

DONATED EASEMENT SERVICES AGREEMENT

This Services Agreement (hereinafter "Agreement"), effective as of the _____ day of _____ 2012, is between **INSERT LOCAL SPONSOR NAME, [Insert Local Sponsor Address]** (hereinafter "Local Sponsor") and the **OHIO DEPARTMENT OF AGRICULTURE**, 8995 East Main Street, Reynoldsburg, OH 43068 (hereinafter "ODA").

RECITALS

WHEREAS, ODA intends to accept as a donation to ODA a perpetual deed of agricultural easement in favor of the Director of ODA ("Agricultural Easement") from _____ (hereinafter "Landowner"), for the property located at _____ **[Insert Property Address]** more fully described in Exhibit A;

WHEREAS, ODA requires a Local Sponsor to perform closing services and monitor conformance of the Easement with ODA's Agricultural Easement Donation Partnership Program (hereinafter "AEDPP") and associated Guidelines, which are attached hereto as Exhibit B;

WHEREAS, Local Sponsor desires to perform such services and act as Local Sponsor pursuant to the terms and conditions contained in this Agreement, and ODA desires to have Local Sponsor 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. SCOPE OF WORK

- 1.1 The Parties to this Agreement shall perform the services set forth in Exhibit C, Scope of Work, for the property described in the attached Exhibit A.
- 1.2 Local Sponsor warrants it has the necessary background, training, and skills to provide ODA with the essential services required for and will provide its best efforts in the performance of the Scope of Work 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. Local Sponsor further warrants it has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments incurred by the State in this Agreement may be applied against such liabilities currently owing or incurred in the future.
- 1.3 Local Sponsor warrants it is not listed with the Secretary of State for unfair labor practices, pursuant to Ohio Revised Code 121.23.
- 1.4 All such deeds will be drafted by ODA. Local Sponsor shall ensure that no changes are made to the deed at closing without the express knowledge and permission of ODA.
- 1.5 The closing ("Closing Date") shall occur within thirty (30) days prior to the termination of this Agreement after ODA Office of Farmland Preservation forwards a signed copy of this Agreement.

- 1.6 ODA may, from time to time as it deems appropriate, communicate specific instructions and requests to the Local Sponsor concerning the performance of the work described in this Agreement, including the performance of Closing Instructions which an example of is provided in Exhibit D. Upon such notice, the Local Sponsor 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 Agreement. The Local Sponsor 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 Local Sponsor is in conformity with the terms and conditions of the Agreement. Local Sponsor is to accept direction only from ODA in the performance of work contained in this Agreement and set forth in Exhibits C and D, unless explicitly stated otherwise in writing by ODA.
- 1.7 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 and the Landowner must meet eligibility requirements outlined in the Guidelines. The additions and deletions must be made by a formal amendment to this Agreement and must contain the same deadlines for closing easements and requesting payment.

II. TIME OF PERFORMANCE

The services as stated in Exhibit C, Scope of Work, shall be commenced on <<Begin Date>> and concluded on June 30, 2013.

- 2.1 This Agreement shall remain in effect until the work described in Exhibit C, Scope of Work, is completed to the satisfaction of ODA and until Local Sponsor is paid in accordance with Article III, Compensation, or until terminated as provided in Article V, Termination of Local Sponsor's Services, whichever is sooner.
- 2.2 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2013. ODA may renew this Agreement on the same terms and conditions by giving the Local Sponsor written notice prior to June 30, 2013.
- 2.3 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.

III. COMPENSATION

- 3.1 ODA shall pay Local Sponsor for services rendered a base amount of Three Thousand and 00/100 Dollars (\$3,000.00) and no more than Four Thousand Five Hundred and 00/100 Dollars (\$4,500.00). Any amounts requested over the base amount shall require pre-approval in writing from ODA. Local Sponsor shall be paid by ODA after receiving the recorded agricultural easement and other documents outlined in ODA's closing instructions. Local Sponsor must have completed the necessary steps to become a state vendor.
- 3.2 The total amount due is computed according to the cost schedule set forth in Exhibit E.

- 3.3 Local Sponsor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement. ODA shall have no responsibility for the costs or management of the agricultural easement donated after payment as provided in this Agreement unless it exercises its rights under the Agricultural Easement.
- 3.4 Local Sponsor shall submit an invoice for the services performed no later than sixty (60) days after the closing 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 services performed and the sum due at that time pursuant to this Agreement.
- 3.5 If Agricultural Easements on all properties listed on Exhibit A are not closed or reimbursement is not requested by the dates indicated, any remaining funds may be released from this obligation unless a written request to extend the closing or reimbursement date is sent to the Office of Farmland Preservation within 30 days of such date.

IV. CERTIFICATION OF FUNDS

- 4.1 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 Ohio Revised Code ("R.C."), including but not limited to R.C. 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.

V. TERMINATION OF LOCAL SPONSOR'S SERVICES

- 5.1 ODA may, at any time prior to the completion of services by the Local Sponsor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to the Local Sponsor.
- 5.2 Upon notice of suspension or termination, Local Sponsor 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 ODA, 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 ODA requires. If the Local Sponsor materially fails to comply with the terms of this Agreement, ODA reserves the right to wholly or partially recapture funds provided in accordance with applicable regulations.
- 5.3 Local Sponsor shall be paid for services rendered up to the date the Local Sponsor received notice of suspension or termination, less any payments previously made, provided Local Sponsor has supported such payments with detailed factual data containing services performed, including but not limited to any documented out-of-pocket expenses made. In the event of suspension or termination, any payments made by ODA for which Local Sponsor has not rendered services shall be refunded. However, 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.
- 5.4 In the event this Agreement is terminated prior to its completion, Local Sponsor, upon payment as specified, shall deliver to Department all work products and documents which have been prepared by Local Sponsor in the course of providing services under this Agreement. All such materials shall become

and shall remain the property of ODA, to be used in such manner and for such purpose as ODA may choose.

- 5.5 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.

VI. RELATIONSHIP OF PARTIES

- 6.1 ODA and Local Sponsor agree that Local Sponsor shall be engaged by ODA solely on an independent contractor basis, and 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. 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. It is fully understood and agreed that the Local Sponsor is an independent contractor and is not an agent, servant or employee of ODA or the State of Ohio.

VII. RELATED AGREEMENTS

- 7.1 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.

VIII. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

- 8.1 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.
- 8.2 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 ODA in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless ODA 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.
- 8.3 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>.

8.4 Charitable organizations shall continue to meet the requirements specified in Ohio Administrative Code Chapter 901-2-04. The Administrative Code states that these organizations must submit to ODA the following which shall be attached as Exhibit F to this Agreement:

- (A) A copy of the organization's exemption under 26 U.S.C.1, subsection 501 (a) and 501(c);
- (B) A statement of the organization's stewardship endowment policy;
- (C) In order for the charitable organization to demonstrate to the director that it has the capability to monitor and enforce the agricultural easement, the organization must provide at the request of the director, information on the following:
 - (i) A copy of the organization's by-laws or regulations stating that farmland preservation is one of its purposes;
 - (ii) A list of the organization's financial condition, including a balance sheet, revenue and expense statement, and the financing available for monitoring and enforcing an agricultural easement;
 - (iii) A list of the organization's officers, board of directors, and members; and
 - (iv) The organization's ability to provide the necessary managerial, legal and financial expertise to hold, monitor, and enforce an agricultural easement.

IX. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

9.1 ODA shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Local Sponsor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Local Sponsor by ODA shall be subject to copyright by Local Sponsor in the United States or any other country.

9.2 Local Sponsor 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 ODA. Any requests received by Local Sponsor should be referred to ODA.

X. CONFIDENTIALITY

10.1 Local Sponsor shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of ODA.

10.2 All provisions of this Agreement relating to "confidentiality" shall remain binding upon Local Sponsor in the event of cancellation.

XI. CAMPAIGN CONTRIBUTIONS

11.1 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. 3517.13.

XII. LIABILITY

- 12.1 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 Landowner 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.
- 12.2 The Local Sponsor shall bear all costs associated with defending ODA and the State of Ohio against any claims for its 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.

XIII. REPORTS, NOTICES

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 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

Any and all notices and other documents and communications required to be given pursuant to this Agreement shall be deemed duly given: (i) upon actual delivery, if delivery is by hand or courier service; (ii) upon receipt by the transmitting party of confirmation or answer back if delivery is by facsimile or electronic means; or (iii) upon the third day following delivery into the U.S. mail if delivery is by regular U.S. mail. Each such notice shall be sent to the respective party at the address indicated first above or at any other address as the respective party may designate by notice delivered pursuant hereto.

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 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.
- 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 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.
- 14.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. 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, Local Sponsor 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 R.C. 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. 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 O.R.C. 4112.01, national origin, sexual orientation, military status, or ancestry.
- 14.7 Compliance with Laws. Local Sponsor, 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. Local Sponsor 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 Agreement period Local Sponsor, for any reason, becomes disqualified from conducting business in the State of Ohio, Local Sponsor will immediately notify ODA in writing and will immediately cease performance of Agreement activities.
- 14.8 Drug Free Workplace. Local Sponsor 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. Local Sponsor warrants that it is not subject to an "unresolved" finding for recovery under R.C. 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.
- 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. 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. 153.02 or R.C. 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.
- 14.13 Executive Order 2011-12K Compliance. 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.
- 14.14 Execution. This Agreement is not binding upon ODA unless executed in full.
- 14.15 Antitrust Agreement. Local Sponsor agrees to assign to ODA all state and federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.
- 14.16 Conflict. 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.
- 14.17 Delay. 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.
- 14.18 Court of Claims. 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.

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

LOCAL SPONSOR

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

Ohio Department of Agriculture

David T. Daniels
Director

The Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

This instrument was prepared by:
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

SAMPLE

**EXHIBIT A
PARCEL DESCRIPTION**

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

Owner: <<owner name(s)>>

Property Location: <<location description>>

Parcel Number:
<<parcel number>>

Acres:
<<acreage>>

SAMPLE

**EXHIBIT B
AEDPP GUIDELINES**

SAMPLE

Ohio Department of Agriculture
Office of Farmland Preservation

Ohio Agricultural Easement Donation Partnership Program

Guidelines



John R. Kasich, Governor

David T. Daniels, Director
Ohio Department of Agriculture

November 30, 2012



August 2012

Dear Ohio Landowners:

On behalf of the Ohio Department of Agriculture, I invite you to learn more about our Agricultural Easement Donation Partnership Program and consider whether or not it is a good fit for your family and your farm. Information about the donation program is contained in the attached Guidelines.

Under the Partnership Program a landowner voluntarily donates an agricultural easement on their farm in return for knowing that it will remain forever in agricultural production and that the easement will be legally backed by the State of Ohio and a local partner organization. There may be tax benefits to the donation and landowners should consult their tax advisor.

Our department has set aside funds to help our local partners (counties, townships, soil and water conservation districts and land trusts) cover up to \$3,000 in administrative costs for the donation of farms up to 200 acres. The incentive will increase by \$5 an acre for larger farms.

Ohio has grown from zero preserved farmland acres to more than 54,000 preserved acres in just over 10 years. This would have never been possible without the dedication of farm owners and our local partners. With the Partnership Program, we hope to preserve many more acres of donated agricultural easements for future generations of Ohioans.

To learn more about agriculture and farmland preservation in Ohio, please visit our website:
<http://www.agri.ohio.gov/divs/FarmLand/FarmLand.aspx>.

Sincerely,

David T. Daniels
Director



OHIO AGRICULTURAL EASEMENT DONATION PARTNERSHIP PROGRAM

GUIDELINES

A. Introduction

The Ohio Department of Agriculture (ODA) is interested in partnering with local sponsoring organizations (local governments, soil and water conservation districts, or land trusts) to accept donated agricultural easements which meet ODA's guidelines. This document summarizes those guidelines and the step-by-step procedure for donating an agricultural easement to ODA. (Note: The donation of agricultural easements to ODA is governed by Ohio Revised Code ("R.C.") Sections 901.21, 901.23, and 5301.67-.69, and others.) While ODA greatly appreciates donations of agricultural easements, there may be circumstances which preclude ODA's acceptance of a donation. The Director of ODA, at his discretion, shall make the final determination whether or not to accept an agricultural easement for donation.

B. Definition of an Agricultural Easement

An agricultural easement is a permanent, legally binding restriction, which forever limits the use of the subject land to predominantly agricultural activity.

Protecting a farm through a donated agricultural easement allows the landowner to retain ownership and exclusive use of the land. The landowner still pays taxes, can continue to farm the land with any agricultural activity permitted by Ohio law, and can sell the land or pass it along as a gift or through the landowner's estate. Even through those transfers, the easement's restriction remains on the land to prevent the new owner from developing or otherwise converting the land to a non-agricultural use. (Note: The legal definition of an "agricultural easement" and "agricultural activities" can be found in Section 5301.67 and 5713.30 of the R.C., respectively.)

C. Eligible Farms

To be eligible for the program, the land must meet the following criteria:

1. The land must be at least 40 acres in size and comprised of one or more contiguous parcels. ODA will consider accepting a donation on a 25- to 40-acre farm if it is contiguous to an existing agricultural easement or other permanently protected land. For the purposes of the Program, two or more parcels of land are contiguous if they share a common boundary or would share a common boundary but for the fact that the parcels are separated by a public or private right-of-way or rights-of-way or by rivers, streams, or other bodies of water.

2. All contiguous parcels owned by the same legal entity must be submitted to the Donation program as one farm. No contiguous parcels under the same ownership can be withheld from the easement unless the director of ODA provides an exception.
3. The landowner must warrant that the landowner has no knowledge of a release of a hazardous substance, toxic waste, or other environmental pollutant prohibited by state or federal law.
4. If there is a mortgage lien on the land, the landowner must obtain a "Subordination Agreement" from the lender on an ODA-approved form. These agreements ensure that any future action regarding the mortgage will not take the land out of agricultural use.
5. There cannot be any third-party interests in the land that are not conducive to agriculture, as determined by the director of ODA. Examples of such interests would be surface mining leases; water, sewer, or utility lines, or roads and highways outside of existing right-of-ways; or other development activities that would damage the topsoil or subsoil of the farm.
6. Generally, no portion of the parcel or contiguous parcels may be excluded from the donation, including the homestead.
7. Generally, the land must be located in an area of a township or county that local officials have (a) designated for agriculture in an adopted comprehensive land use plan or (b) zoned for agricultural use. If the land is located in a township or county where local officials have not identified the use, the director of ODA must determine that the land will support the long-term economic viability of a farming operation. ODA will not accept donations on land that (a) local officials have officially designated for non-agricultural use or (b) the director of ODA determines will not support the long-term economic viability of a farming operation.
8. The land must be valued for purposes of real property taxation at its Current Agricultural Use Value (CAUV) under Section 5713.31 of the R.C. or that constitutes a homestead when the easement is granted. The land must also be enrolled in the Agricultural District program with the County Auditor.
9. The land's real-property description (also called a "legal" or "metes-and-bounds" description) must be clear and accurate as determined by ODA. If not, the landowner must hire a licensed surveyor to conduct a survey and prepare the needed description.
10. A current conservation plan from the local Natural Resources Conservation Service or the Soil and Water Conservation District must be in place at the time of the donation. However, in the case of a property predominantly covered with

trees, the landowner will only need to have a forest management plan. The conservation or forest plan must be maintained, updated, and implemented.

11. Separate from the ODA program the landowner may seek professional tax advice and take advantage of any federal tax benefits arising from the donation. In order to do this the IRS will require the landowner to (a) commission and pay for an appraisal of the land and (b) submit an IRS Form 8283 signed by the director of ODA. In order for the director to sign the IRS 8283 Form, the landowner must provide ODA with a copy of the IRS-required appraisal.
12. Please note that a parcel of land subject to an agricultural easement will not relieve the landowner of the landowner's obligation to pay property taxes on the parcel.
13. The land must be owned by a person(s) at least 18 years of age and have full power, capacity, and authority to donate an agricultural easement. If the landowner is other than a person (e.g., corporation, Limited Liability Company, trust, etc.), the entity must provide ODA with authorization that it has the authority to donate an agricultural easement. Examples of such validation include a copy of the trust agreement, a certificate of authority, or other written documentation as deemed necessary by ODA.

D. Landowner Should Seek Trusted Advice

ODA prefers that the landowner identify a trusted and unbiased local person(s) to witness the donation procedure in order to ensure its integrity. Examples of disinterested witnesses have included county commissioners or their staff, township trustees, OSU extension agents, Soil & Water Conservation District representatives, county planning administrators, etc.) In addition, ODA prefers that the landowner(s) bring immediate family members into the donation discussion early in the process.

An agricultural easement can be a major decision for a landowner and his or her family. In order to ensure that the best interests of the landowner are met, ODA highly recommends that the landowner seek independent legal counsel, as well as independent financial advice. There may be federal tax benefits or consequences which might result from a gift of a perpetual agricultural easement to ODA. The landowner retains sole responsibility for any and all tax benefits and consequences and must hold ODA harmless from any and all costs, claims, or liability relating to them.

E. Local Easement Monitoring Agent

ODA requires that a local sponsor assume responsibility for creating a Present Condition Report (described in section L, step 7) and serve as ODA's monitoring agent by conducting an annual visit to the farm to assure that the landowner is complying with the terms and conditions of the agricultural easement (described in section M). In such a partnership, ODA will assume legal responsibility for enforcing the easement. In some cases, the local sponsor will want to co-hold the agricultural easement with ODA and, therefore, share legal responsibility for enforcing the easement. A local sponsor can be a township, county, municipality, land trust, or local soil and water conservation district. Local sponsors may apply for reimbursement of real estate closing and administrative expenses through the Agricultural Easement Donation Partnership Program (AEDPP). Information about the program is posted on the ODA website under Farmland Preservation at: <http://www.agri.ohio.gov/farmland/>.

F. ODA – Local Partnership Benefits Landowners

The Agricultural Easement Donation Partnership Program combines the assets of ODA and local sponsors, and thereby provides to farmland owners the lowest possible cost and the strongest possible agricultural easement in Ohio.

The lower costs result from ODA's policy of not charging landowners a fee for its farmland preservation services. Rather, ODA will reimburse its local sponsors for certain expenses and costs associated with the donation. It should be noted, however, that land trusts may charge an endowment fee, either up front or in the future, in order to fund the monitoring, enforcement, and other costs associated with holding an agricultural easement.

Agricultural easements are intended to protect the land in perpetuity for future generations of Ohioans. An ODA-held easement offers the strongest measure of protection in Ohio from extinguishment through eminent domain. By combining the advantages of ODA and the local sponsor, whose mission it is to support and protect the agriculture industry in their area, the interests of Ohio's farmland owners are best served.

G. Local Government Review

Before ODA accepts a donated agricultural easement, the local sponsor will give notice of the donation to the local government officials, i.e., county commissioners, township trustees, and any municipality within one-fourth of a mile of the farm. Local officials will be given a minimum of 30 days to review and comment on the proposed donation. However, subsequent to this formal review, any new information regarding the donation brought to the attention of ODA will be taken into consideration. The

Director of ODA may take into account the comments of local officials, as well as other interested parties, in the director's decision to accept or decline the proposed donation.

H. Agricultural Activity Policy

ODA's policy is that landowners who own farmland that ODA holds or co-holds an agricultural easement on, or those who farm their land, can undertake any agricultural activities permitted by Ohio law.

I. Housing Policy

ODA's housing policy is based on the traditional principle that a farm should have a farmstead (i.e., house, barn, etc.) that serves as a residence for the farm family and supports the operation of the farm. Conversely, a non-farm residence on farmland can interfere with the operation of the farm. Therefore, ODA's housing policy, based on this traditional principle, is as follows:

1. If no farmstead currently exists on the applicant property, one farmstead, including a single residence, may be reserved. The size and location of the farmstead is negotiated between ODA and the landowner applicant, and must take into consideration maximizing the agricultural use of the land and any local zoning and health regulations. If the land is adjacent to other preserved farmland and is 40 acres or less, this provision is waived.
2. Generally, if a house/farmstead exists on the property at the time of application, then no additional residences may be built. The director of ODA, at his discretion, may make an exception to this policy in the case of a very large farm or the subdivision of a very large farm as permitted under section K of these Guidelines.
3. Any existing or future house on the preserved farm may not be subdivided from the farm.

J. Permitted Non-Farm Activity

As stated in section B and C of this document, the land must be enrolled in the County Auditor's CAUV program and the land must be used predominantly for agricultural activity, except the homestead. The word "predominantly" allows for some incidental non-farm activity on the farm, such as windmills, telecommunication towers, billboards, and oil and gas wells. The Director of ODA can, at his discretion, permit these and other incidental non-farm activities as long as 1) the land's CAUV

tax value is maintained, and 2) the activity involves minimal impact on the agricultural land.

In the case of oil and gas exploration and extraction, the Deed of Agricultural Easement will require that only the minimum amount necessary of the farm's surface area necessary for extraction activities is disturbed. And, when such activities are completed, the land must be restored as near as possible to its original state prior to the commencement of extraction activities.

The farmstead, which is the farmer's "castle," may be used for any farm or non-farm activity permitted by local or state laws and regulations.

K. Large Farm Exception Policy

As a general rule, ODA does not like to subdivide a farm because it diminishes the agricultural value of the land. However, in the case of a large farm – defined as 400 or more acres in size – the landowner can request a one-time option to split the farm in the future into two parcels of approximately equal size. The Director of ODA, at his discretion, shall determine whether to grant this subdivision request.

L. Step-by-Step Donation Closing Process

The timeframe needed to complete the entire donation process depends on how long it takes to undertake Steps 1 through 6 below. Some easements take longer to complete due to unique circumstances, such as title issues, mortgage subordinations, local government objections to the agricultural easement, or, in the case of an unclear description of the property's boundary, the need for a survey. ODA staff will work diligently with the landowner and local sponsor to complete the donation process and close on a legally sound easement.

Step 1 – Initial Conversation:

After reviewing these guidelines, landowners, their representatives, or other interested parties should contact ODA's Office of Farmland Preservation and their local sponsor for an initial conversation concerning program eligibility and other aspects of the donation process. If as a result of these initial conversations the landowner wishes to continue with the donation process and it appears that the program's eligibility requirements will be met, the local sponsor will schedule a site visit.

In order to donate an agricultural easement, the landowner may be required to provide the following documents and information to ODA for its review. It is highly recommended for the landowner to begin to gather the following items:

1. A map or maps showing the landowner's name, parcel number(s), the acreage for each parcel, and an outline of the land's outer perimeter. Maps are often available on the County Auditor's website.
2. Written verification from the County Auditor that the land is enrolled in the CAUV tax program and the Agricultural District program.
3. An aerial map of the land, if available.

Step 2 – Local Easement Sponsor/Monitoring Agent is acquired and a Site Visit is performed:

ODA will assist the landowner in searching for and recruiting a Local Easement Sponsor/Monitoring Agent if one has not already been selected by the landowner.

The local sponsor will visit the farm, tour it, possibly take photographs, and discuss the donation process further with the landowner. ODA will continue the easement closing process if it is determined that the farm is likely to meet the Program's eligibility requirements.

Step 3 – Local Government Review:

As noted in Section G, above, before accepting a donated agricultural easement, the local sponsor will give notice of the donation to the local government officials (county commissioners, township trustees, and any municipality) within one-fourth of a mile of the farm. The local officials will be given 30 days to review and comment on the proposed donation. Comments received during this 30 day period or subsequently, must be forwarded to ODA for review. A template of a local government notice is available online.

Step 4 – ODA-Local Sponsor Donated Easement Services Agreement:

If the local sponsor is applying the donation under the AEDPP, the entity shall provide ODA with the Intent to Participate form found at the end of these Guidelines and submit to ODA with required attachments.

After completing steps 1-3 above and providing necessary documents for those steps to ODA, the local sponsor will enter into a Service Agreement with ODA .

Step 5- Signed Notice:

Before the local sponsor proceeds with ordering a title commitment to be performed, ODA must sign off that the previous steps have been satisfactorily completed and then the local sponsor will send the landowner(s) a *Notice* document which acknowledges their commitment to proceed with the easement closing process. A

Notice template containing required language that the landowner is committing to donate an easement to ODA is available from the Office of Farmland Preservation.

Step 6 – Title Search:

Once ODA verifies all the above information in items 1 through 3 in *Step 1*, and the landowner commits to proceed with the process to donate an agricultural easement through the *Notice*, the local sponsor will have a title search conducted by a licensed Ohio title company. The resulting title commitment will identify ownership of the property, identify any mortgage liens and other third party interests on the property, and provide a legal description of the land. Details about what should be included in the title search and commitment can be found in the local sponsor's Donated Easement Services Agreement.

ODA will be able to accept the donation of an agricultural easement from the landowner once the following conditions are met as a result of the title examination commitment:

1. The ownership of the property is clear. The landowner will be responsible for clearing and/or subordinating all interests that limit the title of a property, such as mortgages, leases, liens, restrictions, or legal or equitable interests, unless exempted by the director.
2. The legal description of the land must be clear. If the legal description is not clear, as determined by ODA, the landowner must hire a licensed surveyor to survey the farm and prepare a new description.

The local sponsor shall provide to ODA a copy of the title commitment at least 45 days before the intended closing date and any other requested documentation related to title so that ODA can review the title commitment to ensure there are not any encumbrances that would allow non-agricultural use of the property that are not acceptable to ODA. Upon completion of the ODA review, ODA will issue the local sponsor Closing Instructions, which will detail all items on the title commitment that require attention.

When ordering the title commitment from the title company, the local sponsor will also order an Owner's Policy of Title Insurance naming the Director of ODA as the owner insured and Closing Protection Coverage for ODA. The cost of the ODA owner's policy will be reimbursed over and above the \$3000 base amount.

The local sponsor will pay for the title search. However, if the landowner does not sign a Deed of Agricultural Easement before the expiration of this program, then the landowner may be required to pay for an updated title search.

Step 7 - Present Condition Report (PCR):

The local easement monitoring agent/sponsor will complete a PCR on the farm. The PCR will contain a narrative and various maps and photos, which together describe the farm's history, identify natural features, and document the farm's existing buildings, structures, and agricultural activities. The PCR will be recorded as an attachment to the Deed of Agricultural Easement and used to monitor the continued use of the land and compliance with the easement. A template to be used for the PCR's creation is available on ODA's website.

Once completed, the local sponsor shall provide the PCR to ODA for review prior to closing.

Step 8 - Deed of Agricultural Easement:

ODA will provide the local sponsor with both a Sample Deed that can be utilized during initial conversations between local sponsors and landowners, and a Draft Deed of Agricultural Easement with the landowner's specific farm information inserted as this information becomes available through the title report and PCR creation. Once reviewed, ODA will provide the local sponsor with the final Deed of Agricultural Easement to be signed at closing, and the local sponsor will coordinate with the title agent to arrange for all parties to sign the Deed of Agricultural Easement. Once closing has occurred and the Deed of Agricultural Easement recorded, the original recorded Deed of Agricultural Easement (and any other related recorded documents) shall be permanently stored at ODA, with copies of the Deed of Agricultural Easement and any other recorded documents (such as Subordination Agreements or Affidavits) being provided to the local sponsor and landowner(s). Finally, an "Ohio Preserved Farmland" sign will be supplied by ODA to the landowner for display on the farm.

M. Monitoring for Easement Compliance

While ODA may itself visit the farm and monitor the agricultural easement, the local monitoring agent/local sponsor will be primarily responsible for those tasks. Monitoring visits will be conducted annually and documented on an ODA-prescribed form.

Regular and documented monitoring is essential for several reasons:

1. Monitoring is an easement holder's chief tool for verifying compliance with the terms and conditions of the Deed of Agricultural Easement.
2. Regular monitoring can detect noncompliance before it becomes so deeply entrenched that only legal action can resolve the situation.

3. Documentation of monitoring provides a record in case of court action and is essential to determine adequate restoration or resolution of a violation.
4. For landowners who receive federal tax benefits, IRS regulations require the holder of the agricultural easement (i.e., ODA or a local monitoring agent) to protect the conservation purposes of the donation. IRS may inspect ODA's files to determine whether ODA has met that requirement.

N. Enforcing the Easement

ODA is committed to enforcing all agricultural easements that it holds or co-holds. The objectives of that policy are to preserve the integrity of all agricultural easements and to comply with IRS requirements related to those landowners who receive federal tax benefits for donating an agricultural easement. Accordingly, if ODA discovers or is made aware of a violation, ODA will work with the landowner and local monitoring agent (if appropriate) to resolve the situation. But if that attempt fails, ODA will have no choice but to bring legal action to enforce the easement.

O. Extinguishment and Recoupment

An agricultural easement held or co-held by ODA is intended to exist in perpetuity. To further that intent, ODA easements may only be extinguished under the following circumstances:

1. If the easement is taken through eminent domain proceedings under applicable state or federal law; or
2. If an unexpected change in the conditions of or surrounding the land makes continued agricultural use of the land impossible or impractical, as specified by Section 5301.691 (G) of the Ohio Revised Code.

The procedure for extinguishment on account of changed conditions always begins with a request from the landowner to the director of ODA. Thereafter, the process varies:

1. If the director of ODA and the local co-holder (if any) *agree* that it is no longer possible or practical to farm the land, and the donor landowner *did not* take advantage of donation-related federal tax benefits, the director may extinguish the easement.
2. If the director of ODA and the local co-holder (if any) *do not agree* that it is no longer possible or practical to farm the land, and the donor landowner *did not*

take advantage of donation-related tax benefits, the landowner may ask a court to extinguish the easement.

3. If the donor landowner took advantage of donation-related federal tax benefits, only a court may extinguish the easement.

In the rare event that an agricultural easement is extinguished, IRS regulations and ODA policy requires that ODA be entitled to a share of the proceeds. The recoupment amount shall be the greater of either (a) the difference between the fair market value of the Protected Property unencumbered by this Easement and the fair market value of the Protected Property with the Easement at the time the agricultural easement was acquired, or (b) seventy-five percent of the fair market value of the land at the time the agricultural easement is extinguished. The fair market value of the Protected Property shall be determined at the time this Easement is extinguished, terminated or condemned by a completed certified appraisal conducted by an Ohio certified general appraiser certified under Chapter 4763 of the Revised Code. The Director of ODA must approve the appraiser. The fair market value of the Protected Property shall not include any increase in value after the date of this Easement attributable to improvements.

P. ODA Easement Documents

In addition to these guidelines, the following ODA documents are available to anyone interested in learning more about ODA's donation program:

1. Sample Deed of Agricultural Easement
2. Present Condition Report – *Template*
3. Press Releases on previous donations
4. AEDPP Donated Easement Services Agreement
5. Sample “Notice” to Local Governments
6. Sample “Notice” to Landowners
7. Template Subordination Agreements and Affidavits

Contact

For more information on the Ohio Agricultural Easement Donation Partnership Program (AEDPP), please contact:

Ohio Department of Agriculture
Office of Farmland Preservation
Bromfield Administration Building
8995 East Main Street
Reynoldsburg, Ohio 43068-3399
Telephone: 614-728-6210
Fax: 614-752-2282

E-Mail: farmlandpres@agri.ohio.gov

Web site: <http://www.agri.ohio.gov/divs/FarmLand/FarmLand.aspx>

Leaving a Legacy

In addition to donating an agricultural easement to the Ohio Department of Agriculture (ODA), Ohio law offers farmland owners another option to preserve the family farm: landowners can give their farm to ODA. This generous gift can be done through various legal means, including a will or trust agreement, or a deed which reserves a life estate for the landowner. Once ODA receives ownership of the farm, the department will place an agricultural easement upon the land, so that it must continue as a farm in perpetuity. ODA will then sell the property and all the proceeds that the department receives from the sale of the farm must, by law, be used to purchase additional agricultural easements in Ohio. For making such a generous gift, ODA will pay for all costs associated with receiving ownership of the farm.

Local Sponsor Intent to Participate

Agricultural Easement Donation Partnership Program

Name of Local Sponsor:

Local Sponsor Eligibility (please check one):

- Land Trust- with Professional Staff
- Land Trust – without Professional Staff
- Local Soil and Water Conservation District
- Government- Board of County Commissioners
- Government- Board of Township Trustees
- Government- Municipality

Contact Person on Behalf of Local Sponsor:

Title:

Address:

Address 2:

City, State, Zip:

Phone:

Fax:

E-mail:

Date:

1. Describe Local Sponsor's Farmland Preservation Efforts:

- a. Please provide information on the local sponsor, including: staff, governing

board, membership, by-laws, budget, and Stewardship Fund.

- b. Please outline what strategies your locality is using to preserve farmland, and how the strategies work together. Examples include: comprehensive land use plan, Agricultural Security Areas, agricultural zoning, agricultural districts, etc.

2. Explain how Local Sponsor would manage an AEDPP donation, including:

- a. Please provide information on the local sponsor's plan for staffing resources, including available managerial, legal and financial expertise.
- b. Please provide information on local sponsor's experience with the agricultural easement acquisition process (title search, recording of deed, etc.). If local sponsor has no experience, please provide information on local sponsor's plan.
- c. Please describe local sponsor's experience with, and planned procedures for, the monitoring and enforcement of agricultural easements. If local sponsor has no experience, please provide information on local sponsor's plan.

3. Organizational Capacity Easements:

- a. Number of Ohio Department of Agriculture (ODA) agricultural easements co-held/monitored:
- b. Number of total easements (agricultural and conservation) managed and total number of acres they cover:
- c. Number of counties in which the program holds AEPP easements and ODA donated agricultural easements:

Required Attachments

ATTACHMENT A: Resolution

Attach a resolution or ordinance from the political subdivision or a recorded action from the soil and water conservation district or charitable organization supporting the entity's application, certifying the commitment to participate in the AEDPP, and agreeing to monitor, supervise and co-enforce the deed of agricultural easement on behalf of the director.

ATTACHMENT B: Charitable Organizations (if applicable)

If the entity is a charitable organization, it must be tax exempt and be organized for the purpose of the preservation of agricultural land. To demonstrate this, the organization must provide:

1. a copy of the organization's exemption under 26 U.S.C. 1, subsection 501(a) and 501(c);
2. a statement of the organization's stewardship endowment policy;
3. in order for the charitable organization district to demonstrate to the director that it has the capability to hold, monitor and enforce an agricultural easement, the organization must provide, *at the request of the director*, information on the following:
 - (a) A copy of the organization's by-laws or regulations stating that farmland preservation is one of its purposes;
 - (b) A list of the organization's officers, board of directors, and members;
 - (c) The organization's financial condition, including a balance sheet, revenue and expense statement, and the financing available for monitoring and enforcing an agricultural easement;
 - (d) The organization's ability to provide the necessary managerial, legal and financial expertise to hold, monitor, and enforce an agricultural easement.

FOR MORE INFORMATION CONTACT:

*Office of Farmland Preservation
Ohio Department of Agriculture
8995 E. Main Street
Reynoldsburg, OH 43068
<http://www.agri.ohio.gov/divs/FarmLand/FarmLand.aspx>
farmlandpres@agri.ohio.gov
Phone: 614-728-6210*

EXHIBIT C
SCOPE OF WORK

A. Title Search The Local Sponsor, under the direction and to the satisfaction of ODA, shall, through a title agency in good standing with the Ohio Secretary of State, provide a title search of the public records concerning the titles to the parcels of such real estate as delineated in the Agricultural Easement attached hereto as Exhibit A and incorporated herein by reference. The Local Sponsor shall submit a written report, in a form acceptable to ODA, 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 provided in a commitment for the owner's title policy of 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 for the entire interest in land being acquired in the Deed of 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 ODA purposes, together with the recording reference and dates thereof, and a statement of the total acreage to be acquired by ODA easement.
10. The Local Sponsor shall provide to ODA a copy of the title commitment or title report within forty-five (45) days before the intended closing date and any other requested documentation related to title so the legal office may review the title commitment and issue a title opinion for ODA prior to closing.

11. Local Sponsor shall provide recording services surrounding the agricultural easement acquisition in the most cost effective manner on behalf of ODA subject to the pre-approval of ODA, and provide an update of title on the parcels immediately prior to recordation.
12. The Local Sponsor shall secure closing protection as well as an owner's policy of title insurance on the parcels delineated in Exhibit A, naming the Director of ODA as the owner insured.

B. Date and Place of Closing

The closing shall occur thirty (30) days prior to the termination date of this Agreement.

C. Persons Required at Closing Conference

The following persons must attend the closing conference, if possible: Landowner(s) and a representative of the [\[Insert Local Sponsor\]](#). At ODA's discretion, a representative from the Office of Farmland Preservation may attend the closing conference.

D. Treatment of Existing Liens and Mortgages

On the Closing Date, the Property shall be free of any liens or mortgages or such liens and mortgages shall be subordinate to the Agricultural Easement interest of ODA/State that Landowner or Landowner's predecessors have put on the Property, which OAC Section 901-2-02(A)(3) requires or ODA deems could affect the intent of the Easement. Landowner and/or Local Sponsor shall be held responsible for obtaining all such subordinations, lien releases and/or mortgage releases and provide such releases and/or subordinations to ODA prior to the closing date.

E. Conditions of Title

Landowner must have good and marketable title with an unbroken chain of title of record for at least ninety years prior to the grant to Landowner. For the purposes of this Agreement, a "good and marketable title" shall be defined as a title that is free and clear of all liens, easements, restrictions, and encumbrances, other than current taxes due. In addition, Landowner's title must not be subject to any interests other than those interests specifically described in the title search or Landowners application. If the title is encumbered by outstanding or reserved interests, the Local Sponsor shall ensure that any outstanding interests are subordinated to the Agricultural Easement Deed or that any exceptions from this subordination requirement are approved by ODA and are consistent with the purposes of the Agricultural Easement Donation Partnership Program.

F. Appraisal

ODA may obtain a comparable land appraisal at Landowner's expense by a certified general appraiser with experience in conservation and/or eminent domain easements.

G. Local Sponsor to Hold Easement and All Documents Relating to Title

Local Sponsor, through the services of a title agency in good standing, shall have the documents relating to title in Property executed, which include but are not limited to the Notice of Commitment to Donate, Agricultural Easement, Commitment/binder, Owner's Title Insurance Policy/ies naming ODA, Closing Coverage Policy/ies, Subordination Agreement(s), if applicable; and Title Commitment, Title Insurance, Recording, Appraisal Invoices. The Local Sponsor shall perform all necessary legal and administrative actions to ensure proper donation and recordation of a valid Agricultural Easement which is in accordance with AEDPP Guidelines and this Agreement. Local Sponsor shall determine if all documents include the proper designation of ODA's name and manner of holding Property. Further, the Local Sponsor shall ensure that the Agricultural Easement acquired under this Agreement (i) runs with the land in perpetuity

or the maximum allowable under State law; (ii) protects agricultural use and related conservation values by limiting nonagricultural uses of the land; (iii) provides for the administration, management, and enforcement of the Agricultural Easement by the Local Sponsor; (iv) requires management of a conservation plan; (v) includes the appropriate right of enforcement and general indemnification provisions for the benefit of ODA; and (vi) include the appropriate environmental warranty, permitted uses and prohibited uses for the property as provided in the AEDPP Guidelines.

H. Local Sponsor to Record Easement, Subordination, and Other Documents

If all conditions of title are met, Local Sponsor shall record the Easement and if applicable, any other executed agreements which must be recorded (including but not limited to: subordinations, trust agreements, etc.) in the office of the recorder of [Insert Property County] County. Local Sponsor shall ensure that cross references to existing Deed(s) for the property are included on recorded documents.

I. Original Documents to ODA

After the Closing Date, as soon as possible, but no later than 90 days from the Closing Date, Local Sponsor shall present ODA with the original copy of the Easement and, if applicable, any other executed agreements to be recorded in the county recorder's office (including but not limited to: subordinations, trust agreements, etc.). Local Sponsor shall also present ODA with the title insurance policy and any other documents requested on the Closing Instructions.

J. Conservation Plan. Prior to payment certification, the Local Sponsor shall ensure that all lands for which an Agricultural Easement has been acquired will have a conservation plan prepared by the Natural Resources Conservation Service or Soil and Water Conservation District to maintain the agricultural productivity of the farm for this and future generations.

K. Monitoring. The Local Sponsor shall monitor the Agricultural Easement on an annual basis to ensure that the Agricultural Easements are being implemented according to the deed provisions, including all prohibited non-agricultural uses of the land, except for recreational uses, such as hiking, hunting, fishing, boating, and horseback riding to the extent that those activities do not conflict with the purposes of Section 901.21 of the Ohio Revised Code. An annual report of the status of the acquired Agricultural Easements shall be submitted annually by the Local Sponsor. ODA will define the format of this report and provide any revisions or changes to the report format annually to Local Sponsor.

**EXHIBIT D
CLOSING INSTRUCTIONS**

SAMPLE



DATE

LOCAL SPONSOR

LOCAL SPONSOR ADDRESS

Dear Local Sponsor:

Thank you for agreeing to provide services to the Ohio Department of Agriculture (ODA) for the donation of an agricultural easement on the **FARM NAME** farm under the Agricultural Easement Donation Partnership Program (AEDPP). ODA is in receipt of the title commitment for this property, and agrees to co-hold an Agricultural Easement on this property once the following steps have been taken:

Title Review:

Below is a summary of ODA's review of Title Commitment **NUMBER** issued by **[INSERT TITLE COMPANY]** Title Insurance Company after the effective date of **EFFECTIVE DATE**.

Items from Schedule A of said commitment that require attention:

- No action required

Items from Schedule B, Section I (Requirements) of said commitment that require attention:

- Ensure that local sponsor meets all requirements as stated

Items from Schedule B, Section II (Exceptions) that require action by the local sponsor:

#10, 11: These exceptions are mortgages that must be subordinated or released in favor of the Agricultural Easement prior to closing. Provide a Subordination Agreement to the landowner to execute with their lender and have the document recorded at closing. Template Subordination Agreements may be obtained by contacting our office, or you may create your own. **Prior to sending any Subordination Agreement to the landowner for execution, provide to ODA for review.**

#13, 14, and 15: These exceptions are oil and gas leases presently existing on the title to the property. ODA requests that an Affidavit be completed describing the status of each of these leases, and that the Affidavit be recorded at closing. The landowners are the only individuals required to execute the Affidavit, and a template Affidavit may be obtained by contacting our office. **Prior to sending any Affidavit to the landowner for execution, provide to ODA for review.**

Exceptions #1-9, 12, and 16-20 have been reviewed by ODA Legal and are considered acceptable to remain as exceptions in ODA's Owner's Policy for Title Insurance (to be provided to ODA after closing). If you have any questions regarding the clearing of title exceptions, please do not hesitate to contact our office. Actions related to clearing the above title exceptions should happen concurrently while preparing the Present Condition Report and reviewing the Draft Deed of Agricultural Easement.



Exhibit A (Legal Description): The legal description provided with the title commitment has been reviewed and approved for use as Exhibit A to the Deed of Agricultural Easement. Acreage will be stated within the Deed of Agricultural Easement as **XXX.XX** acres.

Present Condition Report:

As outlined in the AEDPP Guidelines, the local sponsor will complete a Present Condition Report (PCR) of the farm. The PCR should contain a narrative section, maps, and photos to collectively describe the farm's history, its present features, and to document the property's existing buildings, structures, and agricultural activities. The PCR is recorded as Exhibit B to the Deed of Agricultural Easement and can be utilized by monitors in the future to ensure compliance with the Agricultural Easement.

You should begin work on the PCR as soon as possible to allow ample time for information collection, document creation, ODA review, and revisions if necessary. A template PCR can be found on our website. Once complete, please email the PCR to Amanda Bennett at abennett@agri.ohio.gov. If the file is too large to send via email, please contact us.

Deed of Agricultural Easement:

ODA will begin work on the Draft Deed of Agricultural Easement for the **FARM NAME** farm utilizing information gathered in the title commitment. Once more information becomes available through your PCR, a Draft Deed will be completed and emailed to you to disseminate to the landowner. Any questions or corrections regarding the Draft Deed should be emailed to Amanda Bennett at abennett@agri.ohio.gov. Once ODA, local sponsor, and landowner agree to the content of the Draft Deed, a final Deed of Agricultural Easement will be printed and mailed to you for the closing.

***Please refer to the No Modifications Letter included with this packet. Local sponsors shall ensure that no changes are made to the Deed of Agricultural Easement at closing without the express knowledge and permission of ODA.**

Closing and Recordation:

Once all title exceptions have been cleared or addressed, and the Final Deed of Easement mailed to the local sponsor, please work with your title vendor to complete closing and recordation of the Deed of Agricultural Easement. Local sponsors shall ensure that all of the following has occurred:

- (1) Any modification of the attached closing documents prior to recordation without prior written approval of ODA is expressly prohibited.
- (2) Ensure no new encumbrances will be recorded against the property according to Title Commitment **NUMBER** issued by **[INSERT TITLE COMPANY]** Title Insurance Company after the effective date of **EFFECTIVE DATE**. Conduct a title update immediately prior to recording the easement. If any new encumbrances have been recorded against the property since the date of the above referenced title commitment/binder, notify ODA immediately and do not proceed until instructions are provided.
- (3) You have ensured all taxes, homeowner's assessments, etc. are paid up to the date the Deed of Agricultural Easement is recorded.
- (4) You have properly executed and duly recorded the Deed of Agricultural Easement with an Exhibit A describing the easement area and Exhibit B containing the "Baseline Documentation" aka Present Condition Report.



- a. The proper signatory authority documentation has been provided for anyone signing the Deed of Agricultural Easement.
- (5) You have recorded the subordination agreements approved by ODA.
- (6) You have recorded the Affidavit approved by ODA.
- (7) You have secured an Owner's Policy for Title Insurance as the insured to be Ohio Department of Agriculture in the amount of **[\$XXX,XXX]**.
- (8) Closing Protection Coverage will be required for ODA. Please provide ODA with proof of this coverage.
- (9) The description of the easement area must be the same on the Agricultural Easement Deed, the Title Insurance Policy, and any Subordination Agreement(s).
- (10) The Commitment for Title Insurance and Title Insurance Policy must include Exhibit A describing the easement area.
- (11) With regard to the Owner's Policy for Title Insurance, the following requirements must be met:
 - a. The date of the policy must match the recorded date and time from the county recorder's office that the Deed of Agricultural Easement was filed for public record.
 - b. The estate or interest in the land that is covered by the policy must be Agricultural Easement.
 - c. The title vested in the interest being acquired by the Grantee should be as stated on the first page of the Deed of Agricultural Easement.

Reimbursement:

After the Deed and associated documents such as Affidavits and Subordination Agreements are recorded in **Co. NAME** County, submit the following to ODA no later than 90 days after closing/recordation to receive reimbursement for local sponsor title/administrative cost:

- Invoice outlining costs as described in the Donated Easement Services Agreement
- Final update (occurs immediately prior to recordation of the Deed of Agricultural Easement)
- Owner's Policy for Title Insurance (ODA)
- Recorded Deed of Agricultural Easement and associated curative documents (i.e. Affidavits, Subordination Agreements)
- Copy of these instructions signed

Please see the attached checklist for items that need to be completed, executed, and or recorded, and returned.

If you should have any questions on this process, please do not hesitate to contact me or my staff at (614) 728-6210.

Sincerely,

Denise Franz King
Executive Director

cc: **NAME**, Landowners (*just cover letter*)



Acknowledgement

Local Sponsor: **ENTITY NAME**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SAMPLE



Closing Instructions Outline
FARM NAME – Commitment # NUMBER
DATE

| Items That Need Completion | Template Available? | Created by ODA | Needs ODA Review | Requires Recordation | Document(s) to Return to ODA |
|---|---------------------|----------------|---|----------------------|---------------------------------|
| Subordinate or Release Mortgages | X | | X | X | X (Original) |
| Affidavit of Oil and Gas | X | | X | X | X (Original) |
| Present Condition Report | X | | X | X (as Exhibit B) | X (Original) |
| Deed of Agricultural Easement | X | X | X | X | X (Original) |
| Title Update (immediately prior to recording) | | | | | X |
| Execute and Record Deed, Exhibit A, Exhibit B, and other curative documents | | X (Deed) | X (Notify ODA of closing/ recording date) | X (via title agent) | X (Original recorded documents) |
| Owners Policy of Title Insurance (ALTA) for ODA and Closing Protection Coverage (CPC) | | | | | X (Original) |
| Submit Invoice to ODA for Reimbursement | | | | | X (Original, after closing) |
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NOTE: Document columns with an "X" in the row are applicable to this easement; when the document cell is blank, that document does not apply to that column OR this particular easement.

EXHIBIT E
SCHEDULE OF FEES AND EXPENSES

| | |
|---|------------------------|
| Title and Closing Costs: | \$3,000.00 |
| Additional Amount per acre over 200 acres: | \$ 5.00 |
| Closing Protection: | \$ 35.00 |
| Owner's Policy | |
| TOTAL: | \$<<total amount>> |

EXHIBIT F
CHARITABLE ORGANIZATION CORPORATE DOCUMENTS

SAMPLE