

NEST Agreement Number: _____ (NRCS USE)
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## AGREEMENT FOR THE PURCHASE OF CONSERVATION EASEMENT

**THIS AGREEMENT** is made by and between \_\_\_\_\_ (“Landowner”),  
\_\_\_\_\_ (address) and the  
UNITED STATES OF AMERICA, by and through the Secretary of Agriculture (“United  
States”). Landowner and the United States are collectively referred to as “the Parties.” The  
Natural Resources Conservation Service (“NRCS”) is the administering agency on behalf of the  
United States.

**For and in consideration of** \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) payable by the United States to the Landowner, Landowner  
agrees to sell to the United States a conservation easement on lands and interests (“Property”) in  
accordance with the following terms and conditions:

### **I. Purpose.**

Landowner agrees that by signing this Agreement, the Landowner is enrolling the Property into:

**Floodplain Easement under the Emergency Watershed Protection Program (EWPP),**  
16 U.S.C. § 2203; 7 CFR Part 624.

The landowner further agrees to the restoration and maintenance of the Property for the duration  
of the easement in accordance with the Easement Deed, appended hereto as Exhibit 1. NRCS  
will assist landowners in restoring and protecting the functions and values of their properties  
through the development of a Restoration Plan.

### **II. Property Description.**

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

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

### **III. Purchase Price.**

The purchase price is based on the value of the Property per acre multiplied by the number of  
acres or as determined by an appraisal that complies with the Uniform Standards of Professional  
Appraisal Practices (USPAP), as determined by NRCS. The Parties agree to adjust the purchase

price to conform to the final acreage as determined by a survey procured by NRCS, unless otherwise mutually agreed to by the Parties. Any adjustment of purchase price or acreage will be incorporated in the Easement Deed, and by its execution, at closing, shall constitute the Parties' agreement to the adjustment.

NRCS will make a single payment to the Landowner for the easement purchase price identified on the Easement Deed. Payment will be made by the United States using Electronic Fund Transfers (EFT).

#### **IV. Terms of Easement.**

Landowner agrees to convey the conservation easement using the Easement Deed provided by NRCS. The period of the conservation easement is in perpetuity.

#### **V. Restoration Rights and Responsibilities**

##### **A. Restoration Rights of the United States for FPE easements**

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

##### **B. Restoration Contracting Method for FPE easements**

1. Landowner must identify a contracting method for implementing the restoration plan and initial below:

Method:  Federal Contract \_\_\_\_\_

Landowner or Partner Agreement \_\_\_\_\_

#### **VI. Risk of Loss & Liabilities.**

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

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

C. Upon execution of the Agreement, Landowner shall not salvage, damage or remove building materials or permanent fixtures from any residences, buildings or other structures on the Property nor remove any residences, buildings or other structures in their entirety or any portion thereof, from the Property. Landowner shall not allow, hire or direct any other person or entity to salvage, damage or remove any building materials or permanent fixtures from any residences, buildings or other structures on the Property nor remove any residences, buildings or other structures in their entirety or any portion thereof, from the Property. Landowner is responsible for preventing any, salvage, damage, or removal activities from occurring on the Property prior to vesting satisfactory title in the United States. Any salvage, damage or removal of building materials or permanent fixtures is a breach of the terms of the Agreement and NRCS may, at its discretion and without liability, withdraw from the transaction and terminate the Agreement.

## **VII. Title.**

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

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

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

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

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

## **VIII. Closing.**

A. NRCS has 12 months from the date the designated NRCS official executes this Agreement to close on the conservation easement unless the Parties mutually agree to extend this Agreement prior to its expiration.

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

## **IX. Conveyance Instruments.**

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

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

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

## **X. General Provisions.**

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

B. Landowner agrees not to do or authorize others to do any act by which the value or title to the Property may be diminished or encumbered, or the Property devalued, including the extraction of resources or materials (for example, oil, gas, minerals, timber), the salvage, damage or removal of building materials or permanent fixtures from residence, buildings or other structures, the manipulation of topography, or the release of hazardous materials or substances.

C. Except for reasons beyond the control of the Landowner, as determined by NRCS, if the Landowner fails to convey the easement, the Landowner will be in default and shall pay the United States the amount of costs incurred by the United States for survey and all other actions taken in furtherance of this Agreement.

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

E. The Parties agree that this Agreement shall not be assigned in whole or in part, except that Landowner may assign this Agreement to Purchase Conservation Easement to a qualified intermediary if he /she elects to conduct a like-kind exchange in accordance with Internal Revenue Code Section 1031. As part of the like-kind exchange, the subject property will be conveyed to the United States and the United States will make payment in accordance with the purchase agreement, assignment, and closing instructions. The United States makes no assurances that this transaction will qualify as a like-kind exchange in accordance with Internal Revenue Code Section 1031. Further, the Parties agree that no Member of Delegate to Congress or Resident Commissioner shall be a party to any share or part of this Agreement.

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

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

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

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

Landowner has hereunto signed on this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

Landowner(s): \_\_\_\_\_  
\_\_\_\_\_

The Secretary of the Department of Agriculture, acting and through his/her authorized representative has executed this Agreement on behalf of the United States of America on this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

THE UNITED STATES OF AMERICA

BY: \_\_\_\_\_  
State Conservationist

Funds are authorized by Budget and Finance.	
_____	_____
State Budget Officer	Date

**NONDISCRIMINATION STATEMENT**

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers. If you believe you experienced discrimination when obtaining services from USDA, participating in a USDA program, or participating in a program that receives financial assistance from USDA, you may file a complaint with USDA. Information about how to file a discrimination complaint is available from the Office of the Assistant Secretary for Civil Rights.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex (including gender identity and expression), marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, complete, sign and mail a program discrimination complaint form, available at any USDA office location or online at [www.ascr.usda.gov](http://www.ascr.usda.gov), or write to:

USDA  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-9410

Or call toll free at (866) 632-9992 (voice) to obtain additional information, the appropriate office or to request documents. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay service at (800) 877-8339 or (800) 845-6136 (in Spanish). USDA is an equal opportunity provider, employer and lender.

Persons with disabilities who require alternative means for communication of program information (e.g., Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

#### OMB DISCLOSURE STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0013. The time required to complete this information collection is estimated to average .69 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

#### PRIVACY ACT STATEMENT

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