

# Memorandum



**Date:** November 15, 2016

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

Agenda Item No. 3(B)(2)

**Subject:** Resolution Ratifying Submission of Grant to US Department of Agriculture and Amending Cooperative Agreement No. 5442091501JSM to Receive Funding for Miami-Dade County's Purchase of Development Rights Program funded through the Building Better Communities General Obligation Bond Program

## Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution, which does the following:

- Ratifies the action of the County Mayor's designee in submitting a grant to the United States Department of Agriculture's (USDA's) Agricultural Land Easement Program for financial assistance to augment Miami-Dade County's Purchase of Development Rights Program, currently funded through the Building Better Communities General Obligation Bond (BBC-GOB) Program, for the acquisition of easements;
- Ratifies execution of the amendment to existing Cooperative Agreement No. 5442091501JSM (Cooperative Agreement) with the USDA by the County Mayor's designee, in substantially the form attached, to provide up to an additional \$1,237,425.00 in matching funds requested in the grant submission for the acquisition of easements; and
- Authorizes the County Mayor or County Mayor's designee to execute extensions and all provisions of the cooperative agreement in substantially the form attached.

Pursuant to Resolution No. R-808-15 adopted on October 6, 2015, the Board approved entering into a Cooperative Agreement to provide up to \$3 million in USDA matching funds. The Cooperative Agreement entered into was for \$2,706,287.50. The attached amendment to the Cooperative Agreement, for an additional \$1,237,425.00 in funding, was received from the USDA on September 7, 2016 and had to be signed and returned to USDA prior to September 20, 2016. Therefore, pursuant to Sections 2-9 and 2-10 of the Code of Miami-Dade County, the attached amendment to Cooperative Agreement was signed by the County Mayor's designee on September 9, 2016 and is submitted to the Board for ratification.

## Scope

The lands affected by the agreement are located in District 9, which is represented by Commissioner Dennis C. Moss. However, the Purchase of Developments Rights Program is countywide in nature, as it contributes to the economic viability, heritage and environmental quality of the region.

## Fiscal Impact/Funding Source

With approval of this item, the County will receive up to a 50 percent match towards the purchase price of the easements spent from BBC-GOB Program Project No. 10 – Purchase of Development Rights Program allocated for expenditure in FY 2016-17. The BBC-GOB Program's Purchase of Development Rights Program project has an existing allocation of \$20 million, of which \$12,878,610.00 has been spent towards this activity. The County has received \$6,232,550.00 in reimbursement grant funds, which leaves an existing balance of \$13,353,940.00 as of September 28, 2016.

Acceptance of the grant does not obligate Miami-Dade County to purchase an easement. If the County uses this or any other local funding source to purchase conservation easement(s) under the Purchase of Development Rights Program, Board approval will be required for each purchase. The acquisition of development rights may have an impact on future operating County budgets and the estimated costs will be included in each legislative request to the Board.

**Tracking/Monitor**

Charles LaPradd, Agricultural Manager, Department of Regulatory and Economic Resources, will monitor the Purchase Development Program.

**Delegation of Authority**

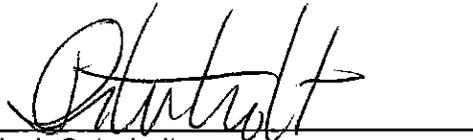
There is no additional delegation of authority related to this item.

**Background**

In November 2004, Miami-Dade County voters approved the BBC-GOB Program, which included funding 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 purposes. 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 Purchase of Development Rights Program allows agricultural landowners to retain their existing agricultural use rights while receiving compensation for the land's development value.

The Purchase of Development Rights Program was adopted by the Board on September 20, 2007, through Resolution No. R-1036-07, as a voluntary process allowing the County to acquire residential development rights associated with a particular piece of property through the purchase of a conservation easements on agricultural land. The Purchase of Development Rights Program was revised in 2009 to accommodate compliance with the USDA requirements that made the program eligible to receive matching funds.

In an effort to increase the viability of the Purchase of Development Rights Program, staff has applied for USDA grants to increase the funding available to the program. To date, the County has acquired development rights on 663.8 acres of farmland. With the funding from this grant to augment BBC-GOB Program funding, it is anticipated that easements will be acquired on an additional approximate 141.42 acres by December of 2017, bringing the total amount of agricultural land conserved to approximately 805.22 acres. Each acquisition will be brought to the Board for approval separately.



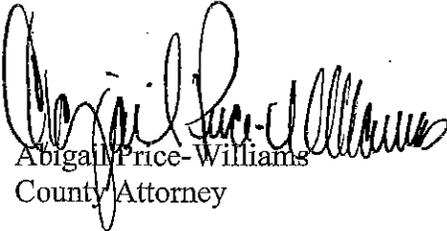
Jack Osterholt  
Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** November 15, 2016

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 3(B)(2)

Please note any items checked.

- "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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 3(B)(2)  
11-15-16

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RATIFYING THE ACTION OF THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE PURSUANT TO SECTION 2-9 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, IN APPLYING FOR, RECEIVING, AND EXECUTING AN AMENDMENT TO FEDERAL AGRICULTURAL LAND EASEMENT GRANT AND COOPERATIVE AGREEMENT NO. 5442091501JSM, FUNDED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, IN AN AMOUNT UP TO \$1,237,425.00 FOR MIAMI-DADE COUNTY'S PURCHASE OF DEVELOPMENT RIGHTS PROGRAM FUNDED BY PROJECT NO. 10 OF THE BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE MODIFICATIONS, RENEWALS, TERMINATION AND OTHER PROVISIONS CONTAINED THEREIN FOLLOWING REVIEW FOR LEGAL SUFFICIENCY BY THE COUNTY ATTORNEY'S OFFICE

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

**WHEREAS**, Section 2-9 of the Code of Miami-Dade County authorizes the County Mayor to enter into contracts with governmental entities on behalf of this County; and Section 2-10 of the Code requires that contracts authorized under Section 2-9 be ratified by the County Commission; and

**WHEREAS**, the amendment to USDA Cooperative Agreement No. 5442091501JSM, attached hereto as "Exhibit A," was signed by the County Mayor or County Mayor's Designee on September 9, 2016, and is hereby submitted to the Board for ratification,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board:

Section 1. Ratifies the County Mayor or County Mayor's designee's action taken pursuant to Section 2-9 of the Code of Miami-Dade County in applying for, receiving, and executing a Federal Agricultural Land Easement grant and amending Cooperative Agreement No. 5442091501JSM funded by the United States Department of Agriculture to receive additional funds in an amount up to \$1,237,425.00 for Miami-Dade County's Purchase of Development Rights Program funded by Project No. 10 of the Building Better Communities General Obligation Bond; and

Section 2. Further authorizes the County Mayor or County Mayor's designee's to exercise modifications, renewals, termination, and other provisions contained therein, upon review for legal sufficiency by the County Attorney's Office.

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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 15<sup>th</sup> day of November, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.



Lauren E. Morse

**NOTICE OF GRANT AND AGREEMENT AWARD**

<b>1. Award Identifying Number</b> 5442091501JSM		<b>2. Amendment No.</b> 1	<b>3. Award/Project Period</b> 9/09/2015 to 8/31/2018		<b>4. Type of Award Instrument</b> Cooperative
<b>5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address)</b> USDA/Natural Resources Conservation Service Florida State Office 2614 NW 43rd Street Gainesville, FL 32606			<b>6. Recipient Organization: (Name and Address)</b> Miami-Dade County 111 NW 1 St., 29th Floor Miami, FL 33128		
			<b>DUNS:</b> 004148292	<b>EIN:</b> 59-6000573	
<b>7. NRCS Program Contact:</b> Roney Gutierrez Roney.Gutierrez@n.usda.gov 352-338-9502		<b>8. NRCS Administrative Contact:</b> Barbara Bardin Barbara.bardin@wdc.usda.gov 817-509-3519		<b>9. Recipient Program Contact:</b> Charles LaPradd 305-971-5091	<b>10. Recipient Administrative Contact:</b> Charles LaPradd 305-971-5091
<b>11. CFDA Number</b> 10.931	<b>12. Authority</b> Agricultural Conservation Easement Program, Subtitle H of Title XII of the Food Security Act of 1985, 16 U.S.C. Section 3865 et seq.		<b>13. Type of Action</b> Amendment No. 1		<b>14. Project Director</b> Same as block 9

**15. Project Title/Description:**  
To acquire ACEP Agricultural Land Easements.

**16. Entity Type:**  Profit  Nonprofit  Higher Education  Federal  State/Local  Indian/Native American  
 Other

<b>17. Select Funding Type:</b>			<b>18. Accounting and Appropriation Data</b>			
	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	Financial Code	Amount	Fiscal Year	Treasury Symbol
Original Funds Total:	\$ 2,706,287.50	\$ 2,706,287.50	NR.SI.ACEA.12.0000.16XX F	\$ 1,237,425.00		12x1004
Additional Funds Total:	\$ 1,237,425.00	\$ 1,237,425.00				
Grand Total:	\$ 3,943,712.50	\$ 3,943,712.50				

**19. APPROVED BUDGET**

Personnel	\$	Fringe Benefits	\$
Travel	\$	Equipment	\$
Supplies	\$	Contractual	\$
Construction	\$	Other	\$ 2,474,850.00
Total Direct Cost <sup>A</sup>	\$ 2,474,850.00	Total Indirect Cost	\$
		Total Non-Federal Funds	\$ 1,237,425.00
		Total Federal Funds Awarded	\$ 1,237,425.00
		Total Approved Budget	\$ 2,474,850.00

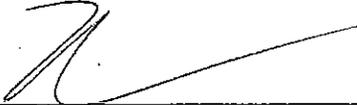
This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

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(Continuation)

**NOTICE OF GRANT AND AGREEMENT AWARD**

Award Identifying Number	Amendment No.	Award/Project Period	Type of Award Instrument
5442091501JSM	1	9/09/2015 to 8/31/2018	COOPERATIVE AGREEMENT

Name and Title of Authorized Government Representative	Signature	Date
RUSSELL MORGAN, Florida State Conservationist USDA-Natural Resources Conservation Service		
Name and Title of Authorized Recipient Representative	Signature	Date
CARLOS GIMENEZ, Mayor or Designee Miami-Dade County		9/9/16

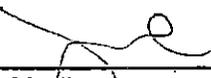
**NONDISCRIMINATION STATEMENT**

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 (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) 795-3272 (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. Section 522a).

Reviewed as to form and legal sufficiency:

  
\_\_\_\_\_  
Jorge Martinez  
Assistant County Attorney

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**AMENDMENT NO. 1  
TO AGREEMENT NUMBER  
5542091501JSM**

**Miami-Dade County**

**DISCUSSION:** This amendment is to extend the period of performance, add funding, and update section III of the General Terms and Conditions. The funding increase will allow the Miami-Dade County to complete its work.

There is no change to the statement of work.

**CHANGES:**

- 1) The amendment will change the period of performance to September 09, 2015 through August 31, 2018.
- 2) Addition to Section III of the agreements General Terms and Conditions:
  - i) The recipient agrees to comply with the **“Prohibition Against Certain Internal Confidentiality Agreements:”**
  - b) You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  - c) You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
  - d) The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - e) If NRCS determines that you are not in compliance with this award provision, NRCS:
    - i) Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
    - ii) May pursue other remedies available for your material failure to comply with award terms and conditions.
- 3) Attachment A is modified to remove the following parcels:

Leonard Talarico Revocable Trust	20.2	\$353,500	\$176,750	5442091501JSS
Orazio Finocchario	40.26	\$704,550	\$352,275	5442091501JSV
F&T Farms, Inc.	40.48	\$708,400	\$354,200	5442091501JSR
O&G Real Estate, LLC and Kirby Johnson	40.48	\$708,400	\$354,200	5442091501K4L

- 4) Attachment B will be added to the agreement for 2016 funded ACEP-ALE parcels.
- 5) Exhibit 7 will be updated to the 'MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE' dated 4-29-2016 for attachment B parcels.

Except as amended, all terms and conditions of said agreement remain unchanged and in full effect.

Attachment B- Fiscal Year 2016<sup>1</sup>

List of Agricultural Land Easement Parcels funded by NRCS in Fiscal Year 2016 and Identified Substitute Parcels.

NRCS has made cost-share assistance available up to the amount specified on the Notice of Grant and Agreement Award for Parcels listed on this Attachment that have been selected for funding. Parcels listed and not currently selected for funding and Parcels identified at the time of the proposed substitution may be substituted for funded parcels listed on this Attachment that are canceled upon mutual agreement of the Parties and removed from this Attachment.

Landowner's Name(s)	Total Acres	Estimated Agricultural Land Easement Value	Estimated Federal Contribution	NEST Parcel ID Number	Selected for Funding (check)	Received a Cash Contribution Waiver
F&T Farms, Inc.	40.48	\$708,400	\$354,200	5442091601LCY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leonard Talarico Revocable Trust	20.2	\$353,500	\$176,750	5442091601LD1	<input checked="" type="checkbox"/>	<input type="checkbox"/>
O&G Real Estate, LLC, Leonard Talarico Revocable Trust, and Salvatore Finocchiaro Revocable Trust	40.48	\$708,400	\$354,200	5442091601LCZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orazio Finocchiaro	40.26	\$704,550	\$352,275	5442091601LD0	<input checked="" type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals</b>	<b>141.42</b>	<b>\$2,474,850</b>	<b>\$1,237,425</b>			

<sup>1</sup> Funding obligated under this attachment will expire on August 31, 2018 unless a request for extension for this funding year has been approved by the State Conservationist and the Cooperative Agreement is amended with a new Attachment B Expiration date.

NRCS Representative Initial \_\_\_\_\_

Entity Representative Initial \_\_\_\_\_

U.S. Department of Agriculture  
Natural Resources Conservation Service  
AGRICULTURAL CONSERVATION EASEMENT PROGRAM  
AGRICULTURAL LAND EASEMENT  
MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE

1) When these terms are appended as an exhibit to the Agricultural Land Easement deed, as opposed to being inserted directly into an Agricultural Land Easement deed, this paragraph will be inserted at the bottom of the ACEP funded Agricultural Land Easement deed:

This 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 forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT \_\_\_\_ that is appended to and made a part of this easement deed.

2) When these terms are being inserted directly into an Agricultural Land Easement deed the following will be included in the deed's introductory paragraph and recitals:

**[Include in introductory paragraph after Grantor and Grantee:]**

and with a right of enforcement to 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).

**[Include in Recitals:]**

This [INSERT DEFINED TERM FOR EASEMENT DEED] is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of [SELECT ONE: *protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of OR protecting grazing uses and related conservation values by restoring and conserving*] the Protected Property.

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is [SELECT ONE: *appended to this easement deed OR maintained in the files of the Grantee*].

3) A fully executed copy of the Exhibit below must be attached to the ACEP funded Agricultural Land Easement deed at the time of closing and recordation or, with NRCS approval, the Section I and II terms below must be incorporated into the body of the Eligible Entity's Agricultural Land Easement deed unmodified except for appropriate formatting changes, selecting options, removing instructional provisions, and substituting as needed, the defined term for the Parcel instead of "Protected Property".

**EXHIBIT \_\_\_\_\_**

**MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS**

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit \_\_\_\_\_, hereafter referred to as "the Protected Property", for the purpose of [SELECT ONE: *protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of* OR *protecting grazing uses and related conservation values by restoring and conserving*] the Protected Property.

The [LANDOWNER NAMES] (collectively Grantor), the [ELIGIBLE ENTITY NAMES] (collectively Grantee), and 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) (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee to [SELECT ONE: *protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of* OR *protect grazing uses and related conservation values by restoring and conserving*] the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is [SELECT ONE: *appended to this easement deed* OR *maintained in the files of the Grantee*].

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Grantor than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

**SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. **Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the property will be subject to the ALE Plan on the Protected Property.

U.S. Department of Agriculture  
Natural Resources Conservation Service

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

**2. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed **[Insert approved impervious surface percentage]** *[Note: if greater than 2 percent, a written waiver from the Chief of NRCS or authorized designee (Chief of NRCS) is required]*, of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.

*Include the following if limited subdivision is allowed below:* [In the event the Protected Property is subdivided as provided for in Section I, Paragraph (3)(A), the total cumulative impervious surface of the subdivided parcels must not exceed the impervious surface limitation referenced above. The Grantor, with Grantee approval, will allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.]

**3. Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. *[Note: The term "ALE grassland enrollments" refers to both general ALE grazing uses enrollments or ALE Grassland of Special Environmental Significance enrollments (GSS).]* **[Also include the following sentence for ALE grassland enrollments:** *The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values*]. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

*(A) Subdivision – [Select Option 1, 2, or 3.]*

**[Option 1]** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited **[Where required by State law the following may be inserted:** *except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property*]. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.

**[Option 2]** The Protected Property must not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ farm or ranch parcels (\_\_\_\_\_ divisions allowed), the boundaries and the allocation of the impervious surface limitation of which have been identified in EXHIBIT \_\_\_\_\_, which is appended to and

U.S. Department of Agriculture  
Natural Resources Conservation Service

made a part of this ALE. To protect the [**SELECT ONE: agricultural use and future agricultural viability OR the grassland, grazing uses**], and related conservation values of the Protected Property, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS or authorized designee of the Chief of NRCS. Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

**[Option 3]** The Protected Property must not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ farm or ranch parcels (\_\_\_\_\_ divisions allowed). To protect the [**SELECT ONE: agricultural use and future agricultural viability OR the grassland, grazing uses**], and related conservation values of the Protected Property, the boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS or the authorized designee of the Chief of NRCS before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when—

1. The Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from the Grantor;
2. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agriculture use and that separate conveyance of the Protected Property farm or ranch parcels will move the land from one agricultural operation to another; and
3. The Chief of NRCS determines that the—

a. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and

b. The resulting parcel will not be below the median size of farms in the county or parish as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

- (i) agricultural production and related uses conducted as described in the ALE Plan;
- (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation purposes of this Easement;
- (iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;

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(iv) commercial enterprises related to agriculture or forestry including but not limited to **[Select those consistent with ALE purposes for the Protected Property: agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.]** **[For properties that contain historical or archaeological resources the following may be inserted: Commercial enterprise activities related to interpretation of the Protected Property's historic or archaeological resources.]**

(v) small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – All new structures and improvements must be located within the Building Envelopes, containing approximately \_\_\_\_ acres and described in EXHIBIT \_\_\_\_, which is appended to and made a part of the ALE.

**[Include the following subparagraph if future building envelope adjustments may be considered:** The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the **[SELECT ONE: agricultural use and future viability OR the grassland, grazing uses]**, and related conservation values of the Protected Property.]

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** that neither individually nor collectively have an adverse impact on the **[SELECT ONE: agricultural use and future viability OR grassland, grazing uses]** and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described Section I, Paragraph 1.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. **[The preceding sentence must be struck for ALE grassland enrollments].**

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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. **[For ALE grassland enrollments replace the preceding sentence with: Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.]**

(D) *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact **[SELECT ONE: the agricultural**

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*use and future viability OR the protection of the grazing uses, grassland conservation value*], and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
- (ii) erosion and sediment control pursuant to a plan approved by the Grantee;
- (iii) soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or
- (iv) **[SELECT ONE: Agricultural activities OR Grazing uses or grassland restoration and conservation activities]** conducted in accordance with the ALE Plan.

(F) *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited. **[Include the following subparagraph if a limited allowance for agricultural purposes may be authorized: Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property is allowed where the extraction of materials used for such agricultural operations is limited, localized, and small with a defined area and acreage identified in EXHIBIT \_\_\_\_\_ and does not harm the conservation values or the agricultural uses of the Protected Property.]**

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

**The following may be inserted to qualify the above if Grantee chooses to allow oil and gas exploration and extraction as an alternative to a complete prohibition on oil or gas exploration and extraction on the Parcel – Beginning of Optional Additional Oil and Gas Language: Oil and gas exploration and extraction on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate that such exploration and extraction of oil and gas is—**

- (i) *not accomplished by any surface mining method;*

(ii) *accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or conservation values of the Protected Property;*

(iii) *within the impervious surface limits of the ALE; and*

(iv) *subject to a plan that includes provisions for oil and gas exploration and extraction.*

*Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference this Deed.*

*Impervious surfaces as defined in [Insert Citation to Impervious Surface Limitation] of this Easement will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses allowed by this paragraph. End of Alternate Oil and Gas Language]*

**[Include the following paragraph for ALE Grassland Enrollments: (G) Crop Cultivation. Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited.]**

**4. Preserving Agricultural Uses.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property, ALE Plan and ALE purposes, and do not violate Federal laws, including Federal drug laws. **[The preceding sentence must be struck for ALE grassland enrollments.]** No uses will be allowed that decrease the ALE's protection for **[SELECT ONE: the agricultural use and future viability, and related conservation values OR the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values]** of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of **[SELECT ONE: agricultural crops and livestock OR livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values]** is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed

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noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

**[Include the following paragraph any time the property is in grassland use, an ALE grassland enrollment, or funded for conservation purposes that include conserving or restoring grassland uses or grassland dependent species: (D) *Grassland Uses of the Protected Property* – Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Grantor, Grantee, and NRCS.]**

**[Include the following paragraph if Land Eligibility is based on the presence of historical or archaeological resources or the project received ranking points for the multifunctional benefits of agricultural land protection for historical and archaeological resources:**

*5. Historic or Archaeological Resources. Existing archaeologically, culturally, or historically significant features on the Protected Property including, but not limited to, such features as documented in the Baseline Documentation Report, must be maintained consistent with the guidelines provided in The Secretary of Department of the Interior's Standards for the Treatment of Historic Properties pursuant to 36 CFR Part 68, as amended. The up-to-date version of such guidelines must be maintained by Grantee in the Baseline Documentation and made available to Grantor upon request. The archaeologically, culturally, or historically significant features may not be altered or removed without Grantee's prior written approval, which approval will not be given except where the proposed activity is accomplished in accordance with the guidelines provided in The Secretary of The Department of the Interior's Standards for the Treatment of Historic Properties.]*

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

1. **United States Right of Enforcement.** 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 are not enforced by the holder of the ALE. 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 Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as

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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 Easement 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 Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement 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 and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence 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, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

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 these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

**2. General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or 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 the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless United States, their 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 United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

**3. Environmental Warranty.** Grantor warrants that it is in compliance with, and will 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, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further

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warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify 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 will 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 will 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 that may pose a present or potential hazard to human health or the environment.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is \_\_\_\_\_ percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The

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appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, \_\_\_\_\_ percent of the Proportionate Share; and (b) to the United States \_\_\_\_\_ percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void