Clear Form

Agreement Number: _____
(NRCS Use)

AGREEMENT FOR THE PURCHASE OF CONSERVATION EASEMENT

THIS AGREEMENT is made by and between _____

_____

_____

("Landowner"), and the UNITED STATES OF AMERICA, by and through the Secretary of Agriculture ("United States"), on behalf of the Commodity Credit Corporation ("CCC"). Landowner and the United States are collectively referred to as "the Parties." The Natural Resources Conservation Service ("NRCS") is the administering agency on behalf of the United States.

For and in consideration of _____

_____ Dollars ($ _____), subject to commensurate reduction under 7 CFR Part 1400 based upon adjusted gross income (AGI) limitations as described in Part IIIB below, and payable by the United States to the Landowner, Landowner agrees to sell to the United States a conservation easement on lands and interests ("Property") in accordance with the following terms and conditions:

I. Purpose.

Landowner agrees that by signing this Agreement, the Landowner is enrolling the Property in the Agriculture Conservation Easement Program-Wetland Reserve Easement (ACEP-WRE), Subtitle H of Title XII of the Food Security Act of 1985, as amended, and agrees to the restoration and maintenance of the Property for the duration of the ACEP-WRE easement in accordance with the Warranty Easement Deed, appended hereto as Exhibit 1. NRCS will assist landowners in restoring and protecting the wetland functions and values of their properties through a Wetland Reserve Plan of Operations (WRPO) developed by NRCS.

II. Property Description.

The Property is comprised of _____ acres, more or less, and is more fully depicted or described in Exhibit 2, appended hereto.

TOGETHER, with an associated right-of-way, water uses, water rights, minerals, oil, gas, and geothermal resources, and depicted on Exhibit 3, appended hereto.

III. Purchase Price and Payment.

A. The purchase price is based on a per-acre easement compensation value of the Property multiplied by the number of acres. The Parties agree to adjust the purchase price to conform to the final acreage as determined by a survey procured by NRCS, or unless

otherwise mutually agreed to by the Parties. Any adjustment of purchase price or acreage will be incorporated in the Warranty Easement Deed, and by its execution, at closing, shall constitute the Parties' agreement to the adjustment.

B. Before the payment is issued, NRCS must determine that all Landowners meet the AGI limitations set forth in 7 CFR Part 1400. Landowners that are legal entities or general partnerships that meet the AGI limitations may have individual members of that legal entity or general partnership that do not meet the AGI limitations. While the deed document will reflect the purchase price as calculated and adjusted under paragraph A above, the amount actually paid at closing will be reduced by an amount commensurate with the percent ownership of any AGI-ineligible member of an otherwise AGI-eligible legal entity or general partnership.

C. NRCS will make a single payment unless Landowner identifies in this paragraph the number of annual installment payments requested. Landowner requests _____ annual installment payments (*not more than 10*) and acknowledges that after the first installment payment, subsequent installment payments will be made after October 1 of each calendar year following the first installment payment. Landowners electing installment payments where the total easement purchase price is more than $500,000 may elect a minimum of 5 and a maximum of 10 installment payments. Payment will be made by the United States using electronic fund transfers (EFTs).

IV. Terms of Easement.

Landowner agrees to convey the conservation easement using the Warranty Easement Deed provided by NRCS. The period of the ACEP-WRE conservation easement is (*Landowner check and initial selected option below*)—

☐ In perpetuity. _____

☐ For a term of 30 years. _____

V. Restoration Rights of the United States.

A. By signing this Agreement, the Landowner agrees that NRCS will have the right to implement the WRPO on the Property upon execution of the Warranty Easement Deed. The Landowner authorizes NRCS to provide financial assistance either directly to the Landowner or through another entity that assists with implementation of the WRPO, as determined by NRCS. These agreements and authorizations shall not merge with but shall survive the execution and recordation of the Warranty Easement Deed to be executed pursuant to this Agreement.

B. Landowner acknowledges that projected restoration practices, locations, extents, quantities, and associated costs developed by NRCS are subject to change and that NRCS has final discretion on the implementation of the WRPO. The Landowner must identify its preferred method for NRCS to provide financial assistance for restoration on the Property and initial below (*Landowner check and initial selected option below*):

Method: ☐ Federal Contract _____

☐ Landowner Conservation Program Contract
or Partner Agreement _____

C. For 30-year easements, NRCS will not provide funding for more than 75 percent of the total restoration cost. The Landowner agrees that NRCS will withhold an amount equivalent to 25 percent of the projected restoration costs from the easement payment in order to carry out the restoration on the Property in accordance with the WRPO. If there is an increase in the final restoration costs from the projected restoration costs, the Landowner is responsible to provide additional funds up to 25 percent of the final restoration cost. If there is a decrease in the final restoration costs, the Landowner will receive the difference between the 25 percent of the final restoration costs and the amount withheld based on the projected restoration costs.

VI. Risk of Loss and Liabilities.

A. The risk of loss or damage to the Property occurring prior to the vesting of satisfactory title in the United States shall be borne by the Landowner. In the event of such loss or damage, NRCS may, at its discretion and without liability, withdraw from the transaction and terminate the Agreement.

B. In the event of loss or damage to the Property, the Parties may mutually agree to adjust the purchase price and proceed with the transaction based upon an acceptable ACEP-WRE valuation methodology.

VII. Title.

A. The United States shall, at its cost, secure evidence of title satisfactory to the Attorney General of the United States, 40 U.S.C. Section 3111.

B. Prior to closing, the title to the Property must be approved by the Department of Agriculture's Office of the General Counsel in conformity with the title standards and regulations of the Attorney General of the United States.

C. Prior to closing, any encumbrance, exception, or other cloud on title including encroachments must be eliminated and quieted by the Landowner, unless deemed administratively acceptable by NRCS pursuant to instructions given by the Office of the General Counsel.

D. Landowner represents and warrants that Landowner has full right, power, and authority to convey; that there is no condemnation or similar proceedings affecting any part of the Property and no proceedings will be pending on the Closing Date; and that Landowner is not subject to any commitment, obligation, or agreement, including but not limited to, any rights of first refusal or option to purchase, granted to a third party, which would or could prevent Landowner from completing the sale of the Property as contemplated by this Contract.

E. Landowner represents and warrants that Landowner has defined, unencumbered, unconditional, and transferable legal right of access from an identified Federal, State, or local public right-of-way to the entire easement area for the term of the enrollment.

F. Landowner agrees to pay at closing any taxes that are due or delinquent owing against the Property.

VIII. Closing.

A. NRCS has until February 15, 2024, to close on the conservation easement. Prior to the expiration of the Agreement, the Parties may mutually agree to extend this Agreement only once until February 15, 2025.

B. NRCS will select a closing company or closing agent and pay all normal costs of closing.

IX. Conveyance Instruments.

A. Landowner shall execute and deliver at closing a Warranty Easement Deed conveying a conservation easement on the Property to the United States of America.

B. Landowner shall deliver, without cost to the United States, any other documents that may be required to convey good and merchantable title, including trust instruments, powers of attorney, corporate resolutions, and similar instruments.

C. The deed or deeds of conveyance shall be prepared by NRCS in consultation with the Office of the General Counsel.

X. General Provisions.

A. Landowner agrees that officers and authorized agents of the United States have at all reasonable times, the right to enter upon the Property for any purpose related to purchasing the conservation easement, including inspection of the Property and the resources upon them, restoration planning, survey, and other due diligence work related to real property acquisition.

B. Landowner agrees not to do or authorize others to do any act by which the value or title to the Property may be diminished or encumbered, or the Property devalued, including the extraction of resources or materials (for example, oil, gas, minerals, timber), the manipulation of topography, or the release of hazardous materials or substances.

C. Except for reasons beyond the control of the Landowner, as determined by NRCS, if the Landowner fails to convey the easement, the Landowner will be in default and shall pay the United States the amount of costs incurred by the United States for survey and all other actions taken in furtherance of this Agreement. In the event the Property is sold or transferred in whole or in part, including entering into a contract to sell the Property, prior to vesting of satisfactory title in the United States, the Agreement will be terminated and the Landowner will be subject to repayment penalties described above. NRCS may waive all or a portion of the repayment penalties if the new landowner is determined by NRCS to meet the eligibility requirements and

agrees to accept the terms of this Agreement and associated transfer agreements. The Landowner must notify NRCS immediately of any sale or transfer of the Property, including any contract to sell the Property.

D. NRCS may, at its discretion and without liability, terminate this Agreement at any time due to the lack of availability of funds, inability to clear title, lack of sufficient legal access, sale of the land, risk of hazardous substance contamination, or other reasons.

E. The Parties agree that this Agreement shall not be assigned in whole or in part, except that Landowner may assign this Agreement to Purchase Conservation Easement to a qualified intermediary if he or she elects to conduct a like-kind exchange in accordance with Internal Revenue Code Section 1031. The Landowner agrees to provide NRCS the notice of assignment no less than 90 days prior to the anticipated closing date. As part of the like-kind exchange, the subject property will be conveyed to the United States and the United States will make payment in accordance with the purchase agreement, assignment, and closing instructions. The United States makes no assurances that this transaction will qualify as a like-kind exchange in accordance with Internal Revenue Code Section 1031. Further, the Parties agree that no Member or Delegate to Congress or Resident Commissioner may be a party to any share or part of this Agreement. In addition, in the event the Landowner dies, this Agreement will be binding upon and inure to the benefit of the Landowner's heirs, successors, and assigns; provided, however, that NRCS may terminate this Agreement, without liability, if such heir, successor, or assign is unwilling or unable to: (1) reaffirm the obligations under this Agreement in writing, or (2) provide verification of their eligibility to enroll in ACEP-WRE, within 60 days notice of this Agreement.

F. All covenants, warranties, and representations made by Landowner shall survive this Agreement.

G. Irrespective of any violations by the Landowner of the terms of the conservation easement, the conservation easement survives and runs with the land for its duration.

H. If NRCS requires a closing or escrow agent to perfect this transaction, the Landowner hereby agrees that the payment may be disbursed into an escrow account administered by the closing company, escrow agent, or authorized person selected by NRCS for completion of the transaction between NRCS and the Landowner.

I. Landowner understands the program requirement that any existing cropland base on the enrolled acres must be permanently retired at the time of easement closing. The landowner understands that it is their responsibility to contact the Farm Service Agency (FSA) to obtain and execute any documents necessary to transfer or retire base acres from the enrolled land prior to the closing of the easement. Upon closing and recording the easement, NRCS will provide written notification of easement recording to FSA, at which time any base acres remaining on the easement acres will be permanently retired.

J. Landowner understands that they are responsible to contact FSA to determine impacts to commodity payments that may result from easement closing and recording.

K. Landowner acknowledges that NRCS may provide a copy of this Agreement to the

FSA at the time it is executed for the purpose of allowing FSA to track ACPE-WRE enrollments to ensure the county cropland enrollment limits are not exceeded. Execution of this Agreement alone does not authorize the permanent retirement of base acres or commodity payment refund collection.

Landowner has hereunto signed on this_____Day of _____, 20____ .

Landowner(s):

_____

_____

_____

_____

_____

_____

_____

_____

The Secretary of the Department of Agriculture, acting through his or her authorized representative, has executed this Contract on behalf of the United States of America on this _____Day of _____, 20_____.

THE UNITED STATES OF AMERICA

BY: _____

Optional Extension of the Agreement for the Purchase of Conservation Easement

XI. Extension of Agreement

Prior to the original expiration date of this Agreement, the Parties mutually agree to extend this Agreement to the February 15 extension date identified in Paragraph VIII(A). The Parties acknowledge that no further extensions of this Agreement are authorized.

Landowner has hereunto signed on this _____ Day of _____, 20____.

Landowner(s):

_____

_____

_____

_____

_____

_____

_____

_____

The Secretary of the Department of Agriculture, acting and through his or her authorized representative has executed this Contract on behalf of the United States of America on this _____ Day of _____, 20____.

THE UNITED STATES OF AMERICA

BY: _____

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 1 (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Sec. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative Tribunal.