

SAMPLE ESCROW AGREEMENT

ESCROW AGREEMENT (LAEPP 20__)

This Escrow Agreement (hereinafter "Agreement"), effective as of the _____ day of _____ 20__, ("Effective Date") is between **INSERT TITLE AGENT/AGENCY NAME, [Insert Title Agent/Agency Address]** (hereinafter "Escrow Agent"), **INSERT LANDOWNER'S NAME, [Insert Signee's Address]** (hereinafter "Landowner") and the **INSERT LOCAL SPONSOR'S NAME, [Insert Local Sponsor/Local Sponsor's Address]** (hereinafter "Local Sponsor"). The **OHIO DEPARTMENT OF AGRICULTURE**, as located at 8995 East Main Street, Reynoldsburg, OH 43068 (hereinafter "ODA") shall be considered a third party beneficiary of this Agreement.

Comment [BA1]: Make sure this information matches information provided to ODA for vendor-system and assignment of payment systems

RECITALS

WHEREAS, Local Sponsor and ODA intend to purchase a perpetual Easement from the Landowner for the property more fully described in the Purchase Agreement, attached hereto and incorporated herein as Exhibit A; and

WHEREAS, ODA requires an escrow agent to perform escrow and closing services for deposits (hereinafter "Deposit") received through the Local Sponsor from ODA; and

WHEREAS, Escrow Agent desires to perform such services and act as escrow agent pursuant to the terms and conditions contained in this Agreement, and Landowner and Local Sponsor desire to have Escrow Agent act in such capacity; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

AGREEMENT

I. NATURE OF CONTRACT

- 1.1 Escrow Agent shall be employed as an independent contractor to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Local Sponsor is the sole judge of the adequacy of such services.
- 1.2 The Local Sponsor and Landowner enter into this Agreement in reliance upon Escrow Agent's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Escrow Agent warrants that it does possess the necessary expertise and experience.
- 1.3 Escrow Agent shall perform the services to be rendered under this Agreement and the Local Sponsor shall not hire, supervise, or pay any assistants to Escrow Agent in its performance under this Agreement. The Local Sponsor shall not be required to provide any training to Escrow Agent to enable it to perform services required hereunder.

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II. SCOPE OF WORK

- 2.1 Escrow Agent has established an escrow account for the purpose of holding the Deposit to be made by Local Sponsor pursuant to the Purchase Agreement referenced herein at [REDACTED] Bank, a bank authorized to do business in the State of Ohio (“Escrow Account”).
- 2.2 All Deposits received from the Local Sponsor prior to closing shall be placed in the Escrow Account within five (5) business days of receipt of the Deposit by the Escrow Agent.
- 2.3 Within ten (10) business days of placing the Deposit in the Escrow Account, Escrow Agent shall provide written notice to the Local Sponsor and ODA confirming the Deposit. Failure to provide confirmation of the deposit may subject the instrument conveying the Deposit to cancellation by ODA.
- 2.4 Under no circumstances shall Local Sponsor or Landowner seek or accept release of the Deposit made by the Local Sponsor on behalf of ODA until after consummation of the Purchase Agreement, completion of any accompanying Closing Instructions as issued by ODA, completion of a final title review prior to the closing, delivery of an executed Deed of Agricultural Easement as signed by the Landowner, and consent has been provided by the Local Sponsor and ODA for release. After recordation of the Easement and in good faith that all instructions and conditions specified in the final ODA Closing Instructions and this Agreement have been satisfied, Escrow Agent shall pay all costs as itemized in ODA’s signed Settlement Statement out of the funds held in the escrow account. Once all other costs are paid, the remainder of the funds held in the escrow account shall then be disbursed to the landowner entitled to payment.
- 2.5 If Escrow Agent is not directed to release the Deposit pursuant to the paragraph above, and Escrow Agent receives a request by either Local Sponsor or Landowner to release the Deposit, then Escrow Agent must give both Local Sponsor and ODA prior written notice of not fewer than thirty (30) days before releasing the Deposit. If Escrow Agent has not received notice of objection to release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to the Local Sponsor and ODA of the release. If an objection is received within the thirty (30) day period, Escrow Agent shall continue to hold the Deposit until otherwise directed by the Local Sponsor and ODA pursuant to paragraph 2.4 above.
- 2.6 *The closing shall occur within ninety (90) days after receipt of the Deposit by the Escrow Agent.*
- 2.7 Local Sponsor may, from time to time as it deems appropriate, communicate specific instructions and requests to the Escrow Agent concerning the performance of the work described in this Agreement. Upon such notice, the Escrow Agent shall comply with such instructions and fulfill such requests to the satisfaction of Local Sponsor. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Agreement. The Escrow Agent shall retain responsibility for the management of the work, including the exclusive right to control or direct the manner or means by which the work described herein is performed. Local Sponsor retains the

Comment [BA2]: This must be completed

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right to ensure that the work of the Escrow Agent is in conformity with the terms and conditions of the Agreement.

III. TIME OF PERFORMANCE

- 3.1 The services described in the Scope of Work above (“Services”) shall be commenced on <<Begin Date>> and concluded on <<End Date>>.
- a. This Agreement shall remain in effect until the work described is completed to the satisfaction of the Local Sponsor and until Escrow Agent is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Escrow Agent’s Services, whichever is sooner.
 - b. As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2017.
 - c. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code (“ORC”) § 3517.13, ORC § 127.16, or ORC § 102.

Comment [BA3]: Begin date: Should be whenever you entered into a contract or agreement with the escrow agent for their services.

Comment [BA4]: End date: This date should be late enough to allow completion of closing and recording, but cannot go past the date in 3.1(b) below.

IV. COMPENSATION

- 4.1 The Local Sponsor shall pay Escrow Agent for services rendered no more than _____ and 00/100 Dollars (\$ _____). Escrow Agent shall be paid at the closing out of the proceeds paid by the Local Sponsor to the grantor of the agricultural easement. In the event that the closing does not take place after the Escrow Agent has completed the services, the Local Sponsor shall pay the Escrow Agent directly.
- 4.2 Escrow Agent shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.
- 4.3 Escrow Agent shall submit an invoice for the services performed at least thirty (30) days prior to closing consistent with this Article IV, Compensation. The invoice shall contain a description of the services performed and the sum due at that time pursuant to this Agreement.

Comment [BA5]: A dollar figure must be inserted. It should be enough to cover the title/escrow/recording costs.

V. CERTIFICATION OF FUNDS

- 5.1 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 ORC, including but not limited to § 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.

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VI. TERMINATION OF ESCROW AGENT'S SERVICES

- 6.1 The Local Sponsor may, at any time prior to the completion of services by the Escrow Agent under this Agreement, terminate this Agreement with or without cause by giving written notice to the Escrow Agent.
- 6.2 Upon notice of termination, Escrow Agent shall cease all work on the terminated activities under this Agreement, terminate all subcontracts relating to the terminated activities, take all necessary steps to limit disbursements and minimize costs, and if requested by the Local Sponsor, furnish a report, as of the date of receipt of notice of termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Local Sponsor requires.
- 6.3 Escrow Agent shall be paid for services rendered up to the date the Escrow Agent received notice of termination, less any payments previously made, provided Escrow Agent has supported such payments with detailed factual data containing services performed and hours worked. In the event of termination, any payments made by the Local Sponsor for which Escrow Agent has not rendered services shall be refunded.
- 6.4 In the event this Agreement is terminated prior to its completion, Escrow Agent, upon payment as specified, shall deliver to Local Sponsor all work products and documents which have been prepared by Escrow Agent in the course of providing services under this Agreement. All such materials shall become and remain the property of the Local Sponsor, to be used in such manner and for such purpose as the Local Sponsor may choose.
- 6.5 Escrow Agent agrees to waive any right to, and shall make no claim for, additional compensation against the Local Sponsor by reason of such termination.

VII. RELATIONSHIP OF PARTIES

- 7.1 The Local Sponsor and Escrow Agent agree that Escrow Agent shall be engaged by the Local Sponsor solely on an independent Escrow Agent basis, and Escrow Agent shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Escrow Agent 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.
- 7.2 While Escrow Agent shall be required to render services described hereunder for the Local Sponsor during the term of this Agreement, nothing herein shall be construed to imply, by reason of Escrow Agent's engagement hereunder as an independent Escrow Agent, that the Local Sponsor shall have or may exercise any right of control over Escrow Agent with regard to the manner or method of Escrow Agent's performance of services hereunder.

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- 7.3 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- 7.4 It is fully understood and agreed that the Escrow Agent is an independent contractor and is not an agent, servant or employee of the Local Sponsor or the State of Ohio.

VIII. RELATED AGREEMENTS

- 8.1 The work contemplated in this Agreement is to be performed by Escrow Agent, who may subcontract without the Local Sponsor's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in the Scope of Work but which are required for its satisfactory completion. Escrow Agent shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by the Local Sponsor. All work subcontracted shall be at Escrow Agent's expense.
- 8.2 Escrow Agent shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Local Sponsor to terms inconsistent with, or at variance from, this Agreement.
- 8.3 Escrow Agent warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Local Sponsor, to perform substantially identical work such that the product contemplated hereunder duplicates the work called for by the other agreements.
- 8.4 Escrow Agent shall furnish to the Local Sponsor a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

IX. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

- 9.1 No personnel of Escrow Agent 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.
- 9.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Local Sponsor in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Local Sponsor shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

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X. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

- 10.1 The Local Sponsor shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Escrow Agent pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Escrow Agent by the Local Sponsor shall be subject to copyright by Escrow Agent in the United States or any other country.
- 10.2 Escrow Agent agrees that all deliverables or original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the Local Sponsor. Any requests received by Escrow Agent should be referred to the Local Sponsor.

XI. CONFIDENTIALITY

- 11.1 Escrow Agent shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Local Sponsor.
- 11.2 All provisions of this Agreement relating to “confidentiality” shall remain binding upon Escrow Agent in the event of cancellation.

XII. LIABILITY

- 12.1 The Escrow Agent and Landowner each agree to indemnify and to hold ODA, the State of Ohio, and Local Sponsor harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to the respective actions or omissions of Escrow Agent or Landowner or those of its or their respective trustees, officers, employees, subcontractors, suppliers, third parties utilized by the Escrow Agent and Landowner, 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.
- 12.2 The Escrow Agent and Landowner shall bear all costs associated with defending the Local Sponsor and the State of Ohio against any claims for their own respective acts or omissions.
- 12.3 In no event shall any party of this Agreement be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

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XIII. REPORTS, NOTICES

13.1 All reports, notices, copies, requests, consents, approvals and other communication required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if hand delivered or sent by U.S. registered or certified mail, postage prepaid:

a. with respect to ODA:

Ohio Department of Agriculture
Office of Farmland Preservation
8995 E. Main Street
Reynoldsburg, Ohio 43068-3399
Attn: Executive Director, Office of Farmland Preservation
Telephone: 614-728-6210

b. with respect to Local Sponsor:

Insert Local Sponsor/Agency Name
Insert Local Sponsor/Agency Contact
Insert Local Sponsor/Agency Address
Insert Local Sponsor/Agency Phone Numbers

c. with respect to Landowner:

Insert Landowner's Name
Insert Signee's Address
Insert Signee's Phone

d. with respect to Escrow Agent:

Insert Title Agent/Agency Name
Insert Title Agent/Agency Contact
Insert Title Agent/Agency Address
Insert Title Agent/Agency Phone Numbers

XIV. MISCELLANEOUS

14.1 Counterparts - 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.

14.2 Entire Agreement/Waiver - This Agreement contains the entire agreement between the parties hereto regarding escrow activities 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 under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

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- 14.3 Governing Law - 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 that only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performances thereunder.
- 14.4 Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties, provided, however, that Landowner shall have no right to assign any rights hereunder or with respect to the Purchase Price except as permitted with respect to assignment of Landowner's rights under the Purchase Agreement and/or Section 1031 exchange which must be completed prior to the closing date. Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part without the prior written consent of ODA.
- 14.5 Record Keeping - During the performance of the services required by this Agreement and for a period of three years after its completion, Escrow Agent shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the parties as the parties may reasonably require.
- 14.6 Nondiscrimination - Pursuant to ORC § 125.111, Escrow Agent agrees that Escrow Agent, any subcontractor, and any person acting on behalf of Escrow Agent or subcontractor, will not discriminate, by reason of race, color, religion, sex, age, disability as defined in ORC § 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. Escrow Agent further agrees that Escrow Agent, any subcontractor, and any person acting on behalf of Escrow Agent 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 ORC § 4112.01, national origin, sexual orientation, military status, or ancestry.
- 14.7 Compliance with Laws - Escrow Agent, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances. Escrow Agent affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the contract period Escrow Agent, for any reason, becomes disqualified from conducting business in the State of Ohio, Escrow Agent will immediately notify the Local Sponsor in writing and will immediately cease performance of contract activities.
- 14.8 Drug Free Workplace - Escrow Agent agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed hereunder do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- 14.9 Findings for Recovery - Escrow Agent warrants that it is not subject to an "unresolved" finding for recovery under ORC § 9.24. If this warranty is deemed to be false, this Agreement is void ab initio and the Escrow Agent must immediately repay to the Landowner any funds paid under this Agreement.

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- 14.10 Headings - The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 14.11 Severability - 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.
- 14.12 Debarment - Escrow Agent represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC § 153.02 or ORC § 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Escrow Agent shall immediately repay to ODA any funds paid under this Agreement.

[Signatures begin on the following page]

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IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized agents as of the Effective Date.

LANDOWNER

LOCAL SPONSOR

Insert Signature Info
Insert Signee's Address

Insert Signature Info
Insert Signee's Address

Date: _____

Date: _____

LANDOWNER

Insert Signature Info
Insert Signee's Address

Date: _____

ESCROW AGENT

Insert Title Agent/Agency Name
Insert Title Agent/Agency Contact
Insert Title Agent/Agency Address

Date: _____