

Appendix D

Template Neighboring Landowner Management Agreement and Certificate of Inclusion

1.0 Neighboring Landowner Information

Cooperator Name:

Address:

Phone:

Email:

2.0 Covered Species

[Check the covered species below for the subject property.]

Safe Harbor Agreement (SHA) Program:

- ☐ Topeka shiner (*Notropis topeka*)
- ☐ Neosho mucket (*Lampsilis rafinesqueana*)
- ☐ Arkansas River shiner (*Notropis girardi*)
- ☐ Rabbitsfoot mussel (*Quadrula cylindrica cylindrica*)
- ☐ Neosho madtom (*Noturus placidus*)
- ☐ Peppered Chub (*Macrhybopsis tetranema*)

☐

(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)

Candidate Conservation Agreement with Assurances (CCAA) Program:

- ☐ Alligator snapping turtle (*Macrochelys temminckii*)
- ☐ Peppered chub (*Macrhybopsis tetranema*)
- ☐ Plains minnow (*Hybognathus placitus*)
- ☐ Silver chub (*Macrhybopsis storeriana*)
- ☐ Hornyhead chub (*Nocomis biguttatus*)

- ☐ Butterfly mussel (*Ellipsaria lineolata*)
- ☐ Fluted shell (*Lasmigona costata*)
- ☐ Cylindrical papershell (*Anodontoidea ferussacianus*)
- ☐ Flat floater (*Andonota suborbiculata*)
- ☐ Western Fanshell (*Cyprogenia aberi*)

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 a property enrolled. See Section 5.0 of the SHA/CCAA Agreement for further guidance.]

4.0 Baseline or Existing Conditions for the Covered Species

[Describe the habitat and population baseline or 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 Baseline or Existing Conditions for Current Land Uses

[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 neighboring landowner allows to occur, or agrees to implement, on the enrolled property.]

6.1 Land Use Activities

The following land use activities may result in incidental take of covered species under this Neighboring Landowner Agreement:

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

6.2 Voluntary Measures

As described in Section 6.0 of the SHA/CCAA Agreement, *Neighboring Landowners and Neighboring Landowner Agreements*, habitat management actions and monitoring are not required on neighboring lands. However, some neighboring landowners may wish to voluntarily provide the Kansas Department of Wildlife and Parks (KDWP) access to their property or voluntarily participate in habitat management actions to further benefit the covered species.

[Check the box below and fill in data if habitat management actions apply to the neighboring landowner property.]

- ☐ **Habitat Management Actions:** Habitat management actions may include actions to benefit the covered species as described in Section 8.3, *Habitat Maintenance and Management Actions*, of the SHA/CCAA Agreement. Upon full execution of this agreement, and as agreed upon by KDWP and the neighboring landowner, the neighboring landowner will implement the following habitat management activities voluntarily agreed to by the neighboring landowner:

[Include a brief description of voluntary habitat management actions for the property. Determined on a case-by-case basis during enrollment.]

[Check the box below and fill in data if effectiveness monitoring applies to the neighboring landowner property.]

- ☐ **Monitoring:** Upon full execution of this agreement, effectiveness monitoring may be performed by KDWP or its designee. Effectiveness monitoring may include population and habitat surveys to assess long-term success of conservation measures. Monitoring frequency, and approximate timing of property visits agreed upon in this Neighboring Landowner Agreement are:

[Include a brief description of voluntary monitoring for the property. Determined on a case-by-case basis during enrollment.]

7.0 Changed Circumstances

Despite management and protection efforts, there may be changed circumstances that are beyond the control of the neighboring landowner. 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 Neighboring Landowner Agreement can reasonably anticipate and plan for (50 CFR Section 17.3). In the event of changed circumstances, the neighboring property owner will not be held responsible for the loss, provided they are otherwise in compliance with the Neighboring Landowner Agreement and its associated Certificate of Inclusion (COI).

8.0 Neighboring Landowner Agreement and Certificate Duration

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

9.0 Assurances to the Neighboring Landowner

Provided that the neighboring landowner complies with the provisions outlined in the SHA/CCAA Agreement identified in this Neighboring Landowner Agreement, the Service assures that it will not impose additional restrictions for the covered species on the use of the neighboring landowner's land, water, or resources additional to those already agreed upon in the SHA/CCAA Agreement throughout the term of the COI. Furthermore, the COI will provide the neighboring landowner with incidental take coverage of the covered species identified in this Neighboring Landowner Agreement for the following activities:

- A. Any land use activities described above in Section 6.1, *Land Use Activities*.
- B. Returning the enrolled lands to baseline through otherwise lawful means, following required conditions described in Section 15.1 of the SHA/CCAA Agreement.

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

10.0 Modifications and Termination

- A. **Neighboring Landowner Agreement:** Any party to this Neighboring 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 neighboring landowner 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 Neighboring 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 neighboring landowner 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 Neighboring Landowner Agreement:** KDWP may terminate the Neighboring Landowner Agreement prior to the expiration date. A neighboring landowner may terminate their SHA or CCAA Neighboring Landowner Agreement before the expiration date. The neighboring landowner will, if possible, provide KDWP the opportunity to relocate the covered species within sixty (60) days of receipt of the termination notice. Neighboring landowners will allow KDWP access to their enrolled properties to capture covered species and move them off the property, if deemed advisable, prior to the return to baseline conditions. If a property is being returned to baseline conditions, this return must be completed within the Neighboring Landowner Agreement's permit term. Refer to Sections 15.2, *Termination of a Landowner Agreement or Neighboring Landowner Agreement by a Cooperator*, and 15.3, *Termination of a Landowner Agreement or Neighboring Landowner Agreement by a Party*, of the SHA/CCAA Agreement for additional information pertaining to termination of a Neighboring Landowner Agreement.

11.0 Other Measures

- A. **Remedies.** No party shall be liable in monetary damages for any breach of this Neighboring Landowner Agreement, any performance or failure to perform an obligation under this Neighboring Landowner Agreement, or any other cause of action arising from this Neighboring 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 neighboring landowner transfers his or her interest in the enrolled lands to another non-federal entity, the new owner has the option to accept the original neighboring landowner's responsibilities and assurances. If the new owner chooses to accept the original neighboring landowner'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 neighboring landowner for the remainder of the term of the agreement. If the new owner chooses not to participate in the SHA/CCAA Agreement and the activities described in the Neighboring 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.** Nothing in this Neighboring Landowner Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from KDWP.
- E. **No Third-Party Beneficiaries.** This Neighboring 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 Neighboring Landowner Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Neighboring Landowner Agreement. The duties, obligations, and responsibilities of the parties to this Neighboring

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.

12.0 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 Neighboring Landowner Agreement and made part thereof.

13.0 Contact Information

Communication, reports, and correspondence required by this Neighboring 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

14.0 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.