

MEMORANDUM OF AGREEMENT

The _____ (Local Sponsor) and the Ohio Department of Agriculture (ODA) agree to a partnership under this Memorandum of Agreement (MOA or Agreement) to support the Farm and Ranch Lands Protection Program for assistance in the receipt of federal funds for the purchase of conservation easements.

LEGAL AUTHORITY

The ODA has the authority set forth in Revised Code 901.01, et seq. and 5301.01, et seq. to enter into agreements with Local Sponsor for the accomplishment of the purposes for carrying out those above-mentioned sections of the Revised Code.

BACKGROUND AND PURPOSE

Section 901.21 of the Ohio Revised Code authorizes the Director of Agriculture to acquire real property used predominately in agriculture, and R.C. Section 901.22 authorizes the Director of Agriculture to develop guidelines and provide technical assistance in the development of a program to facilitate and provide funding to local sponsors for the purchase of agricultural easements for the purpose of protecting the agricultural use of land, including cooperation with a local sponsor in acquiring such agricultural easements.

WHEREAS, the Local Sponsor and ODA have mutual interests in maintaining farmland in agriculture and food production, Ohio's number one industry, and preventing the conversion of agricultural lands to non-agricultural uses; and

WHEREAS, ODA is willing to obligate those funds previously received from the Farm and Ranch Lands Protection Program (FRPP) for the purchase of conservation and agricultural easements as outlined for the properties referenced in this Agreement, and relinquish any right of reimbursement for the use of those funds with FRPP; and

WHEREAS, the Local Sponsor is willing to provide the resources for the completion of the appropriate paperwork and services to gain the referenced properties under FRPP as described in Exhibit A. These areas are referred to under this Agreement as parcels (as a group the "Protected Properties" and individually as the "Protected Property"); and

WHEREAS, the Local Sponsor intends to acquire a perpetual deed of agricultural easement in favor of the Director of ODA and Local Sponsor with joint and survivorship rights ("Agricultural Easement" or Agricultural Easement Deed) on each Protected Property; and

THEREFORE, the parties agree to enter into this Memorandum of Agreement.

WORK PLAN

1. The Local Sponsor Staff will work with the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) to obtain funds under FRPP for the protection of farm and ranch lands from conversion to non-agricultural use. These services will include, but not be limited to, the completion of all requested documents and services outlined in any Cooperative Agreement with NRCS. Local Sponsor will find and obtain landowners within their respective service areas whose lands comply with the current agricultural easement purchase program (AEPP) requirements and shall obtain the rights for an agricultural easement on said land, with ODA and Local Sponsor being the joint owners of such easement. The Protected Properties so obtained by Local Sponsor shall be listed in Exhibit A to this Agreement. All deeds for such agricultural easements shall be approved

by ODA prior to closing, and no changes or modifications shall be made said deeds without the prior written approval of ODA.

2. Nothing in this Agreement obligates ODA to complete the agricultural easement. There may be modifications, additions, or deletions to Exhibit A depending on the ability to obtain good and clear title and local input regarding the implementation of an agricultural easement. Additions to Exhibit A must have pre-approval from ODA. The additions and deletions must be made by a formal amendment to this Agreement.

CONSIDERATION

1. In exchange for naming ODA a grantee on the easement, ODA agrees to pay the respective Landowner an amount up to <<Dollars (\$00,000.00)>>, as more fully described on Exhibit A. Further, ODA agrees that Local Sponsor may seek reimbursement for the payment of such funds by ODA from FRPP as administered by NCRS, and ODA will not seek such reimbursement for the Protected Properties from FRPP. {Optional} Finally, ODA shall obtain on behalf of Local Sponsor title commitment and title insurance policies, for which Local Sponsor shall reimburse ODA upon invoice.
2. Local Sponsor must utilize any reimbursement funds received from FRPP in furtherance of farmland preservation activities and obtaining additional agricultural conservation easements within the Counties of <<_____>>. Such determination of appropriate activities will be in the discretion of the Director of Agriculture. Local Sponsor may submit a list of activities which it intends to use the funds to the Director to be pre-approved if desired.
3. ODA will provide the payment to Landowner in the amount approved on Exhibit A at the closing of the respective Protected Properties ("Closing Date"). The Closing Date shall occur within thirty (30) days prior to the termination of this Agreement unless otherwise amended or agreed in writing between the parties. All obligated funds not utilized by June 30, 2013 shall be de-obligated under this Agreement. During the performance of the services required by this Agreement and for a period of three years after its completion, Local Sponsor shall maintain auditable records of all charges which detail the manner in which the FRPP reimbursement funds are being utilized to obtain agricultural conservation easements and further farmland preservation activities. These records will detail the manner in which funds received under this Agreement were expended and will include the names of the persons engaged in the services to obtain the easements and/or farmland preservation activities and the cost; and all other expenses for which the funds were utilized. ODA may request the records at any time and the Local Sponsor shall, upon request, forward the requested records within forty-five (45) days of the request unless otherwise agreed. If ODA determines that any of the funds are not being utilized for the services as detailed in this MOA, ODA may immediately terminate this MOA and declare the Local Sponsor to be in breach of this Agreement. ODA reserves the right to require additional information or seek clarification of information contained in the auditable records.
4. ODA shall submit an invoice to the Local Sponsor for the title commitment and title insurance costs for the respective Protected Properties no later than sixty (60) days after the closing on the respective Protected Property but in no case shall the invoice be submitted later than 30 days prior to the termination of this Agreement. The invoice shall contain a description of the commitments and title policies obtained and the sum due at that time pursuant to this Agreement.
5. The provisions of Sections 126.07 and 126.30 of the Revised Code apply to this Agreement. Should funding not be provided by either NRCS or the State, this Agreement will terminate upon written notice from ODA to Local Sponsor with no further obligation on the part of ODA.

AGENCY RESPONSIBILITY

The Local Sponsor agrees to indemnify and to hold ODA and the State of Ohio, its employees, agents, and assigns, harmless and immune from any and all claims for injury or damages, losses, expenses, fines, fees, penalties, actions, sanctions or judgments arising from this Agreement which are attributable to the past, present or future respective actions or omissions of Local Sponsor or those of its or their respective trustees, officers, employees, subcontractors, suppliers, third parties utilized by the Local Sponsor, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks. In no event shall ODA or its employees or agents be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as, but not limited to, delay, disruption, or loss of anticipated profits or revenue. In the event of a dispute between the parties regarding claims or judgments awarded against the State under this Agreement, the Attorney General or his designee shall determine the respective obligations and liability of each party.

With regard to any obligations, liabilities, damages, fines, fees, penalties, claims, judgments, costs, expenses, attorneys fees and costs, demands, or cost of any kind regarding the Cooperative Agreement which Local Sponsor enters into with NCRS, Local Sponsor shall be responsible for any and all obligations which arise under or which are related to that Cooperative Agreement. In the event that ODA shall be obligated to act as a party to or secondary beneficiary to that certain Cooperative Agreement, Local Sponsor shall indemnify and hold harmless ODA from any and all costs, liabilities, damages, penalties, fees, claims, demands, judgments, suits, attorneys fees, or any other type of expense, demand, or claim of any kind which arises under or is related to that Cooperative Agreement.

DURATION OF AGREEMENT

The MOA shall be effective at 12:01 a.m. on _____, 2013 and shall terminate at 11:59 p.m. on June 30, 2013. If the parties agree to extend the length of the agreement, the parties must do so in writing.

The Accounting should be sent to:

Denise Franz King, Executive Director
Office of Farmland Preservation
8995 East Main Street
Reynoldsburg, Ohio 43068

COMPLIANCE WITH LAWS

Local Sponsor and ODA agree to comply with all applicable federal, state and local laws and regulations in the conduct of its work hereunder including but not limited to Ohio Revised Code Section 125.111. In the event that any provision of this contract conflicts with any law, rules or regulations, said law, rule or regulation shall prevail. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all applicable statutory provisions of the Ohio Revised Code, including but not limited to R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available, encumbered and forthcoming from the appropriate state agencies or responsible third party entities, and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

DRUG-FREE AND SMOKE-FREE WORKPLACE

Local Sponsor and ODA agree to comply with the applicable state and federal laws regarding a drug-free and smoke-free workplace and shall make a good faith effort to ensure that all its subcontractors, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

DESIGNATED CONTACTS

The contacts for the respective parties are as follows:

Denise Franz King, Executive Director
Office of Farmland Preservation
8995 East Main Street
Reynoldsburg, Ohio 43068

[Insert Local Sponsor/Agency Name](#)
[Insert Local Sponsor/Agency Contact](#)
[Insert Local Sponsor/Agency Address](#)
[Insert Local Sponsor/Agency Phone Numbers](#)

OHIO ETHICS LAW REQUIREMENTS

1. Local Sponsor shall adhere to the requirements of the Ohio Ethics Law as provided by Section 102.04 of the Ohio Revised Code. Division A of this Section prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding, application, or other matter before any state agency. Local Sponsor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2011-03K. Local Sponsor further represents, warrants, and certifies that neither Local Sponsor nor any of its employees will do any act that is inconsistent with such laws and Executive Order. The Governor's Executive Orders may be found by accessing the following website:
<http://governor.ohio.gov/GovernorsOffice/ExecutiveOrdersDirectives/tabid/105/Default.aspx>.
2. Local Sponsor hereby certifies that neither Local Sponsor nor any of Local Sponsor's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. Section 3517.13.
3. Local Sponsor certifies that it does not have on its staff, payroll, or otherwise employed for monetary compensation or not, any employee who, within the past twelve months, was a public official or employee with ODA or any other board, commission or agency of the State of Ohio who had the ability to make decisions regarding approval, disapproval, recommendation, rendering advice, investigation or otherwise exercised substantial administrative control over matters concerning Local Sponsor at the time of his or her state employment.
4. No personnel of Local Sponsor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is in compatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work. This includes the involvement of any personnel of Local

Sponsor to place an easement on a property in which a person who is an immediate family member or household member of an employee or board member, with decision-making involvement in matters related to easement acquisition and management, has a property interest. Further, the Local Sponsor agrees to generally conduct itself in a manner so as to protect the integrity of Agricultural Easements which it holds as well as avoid the appearance of impropriety or actual conflicts of interests in its acquisition and management of agricultural easements, and shall implement a conflict of interest policy as approved by ODA.

5. Charitable organizations shall continue to meet the requirements specified in Ohio Administrative Code Chapter 901-2-04.

INDEPENDENT CONTRACTOR

1. It is expressly understood that Local Sponsor and ODA are contractors independent of one another, and that neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other. Local Sponsor shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Local Sponsor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.
2. The work contemplated in this Agreement is to be performed by Local Sponsor, who may subcontract without ODA's approval for the purchase of articles, supplies, components, or special mechanical services which are required for its satisfactory completion. All work subcontracted shall be at Local Sponsor's expense.

ASSIGNMENT

Neither this MOA nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

CONDITIONS AND WARRANTIES

1. Local Sponsor warrants it has the necessary background, training, and skills to provide ODA with the essential services required for the performance of the work set forth in this Agreement and will provide its best efforts in the performance of this Agreement. Best efforts shall be defined as being efforts performed in a workmanlike manner according to the highest professional standard for the purpose intended. There will be no breach of this covenant if Local Sponsor is prevented from maintaining this standard by causes wholly beyond its control and without any default on its part.
2. Local Sponsor warrants it has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payment incurred by the State in this Agreement may be applied against such liabilities currently owing or incurred in the future.
3. Local Sponsor warrants it is not listed with the Secretary of State for unfair labor practices, pursuant to Ohio Revised Code 121.23.
4. Local Sponsor warrants that it has not entered into nor shall it enter into other agreements, without written approval of ODA, to perform substantially identical work for the State of Ohio such that the work done or to be done under the other agreement.

5. Local Sponsor affirmatively represents and warrants to the State that it is not subject to a finding for recovery under R.C. Section 9.24, or that it has taken the appropriate remedial steps required under R.C. Section 9.24 or otherwise qualifies under that section.
6. Local Sponsor agrees that if any representations and warranties are deemed to be false, the Agreement shall be void *ab initio*, and any funds paid by State hereunder shall be immediately repaid to State.

TERMINATION

ODA or Local Sponsor may terminate this Agreement for any reason within fifteen days of written notice of termination. ODA cannot make commitments in excess of funds authorized by law or made administratively available. If ODA cannot fulfill its obligations under this Agreement because of insufficient funds, this Agreement will automatically terminate. The Local Sponsor understands and agrees that no action arising out of or related to this Agreement may be brought by the Local Sponsor more than one (1) year after the cause of action accrued, regardless of the form of action. Local Sponsor agrees to waive any right to, and shall make no claim for, additional compensation against ODA by reason of such suspension or termination.

MISCELLANEOUS

1. This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes all prior and contemporaneous letters, correspondences, discussions and agreements among the parties with respect to all matters contained herein. A waiver by any party of any breach or default by another party, or failure of either party to enforce any provision of this Agreement or any course of conduct or industry standard shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement. This Agreement and the rights of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Ohio. The parties agree to venue in the Ohio courts located in Franklin County, Ohio, and both parties irrevocably waive any objections to convenience of forum. In the event that this Agreement should become subject to the jurisdiction of the Court of Claims, the parties agree that such jurisdiction shall be binding and take precedence over any other forum selection clauses of this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.
2. Pursuant to R.C. Section 125.111, Local Sponsor agrees that Local Sponsor, any subcontractor, and any person acting on behalf of Local Sponsor or subcontractor, will not discriminate, by reason of race, color, religion, sex, age, disability as defined in R.C. Section 4112.01, national origin, sexual orientation, military status, or ancestry against any citizen of this state in the hiring of any person qualified and available to perform the work under this Agreement and shall post notices regarding this provision. Local Sponsor further agrees that Local Sponsor, any subcontractor, and any person acting on behalf of Local Sponsor or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in R.C. Section 4112.01, national origin, sexual orientation, military status, or ancestry.
3. Local Sponsor warrants that it is not subject to an "unresolved" finding for recovery under R.C. Section 9.24. If this warranty is deemed to be false, this Agreement is void *ab initio* and the Local Sponsor must immediately repay to the ODA any funds paid under this Agreement.

4. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.
5. Local Sponsor represents and warrants that it is not debarred from consideration for contract awards by the Director of ODA of Administrative Services, pursuant to either R.C. Section 153.02 or R.C. Section 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Local Sponsor shall immediately repay to ODA any funds paid under this Agreement.
6. The Local Sponsor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Agreement. Local Sponsor shall perform no services required under this Agreement outside the United States and agrees to immediately notify the State of any Change or shift in the location(s) of services performed by the Local Sponsor or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside the United States. By signing this Agreement, Local Sponsor certifies that it is in, and will remain in, compliance with Executive Order 2012-12K and will not assign or subcontract the work under this Agreement to an entity outside the United States. Local Sponsor's representative has completed and signed the Affirmation and Disclosure Form found at: http://www.agri.ohio.gov/public_docs/forms/Admin/Admn_2201-006.pdf and will return it to ODA along with this Agreement.
7. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
8. ODA shall be excused from failures or delays in delivery or performance hereunder if such failure or delay is attributable to causes beyond the reasonable control of ODA which makes such performance or delivery commercially impractical and such failure or delay could not have prevented through reasonable precautions. In the event of any such delay, the time of delivery or performance or time of payment shall be extended for a period of time equal to the time lost by reason of such delay.
9. Under Chapter 2743 of Ohio's Revised Code the State of Ohio has waived its immunity from liability and consented to be sued and have its liability determined in its Court of Claims in accordance with the same rules of law applicable to suits between private parties, except to the extent the determination of the State of Ohio's liability is subject to limitations set forth in Revised Code Chapter 2743.

By signing this Memorandum of Agreement both agencies agree to honor their respective responsibilities herein and to fully abide by this Agreement.

_____ LOCAL SPONSOR

 Printed Name: _____

Its: _____

Date: _____

Witness: _____

STATE OF OHIO,
OHIO DEPARTMENT OF AGRICULTURE

By: _____
David T. Daniels, Director

Date: _____

Witness: _____

By: _____
Julie K. Phillips
Assistant Chief Legal Counsel

Date: _____

