions that the Cooperator allows to occur, or agrees to implement, on the enrolled property. The potential covered activities include reintroduction, monitoring, and voluntary habitat management actions. Example text for each of these activities is provided below; however, none of these activities are required as a condition of participation in this SHA/CCAA Agreement as described in Section 5.0, Landowner Agreements and Certificates of Inclusion.]

The following covered activities will be implemented on each property.

- A. **Reintroduction:** Upon full execution of this Landowner Management Agreement (Landowner Agreement), the enrolled land will be eligible to receive covered species. Reintroduction will be carried out by the Kansas Department of Wildlife and Parks (KDWP) or its designee.
- B. **Monitoring:** Upon full execution of this Landowner Agreement, compliance and effectiveness monitoring may be performed by KDWP or its designee. Compliance monitoring may include periodic site visits to ensure the property is being managed consistent with the SHA/CCAA Agreement and this Landowner Agreement. Effectiveness monitoring may include population and habitat surveys to assess long-term success of conservation measures. The type of monitoring, frequency, and approximate timing of property visits agreed upon in this Landowner Agreement are: *[Include a description of monitoring requirements for the property. Determined on a case-by-case basis during enrollment.]*
- C. **Additional Habitat Management Actions:** Upon full execution of this agreement, and as agreed upon by KDWP and the Cooperator, the Cooperator will implement the following additional management activities voluntarily agreed to by the Cooperator:

[The primary action on every property will be reintroduction of the covered species and maintaining existing conditions. Any additional habitat management actions will be site specific and developed in conversation with the participating landowner, KDWP, and in some cases the U.S. Fish and Wildlife Service (Service). KDWP may, on a case-by-case basis, request habitat management actions to maintain or improve habitat on the enrolled property. Examples of habitat management actions are listed in Section 8.3 of the SHA/CCAA Agreement. Include a description of the habitat management actions, if any, to be implemented on the property.]

- D. **Land Use Activities:** The following land use activities may result in incidental take of covered species under this Landowner Agreement:

[Described land use activities that are anticipated to take place on the enrolled lands, as discussed in Section 8.4, Land Use Activities, of the SHA/CCAA Agreement.]

7.0 Changed Circumstances

Despite management and protection efforts, there may be changed circumstances that are beyond the control of the Cooperator. Changed circumstances are defined in Section 11.1, *Changed Circumstances*, of the SHA/CCAA Agreement and are conditions or events with potential to affect a covered species population or its habitat that the Parties to this Landowner Agreement can reasonably anticipate and plan for (50 Code of Federal Regulations [CFR] Section 17.3). In the event of changed circumstances, the Cooperator will not be held responsible for the loss, provided they are otherwise in compliance with the Landowner Agreement and its associated Certificate of Inclusion (COI). As discussed in Table 3, Section 11.1, *Changed Circumstances*, of the SHA/CCAA Agreement, KDWP may request voluntary participation from a Cooperator in response to a changed circumstance.

8.0 Review of Impacts to Non-Covered Species

As described in Appendix E of the CCAA/SHA Agreement, effects of the covered activities (Section 6, above) on listed, proposed, or candidate species, and designated and proposed critical habitats have been reviewed and determined to meet the following condition:

- No listed, proposed, or candidate species, or critical habitats outside those covered by the Landowner Agreement (Section 2, above) are likely to be exposed to the covered activities directly or to any stressors generated by the activity.
- One or more listed, proposed, or candidate species, or critical habitats outside those covered by the Landowner Agreement (Section 2, above) may be exposed to the covered activity directly or to one or more stressors generated by the activity, but that exposure will not result in prohibited take of one or more individuals (for animal species) or negative effects (for plants species and critical habitat).
- Take of one or more listed, proposed, or candidate animal species is anticipated from covered activities but is authorized through the following:

(insert name of applicable Endangered Species Act Section 7 consultation or Section 10 permit)

This advance review of the impacts from the covered species on these non-covered, federally listed proposed, candidate, and designated/proposed critical habitats provides the landowner predictability that the covered actions in this Landowner Agreement are not anticipated to result in federally prohibited take.

9.0 Landowner Agreement and Certificate Duration

Pursuant to K.S.A. 32-962 (C) (2), the initial duration of this Landowner Agreement will be 5 years from the date of last signature and will automatically continue to be in effect for as long as the terms of the SHA/CCAA Agreement and the Landowner Agreement are met, unless terminated by either party. The COI issued is included with this Landowner Agreement.

10.0 Assurances to the Cooperator

Provided that the Cooperator complies with the provisions outlined in the SHA/CCAA Agreement and conservation measures identified in this Landowner Agreement, the Service assures that it will not impose additional restrictions for the covered species on the use of the Cooperator's land, water, or resources beyond those already agreed upon in the SHA/CCAA Agreement throughout the term of the Landowner Agreement and its associated COI. Furthermore, the COI will provide the Cooperator with incidental take coverage of the covered species, effective upon a final listing rule, consistent with maintaining the existing conditions described in Section 4.0, *Existing Conditions for the Covered Species*, of this Landowner Agreement for the following activities:

- A. Implementing the conservation measures identified in this Landowner Agreement.
- B. Any land use activities described in Section 6.0, above.

In the event a CCAA-covered species becomes federally listed, landowners would receive take authorization and assurances for the above activities. Take authorization for a return to existing conditions is not provided if the species becomes listed. Landowners could amend their existing Landowner Agreement or enter into a new one for the newly listed species for the SHA. At the time of Landowner Agreement amendment from the CCAA to the SHA, baseline conditions would be documented, and the Cooperator would be required to meet the provisions of the new or amended Landowner Agreement and its associated COI.

11.0 Modifications and Termination

- A. **Landowner Agreement:** Any party to this Landowner Agreement may propose modifications by providing written notice to the other parties explaining the proposed modification and the reasons for the modification. Approval of a modification will require the written consent of KDWP and the Cooperator and must be consistent with the assurances described in Section 10.0, *Incidental Take and Regulatory Assurances*, of the SHA/CCAA Agreement. Any proposed modification to the Landowner Agreement will be considered effective as of the date that all affected parties have agreed in writing to the modification.
- B. **Certificate of Inclusion:** The COI may be amended by the Cooperator and/or KDWP in accordance with all applicable legal requirements in force at the time of the amendment, including, but not limited to, the Endangered Species Act, National Environmental Policy Act, and Service permit regulations (50 CFR, Parts 13 and 17). A request for an amendment of the Permit or COI would require, at a minimum, a written explanation of why the amendment is needed and an explanation of what, if any, effects the amendment would have on the covered species.

- C. **Early Termination of the Landowner Agreement:** KDWP may terminate the Landowner Agreement prior to the expiration date. A Cooperator may terminate their CCAA Landowner Agreement before the expiration date. The Cooperator will, if possible, provide KDWP the opportunity to relocate the covered species within sixty (60) days of receipt of the termination notice. If a Cooperator fails to notify the KDWP regarding possible take or fails to provide access, coverage for incidental take will not be granted.

12.0 Other Measures

- A. **Remedies.** No party shall be liable in monetary damages for any breach of this Landowner Agreement, any performance or failure to perform an obligation under this Landowner Agreement, or any other cause of action arising from this Landowner Agreement.
- B. **Dispute Resolution.** The Parties agree to work together in good faith to resolve any disputes using dispute resolution procedures agreed upon by all Parties.
- C. **Succession and Transfer.** As provided in 50 CFR Section 13.25, if a Cooperator transfers his or her interest in the enrolled lands to another non-federal entity, the new owner has the option to accept the original Cooperators responsibilities and assurances. If the new owner chooses to accept the original Cooperator's responsibilities and assurances, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the enrolled lands as the original Cooperator for the remainder of the term of the Landowner Agreement. If the new owner chooses not to participate in the SHA/CCAA Agreement and the activities described in the Landowner Agreement, he or she will retain authorization for incidental take due to otherwise lawful activities via the Biological Opinion, provided the Service is given an opportunity to relocate covered species currently on the property.
- D. **Availability of Funds.** Implementation of this Landowner Agreement is subject to the availability of appropriated funds. Nothing in this Landowner Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from KDWP. The Parties acknowledge that KDWP will not be required under the Landowner Agreement to expend any of the State's appropriated funds unless and until an authorized official of KDWP affirmatively acts to commit to such expenditures as evidenced in writing.
- E. **No Third-Party Beneficiaries.** This Landowner Agreement does not create any new right or interest in any member of the public as third-party beneficiary, nor shall it authorize anyone not a party to this Landowner Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Landowner Agreement. The duties, obligations, and responsibilities of the parties to this Landowner Agreement with respect to any third-party shall remain as imposed under existing law.
- F. **Notification of Take.** To the extent possible, enrolled landowners agree to provide KDWP with an opportunity to rescue individuals of the Covered Species before anticipated and authorized take occurs (e.g., ground-disturbing activities anticipated to result in extreme sedimentation of nearby covered species habitat). In such cases, notification of take should be provided to KDWP 30 days prior to the action; minimally, notification must occur no less than 14 days prior to the action. For those situations in which unanticipated, authorized take has occurred, the enrolled landowner agrees to notify KDWP within 48 hours of any observation of take of the covered species on the enrolled lands.

13.0 State-Required Contractual Provisions

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this Landowner Agreement and made part thereof.

14.0 Contact Information

Communication, reports, and correspondence required by this Landowner Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

Cooperator:

Address:

Phone Number:

Select One: Legal Landowner
 Landowner's Representative

KDWP: Pratt Operations Office Ecological Services Section

Address: 512 SE 25th Avenue
 Pratt, KS 67124

Phone Number: (620) 672-5911

15.0 Certificate of Inclusion

This certifies that the enrolled lands of the Cooperator are included within the scope of the Section 10(a)(1)(A) permit [*reference number*] issued by the Service expiring on [*date*] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. Through the Permit and this COI, the Cooperator is authorized to perform the activities as described herein to protect, enhance, or restore a population of the species on the enrolled lands, as described herein. The holder of this COI is authorized to engage in any otherwise lawful activity on the enrolled lands that may result in the incidental taking of covered species or its habitat above baseline subject to the terms and conditions of the Permit and this Landowner Agreement [*insert number*] entered into by the parties below.

These authorizations and assurances expire on [*date permit expires*].

IN WITNESS WHEREOF, each party hereto has caused this Landowner Agreement and COI to be executed by an authorized official on the day and year of the final signature as set forth below.

COOPERATOR

 Name and Title

 Date

AUTHORIZING PARTY

Kansas Department of Wildlife and Parks

 Assistant Secretary of Operations

 Date

Designated Landowner Representative Agreement

Landowner Name:

Landowner Representative Name
(Cooperator):

Land Units Leased:

Tract/Parcel:

Acres:

For the above-described land unit that I own, I hereby certify that the above participant will have control of this land for the purpose of satisfying the terms and conditions of this Landowner Agreement. The participant has my permission to work with KDWP to reintroduce species, implement habitat management actions and perform obligations on my land as described under this Landowner Agreement.

Landowner's Signature

Date

Contractual Provisions Attachment

State of Kansas

Department of Administration DA-146a (Rev. 07-19)

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the

_____ Day of _____, 20 _____

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42

U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, et seq.

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions/Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.