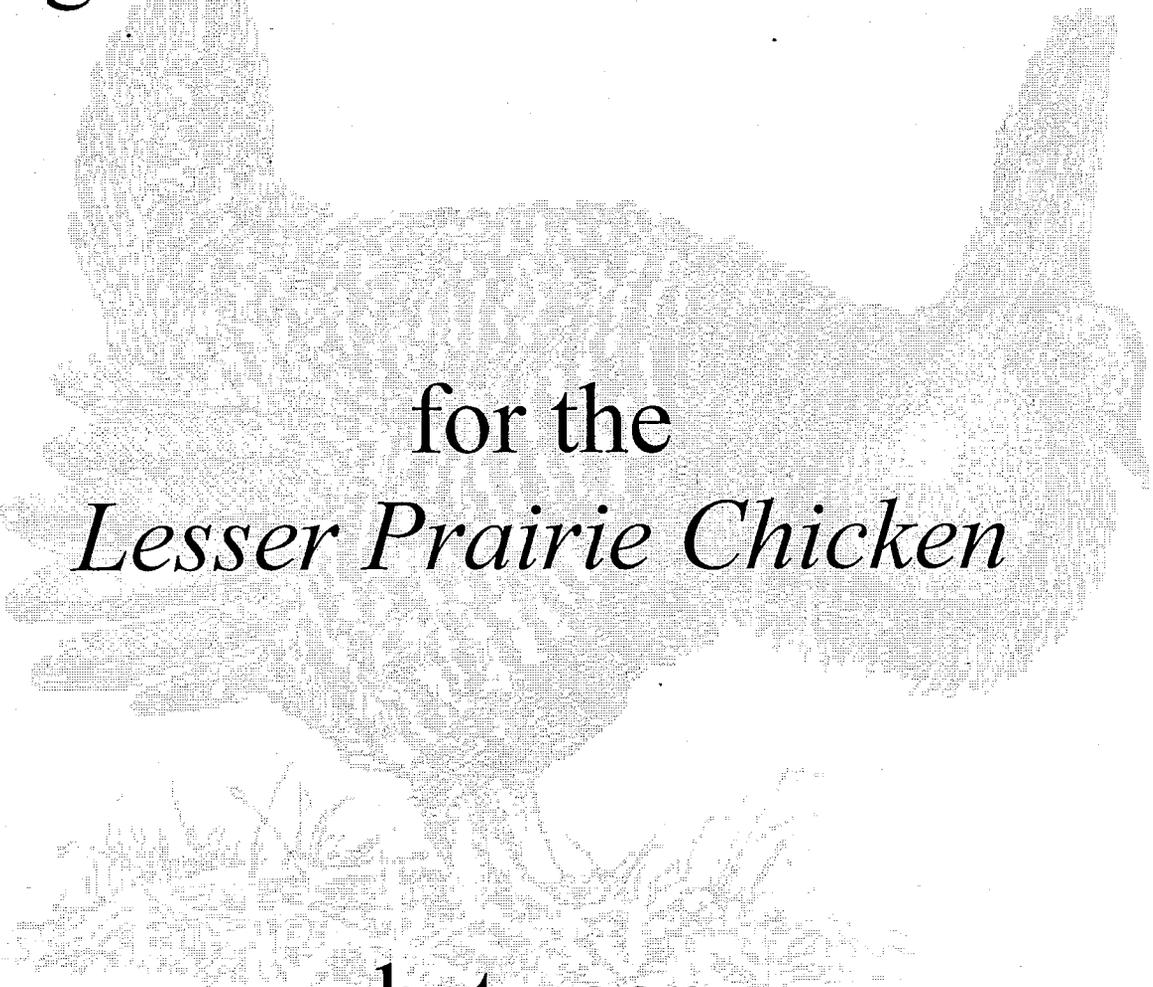


Candidate Conservation
Agreement with Assurances



for the
Lesser Prairie Chicken

between
Theodore R. Alexander
and
U.S. Fish and Wildlife Service

**Candidate Conservation Agreement with Assurances for
the Lesser Prairie Chicken
Between Theodore R. Alexander and
the U.S. Fish and Wildlife Service**

This Agreement, effective and binding on the date of the last signature below, is between **Theodore R. Alexander** (herein referred to as **Mr. Alexander or Landowner**) and the U.S. Fish and Wildlife Service (FWS). This Agreement and the associated Enhancement of Survival Permit (Permit), issued pursuant to section 10(a)(1)(A) of the ESA, will provide Mr. Alexander regulatory assurances that should he cooperate and provide suitable lesser prairie chicken habitat on his land in accordance with this Agreement and the Permit, he will not incur additional land-use restrictions on his property should the species eventually be listed under the ESA during the term of the Agreement and Permit.

I. Authorities and Purpose

Sections 2, 7, and 10 of the Endangered Species Act of 1973, as amended (ESA), and the Fish and Wildlife Coordination Act, allows the FWS to enter into this Agreement. Section 2 of the ESA states that encouraging parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs that they administer and to utilize such programs in furtherance of the purposes of the ESA. By entering into this Agreement, the FWS is utilizing its Candidate Conservation Programs to further the conservation of the Nation's fish, wildlife, and plants. Lastly, section 10(a)(1)(A) of the ESA authorizes the issuance of permits to "enhance the survival" of a listed species.

The purpose of this Agreement is for Mr. Alexander and the FWS to implement conservation measures for lesser prairie-chicken (*Tympanuchus pallidicinctus*) in Barber County, Kansas. The conservation measures would be implemented by Mr. Alexander and the FWS, and would generally consist of: inter-seeding approximately 568 acres of old farmland to a mixture of native forbs, and installing approximately 4,600' of 1.25" pvc pipe for a waterline to water cattle. (See "Exhibit C1 & C2" for a detailed description and location). These activities will be located within the South Cell of Mr. Alexander's property. The entire South Cell (2,232 acres) will be managed for optimal lesser prairie-chicken habitat by:

- A. Maintaining 10 percent of the total habitat (223 acres) as residual grass cover that is at least 20 inches high and patches 8-10 feet in diameter throughout the winter and early spring months (November-May); this nesting cover will be within .5 to 1 mile of any active lekking ground.

- B. Providing grasses, forbs, and shrubs that are distributed unevenly throughout the landscape, with some areas or pastures containing 30 percent-60 percent native shrub canopy, 70 percent tall or mid-grasses, and 30 percent annual or perennial forbs respectively. The goal is to achieve and maintain 60 percent of the South Cell (1,339 acres) in excellent range condition. Consistent with the FWS's Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999) "Exhibit A" (herein referred to as Policy), this Agreement is intended to facilitate the conservation of lesser prairie-chicken by giving Mr. Alexander incentives to implement conservation measures by providing regulatory certainty concerning land use restrictions that might otherwise apply should lesser prairie-chicken become listed under the ESA during the term of this Agreement and the Permit. The lesser prairie-chicken is a "covered species" for purposes of this Agreement and the Policy.

II. BACKGROUND

- A. In 1995, the FWS received a petition to list the lesser prairie-chicken under the ESA. On July 8, 1997 FWS found that listing the species may be warranted (USFWS 1997). FWS made a "warranted but precluded" 12-month finding on June 9, 1998 (USFWS 1998). A proposed rule to list the species will be prepared for public review and comment in the future.
- B. The lesser prairie-chicken is in the Order Galliformes, Family Phasianidae, subfamily Tetraoninae, and is recognized as a species separate from the greater prairie-chicken (*Tympanuchus cupido*) (Ridgway 1885, cited in Giesen 1998). Lesser prairie-chickens exhibit a lek mating system. See Attached "Exhibit B" for a description of the life history and habits of the lesser prairie-chicken (Giesen 1998). Optimal lesser prairie-chicken habitat consists of:
1. Vegetative composition averaging 60 percent tall, mid-, and short grasses characteristic of excellent range condition, 50 percent native shrubs, and 10 percent annual or perennial forbs;
 2. Ten percent of the total habitat supporting residual grass cover that is at least 20 inches high and 8-10 feet in diameter throughout the winter and early spring months (November-May): this nesting cover is within ½ to 1 mile of an active lekking ground.
 3. Grasses, shrubs, and forbs that are distributed unevenly throughout the landscape, with some pastures containing up to, but not to exceed, 60 percent native shrub canopy, 70 percent tall or mid-grasses, and 30 percent native annual and perennial forbs, respectively.

III. DESCRIPTION OF EXISTING CONDITIONS

In the Spring of 2000, one lesser prairie-chicken lek with four males was observed on the West side of the South Cell, (See **“Exhibit C1”** for location). A flock of seven lesser prairie-chickens has consistently been seen within the South Cell.

The current range condition of Mr. Alexander’s Ranch is estimated to be 70 percent good; 15 percent excellent and 15 percent fair. According to the U.S. Dept. of Agriculture’s Soil Survey for Barber County, KS (USDA 1977), a range is in excellent condition if 76 to 100 percent of the vegetation is of the same kind as that in the climax stand. It is in good condition if the percentage is 51 to 75; in fair condition if the percentage is 26 to 50; and in poor condition if the percentage is less than 25. Some of the species of grassland vegetation includes; little bluestem, switchgrass, indiangrass, sand lovegrass, leadplant, sand dropseed, sand paspalum, side-oats grama, blue grama, Scribner panicum, sand sagebrush, sand plum, and buffalo grass. Silver bluestem, annual eriogonum, annual broomweed, tumblegrass, and other annuals are common invaders. The South Cell is a total of 2,232 acres that lies within the Red Hills of South Central Kansas. Of this 2,232 acres, approximately 1,664 acres is native mixed grass prairie. The remaining 568 acres is old farmland that has been seeded back to a mixture of native warm-season grasses.

The South Cell has been grazed utilizing a rotational grazing system for the last 15 years. The South Cell’s 2,232 acres has been gradually divided into 18 paddocks and will further be divided into a 23 paddock rotation in the near future. The entire South Cell (2,232 acres) is grazed on average 143 days. This equates to each acre being rested 94% of the time. The paddocks are grazed on average 9 days during the growing season and each paddock is grazed no more than two-three times a year. This allows for between 30-150 days of rest for each paddock before frost. The length of rest, before frost, is rotated through each paddock. In addition the Alexander Ranch has adapted a drought management plan (See **“Exhibit C1”**) that adjusts the stocking rates according to the amount of rainfall throughout the year (as rainfall decreases so does the stocking rates). Changes to this Drought Management Plan for the South Cell will meet the minimum habitat standards set forth to maintain the assurance.

IV. COVERED LANDS

The Covered Lands are those lands included under this Agreement and the Permit (the South Cell) and are identified on the Map included in **“Exhibit C1”**.

V. DURATION OF THE AGREEMENT AND PERMIT

This Agreement and the associated permit issued in accordance with section 10(a)(1)(A) of the ESA, would be for a duration of 10 years from the date the Agreement is signed by the Landowner and FWS and the permit is issued by the FWS. This Agreement may be

renewed for an additional 10 years in accordance with applicable regulations if mutually agreed to by both parties.

VI. CONSERVATION MEASURES AND OBLIGATIONS OF THE PARTIES

The following conservation measures for the lesser prairie-chicken would be provided under this Agreement are:

- A. Restore 568 acres of old cropland to a vegetative community composed of 70 percent tall, and mid-grasses and 30 percent annual and perennial forbs through the inter-seeding of native forbs. In addition, approximately 4,600' of 1.25" pvc pipe will be installed as a waterline. (See "Exhibit C1 & C2" for location). This waterline will provide a reliable source of water for the cattle, thus improving the grazing system in the South Cell and helping to improve the condition of native prairie. The inter-seeding in combination with the installation of the waterline will also allow the development of excellent nesting, roosting, and brooding habitat for lesser prairie-chickens. And the improved grazing system will help improve the nutrient cycling within the plant community and help break-up the hard-pan layer created from years of farming.
- B. The entire South Cell (2,232 acres) will be managed for lesser prairie-chicken habitat by:
 1. Maintaining 10 percent of the total habitat (223 acres) as residual grass cover that is at least 20 inches high and 8-10 feet in diameter throughout the winter and early spring months (November-May); this nesting cover will be within .5 to 1 mile of any active lekking ground.
 2. Providing grasses, forbs, and shrubs that are distributed unevenly throughout the landscape, with some areas or pastures containing 30 percent-60 percent native shrub canopy, 70 percent tall or mid-grasses, and 30 percent annual or perennial forbs respectively. The overall goal is to achieve and maintain 60 percent of the South Cell (1,339 acres) in excellent range condition. This will provide excellent nesting, roosting, and brooding habitat for lesser prairie-chickens thus providing for an increase in the local population.

C. Landowner:

Mr. Alexander agrees to implement the following range management practices by:

1. Continuing a rotational grazing system that provides 30-150 days of rest between each rotation, with the rotation rate appropriate to the quality of seasonal forage produced.
2. Basing each year's stocking rates on the utilization of 50 percent of the current year's plant growth. Each year the grazing rate could change proportionately with the amount of rainfall. In wet years rates may increase and in dry years rates may decrease. Current stocking rate is 7.7 acres/animal unit or 130 lbs./ac. until frost.
3. Maintaining 10 percent of the South Cell (223 acres) as residual grass cover that is at least 20 inches high and 8-10 feet in diameter throughout the winter and early spring months (November-May). This nesting cover will be within .5 to 1 mile of any active lekking ground. And by maintaining an average Visual Obstruction Reading (VOR) of 20 inches on this 223 acres.
4. Providing grasses, forbs, and shrubs that are distributed unevenly throughout the landscape, with some areas or pastures containing 30-60 percent native shrub canopy, 70 percent tall or mid-grasses, and 30 percent annual or perennial forbs, respectively.
5. Inter-seeding approximately 568 acres of converted farmland to a mixture of perennial forbs (As shown on "Exhibit C1"). This will be accomplished in a method to ensure good seed to soil contact.
6. Install 4,600' of 1.25" pvc pipe waterline.
7. Maintaining an average VOR of > 3 decimeters for the entire South Cell (2,232 acres), along the permanent transects.
8. No herbicides of any kind will be used for shrub and forbs control on the pastures subject to the terms of this agreement unless mutually agreed by both parties.
9. No alterations to the project plan will be undertaken unless mutually agreed to by both parties.

Note: This grazing plan may be changed, if mutually agreed, as part of an adaptive management strategy to achieve habitat goals. For example; should future research determine that lesser prairie-chickens in the eastern portion of their range require a smaller percentage of sand sage canopy, then this plan maybe changed to adapt to the new research findings. This, as well as any funding arrangements, would have to be mutually agreed to by both parties.

B. U.S. Fish and Wildlife Service:

The FWS agrees to:

1. Provide \$8928.00 to the Cooperator for wildlife habitat restoration. These funds will be used for: the inter-seeding of 568 acres of old farmland that is currently planted to a mixture of native warm-season grasses, and installing 4,600' of 1.25" pvc pipe waterline. Both developments will be for the purpose of improving nesting, roosting, and brood rearing habitat for lesser prairie-chickens.
2. Monitor the success of the habitat improvement measures annually using: Exclusion cages to determine yearly grazing utilization, and photo points to measure the over-all trend of the prairie ecosystem.
3. Conduct rangeland inventories to determine species composition by the step-point methods and visual obstruction readings (VOR) to determine residual grass cover, on the first, fifth, and tenth years of this agreement
4. Reevaluate the required stocking rate and grazing system at the Cooperator's request to adjust for changes in range condition.
5. Provide further technical assistance.
6. Issue a permit to the Landowner, under Section 10(a)(1)(A) of the ESA, in accordance with 50 CFR 17.32 (d), with a term of 10 years from the date of issuance that provides Mr. Alexander with authorization for incidental take of lesser prairie-chicken and provide regulatory assurances should the species be listed under the ESA during the time this Agreement is in effect. The permit will authorize incidental take of lesser prairie-chicken resulting from livestock grazing, ranch equipment operation, prescribed burning, haying, no-till drilling/inter-seeding, and herbicide application (not covered in Section V.A.F.). An example of incidental take that could occur is the accidental death of a lesser prairie-chicken by the no-till drill or tractor during the inter-seeding of the old cropland.

VII. EXPECTED CONSERVATION BENEFITS

As identified in the FWS's Candidate Conservation Agreement with Assurances Final Policy, the FWS must make a written finding that:

“[T]he benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.”

Based on the best available science, it is believed that if many of the landowners who own property with potential lesser prairie-chicken habitat managed their properties in accordance with the optimal lesser prairie-chicken habitat guidelines listed in this agreement, it would preclude or remove any need to list the lesser prairie-chicken. This is just one project of many projects that would produce a cumulative positive effect on lesser prairie-chicken habitat.

VIII. LEVEL OF INCIDENTAL TAKE

Should the lesser prairie-chicken be listed under the ESA, authorization for incidental take under the section 10(a)(1)(A) Permit, is limited to ranching-related activities (livestock grazing, ranch equipment operation, no-till drilling/inter-seeding, prescribed burning, haying, and herbicide application) of the Landowner. Implementation of these activities will be carried out in such a manner as to minimize impacts to the lesser prairie-chicken by Mr. Alexander's ranching operation. For example; when a prescribed burn is needed to control woody invasion, then the timing of the burn will be adjusted to minimize impacts to nesting lesser prairie-chickens. Moreover, the FWS will be notified by the Landowner before any authorized take occurs so that a rescue of individual lesser prairie-chickens can occur. {see L) under Section X. General Provisions}. An example of a situation that may require the Landowner to notify the FWS would be if the Landowner was to conduct a prescribed fire during nesting and brooding times of the year (early spring through early summer).

After conservation efforts are implemented, incidental take and the resulting effects to lesser prairie-chicken from this agreement are expected to be minimal. The actual level of take of lesser prairie-chickens is difficult to quantify, but it is anticipated that no more than two lesser prairie-chickens will be incidentally taken by the activities pursuant to this agreement.

This Agreement and its associated Permit will allow incidental take of the lesser prairie chicken from normal ranching operations should the species be listed during the term of the Agreement and the Permit. Direct take, such as hunting or trapping, is not included in the Agreement or the Permit and would not be covered should the species be listed. After the expiration of this Agreement and the Permit, Mr. Alexander would have no further obligation to maintain the lesser prairie-chicken habitat protection or enhancement measures under the Agreement. However, should the species be listed Mr. Alexander would still need to comply with the Section 9 of the ESA, by avoiding take (either incidental or direct) of the lesser prairie chicken.

Approximately 2,232 acres of lesser prairie-chicken habitat will be created and/or maintained as a result of Mr. Alexander's conservation measures. Without this Agreement the habitat on all of these acres could be lost if they were converted to cropland or were over-grazed to the point of providing no nesting, brooding, and loafing habitat.

Grazing practices that maintain the conditions described in this Agreement are expected to improve the habitat conditions for lesser prairie chicken. Other species of native flora and fauna will occupy mid-grass rangeland maintained under these conditions and will benefit to varying degrees from management for lesser prairie chicken habitat. Typically, those species which are dependent upon moderately grazed, late seral stage, excellent condition grasslands will benefit. Because of the extensive degree of rangeland alteration and degradation throughout much of the Great Plains, these species typically have less habitat available to them and represent many of the declining grassland birds, butterflies and other species once more common to the historic prairie. Maintaining conditions favorable for lesser prairie chicken habitat also will provide habitat for many of these species. Other species that are dependent upon shorter grassland conditions or upon denser taller grassland conditions may have limited benefits by the conditions maintained in the Agreement. These species typically occupy grassland areas farther west or east in the Great Plains and would not typically be primary species resident in the mid-grass areas in which the Alexander Ranch is located. Species dependent upon early seral stages, reduced rangeland condition, or disturbed habitats also may have reduced benefits; however, these habitats usually result from human land use activities and are abundant within most of the Great Plains grasslands. Lesser prairie-chicken conservation benefits under this Agreement will likely accrue (and as a result impacts and incidental take will be reduced) well beyond the duration of the Agreement (10 years) Mr. Alexander already manages his ranch in an ecologically sound manner and he is extremely dedicated to this type of management. At this time, Mr. Alexander wishes to continue this type of management beyond the terms of this agreement.

Although impacts and incidental take are expected to occur, the overall management is expected to increase habitat conditions for lesser prairie chicken, to increase their numbers, and to benefit the species as whole. The FWS believes that this level of

incidental take is consistent with the overall goal of precluding the need to list the species, if it is assumed that the habitat protection/enhancement conservation measures like those described in this Agreement were successfully implemented throughout the range of lesser prairie-chicken.

IX. MONITORING AND REPORTING

All baseline data was gathered in the spring of 2000. Transects were located and set using GPS Plugger.

- A. Monitoring of rangeland condition and prairie chicken habitat use will be conducted as follows:
1. Transects will include Visual Obstruction Readings (VOR), Photo points, and step-point transects. Monitoring using the Photo-points, and cattle exclusion cages will be completed annually for the length of this agreement. Monitoring using the step-point monitoring, and VOR monitoring (Item a. & b. below) will be done in the 1st, 5th, and 10th years of the Agreement.
 - a. The VOR's will be taken every 10 paces on a one hundred pace transect using a Robel pole. The pole will be placed at the end of your toe and a measurement (visual obstruction of the pole) will be taken from the four cardinal directions at a distance of 4 meters from the pole and 1 meter in height. These measurements will then be averaged to determine the height-density of the plant community and the residual plant cover. These will be conducted on the first, fifth, and tenth years of this agreement.
 - b. Rangeland condition and plant species composition will be determined using the step-point-transect method and conducted on the first, fifth, and tenth years of this agreement. These transects will be selected based on a representative sample of the major range sites.
 - c. Photo points will be taken on the same transect as the VOR's using permanently selected points. All Photo Points will be taken annually for the length of this agreement.
 - d. A minimum of 5 cattle exclusion cages will be installed. Cattle exclusion cages will be 14'-16' in circumference. The cages will be placed in mutually agreed to locations that represents the major range sites. All cages will be moved annually.

2. The number of active leks and number of males per lek was documented in the Spring of 2000 and will be monitored annually for the length of this agreement.
3. In addition any casual lesser prairie-chicken sightings will be documented.

B. Characteristics of existing habitat for lesser prairie-chicken in the South Cell:

Vegetation data was collected between 6/6/2000-6/8/2000. The current range condition of Mr. Alexander's Ranch is estimated to be 70 percent good; 15 percent excellent and 15 percent fair.

<u>On Native Range Acres</u>	<u>On Inter-seeded Acres</u>
Avg. vegetative composition:	Avg. vegetative composition:
60% Grasses	74% Grasses
40% Native forbs	26% Native forbs
6% Shrub canopy cover	.2% Shrub canopy cover
Avg. VOR 12.5"	Avg. VOR 8.7"

The average VOR for the entire South Cell is 11.2".

Number of Active leks- 1	Number of active leks-0
Number of males/lek- 4	Number of male/lek-0

The Fish and Wildlife Service and Mr. Alexander will be responsible for annual monitoring and reporting related to the Agreement. Information in annual reports will include, but is not limited to:

1. Lesser prairie-chicken habitat management and habitat conditions on the Covered Lands over the past year;
2. Effectiveness of lesser prairie-chicken habitat management activities implemented in previous years at meeting the intended conservation benefits;
3. A summary of any surveys or research over the past year;
4. Other information that FWS and the Participant deem is appropriate. Reports will be due January 15 of each year and a copy will be made available to the FWS.

Blank data forms are attached as "Exhibits D1-D3".

X. FUNDING

- A. Funding for the activities described in this Agreement are being shared between Mr. Alexander and the FWS pursuant to a Partner's for Fish and Wildlife Agreement, which is included as "Exhibit C1 & C2" and is incorporated into this Agreement by reference.

Habitat Regeneration of the South Cell (2,232 Acres Total)

Water Development

4,600' of 11/4" PVC @ \$1.20/ft. \$ 3,968.62

Labor & equipment for packing fill around line 1hr @ \$17.86/hr. \$ 17.86

Native Forbs Inter-seeding (568 Acres)

Labor & equipment for seeding 568 acres @ \$3.36/ac. \$ 1,908.48

Forbs seed \$ 6,821.18

Total Project Cost **\$12,716.14**

Landowners Cost Share for:

forbs seed, waterline, labor & equipment (30%) -\$ 3,788.14

FWS Cost Share for Forbs Seed & Waterline (70%) **\$ 8,928.00**

- B. Pursuant to the Partner's for Fish and Wildlife, Wildlife Extension Agreement, the FWS agrees to pay Theodore R. Alexander \$8,928.00 upon receipt of a signed and dated invoice from Theodore R. Alexander.

XI. GENERAL PROVISIONS

- A. **Sale or Lease of the Enrolled Lands:** Should Mr. Alexander need to sell or lease the covered lands prior to the end of the term of this Agreement and permit, Mr. Alexander will notify the FWS at least 60 days in advance of the potential sale or lease, and notify the prospective landowner of the existence of this Agreement in order for the potential new owner to decide whether to continue this Agreement. If the new landowner wishes to continue the Agreement, the Agreement and permit will be transferred into the new landowner's name. If the new landowner does not become a party to this Agreement, the permit will not be transferred, and the new landowner will not receive the benefits of the permit authorizing incidental take of lesser prairie-chicken.
- B. **Regulatory Assurances:** The FWS provides Mr. Alexander ESA regulatory assurances found at 50 CFR 17.32(d)(5). Consistent with the FWS's Candidate Conservation Agreement with Assurances Final Policy, additional conservation measures and land, water, or resource use restrictions beyond those measures and restrictions described in this Agreement (including the adaptive management measures) will not be imposed for the conservation of the lesser prairie chicken

should it become listed under the ESA in the future. These assurances are authorized by the Permit issued under Section 10(a)(1)(A) of the ESA and apply to the enrolled lands. These assurances do not apply to other species not covered by this Agreement that may be listed under the ESA in the future. In the event of unforeseen circumstances, the FWS will not require the commitment of additional land, water, or other natural resources beyond the level otherwise agreed to in this Agreement for the lesser prairie chicken without the consent of Mr. Alexander. The permit will authorize Mr. Alexander to incidentally take lesser prairie-chicken (if it is listed during the term of this agreement) as long as such take is consistent with this Agreement and the terms and conditions of the 10(A)(1)(a) permit.

- C. **Modifications to the Agreement or the Permit:** Mr. Alexander or FWS may propose modifications or amendments to this Agreement or Permit by providing written notice to the other party. Such notice shall include a statement of the proposed modification/amendment and the reason for the proposed change. Proposed modifications/amendments will become effective upon the other parties' written approval, and compliance with any applicable laws.
- D. **Suspension and Revocation:** The FWS may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. In the event of suspension or revocation, the Landowner's obligations under this Agreement will continue until FWS determines that all incidental take and other impacts that occurred under the permit and this Agreement have been fully addressed. The FWS must revoke the permit if it determines in the future that the permit is likely to jeopardize the continued existence of the lesser prairie chicken or any other listed species.
- E. **Reimbursement of Funds Under Early Termination:** In the event a new landowner does not wish to continue this Agreement and request transfer of the permit pursuant to 50 CFR 13.25(b), or Mr. Alexander terminates his enrollment under this Agreement for good cause, or the FWS suspends or revokes the permit due to the failure to comply with the provisions of this agreement, the landowner will reimburse the FWS the amount provided under the Partner's for Fish and Wildlife program, listed in "Exhibits C1 & C2". These funds will be reimbursed on a pro-rated basis. The pro-rated amount due will be determined by dividing the number of years remaining in the agreement by the total number of years of the agreement (10 years) and multiplying this product by the total cash dollars provided, in cost share, to Mr. Alexander by the FWS.
- F. **Remedies and Enforcement**
1. In general. Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this Agreement and the permit.

2. No monetary damages. No party shall be liable in damages to any other party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement or any other cause of action arising from this agreement. Notwithstanding the foregoing, should the Service suspend or revoke the 10(a)(1)(A) Permit, section XX above will govern reimbursement of monies the landowner received pursuant to the Partners for Wildlife Agreement.
 3. Injunctive and temporary relief. The parties acknowledge that the covered species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this agreement.
- G. **Dispute Resolution:** The FWS and Mr. Alexander agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by the parties.
- H. **Availability of Funding:** Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the FWS will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.
- I. **Third Party Beneficiaries:** This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed under existing law.
- J. **Rules of Construction:** The terms of this Agreement shall be governed by and construed in accordance with applicable federal law. Nothing in this Agreement is intended to limit the authority of the FWS to fulfill its responsibilities under federal laws. All activities undertaken pursuant to this Agreement or the permit must be in compliance with all applicable state and federal laws and regulations.
- K. **Successors and Assigns:** This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and transferees, in

accordance with applicable regulations and policy for the duration of the Agreement.

- L. **Notices:** Any notices or reports required by this Agreement shall be delivered in writing to:
- A. Mr. Theodore R. Alexander, 19718 Southwest U.S. Highway 160, Sun City, Kansas, 67143.
 - B. Field Supervisor, U.S. Fish & Wildlife Service, Manhattan Ecological Services Office, 315 Houston, Suite E, Manhattan, Kansas 66502.
- M. **Recovery of Individuals Before Incidental Take:** Before any action that may incidentally take or otherwise impact any individual lesser prairie-chicken or any habitat for the species, the landowner shall notify the FWS at least 30 days in advance so that the FWS will be afforded an opportunity to rescue individual specimens before any impact occurs. An example of a situation that may require the Landowner to notify the FWS would be if the Landowner was to conduct a prescribed fire during nesting and brooding times of the year (early spring through early summer).
- N. **Listing of Species That Are Not Covered Species:** In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, the FWS will review this Agreement and Permit and may, in consultation with the landowner, make modifications necessary to avoid jeopardy to or take of non-covered species listed under the ESA. The Landowner will implement the "no-take/no-jeopardy" measures identified by the FWS until the permit is amended to include such species, or until the FWS notifies the Landowner that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of, the non-covered species. If the Landowner does not agree to these measures, this Agreement and the Permit may be suspended or revoked by the FWS.
- O. **Extension of the Permit:** Upon agreement of the parties and compliance with all applicable laws, the 10(a)(1)(A) Permit may be extended beyond its initial term under regulations of the Services in force on the date of such extension. If Landowner desires to extend the permit, he will so notify the Service at least 180 days before the then-current term is scheduled to expire. Extension of the permit constitutes extension of this agreement for the same amount of time, subject to any modifications that the Services may require at the time of extension.

Theodore R. Alexander
Theodore R. Alexander, Landowner

4/24/02
Date

William H. Gill
William H. Gill, Field Supervisor
Ecological Services, USFWS

4/30/02
Date

Ralph O. Morganweck
Ralph O. Morganweck, Regional Director,
Region 6, USFWS

5/24/02
Date