PROGRAM AGREEMENT
between
USDA NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
and the
[ELIGIBLE ENTITY or ENTITIES NAME(S)]
for the
AGRICULTURAL CONSERVATION EASEMENT PROGRAM
AGRICULTURAL LAND EASEMENTS

This PROGRAM AGREEMENT is entered into by and between the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), and the **[ELIGIBLE ENTITY or ENTITIES NAME(s)]** (hereinafter, whether singular or plural, **ENTITY**). NRCS and **ENTITY** are engaged in complementary and compatible activities related to purchasing agricultural land easements to secure the long-term protection of the agricultural use and future viability, and related conservation values, of eligible land by limiting the nonagricultural uses of that land that negatively affect the agricultural uses and conservation values, or protecting grazing uses and related conservation values by restoring or conserving eligible land. These activities are accomplished through the provisions of the agricultural land easement component of the Agricultural Conservation Easement Program (ACEP-ALE). To accomplish these activities, financial and technical assistance may be provided by NRCS and **ENTITY**, whose assistance may include qualified contributions from others.

I. AUTHORITY

NRCS enters this PROGRAM AGREEMENT under the authorities of the Commodity Credit Corporation Charter Act, 15 U.S.C. Section 714 et seq.; the Agricultural Conservation Easement Program, subtitle H of title XII of the Food Security Act of 1985, 16 U.S.C. Section 3865 et seq. This PROGRAM AGREEMENT will be administered in accordance with the policies and procedures set forth in the ACEP regulation (7 CFR Part 1468).

[ENTITY or ENTITIES NAME(s)] enters this PROGRAM AGREEMENT under the authorities of **[insert charter or statutory authority]**.

II. BACKGROUND AND PURPOSE

ACEP-ALE is a voluntary conservation program that establishes specific parameters for NRCS to work with and provide ACEP-ALE cost-share assistance to eligible entities for the purchase of an agricultural land easement on eligible land from eligible landowners (Grantors) and for NRCS personnel to conduct technical assistance activities to implement the program. The purpose of this PROGRAM AGREEMENT is to establish the framework by which NRCS and **ENTITY** may implement the activities necessary to acquire agricultural land easements and ensure the long-term protection of the natural resources and agricultural nature of the lands under easement with ACEP-ALE assistance. The term "Parties" as used herein refers collectively to NRCS and **ENTITY.**

ENTITY has submitted an entity application for NRCS program assistance through ACEP-ALE and has been determined by NRCS to meet the statutory and regulatory requirements to participate in ACEP-ALE as an "eligible entity." **ENTITY** will carry out activities specified in this PROGRAM AGREEMENT by working with NRCS and eligible landowners to acquire agricultural land easements on lands determined by NRCS to be eligible for ACEP-ALE. The land on which an agricultural land easement may be acquired is herein referred to collectively as "Parcels" or individually as "Parcel."

The Parties agree that the principal purpose of this PROGRAM AGREEMENT is to identify, describe, and document the Parties' acknowledgement and agreement of—

1. The roles and responsibilities of the NRCS and **ENTITY** related to the acquisition and long-term stewardship of agricultural land easements.
2. The requirements and limitations for providing and receiving ACEP-ALE financial assistance funds (cost-share) and technical assistance services.
3. The procedures for executing and administering individual "ACEP-ALE Parcel Cost-Share Contracts" through which NRCS may provide ACEP-ALE cost-share assistance to **ENTITY** for the purchase of an agricultural land easement on an individual Parcel.
4. The list of eligible entities that are party to this PROGRAM AGREEMENT and the designation of the eligible entities that will individually or collectively be party to individual ACEP-ALE Parcel Cost-Share Contracts entered into pursuant to this PROGRAM AGREEMENT.
5. The list of potential easement co-holders or third-party right holders that may be identified in an individual ACEP-ALE Parcel Cost-Share Contract and the associated agricultural land easement deed and the respective roles and responsibilities of such holders.
6. Supplemental provisions to the framework established in this PROGRAM AGREEMENT included as an attachment to this PROGRAM AGREEMENT and used to identify additional specific requirements, procedures, roles, and responsibilities as agreed to by NRCS and **ENTITY**.

III. PROGRAM AGREEMENT AND ASSOCIATED ACEP-ALE PARCEL COST-SHARE CONTRACTS

A. This PROGRAM AGREEMENT will be for a term of at least 3 fiscal years and not to exceed 5 fiscal years following the fiscal year in which this PROGRAM AGREEMENT is executed and will expire on the date identified below. **ENTITY** may submit individual parcel applications to NRCS for ACEP-ALE cost-share assistance for the purchase of an agricultural land easement at any time during the life of the PROGRAM AGREEMENT. Individual parcel applications associated with this PROGRAM AGREEMENT and determined by NRCS to meet eligibility, enrollment, and prioritization criteria may be selected for funding by NRCS on a continuous basis or during announced signup and batching periods.

Program Agreement Expiration Date: September 30, ____

B. ACEP-ALE cost-share assistance (Federal share) for individual Parcels selected for funding will be obligated and provided through individual ACEP-ALE Parcel Cost-Share Contracts (Parcel Contract) entered into by NRCS and **ENTITY** (see exhibit 3 of this agreement, for standard Parcel Contract forms). Individual Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT are assured of funding for the entire length of the approved Parcel Contract in accordance with the terms of the Parcel Contract.

C. Each Parcel Contract may identify only one Parcel and will document the Parties' agreement to the Parcel-specific information as required in the Parcel Contract, which includes identifying the enrollment type of the Parcel as either a 'General ALE' enrollment or a 'Grasslands of Special Environmental Significance' enrollment, as determined by NRCS.

D. The standard expiration date for all individual Parcel Contracts is March 31 of the third fiscal year following the fiscal year the Parcel Contract is executed. Prior to expiration of a Parcel Contract and upon mutual agreement of the Parties through the execution of a modification to an individual Parcel Contract, a maximum of two 12-month extensions may be approved. No Parcel Contract may extend beyond March 31 of the fifth fiscal year following the original fiscal year of the Parcel Contract execution.

E. Upon mutual agreement of the Parties through the execution of a modification to an individual Parcel Contract during its term, NRCS may allow the substitution of a Parcel at any time, provided that as

determined by NRCS, the substitute Parcel and all of its landowners meet all ACEP-ALE eligibility requirements, the substitute Parcel is of comparable conservation value and is the same enrollment type as the original Parcel, and sufficient funds are available.

F. Upon modification, completion, expiration, termination, or cancellation of an individual Parcel Contract, the excess or remaining funds will be deobligated from the individual Parcel Contract.

G. Nothing in this PROGRAM AGREEMENT obligates NRCS or **ENTITY** to purchase an agricultural land easement on any Parcel submitted for funding.

IV. CONTRIBUTION REQUIREMENTS AND LIMITATIONS

A. The fair market value of the agricultural land easement must be determined using one of the methods set forth in 7 CFR Part 1468. The resultant fair market value of the agricultural land easement will be identified in the individual Parcel Contract and used to establish the amount of the ACEP-ALE cost-share assistance that may be provided by NRCS as the Federal share and the corresponding non-Federal share amount provided by **ENTITY** based on the enrollment type of the individual Parcel as follows:

1. General-ALE Enrollments.—The Federal share will not exceed the lesser of 50 percent of the fair market value of the agricultural land easement or the non-Federal share provided by **ENTITY**, as described in paragraph B below of this section (IV). At the time of execution of this PROGRAM AGREEMENT, **ENTITY** must agree to provide, for each General ALE Parcel, a non-Federal share in an amount at least equivalent to the Federal share.
2. Grasslands of Special Environmental Significance (GSS) Enrollments.—In the case of a Parcel that meets the requirements to be a GSS enrollment, as determined by NRCS, the Federal share will not exceed 75 percent of the fair market value of the agricultural land easement and the non-Federal share provided by **ENTITY**, as described in paragraph B below of this section (IV), must comprise the remainder of the fair market value of the agricultural land easement or an amount at least equivalent to the Federal share, whichever is less. At the time of execution of this PROGRAM AGREEMENT, **ENTITY** must agree to provide for each ACEP-ALE GSS Parcel, a non-Federal share that meets the requirements of this section (IV).

B. The non-Federal share for an individual easement may be comprised of one or more of the following items:

1. **ENTITY's** contribution of its own cash resources for payment of easement compensation to the landowner.
2. A landowner donation toward the easement value in the form of a charitable donation or a qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) that reduces the easement purchase price.
3. If taken together, items (1) and (2) above comprise a non-Federal share that is less than the requested Federal share for that easement, **ENTITY** may also include in the calculation of the non-Federal share for that easement the procured costs paid by **ENTITY** to a third-party for the provision of the following reports or services that meet applicable ACEP-ALE requirements:
   i. appraisal,
   ii. legal boundary survey of the easement area,
   iii. full phase-I environmental site assessment that meets the requirements of 40 CFR Part 312,
   iv. title commitment or report, title insurance, closing costs.
4. If taken together, items (1), (2), and (3) above comprise a non-Federal share that is less than the requested Federal share for that easement, **ENTITY** may also include in the calculation of the non-Federal share **ENTITY's** own contribution, in an amount up to 2 percent of the fair

market value of the agricultural land easement, as determined in accordance with section VI(A)(16) and (17) below, for easement stewardship and monitoring costs.

C. On an individual Parcel basis, **ENTITY** must self-certify on Form NRCS-CPA-230, "Statement to Confirm Matching Funds" (exhibit 3 of this agreement), that **ENTITY**'s contribution of its own cash resources has not come from additional donations, payments, loans, or fees made by or charged to the Grantor (landowner) of the agricultural land easement, immediate family members of the Grantor (landowner), or organizations controlled by or funded by the Grantor (landowner), either through formal or informal agreements. **ENTITY** must provide to NRCS a completed Form NRCS-CPA-230 signed by **ENTITY** and the landowner prior to the closing of an easement, or an advance of the Federal share for the purchase of an easement, on the Parcel identified in an individual Parcel Contract. The appropriate version of the Form NRCS-CPA-230 based on the enrollment type of the Parcel as a General ALE or ACEP-ALE-GSS must be submitted and must identify the amount and sources of the items included in the non-Federal share.

V. PAYMENT OF ACEP-ALE COST-SHARE ASSISTANCE

A. **ENTITY** must meet the terms and conditions set forth in this PROGRAM AGREEMENT and provide NRCS with the items identified in this PROGRAM AGREEMENT and the individual Parcel Contract in order to receive the Federal share for the purchase of an agricultural land easement on the Parcel identified in a valid Parcel Contract.

B. Pursuant to the terms of the individual Parcel Contract, **ENTITY** may request payment of the Federal share as reimbursement after closing or as an advance payment prior to closing of an agricultural land easement on a Parcel identified in a valid Parcel Contract. If an advance of the Federal share will be requested, **ENTITY** must submit to NRCS a complete payment request package, including all required documents, prior to closing on the agricultural land easement.

C. For any eligible procured costs as identified in section IV(B)(3) above, relied upon by **ENTITY** to meet the applicable minimum non-Federal share requirement as identified in section IV(A) above, **ENTITY** must include evidence of such procured cost amounts, including copies of paid invoices or receipts (or unpaid invoices if an advance of the Federal share is requested) as part of the payment request package submitted to NRCS.

VI. RESPONSIBILITIES

A. ENTITY Responsibilities:

1. **ENTITY** will purchase agricultural land easements on eligible land from eligible landowners as identified in an individual Parcel Contract consistent with the requirements identified therein and consistent with the provisions of this PROGRAM AGREEMENT. **ENTITY** may conduct such activities pursuant to the 'Certified Eligible Entity' provisions of this PROGRAM AGREEMENT and associated Parcel Contracts, only if an eligible entity that is party to this PROGRAM AGREEMENT has been certified by NRCS and only for those Parcels on which such certified eligible entity is party to the individual Parcel Contract and **ENTITY** has designated in such Parcel Contract that the agricultural land easement will be acquired in accordance with the certified eligible entity provisions. **ENTITY** must be identified as a Grantee (holder) under the terms of the agricultural land easement deed.
2. An agricultural land easement deed may also include legal entities that are co-holders (identified as Grantees in the easement deed) or third-party right holders (not identified as Grantees in the easement deed). Exhibit 1 to this PROGRAM AGREEMENT specifies the requirements, limitations, roles, and responsibilities of co-holders or third-party right holders. **ENTITY** must list on exhibit 1 of this agreement the legal entities that may be identified as a co-holder or third-party right holder on any agricultural land easement deed that may be acquired pursuant to a Parcel Contract executed under this PROGRAM AGREEMENT. **ENTITY** must list the specific co-holders or third-party right holders for

an individual Parcel on the individual Parcel Contract and obtain any required signatures from a sufficiently authorized representative of the legal entity as follows:

i. All potential co-holders must be listed on and must sign exhibit 1 to this PROGRAM AGREEMENT and any individual Parcel Contracts for Parcels on which the co-holder will be identified in the agricultural land easement deed. **ENTITY** will list the potential co-holders and obtain required signatures on exhibit 1 of this agreement, at the time of execution of this PROGRAM AGREEMENT or through a subsequent amendment to this PROGRAM AGREEMENT to update exhibit 1, prior to the execution of an individual Parcel Contract or modification thereto that identifies the listed co-holder.

ii. **ENTITY** will list all potential third-party right holders on Exhibit 1, as known at the time of execution of this PROGRAM AGREEMENT. An amendment to this PROGRAM AGREEMENT to update exhibit 1 is not required to list subsequently identified third-party right holders. All third-party right holders must be identified on the individual Parcel Contracts for Parcels on which the third-party right holder will be identified in the agricultural land easement deed. Third-party right holders may be required to sign exhibit 1of this agreement or individual Program Contracts at **ENTITY** discretion.

3. **ENTITY** must maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS) and meet the System for Award Management (SAM) registration requirements or successor registry for the duration of this PROGRAM AGREEMENT and any active Parcel Contracts executed pursuant to this PROGRAM AGREEMENT. These DUNS and SAM registration requirements also apply to all legal entities identified as co-holders (Grantees) in exhibit 1 of this agreement.
4. The landowner is identified as the Grantor under the terms of the agricultural land easement deed. **ENTITY** must notify NRCS as soon as possible if there is a change in landownership after the individual Parcel Contract is executed and prior to closing on the easement. Changes to landownership prior to closing must be documented through the execution of a modification to the Parcel Contract.
5. **ENTITY** must ensure that the agricultural land easements acquired with ACEP-ALE cost-share assistance provided by NRCS through a Parcel Contract and the agricultural land easement deeds satisfy the requirements listed in items (a) through (j) below and in the applicable paragraph (6) or (7) below:

   a. Address all regulatory deed requirements identified at 7 CFR Part 1468.25(d);
   b. Address the disposition of the agricultural land easement and the Federal share in the event the agricultural land easement is ever extinguished, terminated, or condemned in whole or in part;
   c. Are conveyed for the purpose of protecting natural resources and the agricultural nature of the land and permitting the landowner the right to continued agricultural production and related uses, including where applicable, grazing uses and related conservation values, by restoring or conserving grassland;
   d. Run with the land in perpetuity or where State law prohibits or does not authorize a permanent easement, for the maximum duration allowed under State law;
   e. Protect the agricultural use and future viability, and related conservation value of the Parcels by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values or protect grazing uses and related conservation values by restoring or conserving eligible land, including grasslands of special environmental significance;
   f. Provide for the effective administration, management, and enforcement of the agricultural land easement by **ENTITY** or its successors and assigns; and
   g. Permit effective enforcement of the conservation purposes of such easements;
   h. A highly erodible land (HEL) conservation plan is required pursuant to the terms of 7 CFR 1468.25(d)(9) for any portion of the Parcel that is highly erodible cropland.
   i. For ACEP-ALE-GSS enrollments: Protects the grasslands of special environmental significance as defined in 7 CFR 1468.3, by identifying in the baseline documentation report the grassland, habitat, species, sensitive natural resources or other GSS attributes identified on the Parcel;

j. Includes the required United States Right of Enforcement clause, as provided below:

Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the "Secretary") or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States' contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE Agreement with the Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time.

6. For Non-Certified Eligible Entities.—**ENTITY** is authorized to use its own terms and conditions in the agricultural land easement deeds so long as the agricultural land easement deed contains the "Minimum Terms for the Protection of Agricultural Use" (ALE Minimum Deed Terms). For ACEP-ALE-GSS enrollments, the grassland and GSS-specific options provided in the ALE Minimum Deed Terms addendum must be used. **ENTITY's** own terms and conditions in the deed may not alter or defeat the intent, purpose, or effective enforcement by the Parties of the ALE Minimum Deed Terms, ACEP, or the agricultural land easements acquired pursuant to this PROGRAM AGREEMENT.

   a. **ENTITY** has the following three options for ensuring the agricultural land easement deed for an individual Parcel contains the ALE Minimum Deed Terms and **ENTITY** must identify the selected option upon execution of an individual Parcel Contract. The selected option may be changed upon mutual agreement of the Parties through the execution of a modification to an individual Parcel Contract, provided all provisions of this PROGRAM AGREEMENT and the Parcel Contract are met.

      (i) <u>Attach the ALE Minimum Deed Terms Addendum as an exhibit to the Agricultural Land Easement Deed.</u>—Under this option, NRCS at the State level, may approve the individual agricultural land easement deed after verifying, prior to **ENTITY** requesting an advance of the Federal share or closing on an agricultural land easement, that **ENTITY** satisfies all of the following requirements:

NRCS Representative Initial_____

Entity Representative Initial _____

- The ALE Minimum Deed Terms addendum, using the version attached as an exhibit to the individual Parcel Contract, will be attached to the agricultural land easement deed at the time of closing and recordation in accordance with the 'Instructions for Appending' provided in the ALE Minimum Deed Terms addendum;
- The terms of the ALE Minimum Deed Terms addendum are not modified except for appropriate formatting changes, selecting options, removing instructional provisions, and substituting, as needed, the defined terms for the ALE deed, baseline documentation report, Protected Property, and the Parties; and
- The paragraph below, or equivalent paragraph contained in the version of the ALE Minimum Deed Terms addendum attached as an exhibit to an individual Parcel Contract, is inserted at the bottom of the agricultural land easement deed:

  This [INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT] is acquired with funds provided, in part, under the Agricultural Conservation Easement Program, (ACEP). The EXHIBIT ____ is attached hereto and incorporated herein by reference and will run with the land [SELECT ONE: in perpetuity OR for the maximum duration allowed under applicable State laws]. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT_____ (legal description or survey) is and will remain subject to the terms and conditions described in EXHIBIT_____ entitled "Minimum Terms For The Protection Of Agricultural Use" that is appended to and made a part of this easement deed.

(ii) Incorporate the ALE Minimum Deed Terms into the Body of the Agricultural Land Easement Deed.—Under this option, **ENTITY** must ensure the ALE Minimum Deed Terms, as stated in the ALE Minimum Deed Terms addendum are incorporated into the body of the agricultural land easement deed in accordance with 'Instructions for Incorporation' provided in the ALE Minimum Deed Terms addendum. The ALE Minimum Deed Terms may be formatted to select options where instructed, conform terms to deed formatting, complete terms with required information, and delete instructions to drafters. Each individual agricultural land easement deed submitted under this option must be reviewed and approved by NRCS National Headquarters (NHQ) and attached as an exhibit to the individual Parcel Contract prior to **ENTITY** requesting an advance of the Federal share or closing on an agricultural land easement.

(iii) Entity Agricultural Land Easement Deed Template Approved by NRCS.—Under this option, **ENTITY** may use an agricultural land easement deed template, the terms and conditions of which must address the ALE Minimum Deed Terms and be approved by NRCS NHQ prior to its use. The agricultural land easement template approved by NRCS NHQ must be attached as an exhibit to the individual Parcel Contract at the time of its execution or through subsequent modification thereto. Subsequent to the attachment of the NRCS NHQ-approved deed template as an exhibit to the individual Parcel Contract for which such template will be used, each individual agricultural land easement submitted under this option must be reviewed and approved by NRCS prior to **ENTITY** requesting an advance of the Federal share or prior to closing on an agricultural land easement. NRCS, at the State level, must verify, that the individual final agricultural land easement deed exactly matches the NRCS NHQ-approved template without any changes except in accordance with drafter's notes contained within the NRCS NHQ-approved template.

b. **ENTITY** must provide to NRCS a copy of the agricultural land easement deed and all exhibits, including the legal description or survey, at least 90 days before the planned closing date.

7. For Certified Eligible Entities.—**ENTITY** is authorized to use its own terms and conditions for the agricultural land easement deed and is required to ensure and certify to NRCS as a condition of payment that the agricultural land easement meets the minimum conditions in section VI(A)(5) above.

NRCS Representative Initial_____

Entity Representative Initial _____

NRCS review of the agricultural land easement deed will not occur prior to payment or closing. If NRCS determines that an agricultural land easement deed fails to meet the minimum conditions in section VI(A)(5) above after **ENTITY** has acquired the agricultural land easement, then **ENTITY** must correct the agricultural land easement deed within 180 days of receiving written notice from NRCS.

8. NRCS may require adjustments to the provisions identified in section VI(A)(5) above and require the addition of other provisions if NRCS determines that they are necessary to meet the purposes of ACEP and protect the conservation values of the Protected Property.
9. **ENTITY** must perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements.
10. **ENTITY** must pay all costs of agricultural land easement acquisition and must operate and manage each agricultural land easement in accordance with its easement program, this PROGRAM AGREEMENT, the terms of the individual Parcel Contract, 16 U.S.C. Section 3865 et seq., and 7 CFR Part 1468. NRCS will have no responsibility for the costs or management of the agricultural land easements purchased by **ENTITY**.
11. NRCS will not be responsible for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of **ENTITY** in connection with its acquisition or management of the agricultural land easements acquired pursuant to this PROGRAM AGREEMENT and associated, fully executed Parcel Contracts. This includes but is not limited to acts and omissions of **ENTITY** agents, successors, assigns, employees, contractors, or lessees that result in violations of any laws and regulations that are now or that may in the future become applicable.
12. **ENTITY** must prepare a baseline documentation report documenting the condition of each Parcel as of the time the agricultural land easement is acquired and include a completed baseline documentation report in the payment request package submitted to NRCS pursuant to the terms of the individual Parcel Contract. **ENTITY** must also provide NRCS a draft baseline documentation report at least 90 days before the planned closing date of the agricultural land easement, except for those easements being acquired by a certified eligible entity as identified in the individual Parcel Contract. The baseline documentation report must contain maps, full descriptions, and pictures of—

    a. the Parcel location;
    b. existing structures and infrastructure, including barns, sheds, corrals, fences, ponds, watering facilities, and waste storage facilities;
    c. land use, land cover and its condition, including crops and crop rotations or for grasslands, the condition of the grassland, pasture, range, hay or forest lands, and animal inventories;
    d. any problem areas;
    e. any special features for which the Parcel is being protected, including, for ACEP-ALE-GSS enrollments, the grasslands of special environmental significance as designated in accordance with the definition in 7 CFR Part 1468.3, and the habitat, species, or sensitive natural resources that were the basis for such designation of the Parcel;
    f. as applicable, irrigation rights and volume of irrigation water rights to be retained for the easement, and
    g. for grasslands, any critical nesting habitat and the associated nesting seasons for grassland-dependent birds whose populations are in significant decline.

13. **ENTITY** must ensure completion of a highly erodible land (HEL) conservation plan that meets the requirements of 7 CFR Part 12 for any portion of a Parcel that contains highly erodible cropland. The HEL conservation plan must be developed by NRCS or an NRCS-certified planner and approved by NRCS prior to closing. The development and maintenance of an agricultural land easement plan that includes a broad, comprehensive agricultural land easement plan, a grasslands management plan, or a forest land management plan, or any combination thereof, is not required unless agreed to by **ENTITY** as a condition of the selection of a Parcel for funding. The agricultural land easement is not required to be subject to an agricultural land easement plan with the exception that **ENTITY** must ensure that the agricultural land easement deed addresses compliance requirements associated with HEL conservation plans pursuant to 7 CFR Part 12. Agricultural land easement plans developed as required

or agreed-to must be signed by the **ENTITY** and the Grantors prior to closing and a copy provided with the payment request package submitted to NRCS pursuant to the terms of the individual Parcel Contract.

For ACEP-ALE-GSS enrollments: If **ENTITY** has agreed to develop and maintain a grasslands management plan, **ENTITY** must ensure such grasslands management plan describes the grassland resource, the management system and practices that conserve, protect, or enhance the viability of the grassland, and the habitat, species, or sensitive natural resources that were the basis of the designation of a Parcel as grasslands of special environmental significance, permissible and prohibited activities, and any associated restoration plan.

14. In acquiring agricultural land easements, **ENTITY** must ensure that the title to the lands or interests therein will be unencumbered or that outstanding or reserved interests are subordinated to the agricultural land easement.

    a. For Non-Certified Eligible Entities.—**ENTITY** and NRCS must review the title commitment to ensure there are no encumbrances that would allow uses of the property that are not acceptable to **ENTITY** or NRCS. **ENTITY** must provide NRCS a copy of the title commitment, including a copy of documents to support each title exception, a summary of **ENTITY** title review findings, and any other requested documentation related to title at least 90 days before the planned closing date. **ENTITY** must also identify and consider unrecorded interests in the Parcel to ensure there are no unrecorded rights, title, or interests in the property that are not acceptable to **ENTITY** or NRCS. Any exceptions to the requirement to remove or subordinate outstanding or reserved interests must be consistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations, and approved by NRCS and documented on Form NRCS-LTP-23, "Certificate of Use and Consent" (or successor form).

    b. For Certified Eligible Entities.—**ENTITY** must review the title commitment to ensure there are no encumbrances that would allow nonagricultural uses of the property that are inconsistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations. **ENTITY** must also identify and consider unrecorded interests in the Parcel to ensure there are no unrecorded rights, title, or interests in the property that are inconsistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations. Any exceptions to the requirement to remove or subordinate outstanding or reserved interests must be consistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations, and **ENTITY's** determination and basis of acceptability documented on a "Certificate of Use and Consent" (**ENTITY** may use Form NRCS-LTP-23) or substantively similar document. **ENTITY** must provide NRCS a copy of the title commitment including a copy of documents to support each title exception, a summary of **ENTITY** title review findings, and any other requested documentation related to title in the payment request package submitted to NRCS pursuant to the terms of the individual Parcel Contract.

15. **ENTITY** must secure proper title evidence and insurance using an American Land Title Association (ALTA) Owner's Policy with **ENTITY** listed as the insured on the policy and the policy issued for at least the full amount of the agricultural land easement purchase price.
16. **ENTITY** must obtain a determination of the fair market value of the agricultural land easement for each Parcel at its own cost using one of the methods set forth in 7 CFR Part 1468.24. Individual appraisals must be conducted by a certified general appraiser and must conform to the NRCS Appraisal Specifications provided as Exhibit 2 to this PROGRAM AGREEMENT and either the Uniform Standards of Professional Appraisals Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000) (UASFLA). The effective date of the appraised value must be within 6 months prior to or after the date the individual Parcel Contract is executed for the individual Parcel, or within 6 months prior to or after the date the individual Parcel Contract is modified to identify a substitute Parcel, or within 12 months of the closing date of the agricultural land easement on the Parcel. Use of a fair market valuation

methodology other than individual USPAP or UASFLA appraisals must be approved by NRCS in writing prior to the execution of a Parcel Contract or modification thereto for a Parcel that would rely upon such methodology.

17. **ENTITY** must provide the appraiser the NRCS appraisal specifications (Exhibit 2) and all of the items required to be provided by **ENTITY** as identified in the NRCS appraisal specifications. **ENTITY** must receive a separate appraisal report for each Parcel with an executed Parcel Contract. Under no circumstances may **ENTITY** allow the landowner to approve or disapprove of the appraiser selected to prepare the appraisal report. The landowner may not be listed as the client.
    a. For Non-Certified Eligible Entities.—**ENTITY** must provide NRCS a completed appraisal report at least 90 days before the planned closing of the agricultural land easement so that NRCS may conduct a technical review of the appraisal. **ENTITY** may not close the agricultural land easement until the technical reviewer approves the appraisal report.
    b. For Certified Eligible Entities.—The determination of value for each Parcel must meet NRCS specifications and the requirements of 7 CFR Part 1468 and will not be reviewed by NRCS prior to payment or closing.
18. **ENTITY** may close on the agricultural land easement on a Parcel identified in the individual Parcel Contract, only after **ENTITY** has received the NRCS-signed Form NRCS-CPA-230, "Statement to Confirm Matching Funds," and for noncertified eligible entities, only after **ENTITY** has been notified that NRCS has completed its reviews as identified in section VI(B) below and has received from NRCS the "NRCS Approval to Proceed with ALE Acquisition" letter. If **ENTITY** closes an agricultural land easement prior to the receipt of these documents from NRCS, NRCS may decline to provide the Federal share for the agricultural land easement and may terminate the individual Parcel Contract.
19. **ENTITY** must provide NRCS a copy of the final recorded agricultural land easement deed and all exhibits, including the legal description or survey, a copy of the final policy of title insurance, and any associated title clearance documents (e.g. recorded subordination agreements), within 30 days of easement recordation or request for reimbursement, whichever is sooner.
20. **ENTITY** may not use ACEP funds to acquire an easement on a property in which **ENTITY**'s employee or board member, with decision-making involvement in easement acquisition and management matters, has a property interest or whose immediate family member or household member has a property interest. **ENTITY** agrees to conduct itself in a manner so as to protect the integrity of the agricultural land easements it holds and avoid the appearance of impropriety or actual conflicts of interest in its acquisition and management of agricultural land easements.
21. **ENTITY** may not at any time, when **ENTITY** holds title to the agricultural land easement, seek to acquire the remaining fee interest in the Parcel. Likewise, if **ENTITY** enters into an agreement with another entity to manage or monitor the agricultural land easement, and that entity seeks to acquire the underlying fee, **ENTITY** agrees to terminate immediately such agreement and arrange for an uninterested party to manage or monitor the Parcel.
22. **ENTITY** must implement easement enforcement procedures when a violation of the agricultural land easement is identified by or reported to **ENTITY**. **ENTITY** enforcement procedures resulting from a violation of an HEL conservation plan may only be initiated after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR Part 12 and 7 CFR Part 614.
23. **ENTITY** must submit a list of all successfully closed easements on Parcels funded through individual Parcel Contracts associated with this PROGRAM AGREEMENT within 30 days of the planned closing date of the last Parcel.
24. At a minimum, **ENTITY** must monitor every agricultural land easement on an annual basis to ensure and document compliance with the easement deed provisions. Each year **ENTITY** must submit to NRCS the annual monitoring report for that year.
25. Nongovernmental organizations must continue to meet the definition of nongovernmental organization in 7 CFR Section 1468 for the entire term of this agreement.
26. This paragraph and paragraphs 5, 10, 11, 12, 13, 19, 20, 21, 22, 23, 24, with the addition of paragraph 7 for certified eligible entities, of this section VI(A) will survive the closing of the agricultural land easement and the termination or expiration of this PROGRAM AGREEMENT.

B. NRCS Responsibilities:

1. The United States, by and through NRCS, will announce funding availability, application batching periods, publish ranking criteria, and select eligible applications for funding in accordance with published procedures.
2. NRCS will review Parcel applications submitted by **ENTITY**, determine land and landowner eligibility, rank eligible applications, obtain and review a hazardous materials record search, conduct onsite visits, and obligate funds for individual Parcels selected for funding through the execution of individual Parcel Contracts. NRCS will prepare the individual Parcel Contract documents or modifications thereto, for review and execution by all required Parties.
3. NRCS will provide technical assistance to develop any required HEL conservation plans, and to the extent its resources allow, be available for consultation and review of any agricultural land easement plans developed by **ENTITY** and submitted to NRCS at least 90 days before the planned closing date of an individual Parcel.
4. After the required materials have been submitted by **ENTITY** and prior to closing on the agricultural land easement, NRCS will—

    a. For a noncertified eligible entity acquisition as designated in the individual Parcel Contract:
        - Review the agricultural land easement deed and associated deed exhibits to ensure that they meet the requirements of this PROGRAM AGREEMENT and the individual Parcel Contract and provide **ENTITY** any approval instructions or items requiring resolution;
        - Review the title documents submitted by **ENTITY**, complete a Form NRCS-CPA-23, "Certificate of Use and Consent" (or successor form), and provide the findings to **ENTITY** for information or remedy as necessary;
        - Conduct a technical review of the appraisal submitted by **ENTITY** and provide the findings to **ENTITY** for information or resolution as necessary;
        - Develop or review an HEL conservation plan on any highly erodible cropland and, if requested by **ENTITY** and as resources allow, review any agricultural land easement plans developed by **ENTITY** and identify any items for resolution to **ENTITY**;
        - Review the draft baseline documentation report provided by **ENTITY** and notify **ENTITY** if additional information is needed;
        - Review and provide notice of determination on any waiver requests submitted by **ENTITY** in accordance with ACEP regulations and policy; and
        - After NRCS reviews are completed and the materials are determined acceptable, provide **ENTITY** with an "NRCS Approval to Proceed with the ALE Acquisition" letter and the NRCS-signed Form NRCS-CPA-230, "Statement to Confirm Matching Funds."

    b. For a certified eligible entity acquisition as designated in the individual Parcel Contract:
        - Review and provide **ENTITY** with the NRCS-signed Form NRCS-CPA-230.

5. If **ENTITY** requests an advance payment of the Federal share, NRCS will provide **ENTITY** a copy of the "NRCS Closing Agent Requirements" to be signed and returned to NRCS.
6. Prior to NRCS disbursement of funds, the NRCS State Conservationist will verify that **ENTITY** has provided all documentation, certifications, and information required by sections IV, V, and VI(A) above and as identified in the individual Parcel Contract. Additionally, for noncertified eligible entities, NRCS will conduct an internal review of the payment request package in accordance with the terms of this PROGRAM AGREEMENT and the individual Parcel Contract and NRCS easement acquisition internal controls policy.
7. NRCS will certify payment and disburse funds, for Parcels with a valid, executed Parcel Contract when **ENTITY** has submitted all required documents and requested payment prior to the expiration date of the individual Parcel Contract and consistent with the requirements of this PROGRAM AGREEMENT and the terms of the Parcel Contract.
8. NRCS will review the annual monitoring reports provided by **ENTITY** to ensure monitoring is conducted annually and reports are sufficient and submitted to NRCS annually for every NRCS-funded conservation easement held by **ENTITY**

9. For Certified Eligible Entities:
   a. NRCS will conduct annual quality assurance reviews on at least 15 percent of the completed agricultural land easement transactions submitted for payment each fiscal year. NRCS will review the agricultural land easement deed, title clearance and final policy of title insurance, appraisal, and the baseline documentation report for every Parcel selected for quality assurance review to determine whether the agricultural land easement is valid and compliant with the terms of this PROGRAM AGREEMENT. NRCS will notify **ENTITY** of deficiencies in writing and provide **ENTITY** a specified period of time to correct the deficiencies. If deficiencies are not corrected to NRCS satisfaction, NRCS may pursue remedies including but not limited to the return of cost-share funds, decertification of **ENTITY**, termination of remaining Parcel Contracts, or termination of the PROGRAM AGREEMENT.
   b. NRCS will assess **ENTITY** certification status pursuant to 7 CFR Section 1468.26 and the terms and conditions of this PROGRAM AGREEMENT. If during the quality assurance review or at any other time, NRCS finds that **ENTITY** no longer meets the criteria in 7 CFR Section 1468.26 and this PROGRAM AGREEMENT, NRCS will send written notice of proposed decertification, a list of outstanding deficiencies, and required remedies. **ENTITY** will be provided a specified period of time, at a minimum 180 days unless a shorter timeframe is agreed to by the Parties, to correct the deficiencies. **ENTITY** may contest the notice of decertification in writing to the Chief of NRCS within 20 calendar days of receipt of the notice of proposed decertification. The Chief will make a final determination and send formal notice to **ENTITY**. NRCS may also determine if any further administrative action is necessary, including whether suspension and debarment action under 7 CFR Part 1407 should be initiated.

VII. PUBLIC INFORMATION

A. **ENTITY** agrees to acknowledge NRCS cost-share assistance in any public outreach materials or events related to agricultural land easements acquired under the framework of this PROGRAM AGREEMENT and to provide draft copies of such information to the NRCS State office for review and comment before public release.

B. **ENTITY** agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under section 1244 of the Food Security Act of 1985 (16 U.S.C. Section 3844) and section 1619 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. Section 8791).

VIII. GENERAL PROVISIONS

A. It is the intent of NRCS to fulfill its responsibilities under this PROGRAM AGREEMENT and specific obligations made in any individual ACEP-ALE Parcel Cost-Share Contracts entered into pursuant to this PROGRAM AGREEMENT. However, NRCS may not make commitments in excess of funds authorized by law or made administratively available. If NRCS is unable to fulfill its responsibilities under this PROGRAM AGREEMENT or specific obligations made in any associated, valid Parcel Contracts because of the unavailability of funds, the affected Parcel Contracts will automatically terminate, and this PROGRAM AGREEMENT may also be terminated.

B. No assignment, in whole or in part, will be made of any right or obligation under this PROGRAM AGREEMENT without the joint approval of both NRCS and **ENTITY**. Nothing herein will preclude NRCS or **ENTITY** from entering into other mutually acceptable arrangements or agreements, except as identified in section VI(A)(20) and (21) of this PROGRAM AGREEMENT. Such documents must be in writing, must reference this PROGRAM AGREEMENT, and must be maintained as part of the official PROGRAM AGREEMENT file.

C. This PROGRAM AGREEMENT may only be amended or modified by written amendment signed by the authorized officials of the NRCS and **ENTITY**.

D. **ENTITY** agrees to give the NRCS, the Office of the Inspector General, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or

documents related to this PROGRAM AGREEMENT or any individual Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT. **ENTITY** agrees to retain all records related to this PROGRAM AGREEMENT or associated Parcel Contracts, as applicable, for a period of three years after completion of the terms of this PROGRAM AGREEMENT, in accordance with the applicable Office of Management and Budget circular.

E. NRCS may terminate this PROGRAM AGREEMENT if NRCS determines that **ENTITY** has failed to comply with the provisions of this PROGRAM AGREEMENT or if it determines that it is in the best interests of the Federal Government to terminate.

F. If any recipient of Federal funds through the Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT fails to comply with the terms and conditions of this PROGRAM AGREEMENT or such Parcel Contracts, NRCS reserves the right to wholly or partially recapture funds provided under such Parcel Contracts in accordance with applicable regulations.

G. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (7 CFR Part 1407, as applicable)

1. By executing this PROGRAM AGREEMENT, **ENTITY** certifies that, to the best of **ENTITY**'s knowledge and belief, **ENTITY** and his or her principals—
    a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
    b. Have not had, within the 3-year period preceding this PROGRAM AGREEMENT, a criminal conviction or civil judgment rendered against them for commission of fraud in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local government) contract, including violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses set forth above in paragraph G(1)(b) of this certification; and
    d. Have not within the 3-year period preceding this PROGRAM AGREEMENT had one or more public contracts (Federal, State, or local) terminated for cause or default.
2. If **ENTITY** is unable to certify to any of the statements set forth in section VIII(G)(1) above, **ENTITY** must attach an explanation to this PROGRAM AGREEMENT. **ENTITY** must notify NRCS immediately if the circumstances supporting certification of any of such statements change or **ENTITY** may incur additional liability or penalties in accordance with applicable law.

H. Misrepresentation and Scheme or Device

1. An **ENTITY** who is determined to have erroneously represented any fact affecting a determination with respect to this PROGRAM AGREEMENT or any individual ACEP-ALE Parcel Cost-Share Contract executed pursuant to this PROGRAM AGREEMENT and the regulations applicable to such PROGRAM AGREEMENT or associated Parcel Contract, adopted any scheme or device which tends to defeat the purposes of this PROGRAM AGREEMENT or associated Parcel Contract, or made any fraudulent representation with respect to this PROGRAM AGREEMENT or associated Parcel Contract, will not be entitled to payments or any other benefits made under any individual Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT. **ENTITY** must refund to NRCS all payment received under affected Parcel Contracts executed pursuant to this PROGRAM AGREEMENT. In addition, NRCS may terminate **ENTITY**'s interest in all Parcel Contracts.
2. NRCS will charge interest on monies it determines to be due and owing to NRCS under this PROGRAM AGREEMENT or associated Parcel Contracts. Under debt collection procedures, unpaid bills accrue interest beginning 30 days after the billing date. The interest rate will be determined using the current value of funds rate, published annually in the *Federal Register* by the United States Department of the Treasury.

3. The provisions of this section VIII(H) above will be applicable in addition to any other criminal and civil fraud statutes.

XII. ATTACHMENTS and EXHIBITS

Exhibit 1 – Signature Page with List of Eligible Entities, and Potential Co-Holders and Third-Party Right Holders

Exhibit 2 – Appraisal – NRCS Specifications and Scope of Work for Appraisals of Real Property for ACEP-ALE

Exhibit 3 – Sample "ACEP-ALE Parcel Cost-Share Contract" for individual Parcel acquisition including:

a. Form NRCS-CPA-1265, "ACEP-ALE Parcel Cost-Share Contract"
b. Form NRCS-CPA-1265-Appendix, "Appendix to the ACEP-ALE Parcel Cost-Share Contract"
c. Form NRCS-CPA-1266, Schedule of Acquisition for Easements
d. Form NRCS-CPA-1267, Modification of the Schedule of Acquisition for Easements
e. Form NRCS-CPA-230E, "Statement to Confirm Matching Funds for General ALE"
f. Form NRCS-CPA-230F, "Statement to Confirm Matching Funds for ACEP-ALE-GSS"
g. Form NRCS-CPA-1268, "Conservation Activity Approval and Payment Application for Acquisition of Easements"

Exhibit 4 – Optional Attachments providing additional Agreement Provisions (e.g., Parameters for Substitutions, Minimum Deed Terms Addendum, or NRCS NHQ-Approved Template Deed)