

**Second Century Habitat Program  
Landowner Agreement [2019]**

This Agreement is made on the date executed below by and between the Second Century Habitat Fund (the "Fund") and

\_\_\_\_\_

Landowner

\_\_\_\_\_

Address, City, State Zip

\_\_\_\_\_

Phone number

\_\_\_\_\_

Email address

(hereinafter referred to as the "Landowner").

Whereas, the Landowner owns private land and desires to restore habitat on those private lands and support the goal of the Second Century Habitat Initiative to improve wildlife habitat in South Dakota; and

Whereas, the Fund desires to provide the Landowner with advice, seed for planting, and compensation;

NOW THEREFORE, these parties agree as follows:

1. Premises. The Landowner owns land within \_\_\_\_\_ of Section \_\_\_\_, Township \_\_\_\_, Range \_\_\_\_, of \_\_\_\_\_ County, South Dakota, and enrolls \_\_\_\_\_ acres in the Second Century Habitat Program to establish perennial nesting and brood rearing habitat at:

Lat \_\_\_\_\_

Long \_\_\_\_\_

The acreage enrolled in the Program is referred to herein as the "Premises" and is further described by the Map attached to this Agreement.

2. Payment. The Fund will pay the Landowner a one-time payment of \$150 per acre for \_\_\_\_\_ acres, enrolled in the Program, for a total payment of \$ \_\_\_\_\_. Such payment will be made within thirty (30) days from the Fund's approval of the Landowner's application to the Fund and will be the only payment to the Landowner under this Agreement during the Term specified below.

3. Term. The term of this Agreement will be for **5** years beginning **October 1, 2019** and ending **September 30, 2024**. Future enrollment or renewals will depend on available funding.

4. Acreage Enrollment. Minimum acreage size per site is 10 acres with a maximum of 160 acres per participant.

5. Planting. The Landowner will work with the Fund to ensure proper preparation of the Premises prior to seeding. The Fund will provide the appropriate seed mixture(s) described in Table 1 attached at no cost to the Landowner. The Landowner is responsible for

planting (or causing to be planted) the seed mixture in the spring or fall as directed by the Fund. The Landowner will maintain the Premises in seeded habitat cover for the Term of this Agreement.

6. Cooperation. The Landowner grants to the Fund and to persons designated by the Fund, the authority to assist the Landowner to carry out activities and provide advisory, financial, and material support as described below. The activities conducted pursuant to this Agreement do not replace, supplement, or mitigate any other requirements of the Landowner pursuant to applicable state or federal laws or regulations, specifically practicing appropriate weed control per best practices and upon recommendations of the Fund.

7. Haying or Grazing Restriction. The Landowner agrees to:

- a. Not hay or graze the Premises during the first growing season;
- b. Only hay or graze the Premises during the second and subsequent growing seasons between August 1 and March 1;
- c. Hay no more than 50% of the Premises each year or the entire Premises every other year; and
- d. Graze only in a manner that maintains suitable vegetative structure for wildlife cover (an average minimum stubble height of 8 inches should be retained).

8. Termination. Either party may terminate this Agreement without cause by notifying the other party in writing at least ten (10) days prior to the planting of the seed mixture. If this Agreement is terminated by the Landowner after planting, then the Landowner must provide prior written notice to the Fund. If the Landowner breaches this Agreement after planting, the Fund may deem the Landowner in breach. In all cases, the Landowner must repay to the Fund the one-time payment made under section 2 and any cost of the seed provided (\$50/acre). The Landowner grants the Fund the right to file a lien on the Premises for any amounts not timely repaid to the Fund.

9. Assignment. This Agreement may be assigned to a subsequent owner under the same terms and conditions for the Premises for the term of this Agreement. A change in ownership of the Premises may be cause for termination of this Agreement, and repayment as described in section 7 above will be required, unless the Landowner notifies the Fund in writing at least thirty (30) days prior to the change in ownership of the Premises and the subsequent owner of the Premises agrees to maintain the seeded cover until the end of this Agreement by signing a new agreement with the same terms and conditions.

10. Representations and Warranties. On execution hereof, and during the Term of this Agreement, the Landowner represents and warrants that:

- a. The Landowner is the legal owner to the Premises;
- b. There are no outstanding rights in favor of any third party that interfere with this Agreement;
- c. The Premises is not enrolled in any other state (excluding Game, Fish and Parks' Walk-In Area access program) or federal program (excluding crop insurance);
- d. There are no easements on the Premises that would prevent it from being planted to a production crop;
- e. The Premises shall not become subject to any lease of hunting rights to a third party, excluding Game, Fish and Parks' Walk-In Area access program;
- f. Commercial and industrial uses of the Premises are prohibited, including any use inconsistent with the intent of the Fund to improve habitat;
- g. The Landowner will not use, and will not allow others to use, motorized vehicles on the Premises except as necessary to fulfill the purpose of this Agreement; provided that motorized vehicles for limited de minimus, non-commercial recreational use such as hunting or bird watching is permitted;
- h. The Landowner is solely responsible for pest and weed control and associated labor;
- i. The Landowner retains all rights to control trespass, except as provided in section 10 below, and retains all responsibility for taxes, assessments, and damage claims;
- j. The Landowner is responsible for securing any necessary permits; and
- k. The Landowner maintains farm or crop insurance on the Premises as the Landowner deems commercially reasonable.

Nothing in this Agreement may be construed as to grant any ownership of the Premises to the Fund.

11. Right to entry. The Fund, its designees, agents, or assignees, including Habitat Advisors, reserve the right to enter the Premises at reasonable times for wildlife habitat development, management, and inspection.

12. No paid hunting. All hunting rights are reserved in the Landowner, and the Landowner is prohibited from charging or receiving compensation from any person or private entity for hunting access on any property under the ownership or control of the Landowner.

13. Acres enrolled in the Second Century Habitat Program which are supported by funds generated through the auction of a bighorn sheep auction tag shall allow reasonable hunting access to non-family members who obtain proper permission.

14. Liability; Indemnity. At all times, the Landowner remains fully and completely responsible for the Premises and no liability or responsibility shall shift to the Fund. The Landowner agrees to indemnify and hold the Fund, its designees, directors, officers, agents, advisors, and employees, harmless from and against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing

services hereunder. This section does not require the Landowner to be responsible for or defend against claims or damages arising solely from errors or omissions of the Fund's designees, directors, officers, agents, advisors, or employees.

15. Lack of Funding. In the event funds are not available to do complete habitat development work within the Term or in the manner prescribed above, the Fund will advise the Landowner of the fact and may cancel this Agreement prior to the delivery of the seed and such termination shall not be deemed a breach. Notwithstanding any other provision of this Agreement to the contrary, the maximum liability of the Fund to the Landowner shall not exceed the obligation set forth in section 2 above.

16. Force Majeure. Neither party shall be liable nor deemed to be in default of its obligations hereunder for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, act of the public enemy, acts of terrorists, war, natural disasters or catastrophes, strikes or other work stoppages, or any other cause beyond the reasonable control of the parties hereto.

17. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to, arising out of, or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

18. Modification. This Agreement may only be modified by mutual written consent of both parties.

19. Severability. In the event any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

20. Entire Agreement. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

\_\_\_\_\_  
Landowner (signature)

\_\_\_\_\_  
Date

Second Century Habitat Fund

\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Date

## Second Century Habitat Program Landowner Agreement [2019]

### Table 1-Seeding Mixtures

Identify the number of acres enrolled in the Program that will be planted with each type of seeding mixture:

- a) \_\_\_\_\_ acres of Saline-Wet seed mix  
b) \_\_\_\_\_ acres of Upland seed mix

Provide the shipping address of seed (*if different from Landowner address*)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_

#### Saline-Wet Mix - 1 Acre

Common Name	LBS/Acre
Alfalfa (SalinityMax) (Pre-Inoculated)	1.500
AC Saltlander Green Wheatgrass	1.150
Creeping Foxtail	0.300
Intermediate Wheatgrass	3.000
Tall Wheatgrass	3.500
Barley (Uncertified)	3.540
Common Milkweed	0.010
Slender Wheatgrass	1.500
Switchgrass	0.500
Total Seeding Rate (LB/Acre)	15.000

#### Upland Mix - 1 Acre

Common Name	LBS/Acre
Alfalfa (Vernal, SD Common, or VNS)	1.700
Intermediate Wheatgrass	2.300
Pubescent Wheatgrass	2.300
Tall Wheatgrass	2.250
Oats (Uncertified)	3.000
Black-Eyed Susan	0.020
Common Milkweed	0.010
Grayhead Coneflower/Yellow Coneflower	0.020
Maximilian Sunflower	0.040
Plains Coreopsis	0.020
Prairie Coneflower/Longheaded Coneflower	0.020
Purple Prairie Clover	0.040
White Prairie Clover	0.030
Big Bluestem	1.200
Switchgrass	0.850
Western Wheatgrass	1.200
Total Seeding Rate (LB/Acre)	15.000

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**Attachment - Map**

Attached to this Agreement is a map that identifies the following information:

- Name of the Landowner
- Legal description of the Premises
- Aerial imagery background of the Premises
- Labeled roads
- Outlined acreage areas, number of acres in each area, and which seed mixture (Saline/Wet or Upland) in each area.