

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	_____
Division/Program: (i.e. Dept. Division and Program)	_____
Contract or Grant Administrator:	_____
Contractor's / Agency Name:	_____

Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes    No  
 Yes    No    If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval?    Yes    No    If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?  
 Yes    No    If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded?  
 Yes    No    If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process?    Contract  
 Yes    No    If yes, RFP and Bid number(s): \_\_\_\_\_ Cost Center: \_\_\_\_\_

Is this agreement excluded from E-Verify?    No    Yes    If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- |   |  |
|---|--|
| <input type="checkbox"/> Professional services agreement for certified/licensed professional. | Goods and services provided due to an emergency                              |
| <input type="checkbox"/> Contract work is for less than \$100,000.                            | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input type="checkbox"/> Contract work is for less than 120 days.                             | <input type="checkbox"/> Work related subcontract less than \$25,000.        |
| <input type="checkbox"/> Interlocal Agreement (between Governments).                          | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.  |

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ \_\_\_\_\_  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ \_\_\_\_\_

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: \_\_\_\_\_

Term of Contract:	Expiration Date:
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- |                   |   |             |
|-------------------|---|-------------|
| Contract Routing: | 1. Prepared by: _____                     | Date: _____ |
|                   | 2. Attorney signoff: _____                | Date: _____ |
|                   | 3. AS Finance reviewed: _____             | Date: _____ |
|                   | 4. IT reviewed (if IT related): _____     | Date: _____ |
|                   | 5. Contractor signed: _____               | Date: _____ |
|                   | 6. Submitted to Exec.: _____              | Date: _____ |
|                   | 7. Council approved (if necessary): _____ | Date: _____ |
|                   | 8. Executive signed: _____                | Date: _____ |
|                   | 9. Original to Council: _____             | Date: _____ |

**Agricultural Conservation Easement Program –  
 Agricultural Land Easement (ACEP-ALE)  
 PARCEL COST-SHARE CONTRACT**

<b>Lead ELIGIBLE ENTITY (Participant):</b>	<b>ACEP-ALE Program Agreement Number:</b>
<b>State:</b>	<b>Parcel Contract Number:</b>

This parcel contract is effective on the date signed by the Natural Resources Conservation Service (NRCS) obligating official and extends through **March 31, \_\_\_\_\_** [ENTER YEAR that is 3 fiscal years after the date signed by NRCS], or to March 31 of a subsequent fiscal year in accordance with the terms of the above-reference ACEP-ALE program agreement and as agreed to by all parties through the execution of a valid modification to this parcel contract as described herein.

- The undersigned eligible entities (participants) enter into this ACEP-ALE Parcel Cost-Share Contract (Parcel Contract) with the Natural Resources Conservation Service (NRCS) to acquire an agricultural land easement, as set forth in the above-referenced ACEP-ALE Program Agreement on the Parcel identified in the documents that comprise this Parcel Contract, including the proposed Parcel boundary map. The term “Parties” as used herein refers collectively to NRCS and the undersigned participants.
- This Parcel Contract is comprised of this Form NRCS-CPA-1265, “ACEP-ALE Parcel Cost-Share Contract,” and the Form NRCS-CPA-1265-Appendix and the Form NRCS-CPA-1266, “Schedule of Acquisition for Easements,” which are hereby fully incorporated into this document and are binding upon the participants. The Form NRCS-CPA-1266 may be modified through the execution of Form NRCS-CPA-1267, “Modification of the Schedule of Acquisition for Easements,” by both NRCS and the participant and becomes a part of the Parcel Contract when the parties have agreed to and signed Form NRCS-CPA-1267.
- NRCS issuance of payment of the Federal share to the participants in the amount identified on Form NRCS-CPA-1266, or approved modifications thereto on Form NRCS-CPA-1267, will be based on a determination by NRCS that the participants have satisfied the terms and conditions of this Parcel Contract and above-referenced Program Agreement.
- The participants agree to—
  - Identify on this Form NRCS-CPA-1265, all eligible entities (participants) under this Parcel Contract, and to identify one of the listed eligible entities as a “Lead Eligible Entity” to serve as the primary point of contact to NRCS for the purposes of administering this Parcel Contract and whose signature is required on all forms associated with this Parcel Contract.
  - Identify on this Form NRCS-CPA-1265, the other eligible entities (participants) whose signatures are required on the Form NRCS-CPA-1266, and any associated modification thereto on Form NRCS-CPA-1267, and the on the submission of Form NRCS-CPA-1268, “Conservation Activity Approval and Payment Application for Acquisition of Easements,” to request payment of the Federal share associated with this Parcel Contract.
  - Obtain all required signatures on the Parcel Contract documents as identified on this Form NRCS-CPA-1265 and Form NRCS-CPA-1265-Appendix.
  - Comply with the terms and conditions of this Parcel Contract and the above-referenced ACEP-ALE Program Agreement, including providing to NRCS all required items identified therein.
- PARCEL CONTRACT PARTICIPANTS**  
*(May only be an Eligible Entity that is Party to the ACEP-ALE Program Agreement to which this Parcel Contract is associated; Payment Shares identified below must total 100 percent)*

**A) Lead ELIGIBLE ENTITY (Participant)**

<b>Lead Eligible Entity Name</b>	<b>TAX ID</b>	
	<b>DUNS</b>	
<b>Eligible Entity Address, Telephone, e-mail</b>	<b>Payment Shares</b>	<b>%</b>
	<i>(enter percent)</i>	
<b>Signature of Authorized Representative</b>	<b>Date</b>	

**ACEP-ALE PARCEL COST-SHARE CONTRACT**

**B) Additional ELIGIBLE ENTITIES (Participants)**  
*(Attach additional pages as needed)*

<b>Eligible Entity Name</b>		<b>TAX ID</b>			
		<b>DUNS</b>			
<b>Eligible Entity Address, Telephone, e-mail</b>		<b>Payment Shares (enter percent)</b>		<b>%</b>	
<b>Signature of Authorized Representative</b>				<b>Date</b>	
<b>Signature required for modifications (Form NRCS-CPA-1267)</b> <i>(NOTE: This delegation is not applicable for change in payment shares made on the Form NRCS-CPA-1267)</i>	<b>Yes</b>	<b>No</b>	<b>Signature required for payment requests (Form NRCS-CPA-1268)</b>	<b>Yes</b>	<b>No</b>

<b>Eligible Entity Name</b>		<b>TAX ID</b>			
		<b>DUNS</b>			
<b>Eligible Entity Address, Telephone, e-mail</b>		<b>Payment Shares (enter percent)</b>		<b>%</b>	
<b>Signature of Authorized Representative</b>				<b>Date</b>	
<b>Signature required for modifications (Form NRCS-CPA-1267)</b> <i>(NOTE: This delegation is not applicable for change in payment shares made on the Form NRCS-CPA-1267)</i>	<b>Yes</b>	<b>No</b>	<b>Signature required for payment requests (Form NRCS-CPA-1268)</b>	<b>Yes</b>	<b>No</b>

**6. NRCS APPROVING OFFICIAL**

<b>NRCS State Conservationist Signature</b>	<b>Date:</b>

## ACEP-ALE PARCEL COST-SHARE CONTRACT

### PRIVACY ACT STATEMENT

The following statements are made in accordance with the Privacy Act of 1974 (5 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. This information collection is exempted from the Paperwork Reduction Act under 16 U.S.C. 3801 note and 16 U.S.C. 3846.

### Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**U.S. Department of Agriculture  
Natural Resources Conservation Service (NRCS)  
On behalf of the  
Commodity Credit Corporation (CCC)  
  
Agricultural Conservation Easement Program –  
Agricultural Land Easements (ACEP-ALE)  
  
Appendix to Form NRCS-CPA-1265  
ACEP-ALE Parcel Cost-Share Contract**

Pursuant to the terms of ACEP-ALE PROGRAM AGREEMENT the terms of which are incorporated by reference into this ACEP-ALE Parcel Cost-Share Contract (Parcel Contract), the Commodity Credit Corporation (CCC) by and through the Natural Resources Conservation Service (NRCS) and Whatcom County

(hereinafter, whether singular or plural, **ENTITY**) enter this Parcel Contract to provide funds for the acquisition of an agricultural land easement by **ENTITY** on the NRCS-approved Parcel (Parcel) identified on Form NRCS-CPA-1266, “Schedule of Acquisition for Easements,” or any modification thereto on Form NRCS-CPA-1267, “Modifications of the Schedule of Acquisition for Easements.” Each eligible entity identified on Form NRCS-CPA-1265, “ACEP-ALE Parcel Cost-Share Contract,” and in this appendix, must be identified as an **ENTITY** in the PROGRAM AGREEMENT, must be signatory to both the PROGRAM AGREEMENT and this Parcel Contract, must be a holder of the agricultural land easement deed, and is considered a participant in ACEP-ALE.

## **1. DEFINITIONS**

The following definitions are applicable to the Parcel Contract and the associated PROGRAM AGREEMENT. All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the PROGRAM AGREEMENT or the regulations governing ACEP at 7 CFR Section 1468.3.

1. Participant.—Is defined as an eligible entity who has entered into this Parcel Contract and is party to and responsible for implementing the terms and conditions of such Parcel Contract and associated PROGRAM AGREEMENT and who may receive payment of the ACEP-ALE cost-share assistance funds provided by NRCS as the Federal share.
2. Lead Eligible Entity.—As designated on the Form NRCS-CPA-1265, is one of the above-listed eligible entities who will serve as the primary point of contact to NRCS for the administration of this Parcel Contract; the lead eligible entity may serve as the primary signatory for executing specific documents associated with this Parcel Contract in accordance with designations made on the Form NRCS-CPA-1265.
3. Co-holder.—Is a legal entity that is identified in and signatory to the PROGRAM AGREEMENT and this Parcel Contract and will be identified as a co-holder (grantee)

- on the individual conservation easement deed to be held by **ENTITY** on the Parcel identified in this Parcel Contract.
4. Third-party Right Holder.—Is a legal entity identified in this Parcel Contract and that will be identified as a holder of a third-party right or other interest (not a grantee) on the individual conservation easement deed to be held by **ENTITY** on the Parcel identified in this Parcel Contract.
  5. Landowner.—Is a person, legal entity, or Indian Tribe, having current legal ownership of eligible land and those who may be buying eligible land under a purchase agreement and as further specified in 7 CFR Section 1468.3.

## 2. PROGRAM ELIGIBILITY REQUIREMENTS

- A. NRCS is responsible to complete eligibility determinations for the land, landowner, and **ENTITY**. To remain in compliance with the terms of this Parcel Contract, **ENTITY** must provide NRCS sufficient and timely access, information, and documentation to complete these determinations.
- B. **ENTITY** acknowledges that NRCS requires all current landowners of record, including required members of landowner-legal entities to:
  - i. Complete and file Form AD-1026, “Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification,” or any successor form, and meet the requirements set forth therein, in accordance with title XII of the Food Security Act of 1985, as amended.
  - ii. Meet the requirements of, complete, and file Form CCC-941, “Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information,” or any successor form.
  - iii. Complete and file Form CCC-901, “Member’s Information,” or its equivalent, if the landowner is a business classified as a legal entity or joint operation by USDA under 7 CFR Part 1400.
  - iv. Maintain updated information with the Farm Service Agency as provided in 7 CFR Part 1400.
- C. **ENTITY** and co-holders identified in this Parcel Contract, must maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS) and meet the System for Award Management (SAM) registration requirements or successor registry for the duration of this Parcel Contract.

## 3. ACEP-ALE PARCEL COST-SHARE CONTRACT

- A. The term “Parcel Contract,” as used in this appendix, means the program documents, including Form NRCS-CPA-1265, this NRCS-CPA-1265-Appendix, the associated Form NRCS-CPA-1266, and as applicable any Form NRCS-CPA-1267. Such Parcel Contract sets forth the terms and conditions additional to the associated PROGRAM AGREEMENT for the acquisition of an agricultural land easement on an individual Parcel and receipt of ACEP-ALE cost-share assistance for such acquisition.
- B. Execution of the Parcel Contract represents agreement by **ENTITY** to acquire an agricultural land easement on the identified Parcel or an agreed-to substitute Parcel under the terms specified in this Parcel Contract and the associated PROGRAM AGREEMENT.

- C. This Parcel Contract must be executed by an authorized representative of **ENTITY**, NRCS, and all identified co-holders.

#### 4. AGREEMENT

**ENTITY** agrees to—

1. Comply with all terms and conditions, complete all activities, and submit all required documents to NRCS in accordance with the timelines outlined in this Parcel Contract and the associated PROGRAM AGREEMENT.
2. Provide NRCS the information necessary to complete the Form NRCS-CPA-1266 and as applicable, any modifications or changes thereto, on the Form NRCS-CPA-1267.
3. Notify NRCS as soon as possible, generally within 60 days, of any changes in landownership, provide NRCS the most current evidence of ownership documentation, and execute a modification on Form NRCS-CPA-1267 as needed to reflect the updated current ownership.
4. Share responsibility for ensuring the information on Form NRCS-CPA-1266 and modifications thereto on Form NRCS-CPA-1267 is accurate and complete. NRCS may be prohibited from providing ACEP-ALE cost-share assistance if it is determined that the Parcel Contract information is not accurately reflected at the time of Parcel Contract execution and changes necessary to reflect the correct information are outside of the scope of the original Parcel Contract.
5. Not undertake any action on the Parcel which tends to defeat the purposes of this Parcel Contract, as determined by NRCS.
6. Allow NRCS representative or their agent access to the land under Parcel Contract for the purposes of conducting onsite visits needed to determine eligibility, conduct pre-acquisition due diligence activities, or complete any required planning activities.
7. Supply records and information, as required by NRCS, to determine compliance with the Parcel Contract and requirements of the program within 30 days of request.
8. Designate on Form NRCS-CPA-1266, or modification thereto on Form NRCS-CPA-1267, based on the status of the eligible entities that are party to this individual Parcel Contract, whether **ENTITY** will acquire the agricultural land easement subject to the “noncertified eligible entity” provisions or “certified eligible entity” provisions set forth in the PROGRAM AGREEMENT and this Parcel Contract. **ENTITY** may only elect to operate under the certified eligible entity provisions, if an eligible entity that is party to this Parcel Contract and the associated PROGRAM AGREEMENT has been certified by NRCS based on the certification requirements in 7 CFR 1468.26.
9. The agricultural land easement deed for the Parcel identified in this Parcel Contract must satisfy the requirements as described in section VI(A)(5), and the applicable paragraph VI(A)(6) for noncertified eligible entities or VI(A)(7) for certified eligible entities. **ENTITY** must identify the selected option to be used to address such deed requirements on Form NRCS-CPA-1266, or modification thereto using Form NRCS-CPA-1267, and:
  - a. For noncertified eligible entities, the agricultural land easement deed must contain the “Minimum Terms for the Protection of Agricultural Use,” (ALE minimum deed terms) and based on the option selected to address this requirement **ENTITY** must attach as an exhibit to this Parcel Contract either—
    - “Attach” Option Selected.—The version of the “ALE Minimum Deed Terms Addendum” that will be attached to the conservation easement deed,

- “Incorporate” Option Selected.—The draft, unexecuted, NRCS NHQ-approved conservation easement deed with the ALE minimum deed terms incorporated, or
  - “Template” Option Selected.—The draft, unexecuted, NRCS NHQ-approved template deed that will be used for the Parcel.
- b. For certified eligible entities, **ENTITY** may select the “Certified Eligible Entity Deed” option or may, with prior-NRCS approval only, select the “Other” option. A copy of the final conservation easement deed must be submitted to NRCS with the payment request package and as identified in the PROGRAM AGREEMENT.

## 5. AGRICULTURAL LAND EASEMENT PLAN

- A. **ENTITY** acknowledges that if the Parcel contains highly erodible cropland, a highly erodible land (HEL) conservation plan that meets the requirements of 7 CFR Part 12 must be developed by NRCS or an NRCS-certified planner, approved by NRCS prior to closing, and provided to **ENTITY** and landowner. The HEL conservation plan must be identified on Form NRCS-CPA-1266, or modification thereto on Form NRCS-CPA-1267 and may comprise the entirety of the agricultural land easement plan.
- B. If **ENTITY** has otherwise agreed to develop and maintain an agricultural land easement plan as described in the PROGRAM AGREEMENT and identified on the Form NRCS-CPA-1266, or modification thereto on Form NRCS-CPA-1267, **ENTITY** must ensure that the agricultural land easement plan is completed and signed by the **ENTITY** and landowner prior to closing.
- C. The agricultural land easement is not required to be subject to an agricultural land easement plan, however **ENTITY** must ensure that for agricultural land easement plans developed as agreed-to or required, that the agricultural land easement deed includes provisions related to such plans as set forth in the PROGRAM AGREEMENT.

## 6. PAYMENTS

- A. Based on a determination by NRCS that **ENTITY** has satisfied the terms and conditions of this Parcel Contract and the associated PROGRAM AGREEMENT and provided the items identified therein, NRCS may provide the Federal share for the purchase of the agricultural land easement acquired by the **ENTITY**.
- B. **ENTITY** may request payment of the Federal share as reimbursement after closing or as an advance payment prior to closing of an agricultural land easement on the identified Parcel.
- C. To obtain reimbursement or an advance payment of the Federal share, **ENTITY** must submit a payment request package, which includes Form NRCS-CPA-1268, “Conservation Activity Approval and Payment Application for Easements,” and the accompanying information and documentation required by the form and as identified in the PROGRAM AGREEMENT and this Parcel Contract.
- D. **ENTITY** may submit the payment request package—
1. Sixty (60) days prior to the planned closing date when a payment is to be issued at closing (advance payment); or
  2. After the agricultural land easement has been recorded and the landowners have been paid (reimbursement).
- E. Payment of the Federal share for the purchase of an agricultural land easement on a Parcel owned by a legal entity, general partnership, or joint venture will be reduced by an amount



commensurate with the direct or indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity determined to be subject to such reduction based on the average adjusted gross income provisions of 7 CFR Part 1400.

- F. Prior to disbursement of funds, the NRCS State Conservationist will verify that **ENTITY** has provided all documentation, certifications, and information required by the terms of this Parcel Contract and the associated PROGRAM AGREEMENT. NRCS will conduct an internal review of the payment request package in accordance with NRCS easement acquisition internal controls policy. The NRCS State office will submit a copy of the payment request package for national review and approval for all payments that require national-level review. For advance payments, complete payment request packages for national review must be submitted by NRCS at the State level to NRCS NHQ no less than 30 days before the planned closing date.
- G. NRCS will disburse payment following receipt of a fully complete and correct payment request package from **ENTITY** within 30 days if the Federal share for the individual easement is less than \$250,000 and within 60 days if the Federal share for the individual easement is \$250,000 or greater.
- H. If NRCS provides an advance payment, **ENTITY** must obtain a receipt for the Federal funds from the closing agent and provide it to NRCS prior to closing. **ENTITY** must ensure the closing agent does not hold the Federal funds in escrow for more than 30 calendar days. If closing does not occur within 30 calendar days of receipt of the advance payment, **ENTITY** must ensure the Federal funds and any interest earned on those funds while in escrow are returned to NRCS by the 31st calendar day unless otherwise mutually agreed to by the parties. **ENTITY** must ensure that the Federal funds are fully insured while held in escrow.
- I. All payments received as part of this Parcel Contract are reported to the United States Internal Revenue Service (IRS). For information related to tax liabilities, it is recommended that **ENTITY** consult with a tax professional as needed.
- J. Any **ENTITY** that will receive any share of a payment made for the implementation of this Parcel Contract must be a signatory on the Parcel Contract and eligible for such payment. Payments will occur in accordance with the shares to which the parties have agreed as set forth on Form NRCS-CPA-1265 or in a fully executed modification on Form NRCS-CPA-1267, signed by all eligible entities. The Lead Eligible Entity on the Parcel Contract may sign the easement payment application, Form NRCS-CPA-1268, unless such signature authority is specifically not granted or assigned.

## 7. PROVISIONS RELATING TO TENANTS AND LANDLORDS

No payment will be approved if NRCS determines that any of the following conditions exist:

1. The landowner or operator has tenants who have an interest in land with a lease that has not been properly terminated or modified, and would interfere with **ENTITY**'s ability to implement the terms of this Parcel Contract or associated PROGRAM AGREEMENT.
2. **ENTITY** or landowner has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by NRCS, must be refunded according to paragraph 10(B) of this appendix, and no further payments will be made.

## 8. PARCEL CONTRACT MODIFICATION, CORRECTION, AND CANCELLATION

- A. **ENTITY** and NRCS may modify this Parcel Contract by mutual agreement through the execution of a Form NRCS-CPA-1267 when—
  - 1. Both the **ENTITY** and the NRCS State Conservationist agree to the modification;
  - 2. NRCS had determined the modification is consistent with the purposes of the program; and
  - 3. **ENTITY** has provided all information needed for the modification and NRCS had completed all associated eligibility and programmatic determinations.
- B. All modifications must be approved in writing by the authorized NRCS official and **ENTITY**. The Lead Eligible Entity may approve modifications to the Parcel Contract on behalf of others signatory to the Parcel Contract unless such signature authority is specifically denied on the Form NRCS-CPA-1265.
- C. NRCS may unilaterally cancel this Parcel Contract when the easement acquisition would cause adverse impacts to significant cultural or environmental resources without mitigation action unless NRCS and **ENTITY** modify this Parcel Contract to address such impacts.
- D. NRCS reserves the right to correct all errors in entering data or the results of computations in this Parcel Contract. If **ENTITY** does not agree to such corrections, NRCS will terminate the Parcel Contract.

## 9. PARCEL CONTRACT TERMINATION

- A. If **ENTITY** fails to carry out the terms and conditions of this Parcel Contract, NRCS may terminate this Parcel Contract. NRCS may require **ENTITY** to refund payments received under this Parcel Contract. Refunds will be subject to the provisions in paragraph 10(B) of this appendix.
- B. The NRCS may terminate this Parcel Contract, in whole or in part, without liability, if NRCS determines that continued operation of this Parcel Contract will result in the violation of a Federal statute or regulation, if NRCS determines that certain actions undermine the ability of the land to accomplish the purposes of ACEP-ALE, or if NRCS determines that termination would be in the public interest. In the event this Parcel Contract is terminated for any reason, the obligations of the parties will be as set forth in 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”
- C. The Parcel Contract terminates upon dissolution of the **ENTITY**.
- D. NRCS may determine **ENTITY** is not in violation of this Parcel Contract for failure to comply with the Parcel Contract if the circumstances for failing to comply were beyond the control of the **ENTITY**, including a disaster or related condition, as determined by the NRCS.
- E. Upon death of a landowner, this Parcel Contract will be terminated with no penalty to the parties to this Parcel Contract unless the landowner, court of appropriate jurisdiction, or operation of State law, appointed an executor or other estate representative to act on the landowner’s behalf and such executor or estate representative is determined eligible by NRCS and identified on the Form NRCS-CPS-1267 or an NRCS-approved substitute parcel is identified.
- F. Nothing in this Parcel Contract will be construed as to limit or condition any right acquired by the United States under any associated ACEP-ALE easement.

## 10. RECOVERY OF COST

- A. The parties agree that NRCS will incur costs in administering this Parcel Contract. The parties further agree that in the event **ENTITY** violates the terms of this Parcel Contract, **ENTITY** voluntarily terminates this Parcel Contract before any contractual payments have been made, or this Parcel Contract is terminated with cause by NRCS, the NRCS is entitled to be reimbursed for these costs.
- B. Collection of amounts due from **ENTITY** for contract violation, improper payment, or any other reason will follow procedures of 7 CFR Part 1403. NRCS will notify **ENTITY** and provide the reason for the collection and the amount owed. Unpaid debts accrue interest due to the NRCS beginning 30 days after the billing date at the current value of funds rate published in the Federal Register by the United States Department of Treasury.

## 11. PERIOD OF PERFORMANCE

Within the timeframes established by NRCS, the documents that comprise this Parcel Contract must be signed, as identified therein, by an authorized representative of each eligible entity that is party to this Parcel Contract, and this NRCS-CPA-1265-Appendix must be signed by an authorized representative of each identified co-holder. This Parcel Contract is effective when signed by **ENTITY** and then executed by an authorized representative of NRCS. The contract term begins on the date NRCS executes the Parcel Contract as indicated on the Form NRCS-CPA-1265. The period of performance must be indicated on the Form NRCS-CPA-1266 or any modification thereto, on the Form NRCS-CPA-1267. This Parcel Contract remains valid until such time as the Parcel Contract expiration date is reached unless otherwise cancelled or terminated by the parties to the Parcel Contract pursuant to the terms and conditions of this Parcel Contract or the associated PROGRAM AGREEMENT. In the event that a statute is enacted during the period of this Parcel Contract which would materially change the terms and conditions of this Parcel Contract, the NRCS may require **ENTITY** to either modify this Parcel Contract consistent with the provisions of such statute or agree to Parcel Contract termination.

## 12. GENERAL TERMS

- A. The regulations in 7 CFR Part 1468 for ACEP-ALE are incorporated, by reference, herein. In the event of a conflict between these regulations and the terms of this appendix, the provisions of the regulations will prevail.
- B. This Parcel Contract must be carried out in accordance with all applicable Federal statutes and regulations. Any ambiguities in this Parcel Contract and questions as to the validity of any of its specific provisions will be resolved in favor of NRCS so as to give maximum effect to the conservation purposes of this Parcel Contract.
- C. NRCS is administering this Parcel Contract on behalf of CCC. Therefore, where this Parcel Contract refers to "NRCS," NRCS is acting on CCC's behalf for the purposes of administering this Parcel Contract. When the term "**ENTITY**" is used in this Parcel Contract, it will be construed to mean all eligible entities identified in this Parcel Contract.
- D. This Parcel Contract is a financial assistance agreement, not a procurement contract. As such, it is not subject to 5 CFR Part 1315, the Prompt Payment Act, and is governed by the terms set forth herein.

**13. CERTIFICATION AND ASSURANCES REGARDING COMPLIANCE WITH PROVISIONS APPLICABLE TO FINANCIAL ASSISTANCE** (see generally 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”)

As a condition of this Parcel Contract entered into pursuant to the associated PROGRAM AGREEMENT, **ENTITY** certifies and assures that they are in compliance with and will comply in the course of this Parcel Contract and the associated PROGRAM AGREEMENT with all applicable laws, regulations, Executive orders, and other generally applicable requirements, including those set out in 2 CFR Part 200, applicable to nonprofit institutions, which are hereby incorporated into this Parcel Contract by reference, and such other regulatory and statutory provisions as are specifically set forth in the associated PROGRAM AGREEMENT and herein.

**14. RIGHTS TO APPEAL AND REQUEST EQUITABLE RELIEF**

- A. **ENTITY** may appeal an adverse decision under this Parcel Contract in accordance with the appeal procedures set forth in 7 CFR Part 11, Subpart A, and Part 614. Pending the resolution of an appeal, no payments will be made under this Parcel Contract. Before an **ENTITY** seeks judicial review, **ENTITY** must exhaust all appeal rights granted within these regulations.
- B. **ENTITY** may also request equitable relief, as provided under 7 U.S.C. Section 7996, and 7 CFR Part 635, with the requirements of that provision.

**15. DRUG-FREE WORKPLACE (2 CFR Part 182 and 2 CFR Part 421)**

By signing this Parcel Contract, **ENTITY** certifies that **ENTITY** will comply with the requirements of 2 CFR Part 182 and 2 CFR Part 421. If it is later determined that **ENTITY** knowingly rendered a false certification or otherwise violated the requirements of the Drug-Free Workplace Act, NRCS, in addition to any other remedies available to NRCS under this Parcel Contract or associated PROGRAM AGREEMENT or in general to the United States, may take action authorized under the Drug-Free Workplace Act.

The following **ELIGIBLE ENTITIES** and Co-Holders, by entering their signatures, acknowledge receipt of this Form NRCS-CPA-1265-Appendix and agree to its terms and conditions thereof.

*By signing this document, you acknowledge and agree that all the information provided is true and accurate on your behalf. Any false certifications made by signing this Appendix may subject the signatory to criminal and civil fraud statutes. You further acknowledge that you have read and accept all terms and conditions provided in this appendix.*

**ELIGIBLE ENTITY – SIGNATURE OF AUTHORIZED REPRESENTATIVE**

*(All signatory Eligible Entities must be party to the associated Program Agreement and must be identified on the Form NRCS-CPA-1266, “Schedule of Acquisition for Easements” and any subsequent Form NRCS-CPA-1267, “Modification of the Schedule of Acquisition for Easements,” for this Parcel Contract)*

\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

**CO-HOLDERS – SIGNATURE OF AUTHORIZED REPRESENTATIVE**

*(All signatory Co-Holders must be signatory to the associated Program Agreement and must be identified on the Form NRCS-CPA-1266, “Schedule of Acquisition for Easements” form and any subsequent Form NRCS-CPA-1267, “Modification of the Schedule of Acquisition for Easements,” for this Parcel Contract)*

\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

**THIRD-PARTY RIGHT HOLDERS – SIGNATURE OF AUTHORIZED REPRESENTATIVE**

*(Optional, only required if ENTITY requires Third-Party Right Holders to Sign this appendix)  
(All signatory Third-Party Right holders may be identified on the associated Program Agreement and must be identified on the Form NRCS-CPA-1266, “Schedule of Acquisition for Easements” and any subsequent Form NRCS-CPA-1267, “Modification of the Schedule of Acquisition for Easements,” for this Parcel Contract)*

\_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [Program.intake@usda.gov](mailto:Program.intake@usda.gov).

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SCHEDULE OF ACQUISITION FOR EASEMENTS						
<b>Lead ELIGIBLE ENTITY (Participant)</b>				<b>STATE</b>		<b>PARCEL CONTRACT EXPIRATION DATE</b>  March 31, _____
<b>ACEP-ALE PROGRAM AGREEMENT NUMBER</b>			<b>RCPP 2014 FARM BILL AGREEMENT NUMBER</b> <i>(Complete ONLY if Parcel Associated with RCPP Agreement)</i>			
<b>Enrollment Type</b> <i>(Check One):</i>	General ALE	<b>Transaction Type</b> <i>(Check One):</i>	Standard Transaction		<b>Designation of Program Agreement and Parcel Contract Provisions Based on Eligible Entity Status</b> <i>(Check One):</i>	Non-Certified Eligible Entity Provisions
	ALE – Grassland of Special Environmental Significance (GSS)		Pre-closing Buy-Protect-Sell Transaction			Certified Eligible Entity Provisions <sup>1/</sup>
			Post-closing Buy-Protect-Sell Transaction			
<b>INSTRUCTION: COMPLETE EACH SECTION</b>						
<b>SECTION 1: Parcel Contract and Location Information</b> <i>(A copy of the proposed Parcel boundary map must be attached to this Form NRCS-CPA-1266)</i>						
<b>PARCEL CONTRACT NUMBER</b>		<b>TOTAL EASEMENT ACRES</b>	<b>LAND UNITS OR LEGAL DESCRIPTION</b>		<b>SERVICE CENTER AND COUNTY</b>	
<b>SECTION 2: Conservation Easement Deed Language</b> <i>(Check one and follow applicable instructions)</i>						
<b>Attach Option.</b> —ALE Minimum Deed Terms will be attached as an Addendum to the Conservation Easement Deed <i>(The version of the ALE Minimum Deed Terms Addendum that will be attached to the conservation easement deed must be attached to this Form NRCS-CPA-1266).</i>					Highly Erodible Land (HEL) Conservation Plan	
<b>Incorporate Option.</b> —ALE Minimum Deed Terms will be incorporated into the Conservation Easement Deed <i>(A copy of the unexecuted, NRCS NHQ-approved conservation easement deed must be attached to this Form NRCS-CPA-1266 or through a modification using Form NRCS-CPA-1267).</i>					Comprehensive Agricultural Land Easement Plan	
<b>Template Option.</b> —ALE Minimum Deed Terms addressed in an NRCS NHQ-Approved Template Deed <i>(A copy of the NRCS NHQ-approved template conservation easement deed must be attached to Form NRCS-CPA-1266 or through a modification using Form NRCS-CPA-1267).</i>					Grasslands Management Plan	
<b>Certified Eligible Entities ONLY.</b> —Certified Eligible Entity Conservation Easement Deed <i>(A copy of the final conservation easement deed must be submitted to NRCS in as part of the payment request package as identified on Form NRCS-CPA-1268, "Conservation Activity Approval and Payment Application for Easements").</i>					Forest Management Plan	
<b>Other.</b> —Include Explanation <i>(selection of this option requires prior NRCS approval).</i>					None	
<b>SECTION 3: Agricultural Land Easement Plan Components<sup>2/</sup></b> <i>(Check all that apply)</i>						

<b>SECTION 4: Easement Cost Information</b>	
<b>A. Estimated Fair Market Value of Agricultural Land Easement</b>	\$
<b>B. Requested Federal Share for the ALE</b> <ul style="list-style-type: none"> <li>• <b>General ALE:</b> Federal Share cannot exceed 50% of Item A</li> <li>• <b>ACEP-ALE-GSS:</b> Federal Share cannot exceed 75% of Item A</li> </ul>	\$
<b>C. Total Estimated Non-Federal Share<sup>3l</sup></b> (The amount shown here is the total of— <ul style="list-style-type: none"> <li>• All entity cash contributions for payment of easement compensation to the landowner.</li> <li>• All landowner donations toward easement value.</li> <li>• Only the amounts of eligible procured costs that may be relied upon to meet the minimum non-Federal share requirements.</li> <li>• Only the amounts of Stewardship funds contributed by the eligible entity that may be relied upon to meet the minimum non-Federal share requirement, limited to 2% of item (A) above).</li> </ul>	\$

<b>SECTION 5: Eligible Entity</b> (attach additional sheets as necessary)				
A. Name of Eligible Entity - List all Eligible Entities that are party to this Parcel Contract	B. Role of Eligible Entity - Independent - Dependent	C. Certified Eligible Entity <sup>1l</sup> - Yes - No	D. Payment Shares (Percentage) - Enter percentage from Form NRCS-CPA-1265 - Total must equal 100%	E. Distribution: Estimated Amount of Federal Share to be paid to Eligible Entity - Federal share may only be paid to an Eligible Entity - Total must equal section 4, item (B) above
			%	\$
			%	\$
			%	\$
			%	\$
<b>Totals:</b>			%	\$

<b>SECTION 6: Other Interest Holder Information</b> (attach additional sheets as necessary)	
A. Name of Legal Entity - List all co-holders or third-party right holders that will be identified in the Conservation Easement Deed for this Parcel	B. Role of Legal Entity - Co-holder - Third-Party Right Holder



<b>SECTION 7: Parcel Landowner Information</b> (attach additional sheets as necessary) (Only one landowner may be identified as the decisionmaker in column B below)				
<b>A. Landowner Name<sup>4/</sup></b>	<b>B. Decision Maker</b> (Yes/No)	<b>C. Ownership Share (%) of Parcel</b>	<b>D. Adjusted Gross Income (AGI) Waiver Approved<sup>5/</sup></b> (Yes/No)	<b>E. Commensurate Reduction (%) applied at payment<sup>6/</sup></b>
		%		%
		%		%
		%		%
		%		%
		%		%
		%		%
<b>Total Ownership Shares (Must Equal 100%):</b>		%		

**NOTES:**

<sup>1/</sup> Acquisition of the agricultural land easement on the identified Parcel may occur in accordance with the certified eligible entity provisions of the above-referenced Program Agreement and this Parcel Contract only if at least one eligible entity identified in section 5 above has been certified by NRCS and if the designation to proceed subject to the certified eligible entity provisions has been made on this Form NRCS-CPA-1266.

<sup>2/</sup> In accordance with the provisions of the above-referenced Program Agreement and this Parcel Contract, an eligible entity may elect to develop on its own, a comprehensive agricultural land easement plan, a grassland management plan, or a forest management plan, however, if the Parcel contains highly erodible cropland, the associated HEL conservation plan must be developed by NRCS or an NRCS-certified planner.

<sup>3/</sup> The specific breakdown of the final amounts and sources that comprise the non-Federal share must be provided in the "Statement to Confirm Matching Funds," (Form NRCS-CPA-230, or successor form) submitted to NRCS.

<sup>4/</sup> NRCS must be notified of any changes in landownership prior to closing in accordance with the terms of this Parcel Contract. If prior to closing, the parcel ownership is different than reflected on this document, the landowners must be eligible, as determined by NRCS and a Form NRCS-CPA-1267, "Modification of the Schedule of Acquisition for Easements," must be executed to reflect current ownership.

<sup>5/</sup> Prior the execution of Form NRCS-CPA-1266, all landowners must be determined compliant with the AGI provisions as set forth in 7 CFR Part 1400, and such determination remains in effect for the duration of the Parcel Contract unless a change is made that affects the existing AGI determination, including the applicability of any AGI waivers granted by NRCS. Before Form NRCS-CPA-1267 may be executed to modify the Parcel Contract to reflect such changes, the landowners must be determined compliant with the AGI provisions.

<sup>6/</sup> NRCS must determine whether payment of the Federal share must be commensurately reduced in accordance with 7 CFR Part 1400 and as described in Form NRCS-CPA-1265-Appendix. The amount shown is the anticipated percent by which payment of the total Federal Share will be reduced. The amount of the actual payment of the Federal share provided by NRCS will reflect the final commensurate reduction determinations made prior to issuing such payment.

<b>Certification of Participants</b>			
Lead Eligible Entity – Authorized Representative Signature	Date	Eligible Entity – Authorized Representative Signature	Date

Eligible Entity – Authorized Representative Signature	Date	Eligible Entity – Authorized Representative Signature	Date
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<b>Signature of NRCS Approving Official</b>	
NRCS State Conservationist Signature	Date

**PRIVACY ACT**

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

This information collection is exempted from the Paperwork Reduction Act under 16 U.S.C. Section 3801 note and 16 U.S.C. Section 3846.

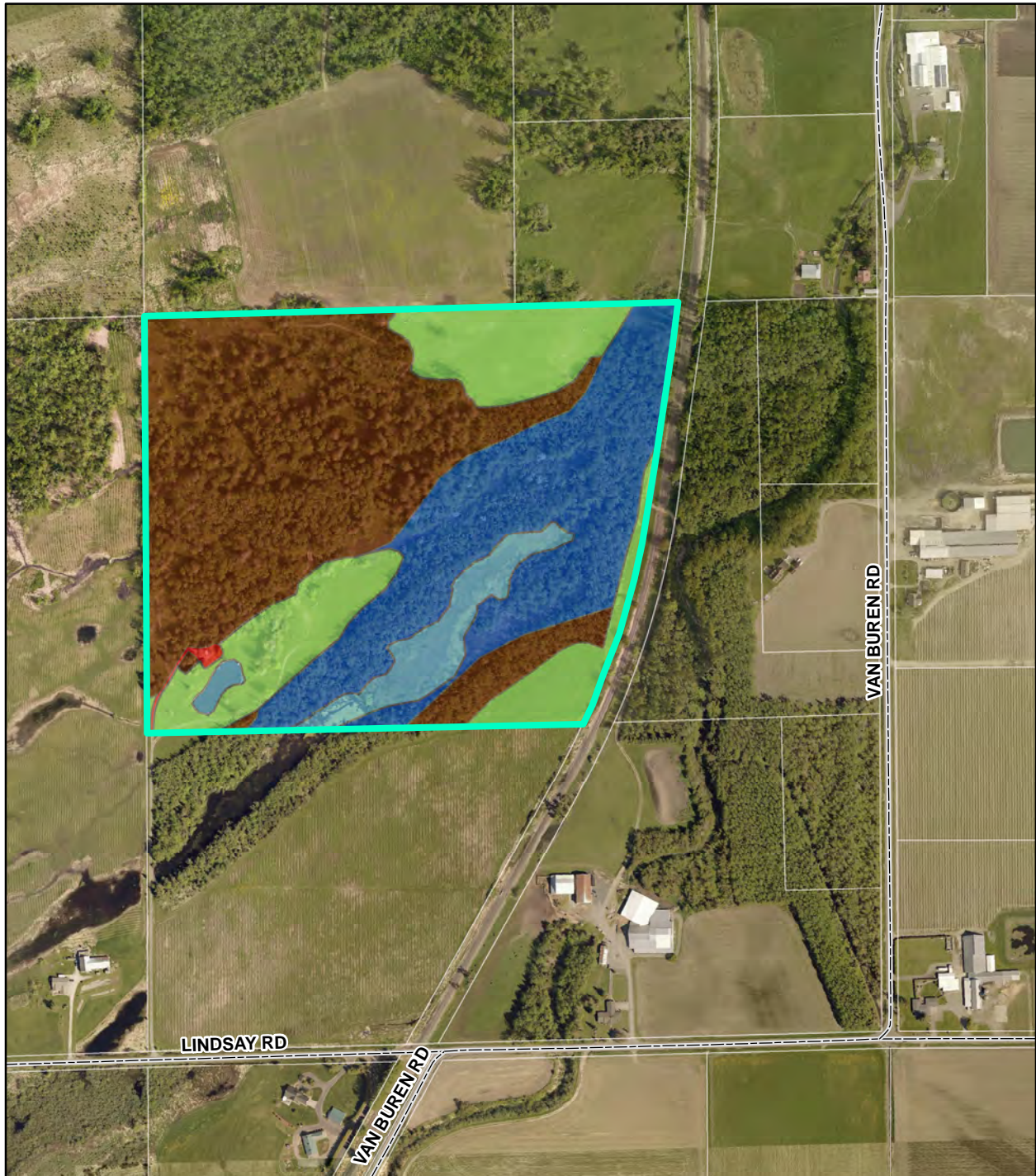
**NONDISCRIMINATION STATEMENT**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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Whatcom County 2020 PDR Program Property  
- Land Cover

- Cropland - 0 ac./0%
- Forest - 25.76 ac./45.2%
- Hay/Pasture - 11.46 ac./20.12%
- Incidental/Farmstead - .22 ac./.39%
- Water/Wetland (non-Forested) - 3.7 ac./6.50%
- Water/Wetland (Forested) - 15.82 ac./27.77%



**USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:**  
 Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

Vander Veen Property



AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP)  
AGRICULTURAL LAND EASEMENT (ALE)  
MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE

**INSTRUCTIONS FOR APPENDING:** *When these terms are appended as an exhibit to the Agricultural Land Easement deed, as opposed to being incorporated directly into an Agricultural Land Easement deed, the following requirements must be met: (1) The Agricultural Land Easement deed must be an enforceable real property easement interest that runs with the land in perpetuity or for the maximum term allowed under State law and protects the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values or protects grazing uses and related conservation values by restoring or conserving eligible land. (2) A complete copy of the exhibit below must be attached to the Agricultural Land Easement deed at the time of closing and recordation. (3) The following paragraph must be inserted at the end of the body of the Agricultural Land Easement deed.*

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

**INSTRUCTIONS FOR INCORPORATION:** *When these terms are incorporated directly into an Agricultural Land Easement deed the following three paragraphs must be included in the Agricultural Land Easement deed’s granting clause and recitals. The terms in Section I and Section II 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 terms for the Agricultural Land Easement Deed, Baseline Documentation Report, Protected Property, and the Parties. Please note, the language contained below between “Exhibit \_\_\_\_” and “Section I” is not for use with this method.*

**[Include in Granting Clause 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 AGRICULTURAL LAND EASEMENT]** 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 BASED ON ENROLLMENT TYPE:**

**(FARMLAND)** *protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the*

*Protected Property (the “Purpose of the ALE”).*

**(GRASSLAND, NON-GRASSLAND OF SPECIAL ENVIRONMENTAL SIGNIFICANCE (GSS)** *protecting grazing uses and related conservation values by restoring or conserving the Protected Property (the “Purpose of the ALE”).*

**(GRASSLAND, GSS)** *protecting grazing uses, [(SELECT ONE OR MORE) protecting and providing habitat for threatened, endangered, or at-risk species; protecting sensitive or declining native grasslands; protecting highly sensitive natural resources identified by the Grantee], and related conservation values by restoring or conserving the Protected Property (the “Purpose of the ALE”).]*

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]**.

**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”), as described in this Agricultural Land Easement Deed (“ALE Deed”), on real property described in Exhibit \_\_\_\_\_, hereafter referred to as “the Protected Property.” As used herein, references to the “ALE Deed” include this Exhibit, except where explicitly stated otherwise.

[**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 Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee for the purpose of [**SELECT BASED ON ENROLLMENT TYPE:**

*(**FARMLAND**) protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the “Purpose of the ALE”).*

*(**GRASSLAND, NON-GSS**) protecting grazing uses and related conservation values by restoring or conserving the Protected Property (the “Purpose of the ALE”).*

*(**GRASSLAND, GSS**) protecting grazing uses, [(**SELECT ONE OR MORE**) protecting and providing habitat for threatened, endangered, or at-risk species; protecting sensitive or declining native grasslands; protecting highly sensitive natural resources identified by the Grantee], and related conservation values by restoring or conserving the Protected Property (the “Purpose of the ALE”).]*

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 this Exhibit and other provisions of the ALE Deed. Notwithstanding any other provision of the ALE Deed, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in the following Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other portions of the ALE Deed, Sections I and II will control; provided, however, that if other portions of the ALE Deed have terms and conditions that are more restrictive to the rights of the Grantor and are consistent with the provision or intent of the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the ALE Deed are more restrictive to the rights of the Grantor than Section I, Paragraphs 3 and 5, and Section II, then Section I, Paragraphs 3 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 ALE, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

The terms and conditions of the ALE Deed 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, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

**1. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed \_\_\_\_\_ percent **[Insert approved impervious surface percentage. Note: if greater than 2 percent, a written waiver from the Chief of NRCS or the Chief’s authorized designee 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 Deed.

*[Include the following if limited subdivision is allowed below: In the event the Protected Property is subdivided as provided for in Section I, Paragraph (2)(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.]*

**2. Limitations on Nonagricultural Uses.** Any activities inconsistent with the Purpose of the ALE are prohibited. *[Note: The term “ALE grassland enrollments” refers to both general ALE grazing uses enrollments or ACEP-ALE-GSS enrollments. Also include the following sentence for ALE grassland enrollments: The provisions of this ALE Deed limit the types of agricultural operations that can occur on the Protected Property to those that promote the Purpose of the ALE.]* The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision – [Select Option 1, 2, or 3.] [Additionally, where required by State law the following may be inserted at the end of the selected option: Notwithstanding the foregoing, subdivision of the Protected Property is permissible when necessary to comply with State or local regulations that 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 the Chief’s authorized designee (Chief of NRCS), prior to division of the Protected Property in accordance with such State or local regulations.]*

**[Option 1]** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

**[Option 2]** The Protected Property must not be divided or subdivided into, or separately conveyed as, more than \_\_\_\_\_ separate 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 made a part of this ALE Deed. To protect the Purpose of the ALE, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS, or the Chief’s authorized designee (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 \_\_\_\_\_ separate parcels (\_\_\_\_\_ divisions allowed). To protect the Purpose of the ALE, the

boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS, or the Chief's authorized designee (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 agricultural use and that any new owners of the subdivided Protected Property farm or ranch parcels intend to use such parcels for agricultural operations; 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 the 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 in accordance with the terms and conditions of this ALE Deed;
- (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 Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;
- (iii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and
- (iv) Commercial enterprises related to agriculture or forestry including but not limited to [**Select those consistent with the Purpose of the ALE and that may occur on the Protected Property:** *agritourism; processing, packaging, and marketing of farm or forest products; farm machinery repair; farm wineries; and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.*] [**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.*]

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), [**Select One (FIXED OPTION):** *containing approximately \_\_\_\_\_ total acres and described or shown*



in EXHIBIT \_\_\_\_\_, which is appended to and made a part of the ALE deed. **OR (FLOATING OPTION):** of which there shall be no more than \_\_\_\_\_, containing no more than \_\_\_\_\_ total acres. The Grantor must receive prior written approval of the location and boundaries of the future building envelopes from the Grantee and the Chief of NRCS, following which, the Grantor and Grantee shall amend this ALE Deed to add an exhibit that describes the approved boundaries and locations of the Building Envelope(s).]

[Alternately, if the Protected Property will have no building envelopes, replace the preceding sentences with the following: Except as otherwise permitted in this Section I, Paragraph 2(C), no structures or improvements, whether existing or in the future, may be constructed, replaced, or enlarged on the Protected Property.]

[Include the following subparagraph if future adjustments to approved building envelopes may be considered: The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Purpose of the ALE. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this ALE Deed to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).]

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section I, Paragraph 2(B)(ii) and in this Section I, Paragraph 3(C) that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located outside of the Building Envelopes with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. [Add the following sentence for ALE-GSS enrollments: Any new roads must be constructed in a location and manner that is consistent with the Purpose of the ALE and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.]

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 or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE [Add the following sentence for ALE-GSS enrollments: and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report].

(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 the Purpose of the ALE 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 for the following:

- (i) Dam construction pursuant to a plan approved by the Grantee 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 Purpose of the ALE; and
- (iv) [**Select One: Agricultural activities OR Grazing uses or grassland restoration**] and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed [**Insert if the agricultural land easement plan paragraph is included:** and the agricultural land easement plan as described in Section I, paragraph 4].

(F) *Surface and Subsurface 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 Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited [**Include the following if either of the optional mineral extraction options below are used: except as otherwise provided in this Paragraph (F)**].

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed 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). 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 ALE Deed and must incorporate by reference this ALE Deed.

**[Include the following subparagraph if a limited allowance for agricultural purposes may be authorized:** *Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage [SELECT ONE: identified in EXHIBIT \_\_\_\_ OR approved prior to extraction by the Grantee, not to exceed \_\_\_\_ acres,] and does not harm the Purpose of the ALE.*]

**[The following may be inserted to qualify the above if Grantee chooses to allow subsurface mineral development as an alternative to a complete prohibition on mineral exploration and extraction on the Protected Property – Beginning of Optional Additional Subsurface Mineral Development Language:** *Subsurface mineral development 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 prior to the initiation of mineral development activity that such subsurface mineral development shall—*

- (i) *Be conducted in accordance with applicable State law;*
- (ii) *Have a limited and localized impact;*
- (iii) *Not harm the Purpose of the ALE;*
- (iv) *Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;*
- (v) *Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Purpose of the ALE, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity.*
- (vi) *Not be accomplished by any surface-mining method;*
- (vii) *Be within the impervious surface limits described in Section I, Paragraph 1; and*
- (viii) *Use practices and technologies that minimize the duration and intensity of impacts to the Purpose of the ALE.*

*All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.*

*Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph. **End of Optional Additional Subsurface Mineral Development Language]***

**[Include the following paragraph for all 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 [Include the following if agricultural intensification may be permitted on ALE Grassland Enrollments that are non-GSS (not allowed on ALE-GSS enrollments): outside of the Designated Crop Cultivation Areas on the Protected Property, identified in Exhibit \_\_\_\_\_, the extent of such areas may not exceed [Insert Percent Not to Exceed 10 Percent] \_\_\_\_\_ percent of the Protected Property, the agricultural uses, location, and boundaries of which must be compatible with the purpose of the ALE and be approved in advance, in writing by the Grantee.]*

**3. 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 and the Purpose of the ALE. **[The preceding sentence must be struck for ALE grassland enrollments.]** No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(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 the Purpose of the ALE]** are allowed provided these activities are conducted in a manner consistent with the terms of the ALE deed **[Insert if the agricultural land easement plan Section I, Paragraph 4 is included: and the agricultural land easement plan described in Section I, Paragraph 4].**

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting are allowed, provided these activities are 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 **[Insert if a forest management plan is included in Section I, Paragraph 4: and in accordance with a written forest management plan as described in Section I, Paragraph 4]**.

(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 and consistent with the Purpose of the ALE.

**[Include the following paragraph any time the property is in grassland use that is considered during ranking and selection, is 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 of this ALE Deed and the Purpose of the 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. Determinations of birds whose populations are in significant decline, nesting seasons for such birds, and the areas of the Protected Property affected by this restriction will be set forth within **[Select all that apply: the Baseline Documentation Report, the ALE Plan, and the grassland management plan described in Section I, Paragraph 4]**.

**[Include the following paragraph and each applicable clause if the Protected Property contains highly erodible cropland or is an ACEP-ALE-GSS parcel on an FY 2019 ALE-agreement, and for each agricultural land easement plan the entity has otherwise agreed to:**

**4. Agricultural Land Easement Plan.** *The Grantee shall prepare an agricultural land easement plan (the “ALE Plan”) in consultation with the Grantor and as needed NRCS. The Grantee agrees to update the ALE Plan, in consultation with the Grantor and as needed, NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.*

**[INCLUDE THE FOLLOWING ONLY IF ENTITY AGREED TO HAVE A GENERAL ALE PLAN:** *The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, and promote the long-term viability of the land to meet the Purpose of the ALE.]*

**[INCLUDE THE FOLLOWING IF PARCEL CONTAINS HIGHLY ERODIBLE CROPLAND:** *The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised conservation plan.]*

**[INCLUDE THE FOLLOWING FOR ALL ACEP-ALE-GSS PARCELS ON FY 2019 ALE-AGREEMENTS OR IF THE ENTITY HAS AGREED TO HAVE A GRASSLAND MANAGEMENT PLAN:** *The ALE Plan shall include a grassland management plan that describes the grassland*

*resource; the management system and practices that conserve, protect, or enhance the viability of the grassland; and as applicable any habitat, species, or sensitive natural resources requirements, permissible and prohibited activities, and any associated restoration plans.]*

**[INCLUDE THE FOLLOWING IF THE ENTITY HAS AGREED TO HAVE A FOREST MANAGEMENT PLAN:** *The ALE Plan shall include a forest management plan that describes the management system and practices that conserve, protect, or enhance the viability of the forest land and as applicable, any significant conservation benefits. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee.]*

**[Include the following paragraph if eligibility of the land for ACEP-ALE 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 (Note: Number as paragraph 4 if the preceding ALE plan paragraph is not included):**

**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 Report 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 Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary’s assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

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

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

Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

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

**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 (defined below) 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 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 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 ALE Deed or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

**3. Environmental Warranty.**

As used herein, "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.

As used herein, "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.

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 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 noncompliance 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 on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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

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 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 [**Calculate and enter the percent of fair market value of the ALE provided based on the sum of the Grantee's contributions and Grantor donations toward the acquisition value of the easement**], \_\_\_\_\_ 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 Deed 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 Purpose of the 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 Deed, 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.



**PROGRAM AGREEMENT**  
between  
**USDA NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**  
and the  
**Whatcom County**  
for the  
**AGRICULTURAL CONSERVATION EASEMENT PROGRAM**  
**AGRICULTURAL LAND EASEMENTS**

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

**I. AUTHORITY**

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

**Whatcom County** enters this PROGRAM AGREEMENT under the authorities of Whatcom County Ordinance No. 2002-054.

**II. BACKGROUND AND PURPOSE**

- A. ACEP-ALE is a voluntary conservation program that establishes specific parameters for NRCS to work with and provide ACEP-ALE cost-share assistance to eligible entities for the purchase of an agricultural land easement on eligible land from eligible landowners (Grantors) and for NRCS personnel to conduct technical assistance activities to implement the program. The purpose of this PROGRAM AGREEMENT is to establish the framework by which NRCS and **WHATCOM COUNTY** may implement the activities necessary to acquire agricultural land easements and ensure the long-term protection of the natural resources and agricultural nature of the lands under easement with ACEP-ALE assistance. The term "Parties" as used herein refers collectively to NRCS and **WHATCOM COUNTY**.
- B. **WHATCOM COUNTY** has submitted an entity application for NRCS program assistance through ACEP-ALE and has been determined by NRCS to meet the statutory and regulatory requirements to participate in ACEP-ALE as an "eligible entity." **WHATCOM COUNTY** will carry out activities specified in this PROGRAM AGREEMENT by working with NRCS and eligible landowners to acquire agricultural land easements on lands determined by NRCS to be eligible for ACEP-ALE. The land on which an agricultural land easement may be acquired is herein referred to collectively as "Parcels" or individually as "Parcel."
- C. The Parties agree that the principal purpose of this PROGRAM AGREEMENT is to identify, describe, and document the Parties' acknowledgement and agreement of—

NRCS Representative Initial   *PC*  

Entity Representative Initial   *CS*

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

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

- A. This PROGRAM AGREEMENT will expire on the date identified below. The term of this PROGRAM AGREEMENT may be for a period of:
1. At least 3 fiscal years and not to exceed 5 fiscal years following the fiscal year in which this PROGRAM AGREEMENT is originally executed; or
  2. If a certified eligible entity, as determined by NRCS, is identified on EXHIBIT 1 and party to this PROGRAM AGREEMENT, at least 5 fiscal years and not to exceed 7 fiscal years following the fiscal year in which this PROGRAM AGREEMENT is originally executed.

**Program Agreement Expiration Date: September 30, 2027**

- B. **WHATCOM COUNTY** may submit individual parcel applications to NRCS for ACEP-ALE cost-share assistance for the purchase of an agricultural land easement at any time during the life of the PROGRAM AGREEMENT. Individual parcel applications associated with this PROGRAM AGREEMENT and determined by NRCS to meet eligibility, enrollment, and prioritization criteria may be selected for funding by NRCS on a continuous basis or during announced signup and batching periods.
- C. ACEP-ALE cost-share assistance (Federal share) for individual Parcels selected for funding will be obligated and provided through individual ACEP-ALE Parcel Cost-Share Contracts (Parcel Contract) entered into by NRCS and **WHATCOM COUNTY** (see exhibit 3 of this agreement for sample Parcel Contract forms, these are provided for informational purposes, NRCS will provide the actual Parcel Contract forms appropriate for the specific transaction type prior to the execution of an individual Parcel Contract). Individual Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT are assured of funding for the entire length of the approved Parcel Contract in accordance with the terms of the Parcel Contract.
- D. Each Parcel Contract may identify only one Parcel and will document the Parties' agreement to the Parcel-specific information as required in the Parcel Contract, which includes identifying the enrollment type of the Parcel as either a 'General ALE' enrollment or a 'Grasslands of Special Environmental Significance' enrollment, as determined by NRCS, and identifying the transaction type as either a 'standard ALE transaction,' a 'Pre-closing transfer buy-protect-sell transaction,' or a 'Post-closing transfer buy-protect-sell transaction.'

NRCS Representative Initial

Per [Signature]

2

04/2021

Entity Representative Initial

[Signature]

- E. For standard ALE transactions: The standard expiration date for all individual Parcel Contracts is March 31 of the third fiscal year following the fiscal year the Parcel Contract is executed. Prior to expiration of a Parcel Contract and upon mutual agreement of the Parties through the execution of a modification to an individual Parcel Contract, a maximum of two individual 12-month extensions may be approved. No Parcel Contract may extend beyond March 31 of the fifth fiscal year following the original fiscal year of the Parcel Contract execution. For buy-protect-sell transactions, the standard expiration date is September 30 of the fifth fiscal year following the fiscal year the Parcel Contract is executed and may not be extended except as specified in the terms of a Parcel Contract for a post-closing transfer buy-protect-sell transaction.
- F. Upon mutual agreement of the Parties through the execution of a modification to an individual Parcel Contract during its term, NRCS may allow the substitution of a Parcel on which an agricultural land easement is being acquired through a standard ALE transaction at any time, provided that as determined by NRCS, the substitute Parcel and all of its landowners meet all ACEP-ALE eligibility requirements, the substitute Parcel is of comparable conservation value and is the same enrollment type as the original Parcel, and sufficient funds are available. The modification of an individual Parcel Contract for the substitution of a Parcel on which an agricultural land easement is being acquired through a buy-protect-sell transaction is not authorized.
- G. Upon modification, completion, expiration, termination, or cancellation of an individual Parcel Contract, the excess or remaining funds will be deobligated from the individual Parcel Contract.
- H. Nothing in this PROGRAM AGREEMENT obligates NRCS or **WHATCOM COUNTY** to purchase an agricultural land easement on any Parcel submitted for funding.

#### IV. CONTRIBUTION REQUIREMENTS AND LIMITATIONS

- A. The fair market value of the agricultural land easement must be determined using one of the methods set forth in 7 CFR Part 1468. The resultant fair market value of the agricultural land easement will be identified in the individual Parcel Contract and used to establish the amount of the ACEP-ALE cost-share assistance that may be provided by NRCS as the Federal share and the corresponding non-Federal share amount provided by **WHATCOM COUNTY** based on the enrollment type of the individual Parcel as follows:
  - i. For General-ALE Enrollments.—The Federal share will not exceed the lesser of 50 percent of the fair market value of the agricultural land easement or the non-Federal share provided by **WHATCOM COUNTY**, as described in paragraph B below of this section (IV). At the time of execution of this PROGRAM AGREEMENT, **WHATCOM COUNTY** must agree to provide, for each General ALE Parcel, a non-Federal share in an amount at least equivalent to the Federal share.
  - ii. For Grasslands of Special Environmental Significance (GSS) Enrollments.—The Federal share will not exceed 75 percent of the fair market value of the agricultural land easement and the non-Federal share provided by **WHATCOM COUNTY**, as described in paragraph B below of this section (IV), must comprise the remainder of the fair market value of the agricultural land easement or an amount at least equivalent to the Federal share, whichever is less. At the time of execution of this PROGRAM AGREEMENT, **WHATCOM COUNTY** must agree to provide for each ACEP-ALE GSS Parcel, a non-Federal share that meets the requirements of this section (IV).
- B. The non-Federal share for an individual easement may be comprised of one or more of the following items:
  - 1. **WHATCOM COUNTY**'s contribution of its own cash resources for payment of easement compensation to the landowner, or for a buy-protect-sell transaction, the amount of the fair

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- market value of the agricultural land easement, less the amount of the Federal share, that is provided through the conveyance of the agricultural land easement by the eligible entity.
2. A landowner donation toward the easement value in the form of a charitable donation or a qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) that reduces the easement purchase price.
  3. If taken together, items (1) and (2) are not sufficient to meet the required non-Federal share amount for that easement, **WHATCOM COUNTY** may also include the procured costs paid by **WHATCOM COUNTY** to a third-party for the provision of the following easement acquisition related reports or services that meet applicable ACEP-ALE requirements:
    - i. agricultural land easement appraisal.
    - ii. legal boundary survey of the easement area.
    - iii. full phase-I environmental site assessment that meets the requirements of 40 CFR Part 312.
    - iv. title commitment or report, title insurance, easement closing costs.
    - v. baseline report.
    - vi. mineral assessment.
  4. If taken together, items (1), (2), and (3) are not sufficient to meet the required non-Federal share amount for that easement, **WHATCOM COUNTY** may also include **WHATCOM COUNTY's** own contribution for easement stewardship and monitoring costs in an amount up to 2 percent of the fair market value of the agricultural land easement, as determined in accordance with section VI(A)(16) and (17) below.
- C. On an individual Parcel basis, **WHATCOM COUNTY** must self-certify on the appropriate Form NRCS-CPA-230, "Statement to Confirm Matching Funds" as provided by NRCS, that **WHATCOM COUNTY's** own contributions toward items 1, 3, or 4 above have not come from additional donations, payments, loans, or fees made by or charged to the landowner (Grantor or qualified farmer or rancher) of the agricultural land easement, immediate family members of the landowner (Grantor or qualified farmer or rancher), or organizations controlled by or funded by the landowner (Grantor or qualified farmer or rancher), either through formal or informal agreements. **WHATCOM COUNTY** must provide to NRCS a completed Form NRCS-CPA-230 signed by **WHATCOM COUNTY** and the landowner prior to the closing of an easement, or an advance of the Federal share for the purchase of an easement, on the Parcel identified in an individual Parcel Contract. The appropriate version of the Form NRCS-CPA-230 must be submitted and must identify the amount and sources of the items included in the non-Federal share.

#### V. PAYMENT OF ACEP-ALE COST-SHARE ASSISTANCE

- A. **WHATCOM COUNTY** must meet the terms and conditions set forth in this PROGRAM AGREEMENT and provide NRCS with the items identified in this PROGRAM AGREEMENT and the individual Parcel Contract in order to receive the Federal share for the purchase of an agricultural land easement on the Parcel identified in a valid Parcel Contract.
- B. Pursuant to the terms of the individual Parcel Contract, **WHATCOM COUNTY** may request payment of the Federal share as reimbursement after closing of an agricultural land easement, or for standard ALE transactions only, as an advance payment prior to closing of an agricultural land easement. If an advance of the Federal share will be requested, **WHATCOM COUNTY** must submit to NRCS a complete payment request package, including all required documents, prior to closing on the agricultural land easement.
- C. For any eligible procured costs as identified in section IV(B)(3) above, relied upon by **WHATCOM COUNTY** to meet the applicable minimum non-Federal share requirement as identified in section IV(A) above, **WHATCOM COUNTY** must include evidence of such procured cost amounts, including copies of paid invoices or receipts (or unpaid invoices if an advance of the Federal share is requested) as part of the payment request package submitted to NRCS.

#### VI. RESPONSIBILITIES

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A. ENTITY Responsibilities:

1. **WHATCOM COUNTY** will acquire and hold agricultural land easements on eligible land with eligible landowners as identified in an individual Parcel Contract consistent with the requirements identified therein and consistent with the provisions of this PROGRAM AGREEMENT. **WHATCOM COUNTY** may conduct such activities pursuant to the 'Certified Eligible Entity' provisions of this PROGRAM AGREEMENT and associated Parcel Contracts, only if an eligible entity that is party to this PROGRAM AGREEMENT has been certified by NRCS and only for those Parcels on which such certified eligible entity is party to the individual Parcel Contract and **WHATCOM COUNTY** has designated in such Parcel Contract that the agricultural land easement will be acquired in accordance with the certified eligible entity provisions. **WHATCOM COUNTY** must be identified as a Grantee (holder) under the terms of the agricultural land easement deed.
2. An agricultural land easement deed may also include legal entities that are co-holders (identified as Grantees in the easement deed) or third-party right holders (not identified as Grantees in the easement deed). Exhibit 1 to this PROGRAM AGREEMENT specifies the requirements, limitations, roles, and responsibilities of co-holders or third-party right holders. **WHATCOM COUNTY** must list on exhibit 1 of this agreement the legal entities that may be identified as a co-holder or third-party right holder on any agricultural land easement deed that may be acquired pursuant to a Parcel Contract executed under this PROGRAM AGREEMENT. **WHATCOM COUNTY** must list the specific co-holders or third-party right holders for an individual Parcel on the individual Parcel Contract and obtain any required signatures from a sufficiently authorized representative of the legal entity as follows:
  - i. All potential co-holders must be listed on and must sign Exhibit 1 to this PROGRAM AGREEMENT and any individual Parcel Contracts for Parcels on which the co-holder will be identified in the agricultural land easement deed. **WHATCOM COUNTY** will list the potential co-holders and obtain required signatures on Exhibit 1 of this agreement, at the time of execution of this PROGRAM AGREEMENT or through a subsequent amendment to this PROGRAM AGREEMENT to update Exhibit 1, prior to the execution of an individual Parcel Contract or modification thereto that identifies the listed co-holder.
  - ii. **WHATCOM COUNTY** will list all potential third-party right holders on Exhibit 1, as known at the time of execution of this PROGRAM AGREEMENT. An amendment to this PROGRAM AGREEMENT to update Exhibit 1 is not required to list subsequently identified third-party right holders. All third-party right holders must be identified on the individual Parcel Contracts for Parcels on which the third-party right holder will be identified in the agricultural land easement deed. Third-party right holders may be required to sign Exhibit 1 of this agreement or individual Program Contracts at **WHATCOM COUNTY** discretion.
3. **WHATCOM COUNTY** must maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS) and meet the System for Award Management (SAM) registration requirements or successor registry for the duration of this PROGRAM AGREEMENT and any active Parcel Contracts executed pursuant to this PROGRAM AGREEMENT. These DUNS and SAM registration requirements also apply to all legal entities identified as co-holders (Grantees) in Exhibit 1 of this agreement.
4. The landowner is identified as the Grantor under the terms of the agricultural land easement deed. **WHATCOM COUNTY** must notify NRCS as soon as possible if there is a change in landownership after the individual Parcel Contract is executed and prior to closing on the easement. Changes to landownership prior to closing must be documented through the execution of a modification to the Parcel Contract. For a buy-protect-sell transaction, the Parcel Contract must identify as landowners the qualified farmer or rancher to whom ownership of the parcel is transferred as specified therein.
5. **WHATCOM COUNTY** must ensure that the agricultural land easements acquired with ACEP-ALE cost-share assistance provided by NRCS through a Parcel Contract and the agricultural land

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easement deeds satisfy the requirements listed in items (i) through (x) below and in the applicable paragraph (6) or (7) below of this section (VI)(A):

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

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

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

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

*advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.*

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

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

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

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

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

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

b. Incorporate the ALE Minimum Deed Terms into the Body of the Agricultural Land Easement Deed.—Under this option, **WHATCOM COUNTY** must ensure the ALE Minimum Deed Terms, as stated in the ALE Minimum Deed Terms addendum are incorporated into the body of the agricultural land easement deed in accordance with

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'Instructions for Incorporation' provided in the ALE Minimum Deed Terms addendum. The ALE Minimum Deed Terms may be formatted to select options where instructed, conform terms to deed formatting, complete terms with required information, and delete instructions to drafters. Each individual agricultural land easement deed submitted under this option must be reviewed and approved by NRCS National Headquarters (NHQ) and attached as an exhibit to the individual Parcel Contract prior to **WHATCOM COUNTY** requesting an advance of the Federal share or closing on an agricultural land easement.

- c. Entity Agricultural Land Easement Deed Template Approved by NRCS.—Under this option, **WHATCOM COUNTY** may use an agricultural land easement deed template, the terms and conditions of which must address the ALE Minimum Deed Terms and be approved by NRCS NHQ prior to its use. The agricultural land easement template approved by NRCS NHQ must be attached as an exhibit to the individual Parcel Contract at the time of its execution or through subsequent modification thereto. Subsequent to the attachment of the NRCS NHQ-approved deed template as an exhibit to the individual Parcel Contract for which such template will be used, each individual agricultural land easement submitted under this option must be reviewed and approved by NRCS prior to **WHATCOM COUNTY** requesting an advance of the Federal share or prior to closing on an agricultural land easement. NRCS, at the State level, must verify, that the individual final agricultural land easement deed exactly matches the NRCS NHQ-approved template without any changes except in accordance with drafter's notes contained within the NRCS NHQ-approved template.
  - ii. **WHATCOM COUNTY** must provide to NRCS a copy of the agricultural land easement deed and all exhibits, including the legal description or survey, at least 90 days before the planned easement closing date.
- 7. For Certified Eligible Entities.—**WHATCOM COUNTY** is authorized to use its own terms and conditions for the agricultural land easement deed and is required to ensure and certify to NRCS as a condition of payment that the agricultural land easement meets the minimum conditions in section VI(A)(5) above. For standard ALE transactions, NRCS review of the agricultural land easement deed will not occur prior to payment or closing. If NRCS determines that an agricultural land easement deed fails to meet the minimum conditions in section VI(A)(5) above after **WHATCOM COUNTY** has acquired the agricultural land easement, then **WHATCOM COUNTY** must correct the agricultural land easement deed within 180 days of receiving written notice from NRCS. For buy-protect-sell transactions, each individual agricultural land easement deed must be reviewed and approved by NRCS NHQ and attached as an exhibit to the individual Parcel Contract prior to **WHATCOM COUNTY** closing on an agricultural land easement.
- 8. NRCS may require adjustments to the provisions identified in section VI(A)(5) above and require the addition of other provisions if NRCS determines that they are necessary to meet the purposes of ACEP and protect the conservation values of the Protected Property.
- 9. **WHATCOM COUNTY** must perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements, and for buy-protect-sell transactions, to ensure the proper transfer of ownership of the parcel to the qualified farmer or rancher subject to the requirements set forth in this Program Agreement and in the terms of the individual Parcel Contract.
- 10. **WHATCOM COUNTY** must pay all costs of agricultural land easement acquisition and must operate and manage each agricultural land easement in accordance with its easement program, this PROGRAM AGREEMENT, the terms of the individual Parcel Contract, 16 U.S.C. Section 3865 et seq., and 7 CFR Part 1468. NRCS will have no responsibility for the costs or management of the agricultural land easements purchased by **WHATCOM COUNTY**.
- 11. NRCS will not be responsible for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of **WHATCOM COUNTY** in connection with its acquisition or management of the agricultural land easements acquired pursuant to this PROGRAM AGREEMENT and associated, fully executed Parcel Contracts. This includes but is



not limited to acts and omissions of **WHATCOM COUNTY** agents, successors, assigns, employees, contractors, or lessees that result in violations of any laws and regulations that are now or that may in the future become applicable.

12. **WHATCOM COUNTY** must prepare a baseline documentation report documenting the condition of each Parcel as of the time the agricultural land easement is acquired and include a completed baseline documentation report in the payment request package submitted to NRCS pursuant to the terms of the individual Parcel Contract. **WHATCOM COUNTY** must provide NRCS a draft baseline documentation report at least 90 days before the planned closing date of the agricultural land easement, except for those easements being acquired under a standard ALE transaction by a certified eligible entity as identified in the individual Parcel Contract. The baseline documentation report must contain maps, full descriptions, and pictures of—
  - i. the Parcel location;
  - ii. existing structures and infrastructure, including barns, sheds, corrals, fences, ponds, watering facilities, and waste storage facilities;
  - iii. land use, land cover and its condition, including crops and crop rotations or for grasslands, the condition of the grassland, pasture, range, hay or forest lands, and animal inventories;
  - iv. any problem areas;
  - v. any special features for which the Parcel is being protected, including, for ACEP-ALE-GSS enrollments, the grasslands of special environmental significance as designated in accordance with the definition in 7 CFR Part 1468.3, and the habitat, species, or sensitive natural resources that were the basis for such designation of the Parcel;
  - vi. as applicable, irrigation rights and volume of irrigation water rights to be retained for the easement, and
  - vii. for grasslands, any critical nesting habitat and the associated nesting seasons for grassland-dependent birds whose populations are in significant decline.
13. **WHATCOM COUNTY** must ensure completion of a highly erodible land (HEL) conservation plan that meets the requirements of 7 CFR Part 12 for any portion of a Parcel that contains highly erodible cropland. The HEL conservation plan must be developed by NRCS or an NRCS-certified planner and approved by NRCS prior to closing. The development and maintenance of an agricultural land easement plan that includes a broad, comprehensive agricultural land easement plan, a grasslands management plan, or a forest land management plan, or any combination thereof, is not required unless agreed to by **WHATCOM COUNTY** as a condition of the selection of a Parcel for funding. The agricultural land easement is not required to be subject to an agricultural land easement plan with the exception that **WHATCOM COUNTY** must ensure that the agricultural land easement deed addresses compliance requirements associated with HEL conservation plans pursuant to 7 CFR Part 12. Agricultural land easement plans developed as required or agreed-to must be signed by the **WHATCOM COUNTY** and the Grantors prior to closing and a copy provided with the payment request package submitted to NRCS pursuant to the terms of the individual Parcel Contract.

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

14. In acquiring agricultural land easements, **WHATCOM COUNTY** must ensure that the title to the lands or interests therein will be unencumbered or that outstanding or reserved interests are subordinated to the agricultural land easement.
  - i. For Non-Certified Eligible Entities.—**WHATCOM COUNTY** and NRCS must review the title commitment to ensure there are no encumbrances that would allow uses of the property

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

- ii. For Certified Eligible Entities.—**WHATCOM COUNTY** must review the title commitment to ensure there are no encumbrances that would allow nonagricultural uses of the property that are inconsistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations. **WHATCOM COUNTY** must also identify and consider unrecorded interests in the Parcel to ensure there are no unrecorded rights, title, or interests in the property that are inconsistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations. Any exceptions to the requirement to remove or subordinate outstanding or reserved interests must be consistent with this PROGRAM AGREEMENT, 16 U.S.C. Section 3865 et seq., and applicable regulations, and **WHATCOM COUNTY**'s determination and basis of acceptability documented on a "Certificate of Use and Consent" (**WHATCOM COUNTY** may use Form NRCS-LTP-23) or substantively similar document. **WHATCOM COUNTY** must provide NRCS a copy of the title commitment including a copy of documents to support each title exception, a summary of **WHATCOM COUNTY** title review findings, and any other requested documentation related to title. **WHATCOM COUNTY** must provide this information to NRCS for standard ALE transactions at the time the payment request package is submitted and for buy-protect-sell transactions at least 90 days prior to the planned easement closing date.
15. **WHATCOM COUNTY** must secure proper title evidence and insurance using an American Land Title Association (ALTA) Owner's Policy with **WHATCOM COUNTY** listed as the insured on the policy and the policy issued for at least the full amount of the agricultural land easement purchase price.
  16. **WHATCOM COUNTY** must obtain a determination of the fair market value of the agricultural land easement for each Parcel at its own cost using one of the methods set forth in 7 CFR Part 1468.24. Individual appraisals must be conducted by a State-certified general appraiser and must conform to the NRCS Appraisal Specifications provided as Exhibit 2 to this PROGRAM AGREEMENT and either the Uniform Standards of Professional Appraisals Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000) (UASFLA). The effective date of the appraised value must no earlier than 6 months prior to the date the individual Parcel Contract is executed for the individual Parcel, or no earlier than 6 months prior to the date the individual Parcel Contract is modified to identify a substitute Parcel, and prior to the closing date of the agricultural land easement on the Parcel. Use of a fair market valuation methodology other than individual USPAP or UASFLA appraisals must be approved by NRCS in writing prior to the execution of a Parcel Contract or modification thereto for a Parcel that would rely upon such methodology.
  17. **WHATCOM COUNTY** must provide the appraiser the NRCS appraisal specifications (Exhibit 2) and all of the items required to be provided by **WHATCOM COUNTY** as identified in the NRCS appraisal specifications. **WHATCOM COUNTY** must receive a separate appraisal report for each Parcel with an executed Parcel Contract. Under no circumstances may **WHATCOM COUNTY** allow the landowner to approve or disapprove of the appraiser selected to prepare the appraisal report. The landowner may not be listed as the client.

- i. For Non-certified Eligible Entities and for all Buy-Protect-Sell Transactions: **WHATCOM COUNTY** must provide NRCS a completed appraisal report at least 90 days before the planned closing of the agricultural land easement so that NRCS may conduct a technical review of the appraisal. **WHATCOM COUNTY** may not close the agricultural land easement until the technical reviewer approves the appraisal report.
  - ii. For Standard ALE Transactions under the Certified Eligible Entity provisions: The determination of fair market value of the agricultural land easement must meet NRCS specifications and the requirements of 7 CFR Part 1468, must be provided at the time the payment request package is submitted, and will not be reviewed by NRCS prior to payment or closing.
18. **WHATCOM COUNTY** may close on the agricultural land easement on a Parcel identified in the individual Parcel Contract, only after **WHATCOM COUNTY** has received the NRCS-signed Form NRCS-CPA-230, "Statement to Confirm Matching Funds," and except for standard ALE transactions with a certified eligible entity, only after **WHATCOM COUNTY** has been notified that NRCS has completed its reviews as identified in section VI(B) below and has received from NRCS the "NRCS Approval to Proceed with ALE Acquisition" letter. If **WHATCOM COUNTY** closes an agricultural land easement prior to the receipt of the required documents from NRCS, NRCS may decline to provide the Federal share for the agricultural land easement and may terminate the individual Parcel Contract. Due to Federal fiscal year-end accounting and reporting requirements, if possible, **WHATCOM COUNTY** should avoid closing on an agricultural land easement between the dates of August 15 and September 30 and must notify NRCS immediately of any agricultural land easements closed during this period.
19. **WHATCOM COUNTY** must provide NRCS a copy of the final recorded agricultural land easement deed and all exhibits, including the legal description or survey, a copy of the final policy of title insurance for the conveyance of the agricultural land easement, and any associated title clearance documents (e.g., recorded subordination agreements), within 30 days of easement recordation or request for reimbursement, whichever is sooner. For buy-protect sell transactions and as specified in the terms of the Parcel Contract, **WHATCOM COUNTY** must also provide required documents related to the transfer of ownership of the parcel to the qualified farmer or rancher, recorded evidence that **WHATCOM COUNTY** is a holder of the agricultural land easement, and for post-closing transfers, a copy of the title insurance policy issued for the sale of the parcel to the qualified farmer or rancher, and as requested by NRCS, any associated title documents for the period between the initial conveyance of the agricultural land easement and the completion of the buy-protect-sell transaction.
20. **WHATCOM COUNTY** may not use ACEP funds to acquire an easement on a property in which **WHATCOM COUNTY**'s employee or board member, with decision-making involvement in easement acquisition and management matters, has a property interest or whose immediate family member or household member has a property interest. **WHATCOM COUNTY** agrees to conduct itself in a manner so as to protect the integrity of the agricultural land easements it holds and avoid the appearance of impropriety or actual conflicts of interest in its acquisition and management of agricultural land easements.
21. **WHATCOM COUNTY** may not at any time, when **WHATCOM COUNTY** holds title to the agricultural land easement, seek to acquire the remaining fee interest in the Parcel. Likewise, if **WHATCOM COUNTY** enters into an agreement with another entity to manage or monitor the agricultural land easement, and that entity seeks to acquire the underlying fee, **WHATCOM COUNTY** agrees to terminate immediately such agreement and arrange for an uninterested party to manage or monitor the Parcel. No individual eligible entity identified in Exhibit 1 to this PROGRAM AGREEMENT may at any time hold the agricultural land easement and the remaining fee interest in the Parcel.
22. **WHATCOM COUNTY** must implement easement enforcement procedures when a violation of the agricultural land easement is identified by or reported to **WHATCOM COUNTY**. **WHATCOM COUNTY** enforcement procedures resulting from a violation of an HEL

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conservation plan may only be initiated after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR Part 12 and 7 CFR Part 614.

23. **WHATCOM COUNTY** must submit a list of all successfully closed easements on Parcels funded through individual Parcel Contracts associated with this PROGRAM AGREEMENT within 30 days of the closing date of the last Parcel.
24. At a minimum, **WHATCOM COUNTY** must monitor every agricultural land easement on an annual basis to ensure and document compliance with the easement deed provisions. Each year **WHATCOM COUNTY** must submit to NRCS the annual monitoring report for that year.
25. Nongovernmental organizations must continue to meet the definition of nongovernmental organization in 7 CFR Part 1468 for the entire term of this agreement.
26. This paragraph and paragraphs 5, 10, 11, 12, 13, 19, 20, 21, 22, 23, 24, with the addition of paragraph 7 for certified eligible entities, of this section VI(A) will survive the closing of the agricultural land easement and the termination or expiration of this PROGRAM AGREEMENT.

**B. NRCS Responsibilities:**

1. The United States, by and through NRCS, will announce funding availability, application batching periods, publish ranking criteria, and select eligible applications for funding in accordance with published procedures.
2. NRCS will review Parcel applications submitted by **WHATCOM COUNTY**, determine eligibility, rank eligible applications, obtain and review a hazardous materials record search, conduct onsite visits, and obligate funds for individual Parcels selected for funding through the execution of individual Parcel Contracts. NRCS will prepare the individual Parcel Contract documents or modifications thereto, for review and execution by all required Parties.
3. NRCS will provide technical assistance to develop any required HEL conservation plans, and to the extent its resources allow, be available for consultation and review of any agricultural land easement plans developed by **WHATCOM COUNTY** and submitted to NRCS at least 90 days before the planned closing date of an individual Parcel.
4. After the required materials have been submitted by **WHATCOM COUNTY** and prior to closing on the agricultural land easement, NRCS will pursuant to the terms of this PROGRAM AGREEMENT and the individual Parcel Contract —
  - i. For Noncertified Eligible Entities and for all Buy-Protect-Sell transactions (as designated in the individual Parcel Contract):
    - a. Review the agricultural land easement deed and associated deed exhibits to ensure that they meet the requirements of this PROGRAM AGREEMENT and the individual Parcel Contract and provide **WHATCOM COUNTY** any approval instructions or items requiring resolution;
    - b. Review the title documents submitted by **WHATCOM COUNTY**, provide the findings to **WHATCOM COUNTY** for information or remedy as necessary, and for noncertified eligible entities complete a Form NRCS-LTP-23, "Certificate of Use and Consent" (or successor form);
    - c. Conduct a technical review of the appraisal submitted by **WHATCOM COUNTY** and provide the findings to **WHATCOM COUNTY** for information or resolution as necessary;
    - d. Develop or review an HEL conservation plan on any highly erodible cropland and, if requested by **WHATCOM COUNTY** and as resources allow, review any agricultural land easement plans developed by **WHATCOM COUNTY** and identify any items for resolution to **WHATCOM COUNTY**;
    - e. Review the draft baseline documentation report provided by **WHATCOM COUNTY** and notify **WHATCOM COUNTY** if additional information is needed;
    - f. Review and provide notice of determination on any waiver requests submitted by **WHATCOM COUNTY** in accordance with ACEP regulations and policy;
    - g. After NRCS reviews are completed and the materials are determined acceptable, provide **WHATCOM COUNTY** with an "NRCS Approval to Proceed with the ALE

- Acquisition” letter and the NRCS-signed Form NRCS-CPA-230, “Statement to Confirm Matching Funds”; and
- h. For pre-closing transfer buy-protect-sell transactions: Review the information submitted by **WHATCOM COUNTY** related to the transfer of ownership of the parcel to the qualified farmer or rancher and provide findings to **WHATCOM COUNTY** documenting compliance or requiring remedy.
  - ii. For Standard ALE Transactions under the Certified Eligible Entity provisions (as designated in the individual Parcel Contract), NRCS will review and provide **WHATCOM COUNTY** with the NRCS-signed Form NRCS-CPA-230.
5. If **WHATCOM COUNTY** requests an advance payment of the Federal share (available for standard ALE transactions only), NRCS will provide **WHATCOM COUNTY** a copy of the “NRCS Closing Agent Requirements” to be signed and returned to NRCS.
  6. Prior to NRCS disbursement of funds, the NRCS State Conservationist will verify that **WHATCOM COUNTY** has provided all documentation, certifications, and information required by sections IV, V, and VI(A) above and as identified in the individual Parcel Contract. Additionally, for noncertified eligible entity transactions and for all buy-protect-sell transactions, NRCS will conduct an internal review of the payment request package in accordance with the terms of this PROGRAM AGREEMENT and the individual Parcel Contract and NRCS easement acquisition internal controls policy.
  7. NRCS will certify payment and disburse funds, for Parcels with a valid, executed Parcel Contract when **WHATCOM COUNTY** has submitted all required documents and requested payment prior to the expiration date of the individual Parcel Contract and consistent with the requirements of this PROGRAM AGREEMENT and the terms of the Parcel Contract.
  8. NRCS will review the annual monitoring reports provided by **WHATCOM COUNTY** to ensure monitoring is conducted annually and reports are sufficient and submitted to NRCS annually for every NRCS-funded conservation easement held by **WHATCOM COUNTY**
  9. For Certified Eligible Entities:
    - i. For standard ALE transactions, NRCS will conduct annual quality assurance reviews on at least 15 percent of the completed agricultural land easement transactions submitted for payment each fiscal year. NRCS will review the agricultural land easement deed, title clearance and final policy of title insurance, appraisal, and the baseline documentation report for every Parcel selected for quality assurance review to determine whether the agricultural land easement is valid and compliant with the terms of this PROGRAM AGREEMENT. NRCS will notify **WHATCOM COUNTY** of deficiencies in writing and provide **WHATCOM COUNTY** a specified period of time to correct the deficiencies. If deficiencies are not corrected to NRCS satisfaction, NRCS may pursue remedies including but not limited to the return of cost-share funds, decertification of **WHATCOM COUNTY**, termination of remaining Parcel Contracts, or termination of the PROGRAM AGREEMENT.
    - ii. NRCS will assess **WHATCOM COUNTY** certification status pursuant to 7 CFR Section 1468.26 and the terms and conditions of this PROGRAM AGREEMENT. If during the quality assurance review or at any other time, NRCS finds that **WHATCOM COUNTY** no longer meets the criteria in 7 CFR Section 1468.26 and this PROGRAM AGREEMENT, NRCS will send written notice of proposed decertification, a list of outstanding deficiencies, and required remedies. **WHATCOM COUNTY** will be provided a specified period of time, at a minimum 180 days unless a shorter timeframe is agreed to by the Parties, to correct the deficiencies. **WHATCOM COUNTY** may contest the notice of decertification in writing to the Chief of NRCS within 20 calendar days of receipt of the notice of proposed decertification. The Chief will make a final determination and send formal notice to **WHATCOM COUNTY**. NRCS may also determine if any further administrative action is necessary, including whether suspension and debarment action under 7 CFR Part 1407 should be initiated.
  10. For all buy-protect-sell transactions: NRCS will determine and document whether the buy-protect-sell transaction, which includes both the acquisition of the agricultural land easement and

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Entity Representative Initial SS

the transfer of ownership of the parcel to the qualified farmer or rancher, has been completed in compliance with all applicable requirements as set forth in the terms of this PROGRAM AGREEMENT and the individual Parcel Contract. NRCS will notify **WHATCOM COUNTY** of its findings including any corrective actions needed. NRCS will provide notice of the buy-protect-sell transaction final compliance and completion determination to **WHATCOM COUNTY** in writing.

**VII. PUBLIC INFORMATION**

- A. **WHATCOM COUNTY** agrees to acknowledge NRCS cost-share assistance in any public outreach materials or events related to agricultural land easements acquired under the framework of this PROGRAM AGREEMENT and to provide draft copies of such information to the NRCS State office for review and comment before public release.
- B. **WHATCOM COUNTY** agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under section 1244 of the Food Security Act of 1985 (16 U.S.C. Section 3844) and section 1619 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. Section 8791).

**VIII. GENERAL PROVISIONS**

- A. It is the intent of NRCS to fulfill its responsibilities under this PROGRAM AGREEMENT and specific obligations made in any individual ACEP-ALE Parcel Cost-Share Contracts entered into pursuant to this PROGRAM AGREEMENT. However, NRCS may not make commitments in excess of funds authorized by law or made administratively available. If NRCS is unable to fulfill its responsibilities under this PROGRAM AGREEMENT or specific obligations made in any associated, valid Parcel Contracts because of the unavailability of funds, the affected Parcel Contracts will automatically terminate, and this PROGRAM AGREEMENT may also be terminated.
- B. No assignment, in whole or in part, will be made of any right or obligation under this PROGRAM AGREEMENT without the joint approval of both NRCS and **WHATCOM COUNTY**. Nothing herein will preclude NRCS or **WHATCOM COUNTY** from entering into other mutually acceptable arrangements or agreements, except as identified in section VI(A)(20) and (21) of this PROGRAM AGREEMENT. Such documents must be in writing, must reference this PROGRAM AGREEMENT, and must be maintained as part of the official PROGRAM AGREEMENT file.
- C. This PROGRAM AGREEMENT may only be amended or modified by written amendment signed by the authorized officials of the NRCS and **WHATCOM COUNTY**.
- D. **WHATCOM COUNTY** agrees to give the NRCS, the Office of the Inspector General, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this PROGRAM AGREEMENT or any individual Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT. **WHATCOM COUNTY** agrees to retain all records related to this PROGRAM AGREEMENT or associated Parcel Contracts, as applicable, for a period of three years after completion of the terms of this PROGRAM AGREEMENT, in accordance with the applicable Office of Management and Budget circular.
- E. NRCS may terminate this PROGRAM AGREEMENT if NRCS determines that **WHATCOM COUNTY** has failed to comply with the provisions of this PROGRAM AGREEMENT or if it determines that it is in the best interests of the Federal Government to terminate.
- F. If any recipient of Federal funds through the Parcel Contracts entered into pursuant to this PROGRAM AGREEMENT fails to comply with the terms and conditions of this PROGRAM AGREEMENT or such Parcel Contracts, NRCS reserves the right to wholly or partially recapture funds provided under such Parcel Contracts in accordance with applicable regulations.
- G. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (7 CFR Part 1407, as applicable)

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Entity Representative Initial SS

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

H. Misrepresentation and Scheme or Device

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

XII. ATTACHMENTS and EXHIBITS

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

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

Exhibit 3 – Sample “ACEP-ALE Parcel Cost-Share Contract” for individual Parcel acquisition under a Standard ALE Transaction including:

- a. Form NRCS-CPA-1265, “ACEP-ALE Parcel Cost-Share Contract”
- b. Form NRCS-CPA-1265-Appendix, “Appendix to the ACEP-ALE Parcel Cost-Share Contract for Standard ALE transactions”
- c. Form NRCS-CPA-1266, “Schedule of Acquisition for Easements”

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- d. Form NRCS-CPA-1267, "Modification of the Schedule of Acquisition for Easements"
- e. Form NRCS-CPA-230E, "Statement to Confirm Matching Funds for General ALE"
- f. Form NRCS-CPA-230F, "Statement to Confirm Matching Funds for ACEP-ALE-GSS"
- g. Form NRCS-CPA-1268, "Conservation Activity Approval and Payment Application for Acquisition of Easements"

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

NRCS Representative Initial

*RCAP*

Entity Representative Initial

*SS*



**IDENTIFICATION AND SIGNATURE PAGE**  
**For**  
**ALL ACEP-ALE PROGRAM AGREEMENT PARTIES: ELIGIBLE ENTITIES and NRCS**  
**and Possible**  
**EASEMENT CO-HOLDERS AND THIRD-PARTY RIGHT HOLDERS**

This exhibit defines the roles and identifies the legal entities that may be party to or identified on any individual “ACEP-ALE parcel cost-share contract” (Parcel Contract) that may be entered into pursuant to this “ACEP-ALE Program Agreement” (Program Agreement). At a minimum, this exhibit and any amendments thereto must be executed as required by an appropriately authorized representative of each legal entity identified as an “eligible entity” or a “co-holder.” Each Parcel Contract associated with this Program Agreement may only identify and be executed by eligible entities or co-holders that are identified on this exhibit and have executed this Program Agreement. The eligible entity and NRCS may agree to attach additional pages to this exhibit to identify additional legal entities or to further define and clarify the roles of the legal entities identified on this exhibit to the extent the further definitions and clarifications do not conflict with the provisions of the Program Agreement including all exhibits and attachments, or the terms and conditions of the individual Parcel Contracts.

**Section 1:**

**ELIGIBLE ENTITY:**


- Is considered a participant in ACEP-ALE, and therefore must meet the ACEP-ALE entity eligibility requirements as an independent<sup>1/</sup> or dependent<sup>2/</sup> eligible entity, as defined in this exhibit. At least one independent eligible entity must be identified on this exhibit.
- Must provide information to the Farm Service Agency (FSA) for entry into the Service Center Information Management System (SCIMS), or successor tool.
- All eligible entities identified in this exhibit, must have a DUNS number<sup>3/</sup> and be registered in SAM<sup>4/</sup>
- Through execution of this exhibit, eligible entities identified in this section are considered party to the ACEP-ALE Program Agreement.
- Only, eligible entities identified in this section may be party to and execute an individual Parcel Contract entered into pursuant to this Program Agreement as described below:
  - “Independent” Eligible Entities.—At least one independent eligible entity that is party to this Program Agreement must be party to and execute any Parcel Contract associated with this Program Agreement.
  - “Dependent” Eligible Entities.—Any dependent eligible entities that are party to this Program Agreement may also be party to and execute any individual Parcel Contract to which an independent eligible entity is also a party.
- Each eligible entity that is party to an individual Parcel Contract associated with this Program Agreement—
  - Must be identified as a holder (grantee) of the conservation easement deed funded through the individual Parcel Contract.
  - May receive payment of ACEP-ALE cost-share assistance provided by NRCS as the Federal share.
- This Program Agreement may be amended to identify new eligible entities but may not be amended to remove eligible entities.

ELIGIBLE ENTITY NAME	DUNS NUMBER	CHECK ONLY ONE		AUTHORIZED REPRESENTATIVE	
		INDEPENDENT ELIGIBLE ENTITY <sup>1/</sup> :	DEPENDENT ELIGIBLE ENTITY <sup>2/</sup> :	WRITTEN NAME and POSITION	SIGNATURE
Whatcom County	60044641	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Satpal Singh Sidhu County Executive	<i>Satpal Sidhu</i>
		<input type="checkbox"/>	<input type="checkbox"/>		Approved as to Form: <u>/s/ Royce Buckingham</u> Senior Civil Deputy
		<input type="checkbox"/>	<input type="checkbox"/>		Prosecuting Attorney
		<input type="checkbox"/>	<input type="checkbox"/>		

**Section 2:**

**CO-HOLDER:**

- Is any legal entity identified as a co-holder (grantee) on an individual conservation easement deed that will be held by an eligible entity that is party to this Program Agreement and identified in section 1 above.
- Is not considered a participant in ACEP-ALE, and therefore is not required to meet the ACEP-ALE entity eligibility requirements.
- May **not** receive a direct payment of ACEP-ALE cost-share assistance from NRCS, however is considered a beneficiary of those Federal funds, and therefore must have a DUNS number<sup>3/</sup> and be registered in SAM<sup>4/</sup>.
- Must provide information to the FSA for entry into the SCIMS, or successor tool.
- This exhibit, or amendments thereto, must identify all legal entities that may serve as a co-holder and must be executed by a sufficiently authorized representative each legal entity.
- Through execution of this exhibit, or amendments thereto, co-holders acknowledge the terms and conditions of this Program Agreement.
- Any co-holder identified in this section may be identified on and signatory to an individual Parcel Contract associated with this Program Agreement.
- Each co-holder identified on an individual Parcel Contract:
  - Must be identified as a grantee (co-holder) of the conservation easement deed funded through the individual Parcel Contract.
  - Must have a sufficiently authorized representative sign the individual Parcel Contract on which that co-holder is identified.
- This Program Agreement must be amended to add any co-holders identified after the execution of this Program Agreement and prior to the execution of any associated individual Parcel Contracts on which that co-holder is identified.

CO-HOLDER ENTITY NAME	DUNS NUMBER	CHECK ALL THAT MAY APPLY <sup>5/</sup>						SIGNATURE OF AUTHORIZED REPRESENTATIVE
		Acquisition	Enforcement	Monitoring	Funding	Third Party <sup>6/</sup>	Other	
Whatcom Land Trust	965690506	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Section 3:**

**THIRD-PARTY RIGHT HOLDER:**

- Is any legal entity identified as a third-party right holder (**not** a grantee) on an individual conservation easement deed that will be held by an eligible entity that is party to this Program Agreement and identified in section 1 above.
- Is not considered a participant in ACEP-ALE, and therefore is not required to meet the ACEP-ALE entity eligibility requirements.
- May not receive a direct payment of ACEP-ALE cost-share assistance from NRCS, is **not** considered a beneficiary of those Federal funds, and therefore is **not** required to have a DUNS number<sup>3/</sup> and be registered in SAM<sup>4/</sup>.
- This exhibit must identify all legal entities that may serve as a third-party right holder as known at the time of execution of this Program Agreement.
- The eligible entity may elect to require third-party right holders to sign this exhibit, or amendments thereto, acknowledging they have received a copy of the terms of the Program Agreement.
- Any legal entity identified as a third-party right holder on this exhibit may be identified on an individual Parcel Contract associated with this Program Agreement.
- Each third-party right holder (including those not identified in this exhibit) that will be identified in the conservation easement deed funded through the individual Parcel Contract:
  - Must **not** be identified as a grantee (co-holder) on the conservation easement deed.
  - Must be identified on the conservation easement deed as a holder of a third-party right.

- Must be identified on the individual Parcel Contract for that Parcel.
- Is not required to sign any Parcel Contracts associated with this Program Agreement unless required by the eligible entity.
- An amendment to this Program Agreement is **not** required to add third-party right holders identified after the execution or amendment of this Program Agreement, however all third-party right holders must be identified on the individual Parcel Contracts for the parcels on which the third-party right holder will be identified in the conservation easement deed.

THIRD-PARTY RIGHT HOLDER ENTITY NAME	DUNS NUMBER (Optional)	CHECK ALL THAT MAY APPLY <sup>5/</sup>					SIGNATURE OF AUTHORIZED REPRESENTATIVE (Optional)
		Acquisition	Enforcement	Monitoring	Funding	Other	
Washington Recreation & Conservation Office	088405852	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Section 4: Definitions and Requirements**

<sup>1/</sup> An INDEPENDENT ELIGIBLE ENTITY means an entity that NRCS has determined meets all ACEP-ALE statutory, regulatory, and policy requirements of an eligible entity, including but not limited to the following:

**Statutory Requirements (see 16 U.S.C. Sec. 3865a(2)):**

The term "eligible entity" means—

(A) an agency of State or local government or an Indian Tribe (including a farmland protection board or land resource council established under State law); or

(B) an organization that is—

(i) organized for, and at all times since the formation of the organization has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of title 26;

(ii) an organization described in section 501(c)(3) of title 26 that is exempt from taxation under section 501(a) of title 26; or


(iii) described in—

(I) paragraph (1) or (2) of section 509(a) of title 26; or

(II) section 509(a)(3) of title 26 and is controlled by an organization described in section 509(a)(2) of title 26.

**Regulatory Requirements (see 7 CFR Sec. 1468.3 and 7 CFR Sec. 1468.20):**

<p><b>Section 1468.3</b>  <i>Eligible entity</i> means an Indian Tribe, State government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purposes of protecting—                  (1) The agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land that negatively affect the agricultural uses and conservation values, or                  (2) Grazing uses and related conservation values by restoring and conserving eligible land.</p> <p><b>Section 1468.20(b)</b>                  In addition, eligible entities interested in receiving ACEP-ALE funds must provide NRCS sufficient evidence of—                  (i) A commitment to long-term conservation of agricultural lands,                  (ii) A capability to acquire, manage, and enforce easements,                  (iii) Sufficient number of staff dedicated to monitoring and easement stewardship, and                  (iv) The estimated easement and related costs and the anticipated sources of funding sufficient to meet the non-Federal share requirements for each parcel.                  (v) For individual parcels on which the eligible entity's own cash resources will comprise less than 10 percent of the fair market value of the agricultural land easement for payment of easement compensation to the landowner, the eligible entity must provide NRCS specific evidence of funding available to manage, monitor, and enforce the easement.</p>
<p><sup>2/</sup> A <b>DEPENDENT ELIGIBLE ENTITY</b> means an entity that NRCS has determined meets all of the ACEP-ALE statutory requirements of an eligible entity but may not meet one or more of the regulatory or policy requirements at the time the Program Agreement is executed. A dependent eligible entity may only be party to a Program Agreement and any associated individual Parcel Contracts to which an independent eligible entity is also party.</p>
<p><sup>3/</sup> All eligible entities and co-holders must provide and maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS).</p>
<p><sup>4/</sup> All eligible entities and co-holders must meet the central contractor registration requirements through the System for Award Management (SAM) or successor registry. Registration in SAM must be maintained for the duration of the Program Agreement and any associated individual Parcel Contracts. Eligible entities and co-holders must renew their SAM registration annually and must not allow their registration to lapse or expire prior to renewal.</p>
<p><sup>5/</sup> A co-holder or third-party right holder may assist in the performance of the identified functions; however, the eligible entity retains primary responsibility for all functions related to compliance with the terms and conditions of the Program Agreement and associated Parcel Contract, as well as the acquisition, monitoring, and enforcement of each agricultural land easement acquired pursuant to such Parcel Contracts.</p>
<p><sup>6/</sup> A legal entity identified in section 2 above as a co-holder, may also identify in section 2 above that they may be a third-party holder for some easement transactions, and such legal entity does not also have to be identified in section 3 above. The role of that legal entity as either a co-holder or a third-party holder will be specified on the individual Parcel Contract for the acquisition of the agricultural land easement on the identified parcel.</p>

NRCS Approving Official Signature	
NRCS State Conservationist Signature	Date
	4/19/2022