Memorandum

MIAMI-DADE COUNTY

Date: July 21, 2009

To: Honorable Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 14(A)(51)

From: George M. Burgess
County Manager

Subject: Resolution entering into a Cooperative Agreement with the United States of America to receive funding from the Farm and Ranch Lands Protection Program for Miami-Dade County's Purchase of Development Rights Program

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Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the County Mayor or his designee to enter into a Cooperative Agreement with the United States of America to receive funding from the Farm and Ranch Lands Protection Program Miami-Dade County's Purchase of Development Rights Program. The PDR Program is funded through the Building Better Communities General Obligation Bond Program (BBC GOB).

Scope

These parcels are located in Commission District 9, however the PDR Program is countywide in nature as it contributes to the cultural heritage and environmental quality of the region.

Fiscal Impact/Funding Source

The PDR Program is funded by the BBC GOB Program (Project 10), with a total allocation of $30 million. Under the Cooperative Agreement the United States of America will provide a 50 percent match up to $1.6 Million.

Track Record/Monitor

This program is monitored by the County's Agricultural Manager, Charles LaPradd, who serves as the PDR Administrator.

Delegation of Authority

The Board will delegate to the County Mayor or his designee the authority to enter into this Cooperative Agreement with the United States of America.

Background

In November 2004, Miami-Dade County voters approved the Building Better Communities General Obligation Bond Program which included $30 million to preserve viable farmland through the acquisition of development rights on property suitable for agricultural use. The value of land for agricultural use often is significantly less than the value of land sold for development. For that reason, many agricultural landowners choose to sell their farmland for development, threatening the community's agricultural heritage and quality of life. Without programs to help farmers find alternatives to liquidating businesses, farms will continue to disappear at an increasing rate. The

PDR Program allows agricultural landowners to retain their existing use rights while receiving compensation for the land's development value. To increase the viability of the PDR Program, staff has applied for grants to increase the funding available to the program.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 21, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 14(A)(51)

Please note any items checked.

✓ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(51)
7-21-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE UNITED STATES FOR THE FARM AND RANCH LANDS PROTECTION PROGRAM TO PROVIDE MATCHING FUNDS IN AN AMOUNT UP TO $1,600,000.00 FOR THE MIAMI-DADE COUNTY PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

WHEREAS, The Board of County Commissioners of Miami-Dade County and the United States have a mutual interests in preventing the conversion of agricultural lands to non-agricultural uses; and

WHEREAS, the United States administers the Farm and Ranch Lands Protection Program through the Natural Resources Conservation Service on behalf of the Commodity Credit Corporation; and

WHEREAS, the Board of County Commissioners of Miami-Dade County administers a farmland protection program and has pending offers for acquiring agricultural conservation easements from landowners within Miami-Dade County, and the United States and the Board of County Commissioners of Miami-Dade County have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the County Mayor or his designee to enter into this Cooperative Agreement with the United States as described in Exhibit A hereto and incorporated herein by reference and authorizing the County Mayor or his designee to exercise any other rights conferred therein.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of July, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

Agreement No. _____

COOPERATIVE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION
ACTING THROUGH THE
NATURAL RESOURCES CONSERVATION SERVICE
and the
[Tribe/State/County/Local Government/Non-governmental Organization]
for the
FARM AND RANCH LANDS PROTECTION PROGRAM

This Cooperative Agreement, made the ____ day of _____, 2009 is entered into by and between the **United States of America (the United States),** acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), and **the [Tribe/State/County/Local Government/Non-governmental Organization]** for the implementation of the Farm and Ranch Lands Protection Program (FRPP). The CCC shall utilize the expertise and services of NRCS to administer this program and perform the duties set forth within this Cooperative Agreement. The term "Parties" as used herein refers collectively to the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization].**

I. AUTHORITY.

This Cooperative Agreement is entered into by the United States under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714 et seq. and Title II, Subtitle E, Section 2401 of the Food, Conservation, and Energy Act of 2008, Public Law 110–234, 16 U.S.C. 3838h and i. In addition to these authorities, this Cooperative Agreement will be administered in accordance with the policies and procedures set forth in the FRPP regulation, 7 CFR part 1491. The CCC administers the FRPP under the general supervision of the Chief of the NRCS who is a Vice President of the CCC.

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II. BACKGROUND AND PURPOSE.

Section 2401 of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to facilitate and provide funding for the purchase of conservation easements that are subject to pending offers from eligible State, Tribal or units of local government or nongovernmental organizations for the purpose of protecting the agricultural uses and related conservation values of eligible land by limiting non-agricultural uses of the land. To be eligible, the farm or ranch land must meet one of three criteria: contain prime, unique, or other productive soil; contain historical or archaeological resources; or further a State or local policy consistent with the purposes of the program. The Food, Conservation, and Energy Act of 2008 authorized FRPP funding for fiscal years 2008 through 2012.

WHEREAS, the **[Tribe/State/County/Local Government/Non-governmental Organization]** and the United States have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses; and

WHEREAS, the United States administers the FRPP through NRCS on behalf of the CCC; and

WHEREAS, the **[Tribe/State/County/Local Government/Non-governmental Organization]** administers a farmland protection program and has pending offers for acquiring agricultural conservation easements from landowners within the **[Reservation/State/County/Local jurisdiction]**, and the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]** have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

THEREFORE, the parties agree to enter into this Cooperative Agreement.

III. BENEFITS

The benefit of this Cooperative Agreement is that funds will be provided to the cooperating entity for the protection of farm and ranch lands from conversion to non-agricultural use. Section 2401 of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to provide funding for the purchase of conservation easements by eligible State, Tribal or units of local government or nongovernmental organizations. Section 1238I of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to enter into agreements with eligible entities.

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IV. OBLIGATION OF FUNDS

Upon execution of this agreement, the United States shall obligate the sum of $ _____ for the acquisition by [**Tribe/State/County/Local Government/Non-governmental Organization**] of conservation easements for the parcels listed on Attachment A. This agreement may be revised to obligate funds in Fiscal Years 2010 and 2011 if the cooperating entity submits parcels that rank high enough to warrant the obligation of funds. The [**State/County/Local Government/Tribe/Non-governmental Organization**] must close on the easement acquisition and request payment of this amount in accordance with Part VII of this Cooperative Agreement before the dates in the table below.

Fiscal Year	Attachment with Associated Parcels	Funds Obligated	Fund Citation
2009	A		
2010	B	NA	NA
2011	C	NA	NA

Fiscal Year of Fund Obligation	Attachment with Associated Parcels	Closing Deadline	Payment Request Deadline	Fund Disbursement Deadline
2009	A	March 31, 2011	August 31, 2011	September 30, 2011
2010	B	March 31, 2012	August 31, 2012	September 30, 2012
2011	C	March 31, 2013	August 31, 2013	September 30, 2013

This Cooperative Agreement expires on September 30, 2013.

This Cooperative Agreement is the authorizing document that obligates CCC funds to acquire conservation easements. The United States' contribution for the acquisition of each conservation easement acquired by the [**Tribe/State/County/Local Government/Non-governmental Organization]** shall be up to but not more than 50% of the appraised market value of the conservation easement. The United States' contribution cannot be used for closing and related administrative costs incurred by the [**Tribe/State/County/Local Government/Non-governmental Organization]** in acquiring the conservation easement. Attachments A, B, and C to this Cooperative Agreement specify the properties on which CCC funds will be used within the **[Reservation/State/County/Local Jurisdiction]** and includes a list with a detailed breakdown of the: (1) name and mailing address of the landowner; (2) number of acres to be acquired; (3) the estimated conservation easement value, and (4) estimated Federal contribution to the estimated conservation easement value. However, nothing in this document obligates the United States or the **[Tribe/State/County/Local Government/Non-governmental Organization]** to purchase all or any of the conservation easements parcels listed. There may be further modifications, additions or deletions to the list depending on the prices paid for the conservation easements, the ability to obtain good and clear title, future funding for acquisitions,

etc. Additions or deletions to the Attachments A, B, and C will be made by mutual agreement between the Parties to this Cooperative Agreement. Additions to Attachments A, B, and C must have written pending offers and the parcels and the landowners must meet eligibility requirements. The pending offers may be from any year. The additions and deletions must be made by a formal amendment to this cooperative agreement and must contain the same deadlines for closing easements, requesting reimbursement, and certifying payments.

V. FEDERAL CONTRIBUTION

The Federal contribution for parcels must be based on an appraisal of the conservation easement performed by a certified general appraiser in accordance with either the Uniform Standards of Professional Appraisal Practices (USPAP) OR the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (Interagency Land Acquisition Conference, 2000) AND policies and procedures in the NRCS Conservation Programs Manual, Part 519. The appraisal must have an effective date that is within twelve months of the closing date. For appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA),the appraiser must have completed training in using the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. For appraisals performed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP), the appraiser must have completed training in either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements.

The cooperating entities must submit four copies of each appraisal to NRCS no less than 90 days before for proposed closing date for administrative and technical review. Easements will not be closed until administrative and technical reviews are completed on each appraisal and any deficiencies are resolved.

VI. COOPERATING ENTITY'S CONTRIBUTION

The **[Tribe/State/County/Local Government/Non-governmental Organization],** herein the Cooperating Entity, or its designated escrow agent must disburse 100 percent of the payment, representing the easement purchase price, to the landowner at the time of closing. The Cooperating Entity must contribute in cash at least 25 percent of the purchase price (appraised fair market value minus the landowner donation) of the easement.

Prior to NRCS accepting the conservation easement and issuing a payment, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall self-certify on the NRCS CPA-230, Confirmation of Matching Funds, that the **[Tribe/State/County/Local Government/Non-governmental Organization]**'s share of matching funds has not come from additional donations, payments, loans or fees made by or charged to the Grantor of the Conservation Easement, immediate family members, or organizations controlled by or funded by the Grantor of the Conservation Easement grantor, either through formal or informal agreements.

The Cooperating Entity must have an appraisal of the conservation easement performed by a certified general appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) OR the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (Interagency Land Acquisition Conference, 2000) AND policies and procedures in the NRCS Conservation Programs Manual, Part 519. The appraisal must have an effective date that is within twelve months of the closing date. For appraisals conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), the appraiser must have completed training in using the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. For appraisals conducted in accordance with Uniform Standards for Professional Appraisal Practice (USPAP), the appraiser must have completed training in either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. The Cooperating Entity must make all contributions in accordance with the policies and procedures in the NRCS Conservation Programs Manual, Part 519.

VII. PAYMENTS

The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall notify the United States when the CCC funds are to be paid. CCC funds shall be paid to the **[Tribe/State/County/Local Government/Non-governmental Organization]** when the United States is provided a copy of the recorded Conservation Easement Deed and the **[Tribe/State/County/Local/or Non-governmental Organization]** has paid the landowner(s). Where a **[Tribe/State/Count/Local Government/Non-governmental Organization]** cannot obtain 100 percent of the funds to be paid at closing to the landowner(s) and requires the United States to make its payment at closing rather than on a reimbursable basis, the **[Tribe/State/County/Local/or Non-governmental Organization]** may request a waiver for the United States to pay its share of the Conservation Easement purchase at closing. When a waiver is requested, the **[Tribe/State/County/Local/or Non-governmental Organization]** shall notify the United States at least 60 days prior to closing, and the United States will make payment to an authorized closing agent via electronic transfer. The closing agent will hold the funds in escrow for a period not to exceed 14 calendar days. Upon receipt of the funds, the closing agent will sign a payment receipt form and return it to the United States. If interest is earned on CCC funds, the closing agent must return any interest earned to the United States.

All Conservation Easement Deeds used by the **[Tribe/State/County/Local Government/Non-governmental Organization]** must be approved by NRCS and the Office of General Counsel (OGC) prior to purchase of the conservation easement. All conservation easement deeds or templates must be submitted to NRCS 90 days before the intended closing date of the first parcel for which the deed will be used.

In order to obtain payment of FRPP funds, the **[Tribe/State/County/Local Government/Non-governmental Organization]** will submit Form SF-270 (Request for Advance/Reimbursement of Funds), and the information specified below to the _____ NRCS State Office. Prior to submitting the SF-270, the **[State/County/Local**

Government/Non-governmental Organization] must also request a copy of closing agent requirements from the United States and ensure that the closing agent meets these requirements. The **[Tribe/State/County/Local Government/Non-governmental Organization]**may submit the Form SF-270 prior to closing when a payment is issued at closing, after all the deeds have been recorded and the landowner has been paid, or on a quarterly basis for each quarter that Conservation Easement Deeds have been recorded and the landowner(s) have been paid.

At a minimum, the following information shall be included in, or attached to, the SF-270, prior to NRCS accepting the conservation easement and disbursing payment: (1) the name of the **[Tribe/State/County/Local Government/Non-governmental Organization]**; (2) this Cooperative Agreement number; (3) Conservation Easement numbers (if applicable); (4) landowner name; (5) landowner's tax identification number (TIN) or social security number; (6) total amount of dollars paid the landowner for each conservation easement, specifying the CCC share and the non-CCC share of the Conservation Easement cost; (7) term of conservation easement; (8) acres acquired for each Conservation Easement; (9) Tax Identification Number (TIN) for **[Tribe/State/County/Local Government/Non-governmental Organization]**; (10) Federal Information Processing Standards (FIPS) number for **[Tribe/State/County/Local Government/Non-governmental Organization]**; (11) bank routing number and account number for desired deposit location; (12) copy of the recorded Conservation Easement Deed(s) for each easement; and (13) NRCS CPA-230, Confirmation of Matching Funds for each easement; and (14) a copy of the ALTA title insurance policy for each Conservation Easement.

VIII. CONSERVATION EASEMENT REQUIREMENTS.

The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that conservation easements acquired under this agreement:

1. run with the land in perpetuity or the maximum allowable under State law, where State law prohibits a permanent easement.

2. protect agricultural use and related conservation values by limiting nonagricultural uses of the land;

3. provide for the administration, management, and enforcement of the Conservation Easement by the **[Tribe/State/County/Local Government/Non-governmental Organization]**;

4. require management of highly erodible land on the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, 7 CFR part 12. The following paragraphs shall be included in all Conservation Easements acquired using FRPP funds:

   As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this

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Conservation Easement Deed. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Conservation Easement Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

5. where parcels are being enrolled in FRPP based on historical and archaeological resources include, at minimum, a paragraph identifying standards and guidelines for treatment and maintenance of these resources is required within the deed. These guidelines should be based on the Secretary of the Department of the Interior's Standards and Guidelines for Historic Preservation. The **[Tribe/State/County/Local Government/Non-governmental Organization]** will ensure that title restriction to protect any historical and archaeological structure(s) is appended to the Conservation Easement Deed and included in any succeeding transfers; and

6. include the following "Right of Enforcement" provision:

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the **[Tribe/State/County/Local Government/Non-governmental Organization]** fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

7. include the following "General Indemnification" provision:

"General Indemnification. Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to

which Grantee may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws."

8. include the following "Environmental Warranty" provision:

"**Environmental Warranty**. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment."

9. include provisions regarding the amount of impervious surfaces permitted on the Property, in accordance with the NRCS Conservation Programs Manual, Part 519.

10. include signature of a responsible NRCS official on the Conservation Easement Deed, accepting the property interest of the United States.

11. Include other terms that may be required by OGC or FRPP policy, such as a general indemnification clause and hazardous materials warranty.

12. Address the following permitted uses of the Protected Property by the Grantor in the Conservation Easement Deed. Other permitted uses may be added if they do not conflict with the conservation values of the Protected Property. For forms further explanation of these provisions see the NRCS Conservation Programs Manual, Part 519.64 B. 7.

a. Agricultural Production - the production, processing, and marketing of agricultural crops for the purposes consistent with the terms of the Conservation Easement Deed.

b. Forest Management and Timber Harvest - forest management and timber harvesting shall be performed in accordance with a written forest management plan consistent with the Conservation Easement Deed.

c. Wetland Pond Restoration and Creation - permitted if it is consistent with the terms and purposes of the Conservation Easement Deed.

d. Non-developed Passive Recreation and Educational Activities - permitted if it does not impact the soils and the agricultural operations and is consistent with the purpose of the Conservation Easement

e. Customary Rural Enterprises - permitted on the Protected Property and in the buildings constructed and maintained for the agricultural use of the Protected Property. Customary rural enterprises that require their own buildings are prohibited.

f. Agri-tourism - -Low impact agri-tourism activities are permitted, such as farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides.

g. Roads - permitted if they are already in place and any new roads necessary to carry out the agricultural operations on the Protected Property.

h. Fences - may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.

i. Oil and Gas Exploration and Extraction - allowed if the method of extraction is from another parcel, or is limited in the number of wells (one per 320 acres) and the amount of disturbance associated with each well including access roads (one acre per well), and thus has minimal impact on the Protected Property.

13. Include the following prohibited uses of the Protected Property and any other prohibited uses necessary to protect the conservation values of the Protected Property. The following activities may be prohibited subject to qualification. Other provisions may be added when they are necessary to protect the conservation values of the Protected Property. The introduction to this section of the Conservation Easement Deed must include a statement that all activities that are inconsistent with the purposes of the Conservation Easement are prohibited. For forms further explanation of these provisions, see the NRCS Conservation Programs Manual, Part 519.64 B. 6.

a. Industrial or Commercial Uses - prohibited unless expressly permitted for agricultural purposes.

b. Construction on the Protected Property - limited to structures and improvements that support the agricultural use of the Protected Property.

c. Mining – prohibited, except for limited mining to the extent that the materials mined (e.g. sand, gravel, or shale) are used for agricultural operations on the Protected Property. In that case, extraction must be limited to a small, defined area or acreage.

d. Motorized Vehicle Use - prohibited except to support agricultural use, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property,

e. Granting of easements for utilities and roads – prohibited when the utility of road will adversely impact the conservation values of the easement deed, including the land's use for agriculture.

f. Waste and Dumping - prohibited.

g. Signage – prohibited except for signs to identify the farm or ranch and signs to identify the farm or ranch as a participant in FRPP and the Local Grantee's program. Conservation easement deeds should specify limitations on sign size.

h. Subdivision – generally prohibited unless required by state or local regulations to construct residences for employees working on the Protected Property.

i. Surface Alteration – prohibited unless it is in accord with general agricultural uses of the Protected Property.

IX. RESPONSIBILITIES.

A. Those of the United States -

1. The United States, by and through the NRCS, shall provide technical and other services required to assist the landowner in developing an appropriate conservation plan in accordance with 7 CFR part 12. To ensure that the conservation plan is implemented in accordance with 7 CFR part 12, the NRCS will be provided the opportunity to conduct periodic field visits on lands that are enrolled in the FRPP and associated lands owned or managed by the landowner which are also subject to 7 CFR part 12.

2. The CCC shall, subject to the availability of funds, disburse the appropriate funds to the **[Tribe/State/County/Local Government/Non-governmental Organization]** in accordance with Part IV and VII of this Cooperative Agreement.

3. Prior to NRCS accepting the conservation easement and processing the payment, NRCS shall: ensure that a conservation plan for highly erodible lands is developed in accordance with 7 CFR part 12 and that an AD-1026, obtain approval of the conservation easement deed or Conservation Easement Deed template from the National Headquarters of the NRCS or the Office of the General Counsel; and acquire: a signed letter from the closing agent indicating that the agent meets FRPP closing agent requirements, an executed NRCS CPA-230, Confirmation of Matching Funds, and a copy of the title commitment.

4. NRCS shall conduct administrative and technical reviews of appraisals in accordance with NRCS Conservation Programs Manual, Part 519.

5. NRCS shall certify payment for all conservation easements for parcels listed on Attachment A acquired by September 30, 2011.

B. Those of **[Tribe/State/County/Local Government/Non-governmental Organization]**-

1. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid Conservation Easement Deeds.

2. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall pay all costs of conservation easement procurement and will operate and manage each conservation easement in accordance with the **[Tribe/State/County/Local Government/Non-governmental Organization]** program, this Cooperative Agreement, and 7 CFR part 1491. The United States shall have no responsibility for the costs or management of the conservation easements purchased by the **[Tribe/State/County/Local Government/Non-governmental Organization]** unless it exercises its rights under a Conservation Easement Deed. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall indemnify,

and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the **[Tribe/State/County/Local Government/Non-governmental Organization]** in connection with its acquisition and management of the conservation easements acquired pursuant to this Cooperative Agreement. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the **[Tribe/State/County/Local Government/Non-governmental Organization's]** agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the conservation easements acquired pursuant to this Cooperative Agreement which result in violations of any laws and regulations which are now or which may in the future become applicable.

3. Non-governmental organizations shall continue to meet the requirements specified in Title II, Subtitle E, Section 2401 of the Food, Conservation, and Energy Act of 2008. The Act states that eligible organizations are "any organization that—

(A) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(B) is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501 (a) of that Code;

(C) is described in section 509 (a)(1) or (2) of that Code; or

(D) is described in section 509(a) (3) of that Code and is controlled by an organization described in section 509 (a) (2) of that Code."

4. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall address in each Conservation Easement Deed in which CCC funds are used as part of the acquisition the permitted/prohibited uses set forth in Part VIII of this Cooperative Agreement.

5. Prior to payment certification, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that all lands for which a conservation easement has been acquired will have a conservation plan, as described in Part VIII of this Cooperative Agreement.

6. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall prohibit all non-agricultural uses of the encumbered properties, except for recreational uses, such as hiking, hunting, fishing, boating, horseback riding to the extent those activities do not conflict with the purpose of Section 2401 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110 – 234).

7. At a minimum, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall monitor FRPP Protected Properties on an annual basis to ensure that the Conservation Easement Deeds are being implemented according to the deed provisions. An annual report of the status of acquired Conservation Easements and Conservation Easements pending acquisition will be submitted to the NRCS representative at the State level. The NRCS representative will define the format of this report.

8. In acquiring Conservation Easements, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that the title to the lands or interests therein shall be unencumbered or, if encumbered by outstanding or reserved interests, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall ensure that any outstanding interests are subordinated to the Conservation Easement Deed or that any exceptions from this subordination requirement are approved by the NRCS and are consistent with the purposes of the Farm and Ranch Lands Protection Program. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall provide to NRCS a copy of the title commitment or title report 90 days before the intended closing date and any other requested documentation related to title so that OGC may issue a title opinion for the United States prior to closing. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall assure that proper title evidence is secured.

9. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall have an appraisal conducted on the Protected Property prior to NRCS accepting an interest in the Conservation Easement. The appraisal shall be conducted by a certified general appraiser and shall conform to the Uniform Standards of Professional Appraisals Practices OR the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000).

10. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall not use FRPP funds to place an easement on a property in which the **[Tribe/State/County/Local Government/Non-governmental Organization's]** employee or board member, with decision-making involvement in matters related to easement and acquisition and management, has a property interest. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall not use FRPP funds to place an easement on a property in which a person who is an immediate family member or household member of an employee or board member, with decision-making involvement in matters related to easement acquisition and management, has a property interest. Further, the **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees to generally conduct itself in a manner so as to protect the integrity of conservation easement deeds which it holds as well as avoid the appearance of impropriety or actual conflicts of interests in its acquisition and management of conservation easements.

11. The **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees that it will not at any time, when the **[Tribe/State/County/Local Government/Non-governmental Organization]** is named as a Grantee on the Conservation Easement Deed, seek to acquire the remaining fee interest in the Protected Property. Likewise, if the **[Tribe/State/County/Local Government/Non-governmental Organization]** enters into an agreement with another entity to manage/monitor the Conservation Easement, and the entity seeks to acquire the underlying fee, the **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees to immediately terminate such a relationship and arrange for an uninterested party to manage/monitor the Conservation Easement.

12. When a conservation plan violation is reported to the Cooperating Entity by NRCS, after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR part 12 and 7 CFR part 614, the **[Tribe/State/County/Local Government/Non-governmental Organization]** shall implement easement enforcement procedures.

13. Paragraphs 2, 3, 6, 7, 10, 11, and 12 of this Section shall survive the termination or expiration of this agreement.

X. GENERAL PROVISIONS.

A. The term of this Cooperative Agreement shall be from the date of the last signature affixed hereto through September 30, 2013.

If Conservation Easements on all the parcels listed on Attachments A, B, and C or the replacements for those parcels are not closed or reimbursement is not requested by the dates indicated in Section III, any remaining funds will be released from this obligation unless the Cooperative Agreement is extended for specific Conservation Easements, as provided for in paragraph IX(C).

B. No assignment in whole or in part shall be made of any right or obligation under this Cooperative Agreement without the joint approval of both the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]**. Nothing herein shall preclude the United States or the **[Tribe/State/County/Local Government/Non-governmental Organization]** from entering into other mutually acceptable arrangements or agreements, except as identified in Part IX of this cooperative agreement. Such documents shall be in writing, reference this Cooperative Agreement, and shall be maintained as part of the official Cooperative Agreement file.

C. This Cooperative Agreement may be amended or modified by written amendment signed by the authorized officials of the United States and the **[Tribe/State/County/Local Government/Non-governmental Organization]**. The Cooperative Agreement may only be extended with the permission of the Deputy Chief for Programs of the Natural Resources Conservation Service and only if extenuating circumstances occur with the individual Conservation Easements for which an extension is requested.

D. The United States may terminate this Cooperative Agreement if the United States determines that the **[Tribe/State/County/Local Government/Non-governmental Organization]** has failed to comply with the provisions of this Cooperative Agreement or if it determines that it is in the best interests of the United States to terminate. In the event that this agreement is terminated for any reason, the financial obligations of the parties will be as set forth in 7 CFR parts 1403, 3016 and 3019, as applicable.

E. This Cooperative Agreement constitutes financial assistance and, therefore, falls under the Uniform Federal Assistance Regulations at 7 CFR parts 3015, 3016 and 3019, for the purposes of

administering this Cooperative Agreement, the procedures set forth at 7 CFR parts 3015, 3016 and 3019 as well as OMB Circular A-122 apply, as applicable.

1. 7CFR, Part 3017, Government Debarment and Suspension;
2. 7CFR, Part 3021, Government-wide Requirements for a Drug-free Workplace;
3. 7CFR, Part 3052, Audits of Institutions of Higher Learning and Non-Profit Institutions;
4. 2CFR, Part 215, Uniform Administrative Requirements 9Grants and Agreements with Institutions of Higher Learning, Hospitals, and Other Non-profit Organizations);
5. Office of Management and Budget (OMB) Circulars A-110 and A-122, Cost Principles for Non-Profit Organizations; and
6. Treasury Circular 1075, Withdrawal of Cash from Treasury for Advance under Federal and Other Programs

F. It is the intent of the United States to fulfill its obligations under this Cooperative Agreement. However, NRCS cannot make commitments in excess of funds authorized by law or made administratively available. If NRCS cannot fulfill its obligations under this Cooperative Agreement because of insufficient funds, this Cooperative Agreement will automatically terminate.

G. The **[Tribe/State/County/Local Government/Non-governmental Organization]** shall give CCC, the United States, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Cooperative Agreement.

H. The **[Tribe/State/County/Local Government/Non-governmental Organization]** agrees to comply with all applicable Federal, State, and local laws.

I. If any recipient of Federal funds under this Cooperative Agreement materially fails to comply with the terms of this Cooperative Agreement, the United States reserves the right to wholly or partially recapture funds provided in accordance with applicable regulations.

XII. PRINCIPAL CONTACTS.

The United States representative for this Cooperative Agreement is:

State Conservationist
Natural Resources Conservation Service
on behalf of the Commodity Credit Corporation
Street Address
City, State Zip Code
Phone Number

The **[Tribe/State/County/Local Government/Non-governmental Organization]** representative for this Cooperative Agreement is:

Director
[Tribe/State/County/Local Government/Non-governmental Organization]
Street Address
City, State Zip Code
Phone Number

IN WITNESS WHEREOF, the following authorized representatives of the United States and the [Tribe/State/County/Local Government/Non-governmental Organization] have executed this Cooperative Agreement.

THE **[Tribe/State/County/Local Government/Non-governmental Organization]**

_____

By: Director
[Tribe/State/County/Local Government/Non-governmental Organization]

UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION

_____

By: State Conservationist

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Attachment A
List of Pending Conservation Easement Offers on Which the Obligation of FY 2009 Funds is Based

Landowner's Name and Address	Acres	Estimated Conservation Easement Value	Estimated Federal Contribution to the Estimated Conservation Easement Value (no greater than 50% of the Estimated Value)

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