

**AGREEMENT
BETWEEN
OHIO DEPARTMENT OF AGRICULTURE
AND
<<TITLE AGENT/AGENCY NAME>>**

This Agreement is made and entered into on this _____ day of _____ 2013 by and between the **State of Ohio, Department of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio 43068, (“**Department**”) and <<Title Agent/Agency Name>>, <<Address>>, City, State Zip (“**Contractor**”), who hereby agree as follows:

WHEREAS, the Department desires to engage Contractor to perform title search, commitment, escrow and closing services; and

WHEREAS, Ohio Revised Code Section 901.21 empowers the Department to acquire agricultural easements and to do all things necessary to retain land acquired thereby predominantly in agricultural use; and

WHEREAS, the Department is proposing to purchase an agricultural easement using funds from the Clean Ohio Agricultural Easement Purchase Program; and

WHEREAS, the Department deems it necessary to conduct a title search, obtain title insurance and secure an escrow agent for closing for such purposes; and

WHEREAS, Contractor desires to perform such services for the Department in accordance with the terms and conditions prescribed by the Department;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I: NATURE OF CONTRACT

- 1.1 Contractor 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 Department is the sole judge of the adequacy of such services.
- 1.2 The Department enters into this Agreement in reliance upon Contractor’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.
- 1.3 Contractor shall perform the services to be rendered under this Agreement and the Department shall not hire, supervise, or pay any assistants to Contractor in its performance under this Agreement. The Department shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

- 1.4 The Department may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this Agreement. Upon such notice and within a reasonable time, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of the Department. It is expressly understood by the parties that the instructions and requests are for the sole purpose of performing the specific tasks requested and to ensure satisfactory completion of the work described in this Agreement.

ARTICLE II. SCOPE OF WORK

- 2.1 The Contractor shall perform the services set forth in Exhibit A, Scope of Work, for the property described in Exhibit B, both attached hereto and incorporated by reference as if fully rewritten herein.
- 2.2 The closing shall occur within ten (10) business days ("Closing Date") after the ODA Office of Farmland Preservation forwards the Escrow Agreement with Purchase Payment to Escrow Agent.
- 2.3 ODA may, from time to time as it deems appropriate, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this contract. Upon such notice, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of ODA. 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 contract. The Contractor 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. ODA retains the right to ensure that the work of the Contractor is in conformity with the terms and conditions of the Agreement. Contractor is to accept direction only from ODA in the performance of work contained in this Agreement and set forth in Exhibit A, unless explicitly stated otherwise in writing by ODA.

ARTICLE III. TIME OF PERFORMANCE.

- 3.1 The services as stated in Exhibit A, Scope of Work, shall be commenced on <<Begin Date>> and concluded on or before the due date set forth in Exhibit B, excluding the recording of the easement. The recording of the easement shall occur on or before <<Recording Deadline>>.
- 3.2 This Agreement shall remain in effect until the work described in Exhibit A, Scope of Work, is completed to the satisfaction of the Department and until Contractor is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Contractor's Services, whichever is sooner.

- 3.3 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than_____. ODA may renew this Agreement once on the same terms and conditions by giving the Contractor written notice prior to _____.
- 3.4 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 (“R.C.”) 3517.13, R.C. 127.16, or R.C. Chapter 102.

ARTICLE IV. COMPENSATION.

- 4.1 The Department shall pay Contractor for services rendered no more than _____ and 00/100 Dollars (\$_____). Contractor shall be paid at the closing out of the proceeds paid by the Department to the grantee of the agricultural easement. In the event that the closing does not take place after the Contractor has completed the work described in Exhibits A and B, the Department shall pay the Contractor directly.
- 4.2 The total amount due was computed according to the cost schedule set forth in Exhibit B.
- 4.3 Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.
- 4.4 Contractor 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.
- 4.5 Payment for Contractor services shall be made after all documents are recorded as required by the closing of the agricultural easement.

ARTICLE 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 relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that the Department gives Contractor written notice that such funds have been made available to the Department by the Department’s funding source.

ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES

- 6.1 The Department may, at any time prior to the completion of services by the Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to the Contractor.
- 6.2 Upon notice of suspension or termination, Contractor shall cease all work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary steps to limit disbursements and minimize costs, and if requested by the Department, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Department requires.
- 6.3 Contractor shall be paid for services rendered up to the date the Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Department for which Contractor has not rendered services shall be refunded.
- 6.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Department all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of the Department, to be used in such manner and for such purpose as the Department may choose.
- 6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the Department by reason of such suspension or termination.
- 6.6 Contractor may terminate this Agreement upon thirty (30) days prior written notice provided to the Department.

ARTICLE VII: RELATIONSHIP OF PARTIES

- 7.1 The Department and Contractor agree that Contractor shall be engaged by the Department solely on an independent contractor basis, and Contractor shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Contractor 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 Contractor shall be required to render services described hereunder for the Department during the term of this Agreement, nothing herein shall be construed to

imply, by reason of Contractor's engagement hereunder as an independent contractor, that the Department shall have or may exercise any right of control over Consultant with regard to the manner or method of Contractor's performance of services hereunder.

- 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 Contractor is an independent contractor and is not an agent, servant or employee of the Department or the State of Ohio.

ARTICLE VIII: RECORD KEEPING

- 8.1 During the performance of the services required by this Agreement and for a period of three years after its completion, the Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the Department as the Department may reasonably require.

ARTICLE IX: RELATED AGREEMENTS

- 9.1 The work contemplated in this Agreement is to be performed by Contractor, who may subcontract without the Department'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 Exhibit A, Scope of Work, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by the Department. All work subcontracted shall be at Contractor's expense.
- 9.2 Contractor 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 Department to terms inconsistent with, or at variance from, this Agreement.
- 9.3 Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Department, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.
- 9.4 Contractor shall furnish to the Department a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

ARTICLE X: CONFLICTS OF INTEREST AND OFFSHORE LABOR PROHIBITION

- 10.1 No personnel of Contractor 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.

- 10.2 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 Department in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Department 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.
- 10.3 The Grantee affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Grant Agreement. Grantee shall perform no services required under this Grant 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 Grantee or its subcontractors under this Grant Agreement, and no services shall be changed or shifted to a location(s) that are outside the United States.
- 10.4 By signing this Grant Agreement, Grantee certifies that it is in, and will remain in, compliance with Executive Order 2011-12K and will not assign or subcontract the work under this Grant Agreement to an entity outside the United States. Grantee'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 Grant Agreement.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

- 11.1 Pursuant to R.C. 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, sexual orientation, military status, ancestry, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.
- 11.2 Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a 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, national origin, sexual orientation, military status, ancestry, or disability.
- 11.3 Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.

ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

- 12.1 The Department shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by the Department shall be subject to copyright by Contractor in the United States or any other country.
- 12.2 Contractor 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 Department. Any requests received by Contractor should be referred to the Department.

ARTICLE XIII: CONFIDENTIALITY

- 13.1 Contractor shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Department.
- 13.2 All provisions of this Agreement relating to “confidentiality” shall remain binding upon Contractor in the event of cancellation.

ARTICLE XIV: LIABILITY

- 14.1 Contractor agrees to indemnify and to hold the Department and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor’s own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by Contractor, 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.
- 14.2 Contractor shall bear all costs associated with defending the Department and the State of Ohio against any claims as outlined in paragraph 14.1.
- 14.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

ARTICLE XV: COMPLIANCE WITH LAWS

- 15.1 Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

- 15.2 Contractor 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 Contractor, for any reason, becomes disqualified from conducting business in the State of Ohio, Contractor will immediately notify the Department in writing and will immediately cease performance of contract activities.

ARTICLE XVI: DRUG FREE WORKPLACE

- 16.1 Contractor 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 none of its employees or permitted subcontractors purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way when they are engaged in the work being performed hereunder.

ARTICLE XVII: CAMPAIGN CONTRIBUTIONS

- 17.1 Contractor hereby certifies that neither Contractor nor any of Contractor's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. 3517.13.

ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER

- 18.1 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.
- 18.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 18.3 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XIX: NOTICES

- 19.1 All notices, consents, requests and other communications hereunder shall be in writing and shall be deemed to be given upon receipt thereof, and shall be sent to the addresses set forth hereunder or to such other address as the other party hereto may designate by written notice transmitted in accordance with this provision.

- 1). In case of the Department to:
Ohio Department of Agriculture

Office of Farmland Preservation
8995 East Main Street
Reynoldsburg, Ohio 43068

- 2). In case of the Contractor, to:
<<Title Agency Name>>
Attn: <<Contact Person>>
<<Address>>
<<City, State Zip>>

ARTICLE XX: HEADINGS

20.1 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.

ARTICLE XXI: SEVERABILITY

21.1 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.

ARTICLE XXII: CONTROLLING LAW

22.1 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. Contractor agrees that only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performances thereunder.

ARTICLE XXIII: SUCCESSORS AND ASSIGNS

23.1 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Contractor, without the prior written consent of the Department.

ARTICLE XXIV: FINDINGS FOR RECOVERY

24.1 Contractor warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is found to be false, this Agreement is void ab initio and the Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXV: DEBARMENT

25.1 Contractor 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 R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXVI: DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

26.1 Contractor hereby represents and warrants to the Department that it has not provided any material assistance, as that term is defined in R.C. 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered “no” to every question on the “Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization,.” Available at <http://homelandsecurity.ohio.gov/dma/dma.asp>. Contractor further represents and warrants that it has provided or will provide such to the Department prior to execution of this Agreement.

26.2 If these representations and warranties are found to be false, this Agreement is void ab initio and Contractor shall immediately repay to the Department any funds paid under this Agreement.

ARTICLE XXVII: EXECUTION

27.1 This Agreement is not binding upon the Department unless executed in full.

ARTICLE XXVIII: ANTITRUST ASSIGNMENT

28.1 Contractor agrees to assign to the Department all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

ARTICLE XXIX: CONFLICT

29.1 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

CONTRACTOR:

<<Title Agency Name>>

<<Address>>

<City, State Zip>>

By: _____

Name: _____

Title: _____

Date: _____

Federal Tax Identification Number:

DEPARTMENT:

State of Ohio

Department of Agriculture

8995 East Main Street

Reynoldsburg, OH 43068-3399

By: _____

NAME, TITLE

Date: _____

APPROVED:

By: _____

Counsel

Date: _____

**APPROVED AS TO FORM:
ATTORNEY**

By: _____

NAME

TITLE

Date: _____

Exhibit A

SCOPE OF WORK

- A. Title Search. The Contractor, under the direction and to the satisfaction of the Department, shall search the public records concerning the titles to the parcels of such real estate as delineated in the Agricultural Easement Parcel Number List attached hereto as Exhibit B and incorporated herein by reference. The Contractor shall submit a written report, in a form acceptable to the Department, as to each parcel, each of which shall include the factual information enumerated below, to the extent that such information can be ascertained from a search of the public records relating to the title of said real estate. The search shall cover a period sufficient to satisfy the State that all matters presently affecting the title have been found, but in no event for a period less than ninety (90) years. The search shall be documented in a Commitment for Title Insurance, which should include at a minimum the following:
1. The name, address, and marital status of record holder or holders of title.
 2. The name, address of spouse, if any, a record holder or holders of title.
 3. List of the combined actual total acreage for the entire interest in land being acquired in the Easement.
 4. The names, and if it appears of record, the address, of the owners of any encumbrances upon or interest in the real estate, such as mortgages, land contract, leases, easements, rights-of-way, mineral rights or reservations, together with the recording references and dates thereof.
 5. Unsatisfied executions and lien judgments, foreign or domestic, or pending suits of record in the courts of records and on file in the Sheriff's office and the Clerk of Court's office of said county, which may affect the title to the real estate examination.
 6. Any other tax liens, mechanics liens, recognizance liens, unemployment compensation liens, workers compensation liens or any other infirmity, encumbrances, liens, or cloud on title disclosed by the public records of the County where the real estate is located.
 7. The tax duplicate description, auditor's parcel number, current agricultural recoupment or use valuation, if applicable, and current tax valuation, including statement of taxes, assessment liens, penalties, and interest which have not been paid and are a lien.
 8. The gross acres of all parcels, minus highway rights-of-way and all other exclusions or transfers, in order to provide a net acreage of all parcels for the agricultural easement.
 9. Attach a complete copy of recorded deed of the land or parcels of land which make up an owner's property which are used as a unit of land acquired for Department purposes, together with the recording reference and dates thereof, and a statement of the total acreage to be acquired by the agricultural easement.
- B. Title Insurance Commitment
1. Contractor shall provide a title insurance commitment naming the Ohio department of agriculture

as an insured party.

C. Escrow Services

1. Contractor shall provide escrow services and shall serve as escrow agent at closing specified by ODA for the purchase of the agricultural easement.
2. Costs incurred for title services will be reimbursed to ODA through the title insurance company, as escrow agent, at closing by the respective landowner noted in Exhibit B as documented in the ODA approved settlement statement (HUD-1).

D. Closing

1. Contractor shall provide recording services surrounding the agricultural easement acquisition in the most cost effective manner on behalf of the Department subject to the pre-approval of the Department.
2. Unless otherwise agreed to in advance by the Department, Contractor shall schedule and conduct a "roundtable" closing for the agricultural easement at a mutually convenient place and time for all necessary parties.
3. The title agent will collect all required signatures for necessary documents and record the easement and any other necessary documents, in addition to any other items outlined in the Closing Letter.
4. ODA shall tender a lump sum payment to title insurance company, as escrow agent, for distribution to the landowner and/or landowner's assignee(s) in the proportions directed by the landowner.
5. All recorded original documents as requested in the Closing Letter must be returned to ODA as soon as possible.
6. Secure a policy of title insurance if the federal government is involved on A.L.T.A U.S. Policy Form 1991 for an amount specified by ODA or an A.L.T.A. U.S. Policy Form 2006 to the local sponsor when requested.
7. Secure an Owners Policy of title insurance for ODA.

Exhibit B

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: <<owner name(s)>>

Main Contact Information:

Property Location: <<location description>>

County:

Township:

Parcel Number:
<<parcel number>>

Acres:
<<acreage>>

Title Search:	\$<<amount>>	
Title Insurance Commitment:	\$<<amount>>	
Title Insurance Premium:	\$<<amount>>	
Title Update & Recording:	\$<<amount>>	
Recording Costs:	\$332.00	(\$28 first two pages, \$8 for each additional page, based on 40 pages)
Settlement Fee:	\$<<amount>>	
Copy Costs:	\$<<amount>>	
Courier Fee:	\$<<amount>>	
TOTAL:	\$<<total amount>>	
Title Search Due Date:	<<Month Day, Year>>	