

**2022 LOCAL AGRICULTURAL EASEMENT PURCHASE PROGRAM (LAEPP)**  
**COOPERATIVE AGREEMENT BETWEEN**  
**THE OHIO DEPARTMENT OF AGRICULTURE**  
**AND**  
**[LOCAL SPONSOR]**

This Cooperative Agreement (hereinafter “Agreement”), effective as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022 by and between the **State of Ohio, Department of Agriculture**, located at 8995 East Main Street, Reynoldsburg, Ohio 43068, (“**ODA**”) and [**LOCAL SPONSOR**] located at [**LOCAL SPONSOR ADDRESS**] (“**Local Sponsor**”) (hereinafter collectively “**Parties**”), for the implementation of Local Agricultural Easement Purchase Program (“**LAEPP**”) as authorized under Ohio Revised Code (“**ORC**”) § 901.21, et. seq.

**RECITALS**

ORC § 901.21 authorizes the Director of Agriculture to utilize funding received from the Clean Ohio fund to purchase agricultural easements, in conjunction with eligible governmental and non-profit entities, for the purpose of protecting the agricultural uses of eligible land by limiting the non-agricultural uses of the land. To be eligible, the farm land must meet the criteria and further the purposes as provided in ORC § 901.22 and Ohio Administrative Code (“**OAC**”) § 901-2-01, et seq.

**WHEREAS**, as the context may require, the singular may be read as the plural and the plural as the singular;

**WHEREAS**, the Local Sponsor and ODA have mutual interests in maintaining land in agricultural production and preventing the conversion of agricultural lands to non-agricultural uses;

**WHEREAS**, ODA administers the LAEPP through its Office of Farmland Preservation;

**WHEREAS**, Local Sponsor administers a farmland protection program, is a certified local sponsor as defined in OAC § 901-2-07 for LAEPP, and has opportunities to acquire agricultural easements from landowners within the County of **[INSERT CERTIFIED COUNTY]** in the State of Ohio; and

**WHEREAS**, ODA and Local Sponsor have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

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

## **AGREEMENT**

### **ARTICLE I: BENEFITS**

The funding allocated to the Local Sponsor by ODA in this Agreement will be used for the protection of Ohio farm lands against conversion to non-agricultural use.

### **ARTICLE II: SCOPE OF WORK**

- 2.1 The Local Sponsor shall be responsible for the duties and obligations set forth in “Exhibit A – Scope of Work,” attached hereto and incorporated herein by reference, in connection to the use of ODA funds as identified in Article IV of this Agreement. These funds are for the acquisition of agricultural easements on real estate (“Property”) described in the attached “Exhibit B – Property/Funds,” attached hereto and incorporated herein by reference.
- 2.2 Exhibit B shall be amended from time to time as Properties are selected in accordance with Exhibit A. For the purposes of this Agreement, “agricultural easement” shall be defined as provided in ORC § 901.21, et seq. Local Sponsor hereby represents and warrants that it will comply with all applicable federal and state laws, specifically including but not limited to OAC § 901-2-01, et seq. in performing its described obligations herein.
- 2.3 Local Sponsor warrants that it has the necessary background, education, training, and skills to provide ODA with the essential services required to carry out the Scope of Work included as Exhibit A herein. Local Sponsor further warrants that he/she will provide satisfactory efforts in the performance of the same. Satisfactory performance of work pursuant to these standards shall be determined in ODA’s sole discretion. There will be no breach of this covenant if Local Sponsor is prevented from maintaining this standard by causes wholly beyond its control and without any default on its part.
- 2.4 All 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 the prior written permission of ODA.
- 2.5 The agricultural easement closing (“Closing”) in connection with each Property shall occur on a time and date mutually agreed to by the parties, but in no event later than June 30, 2023. Local Sponsor may receive an extension to this deadline with the prior written approval of ODA.

- 2.6 ODA may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Local Sponsor concerning the performance of the work described in this Agreement; including but not limited to, the performance of Closing Instructions. An example of which is provided in “Exhibit C – ODA Closing Instructions,” which is attached hereto and incorporated herein by reference. Upon such notice and within a reasonable time, 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 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.
- 2.7 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 Exhibit A, Exhibit C, or other specialized instructions provided during the course of this agreement, unless explicitly stated otherwise in writing by ODA.
- 2.8 Nothing in this Agreement obligates ODA to complete the acquisition of an agricultural easement. There may be problems or issues which in the sole opinion of ODA require modifications, additions, or deletions to Exhibit B depending on the ability to obtain good and clear title and local input regarding the implementation of an agricultural easement. Additions to Exhibit B must have the written pre-approval from ODA. The additions and deletions must be made by a formal written amendment to this Agreement and must contain the same deadlines for closing for the acquisition of the agricultural easements and the request for payment.

### **ARTICLE III: TIME OF PERFORMANCE**

- 3.1 The services as stated in Exhibit A shall be concluded by the Local Sponsor on or before June 30, 2023. Prior to the expiration of this Agreement, the parties may mutually agree to renew this Agreement as indicated in Paragraph 3.3 below.
- 3.2 This Agreement shall remain in effect until the work described in Exhibit A is completed to the satisfaction of ODA or until terminated as provided in Article VIII, Termination of Local Sponsor’s Services, whichever is sooner. However, in no event will this Agreement continue beyond June 30, 2023, unless renewed as provided for herein.

- 3.3 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2023. This contract may be renewed, at ODA's option, for a period of one (1) year upon the same terms contained herein.
- 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 ORC § 127.16.

#### **ARTICLE IV: ODA'S OBLIGATION TO FUND**

- 4.1 Subject to the terms and conditions of this Agreement, upon execution of this Agreement, ODA shall obligate the sum of \_\_\_\_\_ (**SPELL OUT DOLLAR AMOUNT**) and **00/100 Dollars** for the acquisition by Local Sponsor of agricultural easements for the parcels approved by the Director of ODA and added by amendment to Exhibit B.
- 4.2 ODA's contribution for the acquisition of each agricultural easement to be acquired by the Local Sponsor shall be up to but not more than seventy-five percent (75%) of the appraised value, as determined by ORC § 901.22 and OAC § 901-2-09, of the subject agricultural easement as provided in the Landowner Program Application.
- 4.3 If agricultural easements for all properties listed on Exhibit B are not closed, or payment for the agricultural easement is not requested by the mutually agreed closing date as provided in Exhibit A and previously stated herein, any remaining funds may be released from this obligation unless a written request to extend the closing or payment date is sent to ODA 30 days or less before such date, and approved in writing by ODA.

#### **ARTICLE V: LOCAL SPONSOR CONTRIBUTION AND RESPONSIBILITIES**

- 5.1 Local Sponsor must disburse one hundred percent (100%) of the payment, minus any cost or expense permitted by OAC § 901-2 *et seq*, representing the agricultural easement purchase price, to the landowner at the time of Closing, as that term is hereinafter defined. Local Sponsor shall pay all costs of the agricultural easement procurement and will operate and manage each agricultural easement in accordance with the Local Sponsor's program, this Agreement, and any relevant federal or state laws, regulations, or codes.
- 5.2 Local Sponsor shall not use ODA funds to acquire an agricultural easement on a property in which an employee or board member of the Local Sponsor, with decision-making

involvement in matters related to easement acquisition and management, or their immediate family or household member, has a property interest. Local Sponsor agrees to generally conduct itself in a manner so as to protect the integrity of agricultural easements which it holds, avoid the appearance of impropriety or actual conflicts of interests in its acquisition and management of agricultural easements, and in compliance with Article XVII: Ethics and Article XI: Conflicts of Interest, herein contained.

- 5.3 Local Sponsor agrees that it will not at any time, when the Local Sponsor is named as a Grantee in the agricultural easement, seek to acquire the remaining fee interest in the Property or otherwise enter into a partnership or joint venture wherein a partner has a fee interest in the Property.
- 5.4 When an agricultural easement violation is observed by Local Sponsor or reported to Local Sponsor by ODA, then Local Sponsor shall, after appropriate administrative and appeal rights, enforce the terms and conditions of the agricultural easement. Enforcement shall be pursuant to all available enforcement procedures; including legal and equitable remedies. In the event Local Sponsor should decide to utilize any legal or equitable remedy that involves the filing of a lawsuit, such use shall be subject to the mutual consent of the Parties prior to filing. The Local Sponsor agrees to completely and fully support ODA and work with ODA in the enforcement of this Agreement, the agricultural easement, and any agreement with a Landowner arising out of this Agreement. Failure to do so shall be a breach by the Local Sponsor of this Agreement.
- 5.5 Local Sponsor agrees to include ODA in any public news releases, events, brochures, fact sheets, or any other information distributed to the media (“Media Release”) related to the acquisition of an agricultural easement on the Property listed in Exhibit B and acquired with ODA funds under this Agreement. Local Sponsor agrees to provide any Media Release to ODA for review and comment at least three (3) business days prior to its publication.
- 5.6 Local Sponsor agrees to comply with ODA guidelines and requirements regarding the disclosure of any confidential and/or potentially sensitive information about governmental and landowner issues, and such information shall not be disclosed without the prior written consent of ODA.
- 5.7 If Local Sponsor enters into a Cooperative Agreement with the United States Department of Agriculture – Natural Resources Conservation Service (“USDA-NRCS”) to receive matching funds under its Agricultural Conservation Easement Program – Agricultural Land Easement (“ACEP-ALE”) program, Local Sponsor is responsible for completion of all requested documents and services outlined in Cooperative Agreement with NRCS.

- 5.8 Any ODA funds received by Local Sponsor under this Agreement may not be utilized for reimbursement by Local Sponsor under any federal or state program, including ACEP-ALE.

## **ARTICLE VI: PAYMENT AND CERTIFICATION OF FUNDS**

- 6.1 The Local Sponsor shall notify ODA when the funds for the agricultural easement are to be requested for payment.
- 6.2 Funds shall be paid to Local Sponsor via an escrow agreement as provided in “Exhibit H – Escrow Agreement,” or substantially similar to the same, and approved by ODA with the title company as arranged by Local Sponsor. Local Sponsor shall, upon receipt of the funds from ODA, deposit and endorse over the funds to the title agent pursuant to the escrow agreement. Such escrow agreement shall specifically provide that:
- a. ODA is a third-party beneficiary of the escrow agreement;
  - b. Funds shall be returned to ODA if not disbursed to Landowner within 90 calendar days of the deposit of funds to the title agent unless otherwise agreed in writing by ODA; and
  - c. Any other requirements as specified by ODA.
- 6.3 Local Sponsor shall provide ODA notice of the scheduled Closing not less than 90 calendar days prior to said Closing to ensure timely delivery of the funds.
- 6.4 In the event that funds are requested and placed with the title company in escrow, and that said funds are not disbursed at Closing within 90 calendar days of such deposit, the use of said funds shall be de-obligated and returned to ODA by the title agent unless the title agent has received an amendment to the escrow agreement which consents to holding the funds longer than 90 days.
- 6.5 In the event that any funds sent to the Local Sponsor are not endorsed or otherwise provided to the title agent pursuant to the requirements of this paragraph within 5 days of receipt, such check shall be returned to ODA unless written permission is provided by ODA to continue to hold the check.
- 6.6 Any periods of time longer than 90 calendar days to hold the funds shall require prior written amendment of this Agreement by the parties.

- 6.7 It is understood that ODA's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments due hereunder, this Agreement is terminated as of the date that the funding expires without further obligation to ODA.
- 6.8 ORC 126.30 is applicable to this Agreement and requires payment of interest on overdue payments. The interest charge shall be at the rate per calendar month which equals one-twelfth of the rate per annum prescribed by ORC 5703.47.
- 6.9 This Agreement is subject to ORC 126.07, which provides, in part, that orders under this Agreement shall not be valid and enforceable unless the Director of the Office of Budget Management first certifies that there is a balance in the appropriations not already obligated to pay existing obligations.
- 6.10 Under ORC 5739.02(B)(1) the State of Ohio is exempt from all state and local taxes. Neither the State of Ohio nor ODA agree to pay any taxes.

#### **ARTICLE VII: AGRICULTURAL EASEMENT REQUIREMENTS**

- 7.1 The Local Sponsor shall ensure that agricultural easements acquired under this Agreement meet the following requirements:
- a. Run with the land in perpetuity;
  - b. Protect agricultural use and related conservation values by limiting nonagricultural uses of the land and specify prohibited uses along with permitted uses;
  - c. Provide for the administration, management, and enforcement of the agricultural easement by the Local Sponsor or its successors;
  - d. Provide that if this Easement is extinguished, terminated, or condemned, in whole or in part, Landowner shall reimburse ODA for the amount equal to the proportionate share of the fair market value of the Protected Property unencumbered by this Easement as required by ORC § 901.22(A)(2)(b), and which is further specified in the terms of that certain Deed of Agricultural easement; and
  - e. All other provisions as required by ODA.

7.2 The form of any deed of agricultural easement used under this Agreement shall be drafted, approved, and provided by ODA. Any revisions or modifications thereto must be approved by ODA in writing prior to the Closing.

#### **ARTICLE VIII: TERMINATION OF LOCAL SPONSOR'S SERVICES**

8.1 ODA and Local Sponsor may mutually agree, 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 other Party.

8.2 ODA shall be entitled, by written or oral notice, to cancel this Agreement in its entirety or in part, for breach of any of the terms, and to have all other rights against Local Sponsor by reason of the Local Sponsor's breach as provided by law. A breach shall mean, but shall not be restricted to, any one or more of the following events:

- a. Local Sponsor fails to perform the services by the date required or by such later date as may be agreed to in a written amendment to the Agreement, signed by ODA;
- b. Local Sponsor breaches any warranty or fails to perform or comply with any term of this Agreement;
- c. Local Sponsor makes any general assignment for the benefits of any creditors not previously authorized;
- d. In ODA's sole opinion, Local Sponsor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- e. Local Sponsor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency, or reorganization or relief from debtors; or
- f. Any receiver, trustee or similar official is appointed for Local Sponsor or any of Local Sponsor's property.

8.3 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, and take all necessary steps to limit disbursements and minimize costs. If requested by ODA, Local Sponsor will 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.

- 8.4 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 hereunder in accordance with applicable regulations.
- 8.5 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 with no further obligation by ODA. 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.
- 8.6 In the event this Agreement is terminated prior to its completion, Local Sponsor shall deliver to ODA 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 remain the property of ODA, to be used in such manner and for such purpose as ODA may choose.
- 8.7 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.

#### **ARTICLE IX: RELATIONSHIP OF PARTIES**

- 9.1 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.
- 9.2 While Local Sponsor shall be required to render services described hereunder for ODA during the term of this Agreement, nothing herein shall be construed to imply, by reason of Local Sponsor's engagement hereunder as an independent contractor, that ODA shall have or may exercise any right of control over Local Sponsor with regard to the manner or method of Local Sponsor's performance of services hereunder.
- 9.3 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.

- 9.4 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.

#### **ARTICLE X: RELATED AGREEMENTS**

- 10.1 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 that do not involve the type of work or services described in Exhibit A, but which are required for its satisfactory completion. Local Sponsor shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by ODA. All work subcontracted shall be at Local Sponsor's expense.
- 10.2 Local Sponsor 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 ODA to terms inconsistent with, or at variance from, this Agreement.
- 10.3 Local Sponsor shall furnish to ODA a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

#### **ARTICLE XI: CONFLICTS OF INTEREST**

- 11.1 Subject to the terms of paragraph 11.3 below, Local Sponsor shall not acquire, prior to the completion of the terms contained herein, any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of its functions and responsibilities with respect to the terms contained herein.
- 11.2 Subject to the terms of paragraph 11.3 below, should Local Sponsor acquire an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or involuntarily acquires any such incompatible or conflicting personal interest, Local Sponsor shall immediately disclose Local Sponsor's interest to ODA in writing. Thereafter, Local Sponsor shall not participate in any action affecting the terms of this Agreement, unless ODA determines that, in light of the personal interest disclosed, Local Sponsor's participation in any such action would not be contrary to the public interest, the statement of work, or the statutory and regulatory authority of ODA.
- 11.3 As an agency of the State of Ohio, ODA may not contract for services currently being performed for another state agency, so that the State actually pays more than once for the same services. Nor may ODA contract for services with another agency where the other agency's contracts could interfere with or conflict with the terms set forth in this Agreement

or the regulatory authority and power of ODA. Therefore, Local Sponsor asserts that it has not entered into other agreements with another state or public agency for similar work as set forth herein that would negatively impact or interfere with the terms set forth herein or the regulatory power and authority of ODA. Nor shall Local Sponsor enter into similar agreements, without informing ODA in writing of the other agreements.

- 11.4 Charitable organizations shall continue to meet the requirements specified in OAC § 901-2-04 and § 901-2-07.

## **ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

The work product and its component parts provided by Local Sponsor under this Agreement are considered “work for hire” and shall become the property of the State of Ohio and neither Local Sponsor, nor employees or anyone with whom it subcontracts shall claim or assert any right, title, or other interest in, the work product or any of its component parts. The State, and any person, agency, or instrumentality providing financial assistance for the work performed under this Agreement shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the work product, and Local Sponsor shall not obtain copyright, trademark, service mark, or other proprietary protection for the work product. Local Sponsor shall not include in any work product any matter for which there is proprietary protection, unless the owner and any person, agency, or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such protected matter. If any of the work products is subcontracted, the Local Sponsor shall bind the subcontractor to the terms of this Article.

## **ARTICLE XIII: RECORD KEEPING**

- 13.1 Any payment required under this Agreement shall be for obligations incurred in performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the costs incurred.
- 13.2 All records shall be kept in a manner consistent with generally accepted accounting procedures. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Records shall be maintained for three years after the completion of the Agreement.
- 13.3 Upon ODA’s request, Local Sponsor shall provide reasonable access and a right to examine, during normal business hours, any and all books, documents, and records necessary to ensure or review compliance of this Agreement to ODA.

#### **ARTICLE XIV: CONFIDENTIALITY**

- 14.1 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.
- 14.2 All provisions of this Agreement relating to “confidentiality” shall remain binding upon Local Sponsor in the event of cancellation.

#### **ARTICLE XV: NONDISCRIMINATION OF EMPLOYMENT**

Local Sponsor agrees to comply with all applicable federal, state, and local laws in the conduct of the terms herein, including but not limited to ORC 125.111. In the event that any provision of this Agreement conflicts with any law, rule, or regulation, said law, rule or regulation shall prevail.

#### **ARTICLE XVI: ASSIGNMENT**

- 16.1 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Local Sponsor, without the prior written consent of ODA.
- 16.2 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

#### **ARTICLE XVII: OHIO ETHICS LAW REQUIRMENTS**

- 17.1 Local Sponsor certifies that he/she has not given nor promised to give anything of value to any public official or employee of ODA or any other board, commission, or agency of the State of Ohio. Local Sponsor also certifies that he/she is in compliance with and will remain in compliance with all of the provisions of Ohio Ethics Law as provided by ORC 102.03 and 102.04.
- 17.2 Local Sponsor affirms that, as applicable to Local Sponsor, no party listed in ORC 3517.13(I) and (J) or spouse of such party has made, as an individual, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees within the two previous calendar years.
- 17.3 Local Sponsor certifies that it does not have on its staff, payroll, or otherwise employed for monetary compensation or not, any employee who, within the past twelve months, was a public official or ODA employee or any other board, commission or agency of the State of

Ohio who had the ability to make decisions regarding approval, disapproval, recommendation, rendering advice, investigation or otherwise exercised substantial administrative control over matters concerning Local Sponsor at the time of his/her state employment.

## **ARTICLE XVIII: LIABILITY**

- 18.1 Local Sponsor agrees to indemnify and to hold ODA 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 Local Sponsor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by 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.
- 18.2 Each party to this Agreement shall be responsible for any breach of this Agreement, or negligent acts or omissions arising out of or in connection with this Agreement, or any other agreement entered into as a result of this Agreement, as determined by a court of competent jurisdiction, or as the parties may otherwise mutually agree. Nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party.
- 18.3 Each party is responsible for paying its own costs and attorney's fees that arise from defending any claims brought under the terms of this Agreement.
- 18.4 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
- 18.5 If Local Sponsor enters into a Cooperative Agreement with the United States Department of Agriculture – Natural Resources Conservation Service (“USDA-NRCS”) to receive matching funds under its Agricultural Conservation Easement Program – Agricultural Land Easement (“ACEP-ALE”) program, and to which ODA shall be obligated to act as party to or secondary beneficiary to that certain Cooperative Agreement and associated rights and responsibilities, Local Sponsor shall be responsible for any and all obligations which arise under or which are related to that Cooperative Agreement.

## **ARTICLE XIX: CONDITIONS AND WARRANTIES**

- 19.1 Local Sponsor warrants that it is not listed with the Secretary of State for unfair labor practices, pursuant to ORC 121.23.
- 19.2 Local Sponsor affirmatively represents and warrants to the State that it is not subject to a finding for recovery under ORC 9.24, or that it has taken the appropriate remedial steps required under ORC 9.24 or otherwise qualifies under that section.
- 19.3 Local Sponsor warrants that he/she has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments provided to the Local Sponsor by the State pursuant to this Agreement may be applied against such liabilities currently owing or incurred in the future.
- 19.4 Local Sponsor agrees that if this representation and warranty is deemed to be false, the Agreement shall be void *ab initio*, and any funds paid by State hereunder shall be immediately repaid to State
- 19.5 Local Sponsor affirmatively represents that it does not and will not boycott any jurisdiction with whom the State can enjoy open trade during the contract period, in accordance with ORC 9.76.

## **ARTICLE XX: ENTIRE AGREEMENT AND WAIVER**

- 20.1 This written Agreement constitutes the entire Agreement between Local Sponsor and ODA, and there are no other agreements between them, either oral or written, which relate to the work to be performed under this Agreement.
- 20.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties. No change to any provision of this Agreement shall be effective unless stated in writing and signed by both parties to this Agreement.
- 20.3 No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver or consent is in writing and signed by both parties to this Agreement. ODA may at its discretion, in event of a breach, notify Local Sponsor of the breach and allow the time specified by ODA to correct the breach.
- 20.4 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 XXI: NOTICES**

21.1 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. Electronic or facsimile notices are permitted when reasonable and upon approval by ODA.

1) In case of ODA to:  
**Jody Bowen**  
**Ohio Department of Agriculture**  
**Office of Farmland Preservation**  
**8995 East Main Street**  
**Reynoldsburg, Ohio 43068**

2) In case of the Local Sponsor to:  
**[CONTACT NAME]**  
**[LOCAL SPONSOR]**  
**[ADDRESS]**  
**[CITY, STATE ZIP]**

21.2 Any and all notices and other documents and communications required to be given pursuant to this Agreement shall be deemed duly given: (a) upon actual delivery, if delivery is by hand or courier service; (b) upon receipt by the transmitting party of confirmation or answer back if delivery is by facsimile or electronic means; or (c) 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.

## **ARTICLE XXII: CONSTRUCTION, APPLICABLE LAW, AND HEADINGS**

22.1 Under ORC Chapter 2743 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 ORC Chapter 2743.

22.2 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.

- 22.3 This Agreement and any claims arising in any way out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect.
- 22.4 All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction 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.
- 22.5 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.
- 22.6 The headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

#### **ARTICLE XXIII: DEBARMENT**

Local Sponsor 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 ORC 25.25. 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.

#### **ARTICLE XXIV: ANTITRUST ASSIGNMENT**

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.

#### **ARTICLE XXV: EXCUSE OF PERFORMANCE**

- 25.1 The performance of this Agreement, except for the payments of money for services already rendered, may be suspended by either Party for cause or causes beyond the reasonable control of such Party.
- 25.2 Such causes shall include, but not be limited to, acts of God, acts of war, riot, fire, explosion, accident, flood or sabotage; unforeseeable or unpreventable lack of adequate

fuel, power, raw materials, labor or transportation facilities; unforeseeable changes in governmental laws, regulations, requirements, orders or actions; unforeseeable or preventable breakage or failure of machinery or apparatus; national defense requirements; injunctions or restraining orders; unforeseeable or unpreventable labor trouble, strike, lockout or injunction, provided that neither Party shall be required to settle or prevent a labor dispute against its own best judgment.

#### **ARTICLE XXVI: 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. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature. 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 XXVII: DRUG FREE WORKPLACE**

Local Sponsor agrees to comply with all applicable state and federal laws regarding drug-free and smoke-free workplace requirements and shall make good faith effort to ensure that all its employees will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way and will not violate Ohio Liquor Law or any other state or federal law regarding the sale, transfer, or consumption of alcoholic beverages

#### **ARTICLE XXVIII: EXECUTION**

This Agreement is not binding upon ODA unless executed in full.

**[THIS PORTION IS INTENTIONALLY LEFT BLANK]**

A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature.

**IN WITNESS WHEREOF**, to show their agreement hereto, the parties have hereunto set their hands and affixed their signatures.

**LOCAL SPONSOR**

Date:

By:

\_\_\_\_\_

(signature)

\_\_\_\_\_

(print name)

\_\_\_\_\_

(print title)

**[LOCAL SPONSOR]**

**[ADDRESS]**

**[CITY, STATE ZIP]**

**OHIO DEPARTMENT OF AGRICULTURE**

Date:

By:

\_\_\_\_\_

**Director of Agriculture**

Director

Approved:

Date:

By:

\_\_\_\_\_

**ODA Attorney**

Deputy Legal Counsel

This instrument was prepared by:

Ohio Department of Agriculture

8995 East Main Street

Reynoldsburg, OH 43068-3342

**EXHIBIT A**  
**SCOPE OF WORK**

- A. Selection of Landowners Eligible for Purchase: The Local Sponsor shall perform all necessary legal and administrative actions to ensure the proper acquisition of and recordation of valid agricultural easements. The Local Sponsor shall follow the appropriate phases for the determination of eligible landowners and their properties for purchase as outlined in Ohio Administrative Code (“OAC”) § 901-2-06, within the following timeline:
1. In the event Local Sponsor opts to provide its own requirements for points in the “Other Factors” Section of the ODA online landowner application, Local Sponsor shall follow the Instructions for Preparing LAEPP Localized Questions and submit required information for approval no later than fourteen (14) days before the opening of the online landowner application.
  2. Pursuant to OAC § 901-2-04, online applications from potential landowners may be solicited and accepted beginning on January 18, 2022. All applications must be submitted electronically to ODA by April 18, 2022. All original applications must subsequently be sent to ODA by May 2, 2022.
  3. Local Sponsor shall review and rank each received application based on the farmland ranking system as previously approved by ODA and further specified in OAC § 901-2-05.
  4. Local Sponsor shall submit the hardcopy applications of the farms selected for easement purchase and any alternate applications no later than **May 2, 2022** (hereinafter known as the “Application Submission Deadline”). Local Sponsor shall also provide a summary of all electronically-submitted applications received and ranked to ODA in the same form as the example provided in “Exhibit D – Summary of Applications Received.”
  5. Within **ninety (90) days of the Application Submission Deadline** and after receiving notice of approval by ODA of the landowner applications selected for funding, Local Sponsor shall notify selected landowners of their acceptance into the program, and shall send the Notice of Selection created on their organization’s letterhead to the Landowner. An example of the Notice of Selection is provided in “Exhibit E – Notice of Selection” to the Cooperative Agreement. Local Sponsor shall provide the **original** Signed Notice of Selection to ODA no later than within one hundred twenty (120) days of the Application Submission Deadline. After receipt of the executed Notice of Selection by the Landowner, ODA shall provide an Amended “Exhibit B – Property/Funds” with the Properties identified for Local Sponsor’s execution.
  6. Local Sponsor shall complete all required due diligence and remaining steps in this Agreement to complete purchase of the selected Property pursuant to Section 2.5 of this Cooperative Agreement unless otherwise agreed in writing by ODA.
  7. Local Sponsor shall obtain the following documents for each selected Property at the landowner’s expense as provided in Sections B – O of this “Exhibit A – Scope of Work:”
    - a. **Ninety (90)** year title search and commitment shall be provided to ODA within one hundred and eighty (180) days of the Application Submission Deadline;
    - b. Property survey and appraisal if requested by ODA; and

**EXHIBIT A**  
**SCOPE OF WORK**

(continued)

- c. Subordination of all mortgages, leases, liens, restrictions or legal or equitable interests present on the title of the Property unless otherwise exempted by ODA as outlined in the ODA Closing Instructions in a form similar as provided in the example in “Exhibit C – ODA Closing Instructions.”
    - d. Present Condition Report (PCR) using a template provided by ODA as specified in OAC § 901-2-08.
  - 8. Local Sponsor shall complete the following after supplying documents in the previous paragraph of this Exhibit A:
    - a. Local Sponsor shall request ODA to send the Purchase Agreement prepared by ODA to the Landowner. Landowner must return a signed Purchase Agreement to Local Sponsor and/or ODA within thirty (30) calendar days of postmark. Local Sponsor must request and provide a signed Purchase Agreement at least ninety (90) days prior to the date the deed of easement is scheduled to be executed and funds exchanged (“Closing”).
    - b. Local Sponsor shall provide an original signed escrow agreement which complies with Section 6 of the Cooperative Agreement and closing protection coverage no later than forty-five (45) days prior to Closing.
    - c. Local Sponsor shall forward all preliminary Closing documents for review and final closing approval to ODA after receipt of the Purchase Agreement for final review of clear title and any further actions to ensure clear title to the Property at least thirty (30) days prior to Closing. Upon receipt of the documents and approval by ODA, ODA shall forward to the Local Sponsor the Deed of Agricultural Easement and final ODA Closing Instructions for use at Closing.
- B. Title Search: The Local Sponsor shall select a title agency in good standing with the Ohio Secretary of State. The title agency must be able to conduct the title search, prepare the title commitment, issue owner’s policy, provide escrow services and facilitate closing and recordation. The Local Sponsor shall provide their title agent with ODA’s Title Review Checklist, attached hereto as “Exhibit I – Title Review Checklist.” The title agency shall provide a title search of the public records concerning the titles to the parcels of such real estate as delineated in the Property attached hereto as Exhibit B. The Local Sponsor shall submit a written report (also known as the title commitment), 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 acreage for the entire interest in land being acquired in the Deed of Easement.

**EXHIBIT A**  
**SCOPE OF WORK**

(continued)

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 **all recorded deeds and encumbrances** 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, all source documentation** (including documentation of conveyances for a period of **90 years**), and any other requested documentation related to title within one hundred eighty (180) days after the Application Submission Deadline so the legal office may review the title commitment and issue a title opinion for ODA prior to closing. ODA will then issue preliminary Closing Instructions to the Local Sponsor.
  11. Local Sponsor shall secure 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 coverage as well as an owner's policy of title insurance on the parcels delineated in Exhibit B, naming the Director of ODA as the sole owner insured. Evidence of closing protection coverage shall be provided no later than forty-five (45) days prior to Closing.
- C. Purchase Agreement: After obtaining all the documents in Paragraph 7 of Section A of this Exhibit A, Local Sponsor shall request ODA send the Purchase Agreement prepared by ODA to the Landowner. Such Purchase Agreement shall substantially follow the example provided in "Exhibit F – Purchase Agreement." In order to participate in the program, Landowner must return a signed Purchase Agreement to Local Sponsor and/or ODA within thirty (30) calendar days of postmark. Local Sponsor must request and provide a signed Purchase Agreement at least ninety (90) days prior to the date the deed of easement is scheduled to be executed and funds exchanged ("Closing") or the Closing shall be rescheduled by the Local Sponsor.

**EXHIBIT A**  
**SCOPE OF WORK**

(continued)

- D. Appraisal: If required by the Director, ODA may direct the Local Sponsor to obtain a comparable land appraisal at Landowner's expense by a certified general appraiser. The appraiser must be selected by following the Ohio Administrative Code ("OAC") Chapter 901-2 and Ohio Revised Code ("ORC") Chapter 4763.  
Additionally, if the Local Sponsor requests and receives a Points Based Appraisal Exception, they must follow the Points Based Appraisal Exception Policy & Guidelines for the Local Agricultural Easement Purchase Program ("LAEPP") 2022 and other steps deemed necessary by ODA to obtain the appraisal.
- E. Preparation for Closing: Local Sponsor shall forward all preliminary Closing documents for review and final closing approval to ODA after receipt of the Purchase Agreement for final review of clear title and any further actions to ensure clear title to the Property at least thirty (30) days prior to Closing. Upon receipt of the documents and approval by ODA, ODA shall forward to the Local Sponsor the Deed of Agricultural Easement and final ODA Closing Instructions for use at Closing. No changes may be made to the Deed of Agricultural Easement without the express consent of ODA in writing.
- F. Date and Place of Closing: The parties shall mutually agree to a closing date, but in no event later than June 30, 2023 unless otherwise agreed in writing by ODA.
- G. Settlement or Closing Statement: A settlement or closing statement reflecting the amount to be paid for the agricultural easement, as well as any costs and expenses as incurred by the parties, which complies with Section 5 of this Cooperative Agreement, shall be submitted to ODA prior to Closing, and signed by the Ohio Department of Agriculture, the Local Sponsor, the Landowner, and the title agent.
- H. Persons Required at Closing Conference: The following persons must attend the closing conference, if possible: Landowner(s) and a representative of the Local Sponsor. At ODA's discretion, a representative from the Office of Farmland Preservation may attend the closing conference.
- I. 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 all of the necessary documents relating to title in Property and the granting of the agricultural easement executed, which include but are not limited to the Notice of Selection, Purchase Agreement, Agricultural Easement Deed, 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 closing and recordation of a valid agricultural easement which is in accordance with LAEPP Policies and Guidelines and this Agreement. The LAEPP Policies and Guidelines are attached hereto as "Exhibit G – LAEPP Policies and Guidelines" and are incorporated herein, and are subject to revision at any time in the sole discretion of ODA. Local Sponsor shall determine if all documents include the proper designation of ODA's name and manner of holding the agricultural easement on the 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

**EXHIBIT A**  
**SCOPE OF WORK**

(continued)

administration, management, and enforcement of the agricultural easement by the Local Sponsor; (iv) requires implementation 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 LAEPP Policies and Guidelines as available from ODA's Office of Farmland Preservation.

- J. Treatment of Existing Liens and Mortgages: On the date of Closing, the Property shall be free of any liens or mortgages which encumber the Property, or such liens and mortgages have been subordinated to the agricultural easement interest of ODA as required by OAC § 901-2-02(A)(4) or which ODA deems could affect the intent of the easement. Landowner and/or Local Sponsor shall be held responsible for obtaining and recording all such subordinations, lien releases and/or mortgage releases and provide such releases and/or subordinations to ODA prior to the Closing.
- K. Conditions of Title: Landowner must have good and marketable title to the Property with an unbroken chain of title of record for at least ninety years prior to the date the title search was conducted. 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 Landowner's 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 or that any exceptions from this subordination requirement are approved by ODA, and are consistent with the purposes of the LAEPP.
- L. Conservation Plan: The Grantor, the Grantor's heirs, successors and assigns, shall conduct all farming operations in accord with applicable federal and state laws and using best management practices approved by the US Department of Agriculture, Natural Resources Conservation Service, Soil and Water Conservation District or another qualified professional approved by the Grantee. Prior to payment at Closing, the Local Sponsor shall ensure that each Property on which an agricultural easement will be acquired has a conservation plan prepared or approved 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.
- M. Local Sponsor to Record Easement, Subordination, and Other Documents: If all conditions of title are met, including update of title on the parcels immediately prior to recordation, the Local Sponsor shall record the agricultural easement and if applicable, any other executed documents, releases and agreements which must be recorded (including but not limited to: subordinations, trust agreements, etc.) in the office of the recorder of the county in which the property is located. Local Sponsor shall ensure that cross references to existing Deed(s) for the property are included on recorded documents.
- N. Disbursement of Funds: After recordation of the Easement and upon determination by Local Sponsor, through the services of a title agency in good standing, and in good faith that all instructions and conditions specified in the final ODA Closing Instructions and escrow agreement have been satisfied, title agent shall pay all costs as itemized in ODA's signed Settlement Statement out of the funds held in the escrow account. Once all other costs are paid, from the terms and requirements of the signed escrow agreement, the remainder of the funds held in the escrow account shall then be disbursed to the landowner entitled to payment.

**EXHIBIT A**  
**SCOPE OF WORK**

(continued)

- O. Notification of Closing: Local Sponsor shall notify ODA within three business days of Closing that the Closing has occurred.
  
- P. Original Documents to ODA: After the Closing, as soon as possible, but in any event no later than 90 days after the Closing, Local Sponsor shall present ODA with the original copy of the Deed of 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.
  
- Q. Monitoring: The Local Sponsor shall monitor the use and management of the Property covered by the agricultural easement on an annual basis to ensure that the Property is being managed and used according to the provisions in the agricultural easement agreement entered into by the Local Sponsor and the landowner. 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 B**  
**PROPERTY / FUNDS**  
*(TEMPLATE - Prepared by ODA)*

Farm ID: Farm ID from Landowner Application

Owner: Landowner Name

Main Contact Information: Primary Contact Name  
Primary Contact Mailing Address

Property Location: Property Location

County: County Name of Easement

Township: Township Name of Easement

Parcel Number - Acres: Parcel ID – Acres ac

ODA Contribution: \$###,###

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
*(Prepared by ODA)*

**CLOSING INSTRUCTIONS**  
**(FINAL)**

Date

Local Sponsor Name

Local Sponsor Address

Local Sponsor City, State, Zip

Dear Local Sponsor:

Thank you for agreeing to provide services to the Ohio Department of Agriculture (ODA) for the purchase of an agricultural easement on the **Farm Name** farm under the 20XX Clean Ohio Local Agricultural Easement Purchase Program (LAEPP). ODA agrees to co-hold an Agricultural Easement on this property once the following steps have been taken and Local Sponsor 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) Closing agent has deposited ODA's purchase funds (\$XXX,XXX.00, sent separately to closing agent on \_\_\_\_\_) as described in the enclosed Escrow Agreement naming the Ohio Department of Agriculture as a third-party beneficiary. Per Escrow Agreement, within ten (10) business days of placing the deposit in the Escrow Account, Escrow Agent shall provide written notice (email is acceptable) to the Local Sponsor and ODA confirming the deposit.
- (3) At least three (3) days prior to closing, closing agent shall deduct landowner's title expenses from the landowner's check and provide to ODA for approval and signature a Settlement Statement (HUD-1) detailing ODA's expenses. Costs expected to be deducted on ODA's Settlement Statement include:
  - a. Title search
  - b. ODA's title commitment/binder and updates to ODA's title commitment
  - c. Title agent's Settlement or Closing fee
  - d. Recording costs for Deed of Agricultural Easement (**costs for both counties**) and approved curative documents (i.e. subordination agreements, Consents to Easement, Affidavits, etc.)
  - e. ODA's closing protection coverage
  - f. ODA's Owner's Policy for Title Insurance
  - g. Other items only with written approval of ODA
- (4) You have confirmed the present condition of the Agricultural Easement property. Prior to the Closing Conference, Local Sponsors should contact the landowner(s) to ensure there have been no changes to the condition of the property that would impact the Present Condition Report (Exhibit B to the Deed of Agricultural Easement). Local Sponsor should also confirm with the landowner that there have been no changes that would affect the title of the property (new mortgages, ownership changes, etc.).

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**

(continued)

- (5) (if applicable) Local Sponsor shall execute a revised Escrow Agreement between Local Sponsor, closing agent, and landowner now that we are in a new biennium (2017-2019). Original, executed Escrow Agreement must be returned to ODA after closing.
- (6) (if applicable) During the closing conference, have the landowners execute the enclosed revised Purchase Agreement for Easement. This revised document corrects the total purchase price of the Agricultural Easement.
- (7) (if applicable) Local Sponsor shall execute revised Corporate Resolution enclosed. Return the original to ODA.

Note: Before recording any of the documents outlined below, read Closing Instructions Attachment A – Procedures for completing recordation and preparing ODA’s final title policy.

- (8) Ensure no new encumbrances will be recorded against the property according to ODA’s Title Commitment **Title Number** issued by **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.
- (9) You have recorded the necessary deed of ownership to make the landowner’s survey “of record” prior to recording the Deed of Agricultural Easement.
  - a. Deed of Agricultural Easement (page 2) contains a blank line for Vol/Page reference to the new source of title.
- (10) You have properly executed and duly recorded the Deed of Agricultural Easement with an Exhibit A describing the easement area, Exhibit A-1 containing a description of the route of ingress and egress, Exhibit A-2 containing the map of the easement area, Exhibit B containing the “Baseline Documentation” aka Present Condition Report, and Exhibit C describing existing easements and rights-of-way.
  - a. **This is a multi-county property. Recording of the Deed is required in both \_\_\_\_\_ and \_\_\_\_\_ counties.**
  - b. Ensure the proper signatory authority documentation has been provided for anyone signing the Deed of Agricultural Easement.
    - i. A copy of the most recent Memorandum of Trust for the landowners is included for reference.
  - c. Local Sponsor shall ensure that cross references to the Deed of Agricultural Easement are included on recorded documents (example enclosed).
  - d. Purchase funds not to be disbursed to the landowner until the final title update has been performed and the Deed of Agricultural Easement filed of record.
  - e. ODA’s purchase funds are not to be disbursed until all contributions are also in escrow (Local Sponsor/NRCS).
- (11) (if applicable) You have recorded the subordination agreement (copy enclosed) approved by ODA.
- (12) (if applicable) You have recorded the Renter Consent to Easement (copy enclosed) approved by ODA.
- (13) (if applicable) You have recorded the Affidavit for uninstalled utilities (enclosed).
- (14) (if applicable) You have recorded the Affidavit for expired Oil and Gas Leases (enclosed).
- (15) (if applicable) You have recorded the Partnership Agreement enclosed. Return the original to ODA.
- (16) (if applicable) You have recorded the two (2) Memorandums of Trust. Have title agent ensure that the Memorandums as written correspond with the titling of the Grantor information on the first page of the Deed of Agricultural Easement.

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
(continued)

- (17) You have obtained the landowner's signature on the **Conservation Plan** (correspondence enclosed)
- (18) 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.00**].
- 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 Easement Interest.
  - c. The title vested in the interest being acquired by ODA should be as stated on the first page of the Deed of Agricultural Easement.
  - d. **The Owner's Policy cannot contain an arbitration clause. The State of Ohio cannot agree to this clause.**
- (19) The description of the easement area must be the same on the Agricultural Easement Deed, Commitment for Title Insurance, and Title Insurance Policy.
- (20) Section 1 of Schedule B of said commitment "Requirements" shall be adhered to and executed as stated.
- a. Requirement 2: A copy of the Memorandum of Trust for the Bruce E. Flora Trust is included with this escrow package.
- (21) Schedule B Section 2 of the Owner's Policy for Title Insurance will reflect that the following "Exceptions" have been deleted or revised: **1, 2, 4, 5, 7, 8**.
- a. Notify ODA immediately if these exceptions cannot be deleted from the final title policy.
  - b. The above-mentioned exceptions **1-2, 4-5** should be deleted after the landowner completes an Owners/Sellers Affidavit at closing. Please provide ODA with a copy of the owners/sellers affidavit after closing.
  - c. The above-mentioned exception **7** can be deleted since ODA is purchasing an owner's policy and not a loan policy.
  - d. **The above-mentioned exception 8 cannot appear on ODA's final title policy as written. If unable to be removed, acceptable edits would be:**  
  
"Coal, oil, natural gas, or other mineral interests and all rights that were previously conveyed, transferred, leased, excepted, or reserved prior to (INSERT TITLE SEARCH PERIOD START DATE (i.e. November 11, 1911)) and any interest subsequent to the date of the policy;" or  
  
"Coal, oil, natural gas, or other mineral interests and all rights that were previously conveyed, transferred, leased, excepted, or reserved prior to the period of search performed under the aforementioned commitment and any interest subsequent to the date of the policy."
- (22) Schedule B Section 2 of the Owner's Policy for Title Insurance will reflect that the following "Exceptions" have been subordinated or released: **10**.
- a. Per enclosed document prepared by title agent, proceeds from the agricultural easement purchase are being used to pay off the existing mortgage. If there are any deviations from the approved procedures, notify ODA immediately.
- (23) Schedule B Section 2 of the Owner's Policy for Title Insurance will reflect that the following "Exceptions" have been paid current through the date of closing: **6, 10**.
- (24) The following "Exceptions" are permissible to remain as exceptions in the ODA Owner's Policy for Title Insurance: **3, 9, 11**.

After the Deed and associated documents such as Affidavits and/or Subordination Agreements are recorded in **County Name** County, submit the following to ODA no later than **90** days after

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
(continued)

closing/recordation:

- Copy of these instructions with signed acknowledgement by Local Sponsor and Closing Agent
- Executed REVISED Escrow Agreement (if applicable)
- Executed REVISED Purchase Agreement (if applicable)
- Executed REVISED Corporate Resolution (if applicable)
- Final title commitment update (occurs immediately prior to recordation of the Deed of Agricultural Easement)
- Owner's Policy for Title Insurance (ODA)
- **Original Recorded Deed of Agricultural Easement**, all curative and/or recorded documents (i.e. Affidavits, Subordination Agreements, Consents to Agricultural Easement, Memorandums of Trust)
- Final executed Settlement Statement (HUD-1)
- Copy of owner's/seller's affidavit (provided by title agent)
- Copy of Local Sponsor's title policy for NRCS Contribution
- Complete copy of NRCS Form 230 with all signatures
- Copy of the ACEP-ALE Plan required by NRCS for ODA's files (send electronically)
- Complete copy of NRCS Closing Instructions for this Agricultural Easement
- Copy of the NRCS appraisal for this agricultural easement, for ODA's files (send electronically)
- Copy of the complete IRS tax appraisal for this agricultural easement, for ODA's files (send electronically)

**Please see the attached outline (Attachment B) 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 us at (614) 728-6238.

Sincerely,

Amanda Y. Bennett  
Program Manager

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
(continued)

**Acknowledgements**

Local Sponsor: **Local Sponsor**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Closing Agent: **Closing Agent**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
(continued)

**CLOSING INSTRUCTIONS – ATTACHMENT A**

**Procedures for completing recordation and preparing ODA's final title policy**

Dear Local Sponsor and Closing Agent:

**Recordation Procedures**

This ODA Agricultural Easement Closing package may contain one or more of the documents listed below. If any of these documents are to be recorded for this Agricultural Easement, proceed with recording in the following order:

- (1) Memorandums of Trust or Partnership Agreements**
- (2) Deed of Agricultural Easement**
- (3) Subordination Agreement(s) for mortgage or other lien**
- (4) Affidavits (including but not limited to, Affidavits for Oil and Gas, Affidavits for Uninstalled Utilities, etc.)**
- (5) Consents to Easement (for farm renters)**

Note: Do not proceed with recording any of the above documents until after a final title update has occurred, which is to happen immediately prior to recording the documents listed above.

**Final ODA Title Policy**

Per ODA's final Closing Instructions, the final title policy insuring ODA's Easement Interest is to list a date and time matching that of the recording date/time stamp for the Deed of Agricultural Easement. Therefore, items recorded in the order above shall appear or not appear in the final title policy as follows:

- 1) Mortgages that were subordinated to the Agricultural Easement should not appear as exceptions on the final title policy. By being subordinated to the Agricultural Easement, they are no longer an exception to our Easement Interest.
- 2) Affidavits should be added to the title policy exception that they pertain to by Volume/Page or Instrument reference. For example, an Affidavit filed at Closing which speaks to specific oil and gas leases should be added to the policy exception for those oil and gas leases.
- 3) Consents to Easement for farm renters should not appear as exceptions to ODA's policy. Since the document subordinates the renter's rights to the Agricultural Easement, they are no longer exceptions to ODA's Easement Interest.
- 4) Finally, the Deed of Agricultural Easement should not appear as an exception on ODA's title policy. The interest being insured is for the Easement itself. If the underwriter requires the Deed to be listed as an exception, it needs to be qualified with language that makes clear that the terms and conditions of the Deed of Ag Easement are excepted from the policy, not the document itself.
- 5) The final title policy shall not contain an arbitration clause. The State of Ohio cannot agree to arbitration clauses.

If you have any questions about any of the above items, contact Amanda Bennett at the Office of Farmland Preservation at (614) 728-6214 or [amanda.bennett@agri.ohio.gov](mailto:amanda.bennett@agri.ohio.gov).

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
(continued)

**Closing Instructions Outline – ATTACHMENT B**  
**Landowner Name – Commitment # Number**  
**DATE**

All Documents	Document Type	Document Enclosed	Document to be Signed	Document to be Recorded	Document(s) to Return to ODA
Check (ODA contribution) for <b>\$XX,XXX.00</b>	Original	Sent directly to Closing Agent	X (deposited per escrow agreement)		
ODA Closing Instructions (w/ LS and Title Agent Signature)	Original	X	X		X
Most recent ODA title commitment (for reference)	Copy	X			
Escrow Agreement including ODA as third party	Original (Revised) Copy (Initial)	X	X (Original Revised)		X (Original Revised)
<u>Corporate Resolution</u>					
Deed of Agricultural Easement, Ex. A, A-1, A-2, B, C	Original	X	X	X	X (Original)
<u>Subordination Agreement</u>	Original/Copy	X	X	X	X (Original)
<u>Renter's Consent to Easement</u>	Original/Copy	X	X	X	X (Original)
<u>Affidavit</u>	Original/Copy	X	X	X	X (Original)
<u>Memorandum of Trust</u>					
<u>Partnership Agreement</u>					
ODA Purchase Agreement	Copy	X			
Recording Information	Copy	X			
Example of cross references	Copy	X			
Title Update (pre-recording)	Original				X (Original)
Owners Policy of Title Insurance (ALTA) for ODA	Original				X (Original)
Settlement Statement (HUD-1)	Original		X (ODA must sign before closing)		X (Original)
Owner's/Seller's Affidavit	Copy				X (Copy)
<u>Local Sponsor's Policy (for NRCS Contribution)</u>	Copy				X (Copy)

**EXHIBIT C**  
**SAMPLE ODA CLOSING INSTRUCTIONS**  
 (continued)

All Documents	Document Type	Document Enclosed	Document to be Signed	Document to be Recorded	Document(s) to Return to ODA
NRCS Form 230	Copy	X (ODA's signed copy)	X		X (Copy)
NRCS ACEP-ALE Plan	Electronic Copy				X (send electronically)
NRCS Closing Instructions	Copy				X (Copy)
NRCS Approved Appraisal	Electronic Copy				X (send electronically)
IRS Tax Appraisal (full)	Electronic Copy				X (send electronically)

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.

LS = Local Sponsor  
 ODA = Ohio Department of Agriculture

**EXHIBIT D**  
**SAMPLE SUMMARY OF APPLICATIONS RECEIVED**  
*(Draft Prepared by Local Sponsor - Maintained by ODA)*

**(Enter Local Sponsor Name Here)**  
**Landowner Application Funding Plan**  
**by Rank**

**Landowner Payment Plan**

Farm ID*	County	Landowner Name	Total Score	% of Donation	Acres	Points-Based Max Purchase Price **	Landowner Payment Plan			
							ODA Contribution	Local Sponsor Contribution	Projected ACEP-ALE	Total Planned Payment
103FRH2	Lincoln	Smith	99.99	25%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###
11D7EBC	Clay	Jones	88.88	60%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###
11TI8NI	Grant	Wilson	77.77	40%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###
121NOVQ	Douglas	Abbott	66.66	60%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###
12242A6	Johnson	Brown	55.55	60%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###
122NCPN	Polk	Moore	44.44	25%	###.##	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###	\$ ###,###

**EXHIBIT E**  
**SAMPLE NOTICE OF SELECTION**  
*(Prepared by Local Sponsor on Local Sponsor Letterhead)*

**NOTICE**  
(LAEPP 20\_\_)

DATE

LANDOWNER FIRST NAME/LAST NAME  
LANDOWNER STREET ADDRESS  
CITY, STATE ZIP

Dear LANDOWNER:

Congratulations on the selection of your 20\_\_ Clean Ohio Local Agricultural Easement Purchase Program (“LAEPP”) application in this year’s funding round. Your application is now eligible to proceed to Phase 3, in accordance with Ohio Administrative Code (“OAC”) § 901-2-06.

***DRAFTING NOTE: For single-contributor (ODA-only) purchases, use OPTION A for the next paragraph. For multi-contributor purchases, use OPTION B or OPTION C as the next paragraph:***

***OPTION A (ODA-only):***

The purchase price of your agricultural easement is expected to be *[TOTAL AG EASEMENT PURCHASE PRICE IN DOLLAR FORMAT ex. \$78,345.00] [(PURCHASE PRICE WRITTEN OUT ex. Seventy-eight thousand three hundred and forty-five 00/100 dollars)]*. This price is based on the acreage stated in your 20\_\_ LAEPP application, which the *[LOCAL SPONSOR]* shows as *[NUMBER OF ACRES]* acres. This price may be adjusted if the subsequent title search and survey (if necessary) show less acreage than what was submitted on your application.

***OPTION B (multi-contributor, NRCS as additional contributor):***

The purchase price of your agricultural easement is expected to be *[TOTAL AG EASEMENT PURCHASE PRICE IN DOLLAR FORMAT ex. \$78,345.00] [(PURCHASE PRICE WRITTEN OUT ex. Seventy-eight thousand three hundred and forty-five 00/100 dollars)]*. Of these funds \$*[Insert ODA contribution in dollar format, ex. \$26,115.00]* will be awarded from ODA through the LAEPP and the remaining \$*[Insert other contribution in dollar format, ex. \$52,230.00]* will be awarded by the Natural Resources Conservation Service (NRCS)’s Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) program. This price is based on the acreage stated in your 20\_\_ LAEPP application, which the *[LOCAL SPONSOR]* shows as *[NUMBER OF ACRES]* acres. This price may be adjusted if the subsequent title search and survey (if necessary) show less acreage than what was submitted on your application. Additionally, this price may be adjusted based on the Fair Market Value of the Agricultural Easement (FMEV) as determined by the subsequent appraisal required by ACEP.

***OPTION C (multi-contributor, non-NRCS):***

The purchase price of your agricultural easement is expected to be *[TOTAL AG EASEMENT PURCHASE PRICE IN DOLLAR FORMAT ex. \$78,345.00] [(PURCHASE PRICE WRITTEN OUT ex. Seventy-eight thousand three hundred and forty-five 00/100 dollars)]*. Of these funds \$*[Insert ODA contribution in dollar format, ex. \$26,115.00]* will be awarded from ODA through the LAEPP and the remaining \$*[Insert other contribution (other grant, local sponsor contribution, etc.) in dollar format, ex. \$52,230.00]* will be awarded by the *[ADDITIONAL CONTRIBUTOR]*. This price is based on the acreage stated in your 20\_\_ LAEPP application, which the *[LOCAL SPONSOR]* shows as *[NUMBER OF ACRES]* acres. This price may be adjusted if the subsequent title search and survey (if necessary) show less acreage than what was submitted on your application.

**EXHIBIT E**  
**SAMPLE NOTICE OF SELECTION**  
(continued)

**Upon exercise of this NOTICE:**

1. *[LANDOWNER]* (“Landowner”) acknowledges that the *[LOCAL SPONSOR]* shall obtain, on the Ohio Department of Agriculture (“ODA”)’s behalf, a title guaranty, attorney’s certificate or title insurance as evidence of the title to be conveyed.
  - a. Costs incurred by *[LOCAL SPONSOR]* for the above items will be reimbursed to *[LOCAL SPONSOR]* through the title insurance company, as escrow agent, at closing by deducting these costs from the Agricultural Easement purchase price.
  - b. *[LOCAL SPONSOR]* will review the previously mentioned documentation for compliance with LAEPP requirements, and if *[LOCAL SPONSOR]* and ODA determines that the documentation is in compliance, Landowner will receive written notice that it has been selected to proceed to Phase 4, which consists of ODA and Landowner signing a Purchase Agreement.
  - c. If, after costs are incurred by *[LOCAL SPONSOR]* for the above items, Landowner becomes ineligible for any reason or withdraws from receiving funding, Landowner shall be held completely responsible and shall reimburse *[LOCAL SPONSOR]* for all such costs.
  - d. ODA may require that the property be surveyed by a duly licensed surveyor at Landowner’s expense, if ODA determines that the boundaries of the easement property are not sufficiently described to enforce the easement or if a survey is required to record the easement.

2. Title to the application property shall not be subordinate to any other legal or equitable interest, the exercise of which would result in a conversion of the land from predominately agricultural use. Landowner shall provide subordination agreement(s) from any party that has a legal or equitable interest in the land identified in the application, or in the title search, that *[LOCAL SPONSOR]* and/or ODA determines is not conducive to keeping the land in agriculture.

**NOTE: Any liens, encumbrances, mortgages and easements allowed to remain must be subordinated in accordance with the policies of ODA before payment of the purchase price is permitted.**

3. Landowner acknowledges that subdividing of an agricultural easement is prohibited. All parcels that make up the application property will be bound together by one permanent agricultural easement. In the future, if the land under easement is sold or transferred, all parcels must be conveyed as one unit and cannot be sold or transferred separately.
4. Landowner acknowledges that no additional house(s) may be added to the property if homes already exist. If no housing currently exists, landowner acknowledges that they will be permitted to reserve a home site for one future single-family residence.
5. Landowner acknowledges and consents that *[LOCAL SPONSOR]* may submit Landowner’s application to the United States Department of Agriculture’s (“USDA”) Natural Resources Conservation Service (“NRCS”) for partial reimbursement under the Agricultural Conservation Easement Program – Agricultural Land Easement (“ACEP-ALE”) program for the purchase of the Agricultural Easement.
6. Landowner acknowledges that if *[LOCAL SPONSOR]* submits Landowner’s application to USDA/NRCS, compliance with the ACEP requirements will be required by the Landowner and *[LOCAL SPONSOR]*.

***DRAFTING NOTE: Preceding items #5 and #6 relate directly to Local Sponsors who have applied to or intend to apply to the USDA-NRCS for matching funds. If the Local Sponsor has not and will not apply the property in question to the ACEP-ALE program, these items can be removed from the final Notice of Selection.***

7. Landowner acknowledges that any award is public record and such information may be released to the media in accordance with the requirements of Ohio law.

**EXHIBIT E**  
**SAMPLE NOTICE OF SELECTION**  
(continued)

8. Landowner acknowledges that any funding is contingent upon the availability of funds from the Clean Ohio Agricultural Easement Fund.
9. Landowner further acknowledges that this Notice does not guarantee the receipt of funding, but is an agreement by Landowner to abide by the terms of this Notice and proceed to Phase 3 of the Local Agricultural Easement Purchase Program.

Sincerely,

*[LOCAL SPONSOR]*

*[LOCAL SPONSOR TITLE]*

CC: Ohio Department of Agriculture, Office of Farmland Preservation *(via email)*

**EXHIBIT E**  
**SAMPLE NOTICE OF SELECTION**  
(continued)

*[LANDOWNER NAME]* - LAEPP 20\_\_ Notice of Selection

**ALL Landowners/Partners/Trustees** must return this **SIGNED NOTICE** to *[LOCAL SPONSOR]* within **10 business days** after the date of this Notice, if they desire to proceed to Phase 3. If no response is received within **10 business days**, the application will not proceed to Phase 3.

If all landowners agree to proceed to Phase 3 of the application process, please sign and date below.

**ACKNOWLEDGEMENT AND ACCEPTANCE**

**MY SIGNATURE INDICATES THAT I HAVE READ, UNDERSTAND, AND AGREE TO ABIDE BY THE PROVISIONS/TERMS AND CONDITIONS ABOVE.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

\*If more than four signatures are required, please attach a sheet with remaining signatures.

**Notice of Selection Template Date: 11/29/2018**

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
*(Prepared by ODA)*

**STATE OF OHIO**  
**DEPARTMENT OF AGRICULTURE**

**PURCHASE AGREEMENT FOR EASEMENT**  
(LAEPP 20\_\_)

This Purchase Agreement (“Agreement”) is entered into by [SELLER’S NAME] (hereinafter “Seller”), [SELLER’S ADDRESS], and the State of Ohio, acting by and through the **Department of Agriculture** (“ODA”), 8995 East Main Street, Reynoldsburg, Ohio 43068 and the [LOCAL SPONSOR’S NAME], **(if applicable, remove next part if government LS)** an Ohio non-profit corporation (“Local Sponsor”), [LOCAL SPONSOR’S ADDRESS].

1. **PURCHASE.** Upon the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell and ODA and Local Sponsor agree to purchase (“Purchase”), under the terms and conditions hereinafter set forth, an Agricultural Easement (“Easement”). Easement shall be approximately \_\_\_\_\_ acre(s) of land located in \_\_\_\_\_ County, [STREET ADDRESS] in [CITY, STATE] and which is further described in the legal description attached hereto as Exhibit A (“Property”). It is the purpose of this Easement to ensure that the Property will be retained in agricultural use, as that term is defined by Ohio Revised Code (“ORC”) § 5713.30, by preserving and protecting the Property’s agricultural soils and agricultural viability through a perpetual restriction on the use of the Property. For the purposes of this Agreement, Property will be deemed to refer to not only the described land but also all rights and interests in said land, including without limitation, all water and mineral rights, development rights, rights-of-way, utility agreements and improvements located on or related in any way to such land.
2. **PURCHASE PRICE:** The purchase price of the Easement is expected to be \$[\_\_\_\_\_] (WRITTEN OUT DOLLAR AMOUNT and 00/100 Dollars), or \$[\_\_\_\_\_] per acre. Of the total purchase price, ODA shall contribute \$[\_\_\_\_\_] (WRITTEN OUT DOLLAR AMOUNT and 00/100 Dollars). Landowner must complete all requirements provided by ODA in order to qualify for the purchase price specified above. After ODA receives an executed copy of this Agreement, ODA will verify the information which was submitted by the Seller. The final purchase price will be based upon ODA’s policies as applied to the verifiable facts in Seller’s application.

It is expressly understood by Seller that this Purchase is contingent upon the availability and receipt of all necessary funds from the appropriate State and Federal Agencies and all necessary approvals by the General Assembly and by the Controlling Board of the State of Ohio, when required, and is further contingent on the acquisition of any necessary funds from other non-state financing sources for purchase monies. Further the Purchase is contingent on Seller’s performance of all of its obligations under this Agreement.

3. **DUE DILIGENCE PERIOD:** ODA shall have such time to perform due diligence on the Property to review title work and any other aspects of the property to determine the property’s suitability for Purchase. ODA shall be granted until June 30, 2019 with the option of renewal for two, one (1) year terms in the sole discretion of ODA, commencing upon the execution of this Agreement by both parties. Seller agrees not to sell or transfer, or negotiate to sell or transfer the Property; or otherwise offer the Property for sale or grant any type of license, option, easement or other rights in and to the Easement during the option period. No modifications to this Agreement are permitted unless otherwise agreed to in writing by both parties.

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

4. **EXERCISE OF PURCHASE:** For the purpose of inducing ODA to enter into this Agreement, Seller agrees, represents, and warrants:
- (A) That Seller is legally bound and has full right, power and authority to convey the Easement in said Property to the State of Ohio, Department of Agriculture and Local Sponsor in accordance with the terms of this entire agreement as set out herein, and has marketable fee simple title to the Property.
  - (B) Excepting matters disclosed to ODA (including, but not limited to, matters known at the time of this execution and thereafter), Seller has not received any notice of, nor has knowledge concerning, any adverse parties in possession of the Property, proceedings (including but not limited to eminent domain and foreclosure) against the Property or Seller, or public improvements or utilities contemplated to be placed on the Property, or any petitions now or in the future to subdivide or split off the Property.
  - (C) That the Property is free of all liens and encumbrances except as shown on the title commitment or disclosed to ODA, and Seller has not and will not take any action which would result in any liens or encumbrances against the Property prior to the Closing, including but not limited to any type of mortgage, easement, permits, rights-of-way, or any other license against any right in the Property. This includes but is not limited to any rights granted to utilities and septic systems or for the building of roads or other improved surfaces.
  - (D) That all laws, ordinances, rules, regulations and court orders (including, but not limited to, those relating to zoning, building, fire, health, safety, taxes, and environmental conditions and protection) of any applicable governmental agency or other party bearing on the Seller's ownership, operation or use of the Property or any part thereof, have been or will, prior to Closing, be disclosed to ODA and complied with by Seller.
  - (E) That the Property is not currently used and will not be used for industrial or commercial activity beyond the production of agricultural products from the Property, and no further buildings other than for agricultural production are currently planned or will be built without further permission from ODA.
  - (F) That Seller has consulted with legal counsel or has otherwise settled any estate planning matters regarding the disposition of the Property upon his death, and no further transfer or conveyance of the Property in furtherance of such planning is anticipated at this time. Seller acknowledges upon execution of this Agreement, the Property cannot be split off or otherwise broken apart, and must be conveyed as a single piece in any transfer or conveyance.
  - (G) That there are no hazardous materials (including but not limited to any chemical, pollutant, contaminant, waste, toxic substance or petroleum product regulated by law or regulation) located on the Property and neither Seller, nor any previous owner of the Property, has ever violated or received any notice of the claimed violation of any federal, state, or local law or regulation relating to the health, safety or environment, including without limitation, the Clean Air Act, the Clean Water Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act. Seller agrees that it will hold ODA and Local Sponsor harmless from any and all liability or expense arising from violation of environmental laws and regulations.

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

- (H) Prior to the Closing, and with prior notice to Seller, ODA or its agents may enter the Easement at reasonable times for the purpose of preparing the Present Condition Report, conducting investigations, surveys, tests, and inspections as ODA may desire.
- (I) The acts of obtaining a prepared Easement and obtaining the evidence of title will be done by ODA or its agent. The cost of the Easement preparation and obtaining the evidence of title shall be borne by the Seller. The Seller will be responsible for all closing costs. Seller will cooperate with ODA and Local Sponsor in their efforts to obtain the Easement and timely respond to any requests for information.
- (J) Seller certifies that it has not given nor promised to give anything of value to any public official or employee of ODA or any other board, commission, or agency of the State of Ohio. Seller also certifies that it is in compliance with and will remain in compliance with all of the provisions of Ohio Ethics Law as provided by ORC Sections § 102.03 and § 102.04.

If ODA exercises the Purchase, then each of the representations and warranties set forth in this Paragraph will be deemed to have been remade by Seller as of the Closing Date. ODA's remedies for Seller's breach before Closing shall be provided elsewhere in this Agreement.

5. **TERM AND CONDITION OF SALE:** Upon execution of this Agreement, the sale of the Easement will be completed as follows:

- (A) **Conveyance:** Seller shall convey the Easement on the Property to the Director of the Ohio Department of Agriculture by a deed of easement with release of dower, if any. The Property which the Easement will be on must also be free and clear of any and all liens, encumbrances, mortgages and other easements that affect this Easement, other than those permitted by ODA. Once the above requirements are met and the Easement interest is recorded, Seller shall receive payment of the purchase price. Seller shall indemnify, defend and save harmless ODA, Local Sponsor, and their respective agents and employees, from any claims, demands, injuries, suits, actions, proceedings, losses, costs and damages and attorney fees arising out of the actions and omissions of Seller, its employees and/or agents or contractors, in the completion of the activities under this Agreement or relating to this Agreement. This Article shall survive any termination of this Agreement.

**NOTE: Any liens, encumbrances, mortgages and easements allowed to remain must be subordinated in accordance with the policies of the Department of Agriculture before payment of the purchase price is permitted.**

- (B) **Taxes:** The Seller shall remain obligated for the payment of real estate taxes and assessments on the described Property as determined by the Auditor of the County. However, the Seller may apply to the County Auditor for any reduction in real estate taxes that may result from the execution of the Easement. Taxes shall not be apportioned between the Seller and ODA. The risk of loss to the Property shall remain with Seller before and after the sale of the Easement.
- (C) **Title, Appraisal and Survey:** ODA will obtain, at the Seller's expense, a title guaranty, title insurance as evidence of the title to be conveyed hereunder, and if necessary, an appraisal. ODA may require the Seller to have the Property surveyed by a duly licensed surveyor at the Seller's expense, if ODA determines that the boundaries of the Property are not sufficiently

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

described to enforce the Easement or if a survey is required to record the Easement. Release of payment is subject to approval by ODA's Legal Section of the title information contained hereunder, including restrictions, reservations, conditions, agreements and easements of record, if any, and zoning ordinances, if any. If the title commitment or survey discloses any exception to title which ODA in the exercise of its reasonable judgment finds unacceptable, the Seller shall have a reasonable time period, not to exceed one hundred and eighty days (180) to cure the exception to title. If Seller fails to cure the exception, then Seller shall be considered in breach of this Agreement, and this Agreement shall terminate. ODA's remedies for breach are described in Paragraph 6 of this Agreement.

The Seller's application may be submitted to the United States Department of Agriculture's ("USDA") Natural Resource Conservation Service ("NRCS") for partial reimbursement under the Agricultural Conservation Easement Program - Agricultural Land Easement ("ACEP-ALE") program for the purchase of the Agricultural Easement. If Seller's application is submitted to USDA/NRCS, compliance with ACEP-ALE requirements will be required.

(D) **Signs:** ODA may, at the State's expense, provide one or more signs to the landowner to erect on the property designating the farmland as being preserved with an agricultural easement.

6. **CONTINGENCY AND BREACH:** Seller may, upon thirty (30) days written notice, terminate this Agreement at any time prior to execution of the deed of Easement. In the event that Seller breaches or otherwise terminates this Agreement, ODA shall be entitled to payment or reimbursement by Seller of all ODA's costs expended under this Agreement, including but not limited to any title search or other title costs, surveys, or any other cost or expense incurred as related to this Agreement. ODA's obligation to purchase the Property is contingent upon the Seller's performance of all its obligations under this Agreement, that the Property is suitable for ODA's intended use, and all of Seller's representations and warranties being true and correct as of the date of the Closing.

Breach for the purposes of this Agreement shall specifically include but is not limited to any violation of any representations or warranties herein or any other material provision of this Agreement. No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver of consent is in writing and signed by both parties to this Agreement.

7. **CLOSING:** The closing will occur, if at all, at such specific date, time and place as are mutually agreed to by ODA and Seller. At the option of ODA, the closing of the transaction contemplated hereunder may be affected by the delivery by Seller and ODA of all closing documents and other required deliveries into escrow with an appointed Escrow Agent, and the Escrow Agent's holding, recordation, and disbursement of all such closing documents and deliveries in accordance with escrow instructions.

8. **CLOSING OBLIGATIONS:** Seller's sale of the Easement to ODA will be contingent upon Seller and ODA taking the following described obligatory actions at Closing:

(A) **Purchase Price Payment:** ODA will pay the Purchase Price to Seller. The amount of such payment will be adjusted in the manner contemplated in Paragraph 2 of this Agreement.

(B) **Transfer of Easement:** Seller will execute and deliver to ODA a general deed of easement free and clear of liens and encumbrances other than as agreed by ODA.

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

- (C) **Entity Resolutions:** If Seller is an entity (such as a corporation, limited liability company, or partnership), then Seller will execute an entity resolution affirming the authority of such party to enter into the transaction contemplated in this Agreement and further authorizing an individual officer or representative of such party to execute this Agreement and all closing documents in the name and on behalf of such party.
- (D) **Closing Statement:** Seller and ODA will execute and deliver to the other a closing statement which sets forth the economics of ODA's purchase of the Easement from Seller, including the amount of the purchase price and all those closing credits, charges and other adjustments specified herein. Seller will execute and deliver such other documents as are reasonably requested by ODA to further evidence the sale of the Easement to ODA in the manner contemplated in this Agreement.
- (E) **Closing Costs:** Seller will pay all of the following closing costs:
- a. All premiums and other charges required to permit the title company to issue the title insurance policy;
  - b. All costs required to permit the surveyor to issue and certify the survey;
  - c. All recording fees associated with the recording of the general easement deed; and
  - d. All costs associated with due diligence as conducted by Local Sponsor and/or ODA.
9. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the parties and no prior oral or implied agreements or representations shall be binding on the parties hereto, and all rights and obligations shall accrue to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto. Seller may not assign this Agreement at any time. This Agreement may be executed in counterparts, each of which will be deemed an original, and all such counterparts will collectively constitute a single agreement. This Agreement shall be construed in accordance with the laws of Ohio, and the parties irrevocably agree to venue in Franklin County, Ohio, or the Ohio Court of Claims, as applicable, and waive any claims as to convenience of forum. Any notices required or permitted to be given under this Agreement must be in writing and delivered to Seller or ODA at the address set forth above, and must be sent by certified mail, personally delivered, or by email or facsimile transmission with proof of delivery. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature. 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. The headings of this Agreement, including the name of this Agreement, are for informational purposes only and should not be construed against either party or otherwise used to determine the meaning of any section of this Agreement.

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

**ACKNOWLEDGEMENTS:**

IN WITNESS WHEREOF, the Seller, who hereby further agrees to release all right and expectancy of dower in said premises, have hereunto set his/her/their hand(s) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SELLER:**

\_\_\_\_\_  
[NAME OF SELLER]

\_\_\_\_\_  
[NAME OF SELLER]

**STATE OF** \_\_\_\_\_,  
(state)

County of \_\_\_\_\_, \_\_\_\_\_, ss  
(county) (state)

I certify that on this date before me, a notary public duly authorized in the state and county named above to take acknowledgements, personally appeared \_\_\_\_\_, who is/are known to me and who executed the foregoing instrument, and who acknowledged before me that he/she/they executed the same as his/her/their own free act and deed, for the use and purpose stated therein.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at \_\_\_\_\_, \_\_\_\_\_,  
(city) (state)  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT F**  
**SAMPLE PURCHASE AGREEMENT**  
(continued)

**OHIO DEPARTMENT OF  
AGRICULTURE (ODA):**

\_\_\_\_\_  
\_\_\_\_\_, Director

**STATE OF OHIO,**

County of \_\_\_\_\_, ss

I certify that on this date before me, a notary public duly authorized in the state and county named above to take acknowledgements, personally appeared (Director of Agriculture Name), who is known to me to be the Director of the Ohio Department of Agriculture and who executed the foregoing instrument on behalf of the Ohio Department of Agriculture.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at \_\_\_\_\_, Ohio,  
(city)  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**Rev. 01/18/2019**

**EXHIBIT G**  
**LAEPP POLICIES AND GUIDELINES**

**Clean Ohio Local Agricultural Easement Purchase Program**

**20xx Policies and Guidelines for Landowner Application  
Through Certified and Funded Local Sponsor  
Ohio Department of Agriculture (ODA)  
Office of Farmland Preservation**

The Ohio Department of Agriculture's Office of Farmland Preservation anticipates distributing nearly \$#. # million in this round of the Clean Ohio Local Agricultural Easement Purchase Program (LAEPP). The funds will be used to purchase agricultural easements from Ohio farmland owners.

In addition to reading through the following 20xx Policies which are listed below, please review the following documents and share them with the farmland owner:

- Sample Deed of Agricultural Easement
- Sample Purchase Agreement
- Site Visit Form

**Complete Application** – Any application may be deemed incomplete and ineligible for funding if all required information and attachments are not submitted with the application to ODA and the Local Sponsor. Data must be accurate as of the day of electronic application submission. If changes occur, contact the Local Sponsor and ODA.

Note to Local Sponsors: Top-ranking applications submitted for approval for funding must include all required attachments and signatures as of the closing date of ODA's application period.

**Farm** – An application must consist of parcel(s) held by the same legal interest. Each applicant farm must be a minimum of 40 acres unless the land is located adjacent to property with an agricultural easement or is adjacent to permanently protected land compatible with agriculture, including natural resource, open space, or forested land protected by conservation easements, as well as wetlands, public parks, open spaces, forests, airports, military bases, wildlife areas, natural preserves, prison farms, historic or archaeological sites, conservancy parks, reservoirs, water wellfields, battlefields, flood pools and other normally undevelopable waterbodies, publicly-owned agricultural research lands, and water wellhead protection areas. In this case, the land may be a minimum of 25 acres. All contiguous parcels owned by the same legal interest must be submitted. See OAC § 901-2-01 (M) for "contiguous parcels" definition. No contiguous parcels under the same ownership can be withheld from the application unless waived by ODA and the Local Sponsor.

**Eligibility and Scoring Criteria** – An application property's enrollment in all eligibility criteria (e.g., "Agricultural District" ORC Chapter 929, "Current Agricultural Use Valuation ('CAUV')" ORC § 5713.30) must be in place by the application deadline as set by the Local Sponsor. Furthermore, an application property's enrollment, designation, or other submitted data within the application (e.g., "Agricultural Security Area ('ASA')" ORC Chapter 931, Ohio's Historic Family Farms Program) must also be in place and documented accurately as of the closing date of the landowner application period.

**Current Agricultural Use Value (CAUV) enrollment** – The application property must be enrolled in the Current Agricultural Use Value (CAUV) program through the County Auditor. The CAUV enrollment period is January-March and applications must be made to the County Auditor.

**EXHIBIT G**  
**LAOPP POLICIES AND GUIDELINES**  
(continued)

**Agricultural District Enrollment** – The application property must be enrolled in the Agricultural District program, with the exception of the homestead, wind energy-producing facilities, bio-digesters for on-farm use and/or any other land use determined excepted by the director. The Agricultural District enrollment period is January-March and applications must be made to the County Auditor.

**No Subdividing Policy** – All parcels that make up an application will be bound together by one permanent agricultural easement. In the future, if the land under easement is sold or transferred, all parcels must be conveyed as one unit and cannot be sold or transferred separately. The purpose of this policy is to preserve entire farms.

**Farmstead/Homestead Policy** – ODA's farmstead policy permits one homestead to be reserved if no housing currently exists on the applicant property. The reservation allows for one-single family home to be built in the future. If housing exists on the property at the time of application, then no additional residences may be built. Any future or existing house on the preserved farm may not be subdivided from the farm. The purpose of this policy is to promote farm families living on the land they work.

**Conservation Plan Policy** – If selected for funding, a farm must have a Conservation Plan in place before the Deed of Agricultural Easement is finalized. Conservation Plans can be prepared in consultation with the United States Department of Agriculture-Natural Resources Conservation Service (NRCS) or the local Soil and Water Conservation District in which the property is located.

**Forest Management Plan Policy** – If selected for funding, a farm that contains 40 contiguous acres of forest or if 20% of the applicant property is forestland, then a written forest management/woodland plan or Conservation Plan component must be in place before the Deed of Agricultural Easement is finalized.

**Zoning Policy** – Where the local governments have adopted zoning, applicant farms must be zoned for agricultural use. The purpose of this policy is to ensure preservation is consistent with the local governments' long-term planning for the area.

**Exception/Waivers Policy** – To request an Exception or waiver of an application requirement, write to the Director of ODA in the care of the Office of Farmland Preservation. The letter may be submitted through mail (please address the letter to the Office of Farmland Preservation) or email ([farmlandpres@agri.ohio.gov](mailto:farmlandpres@agri.ohio.gov)). The Local Sponsor conducting the local application process must be copied on the letter. The letter shall indicate the exception requested, include aerial or topographic maps distinguishing the property and associated parcel numbers, and indicate local sponsor support for the request.

Large Farm Exception: If an exception is granted, the landowner has the option to submit one or both halves of the farm as individual applications.

- Large Farm Size Exception: Farms comprised of no less than 400 acres may request the one-time option to apply the farm in two applications of approximately equal size.
- Large Farm Value Exception: If the applicant farm's points-based appraisal is greater than \$1 million, the landowner may request the one-time option to apply the farm in two applications of approximately equal size.

Small Farm Exception: If an exception is granted by the Director, the landowner has the ability to submit a farm of 10-24 acres so long as it shares a substantial border with permanently protected land compatible with agriculture, including natural resource, open space, or forested land protected by conservation easements, as well as wetlands, public parks, open spaces, forests, airports, military bases, wildlife areas, natural preserves, prison farms, historic or archaeological sites, conservancy parks, reservoirs, well fields, battlefields, flood pools and other normally undevelopable waterbodies, publicly-owned agricultural research lands, and well heads.

**EXHIBIT G**  
**LAEPP POLICIES AND GUIDELINES**  
(continued)

Small Farm Exception: If an exception is granted by the Director, the landowner has the ability to submit a farm of 10-24 acres so long as it shares a substantial border with permanently protected land compatible with agriculture, including natural resource, open space, or forested land protected by conservation easements, as well as wetlands, public parks, open spaces, forests, airports, military bases, wildlife areas, natural preserves, prison farms, historic or archaeological sites, conservancy parks, reservoirs, well fields, battlefields, flood pools and other normally undevelopable waterbodies, publicly-owned agricultural research lands, and well heads.

Contiguous Parcel Exception: O.A.C. 901-2-02(A)(5) requires all contiguous parcels owned by the same legal interest must be submitted in the landowner application. However, that requirement can be waived.

Determining whether to grant exceptions and waivers is at the discretion of the Director of ODA. The Director's approval must be obtained prior to the submission of an application during the landowner application period and a copy of such approval shall be submitted with the other required attachments to the application.

**Title Costs** – If selected for funding, the Local Sponsor (on behalf of ODA) may initiate a title examination and purchase title insurance. The costs incurred for these services – along with escrow, closing, and recording services – will be deducted from the agricultural easement purchase payment at closing.

**Funding/Landowner Payment** – A landowner can receive up to 75% of the appraised value of the easement. Additionally, the maximum dollar amount per acre is set at \$2,000 and the total dollar amount per farm is set at \$500,000. No individual may sell more than one easement in this round of funding. The Director also reserves the right to adopt additional guidelines according to OAC § 901-2-05 (D).

**Multi-County Farm** – If a landowner requests to apply a farm that is located within more than one county, the landowner must apply under the county with the majority of the farm's acreage. This majority-acreage (primary) county must be a part of the Local Sponsor's landowner application area. The applicant must answer landowner application questions based on the majority-acreage county. A multi-county farm will have a deed and Present Condition Report recorded in each county in which the applicant property is located. Note: Under the LAEPP, only one Local Sponsor may co-hold an easement with ODA.

The following additional steps for a multi-county farm need to be addressed before the farm is selected for funding:

- Local Sponsors that are political subdivisions: Obtain your own organization's resolution (per Attachment A) as well as resolutions supporting the agricultural easement from all other townships and counties in which the farm sits. (Example: Smith County SWCD is the Local Sponsor, submitting an application for a farm that sits in both Smith County (Roberts Township) and Jones County (Wilson Township). They must attach 1) Smith SWCD resolution, 2) Jones County resolution, and 3) Wilson Township resolution).
- Local Sponsors that are charitable organizations: Obtain resolutions supporting the agricultural easement from all counties and townships in which the farm sits (per Attachment H), along with your own organizational resolution (per Attachment A). (Example: Able Land Trust is the Local Sponsor, submitting an application for a farm that sits in both Smith County (Roberts Township) and Jones County (Wilson Township). They must attach 1) Able Land Trust resolution, 2) Smith County resolution, 3) Roberts Township resolution, 4) Jones County resolution, and 5) Wilson Township resolution)

Note: Only one Local Sponsor may co-hold an easement with ODA and be named on the Deed. Therefore, Resolutions from minority-acreage (secondary) entities must include a reference that the funded Local Sponsor will be holding the easement with ODA.

11-26-2021

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
*(Prepared by Local Sponsor)*

**ESCROW AGREEMENT**  
(LAEPP 20\_\_)

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

**RECITALS**

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

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

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

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

**AGREEMENT**

**I. NATURE OF CONTRACT**

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

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

**II. SCOPE OF WORK**

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

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

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

**III. TIME OF PERFORMANCE**

- 3.1 The services described in the Scope of Work above (“Services”) shall be commenced on <<Begin Date>> and concluded on <<End Date>>.
- a. This Agreement shall remain in effect until the work described is completed to the satisfaction of the Local Sponsor and until Escrow Agent is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Escrow Agent’s Services, whichever is sooner.
  - b. As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 20\_\_.
  - c. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code (“ORC”) § 3517.13, ORC § 127.16, or ORC § 102.

**IV. COMPENSATION**

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

**V. CERTIFICATION OF FUNDS**

- 5.1 It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all applicable statutory provisions of the ORC, including but not limited to § 126.07, have been complied with, and until such time as all necessary funds are available, encumbered and forthcoming from the appropriate state agencies or responsible third party entities, and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

**VI. TERMINATION OF ESCROW AGENT’S SERVICES**

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

**VII. RELATIONSHIP OF PARTIES**

- 7.1 The Local Sponsor and Escrow Agent agree that Escrow Agent shall be engaged by the Local Sponsor solely on an independent Escrow Agent basis, and Escrow Agent shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Escrow Agent will also be responsible for all licenses, permits, employees’ wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers’ Compensation and Unemployment Compensation coverage, if any.
- 7.2 While Escrow Agent shall be required to render services described hereunder for the Local Sponsor during the term of this Agreement, nothing herein shall be construed to imply, by reason of Escrow Agent’s engagement hereunder as an independent Escrow Agent, that the Local Sponsor shall have or may exercise any right of control over Escrow Agent with regard to the manner or method of Escrow Agent’s performance of services hereunder.
- 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.

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

- 7.4 It is fully understood and agreed that the Escrow Agent is an independent contractor and is not an agent, servant or employee of the Local Sponsor or the State of Ohio.

**VIII. RELATED AGREEMENTS**

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

**IX. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE**

- 9.1 No personnel of Escrow Agent or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is in compatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
- 9.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Local Sponsor in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Local Sponsor shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

**X. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

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

**XI. CONFIDENTIALITY**

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

**XII. LIABILITY**

- 12.1 The Escrow Agent and Landowner each agree to indemnify and to hold ODA, the State of Ohio, and Local Sponsor harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to the respective actions or omissions of Escrow Agent or Landowner or those of its or their respective trustees, officers, employees, subcontractors, suppliers, third parties utilized by the Escrow Agent and Landowner, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.
- 12.2 The Escrow Agent and Landowner shall bear all costs associated with defending the Local Sponsor and the State of Ohio against any claims for their own respective acts or omissions.
- 12.3 In no event shall any party of this Agreement be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

**XIII. REPORTS, NOTICES**

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

a. with respect to ODA:

Ohio Department of Agriculture  
Office of Farmland Preservation  
8995 E. Main Street  
Reynoldsburg, Ohio 43068-3342  
Attn: Office of Farmland Preservation  
Telephone: 614-728-6210

b. with respect to Local Sponsor:

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

c. with respect to Landowner:

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

d. with respect to Escrow Agent:

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

**XIV. MISCELLANEOUS**

14.1 Counterparts - This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

14.2 Entire Agreement/Waiver - This Agreement contains the entire agreement between the parties hereto regarding escrow activities and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes all prior and contemporaneous letters, correspondences, discussions and agreements among the parties with respect to all matters contained herein. A waiver by any party of any breach or default by another party under this Agreement shall not constitute a continuing waiver by such party of any subsequent

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

act in breach of or in default hereunder.

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

**EXHIBIT H**  
**SAMPLE ESCROW AGREEMENT**  
(continued)

- 14.10 Headings - The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 14.11 Severability - The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.
- 14.12 Debarment - Escrow Agent represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC § 153.02 or ORC § 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Escrow Agent shall immediately repay to ODA any funds paid under this Agreement.

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

**LANDOWNER**

\_\_\_\_\_  
Insert Signature Info  
Insert Signee's Address  
Date: \_\_\_\_\_

**LANDOWNER**

\_\_\_\_\_  
Insert Signature Info  
Insert Signee's Address  
Date: \_\_\_\_\_

**ESCROW AGENT**

\_\_\_\_\_  
Insert Title Agent/Agency Name  
Insert Title Agent/Agency Contact  
Insert Title Agent/Agency Address  
Date: \_\_\_\_\_

**(Escrow Agreement Template Date: 05/09/2017)**

**LOCAL SPONSOR**

\_\_\_\_\_  
Insert Signature Info  
Insert Signee's Address  
Date: \_\_\_\_\_

**EXHIBIT I**  
**TITLE REVIEW CHECKLIST**  
*(Template for Local Sponsor)*

**Local Agricultural Easement Purchase Program (LAEPP)**  
**Title Review Checklist**

Below is a list of documents commonly requested by the Ohio Department of Agriculture (ODA) for the review of title on a proposed agricultural easement property. While not an all-inclusive list, we strongly encourage Local Sponsors (LS) to share this checklist with their title agents to help communicate ODA's requirements.

<b>Document/Description</b>	Check when complete	
	<b>Title Agent to LS</b>	<b>LS to ODA</b>
1. Provision of 90-year chain of title* – provide source documents for deeds showing chain for 90 years. a. Deeds must be provided which demonstrate conveyance of each tract and/or parcel of land. b. Deeds should clearly show the recording information or title agent should provide if reference is obscured or illegible.		
2. If the owner of the land is a corporation, limited liability company, or partnership**: a. Provide Articles of Incorporation or Organization, as applicable. b. By-laws or Code of Regulations, as applicable. c. Provide Corporate Resolution or Minutes of Meeting approving sale of easement to ODA. d. Unless all members of the organization will be signing the Deed of Agricultural Easement, an additional Resolution is required authorizing a member to sign on behalf of the corporation, company, or partnership.	N/A	
3. Provide a source document for each exception shown on the title commitment, and please ensure that <u>all documents are legible</u> . a. Assignments of leases should be provided. b. Exception documents should clearly show the recording information or title agent should provide if reference is obscured or illegible.		
4. Ohio Department of Agriculture listed as the only insured on the title commitment (also applies to Closing Protection Coverage).		
5. If the owner of the land is a trust, provide a Memorandum of Trust in accordance with ORC 5301.255.	N/A	
6. Provide a legal description in the title commitment which matches the last deed that is in the chain of title; if parts of the legal description have been omitted, a corrective deed or survey should be requested. *		
7. Provide county auditor tax card indicating payment of taxes up to current date.		
8. If mortgages are on the property, subordination of mortgages will be requested.	N/A	

Local Sponsors should refer to the Scope of Work in the ODA-Local Sponsor Cooperative Agreement for the complete requirements regarding title work and title agent responsibilities.

**EXHIBIT I**  
**TITLE REVIEW CHECKLIST**  
(continued)

**\*Chain of Title Definition for Source Documents**

- All Deeds related to the Property for the last 90 years.
- All liens, easements, mortgages, and other encumbrances in the last 90 years (including assignments of same).
- All oil and gas leases associated with the Property in the last 90 years.
- All outsales/conveyances that have occurred after the recording of the source deed for the property.
- All instruments marginally notated.

**\*\*Corporate/Trust documentation is not always available through public records (or title agent). Local Sponsors should contact landowner directly for these documents and provide to ODA.**

12/5/2017

**Cooperative Agreement (Entire Agreement Template): 01/29/2019**