

U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

**APPENDIX TO FORM NRCS-CPA-1202
CONSERVATION PROGRAM CONTRACT**

1 PROGRAM ELIGIBILITY REQUIREMENTS

- A** The Participant must complete and file Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification) and meet the requirements set forth therein, in accordance with the Food Security Act of 1985, as amended. By signing this Conservation Program Contract (Contract), the Participant certifies that the Participant has completed and filed the AD-1026 and meets the requirements set forth in the highly erodible land conservation-wetland conservation (HELC-WC) provisions.
- B** The Participant must complete and file Form CCC-526 (Payment Eligibility Average Adjusted Gross Income Certification) and meet the requirements therein. By signing this Contract, the Participant certifies that the Participant has completed and submitted Form CCC-526 and meets the requirements therein.
- C** The Participant must complete and file Form CCC-501A (Member's Information) if he or she represents a business classified as an entity or joint operation by the U.S. Department of Agriculture (USDA) under 7 CFR part 1400.
- D** The Participant must have control of the land for this Contract period. By signing this Contract, the Participant certifies that the Participant will control the land subject to this Contract for the terms of this Contract period and shall, upon request, provide evidence to Commodity Credit Corporation (CCC) demonstrating that such Participant will control the land for that period. Where applicable, the Bureau of Indian Affairs and the Natural Resources Conservation Service (NRCS) will determine Tribal land eligibility.
- E** The Participant shall not be eligible for Contract payments for: (1) practices that are required to meet HELC and WC compliance requirements found in 7 CFR part 12, (2) practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to participation, (3) a non-land based structure that is not integral to a land based practice, or (4) new practices that were applied with cost-share assistance through other USDA cost-share programs.

- F** Land otherwise eligible for the program shall not be eligible if the land is subject to a deed or other restriction prohibiting the application of the conservation plan and associated practices or where a benefit has or will be obtained from a Federal agency in return for the Participant's agreement not to implement the conservation plan and associated practices on the land during the same time as the land would be enrolled in this Contract. By applying for the program contract, the Participant certifies as a condition for payment that no such restrictions apply to the subject land.
- G** The Participant is responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in accordance with applicable laws and regulations. A Participant must comply with all laws and is responsible for all effects or actions resulting from the Participant's performance under this Contract.

2 SELECTING OFFERS FROM PRODUCERS

All applications will be evaluated using a selection process developed by the State Conservationist (STC), or Designated Conservationist, with advice from the State Technical Committee or Local Work Group. Form NRCS-CPA-1200, Conservation Program Contract Application, and this Appendix are a request to enter into the program under the terms specified in this Contract.

3 AGREEMENT

- A** The Participant agrees to:
- (1) Place eligible land into the program for the period of time as specified on Form NRCS-CPA-1202 beginning on the date this Contract is executed by CCC;
 - (2) Not start any financially assisted practice or activity or engage the reimbursable services of a certified Technical Service Provider (TSP) before this Contract is executed by CCC. The Participant may request, in writing, a waiver of this requirement for financially assisted practices by the NRCS STC, or designee;
 - (3) Secure funding for the desired services of a TSP through contract development or contract modification before engaging the services of a TSP;
 - (4) Apply or commence a financially assisted practice within the first 12 months from the date this Contract is signed by NRCS. The participant may request, in writing, a waiver of this requirement from the NRCS STC, or designee for circumstances beyond the Participant's control;

- (5) Complete all cost-share practices at least one year before the expiration date of the Contract;
- (6) Establish conservation practices described in this Contract as scheduled, to operate and maintain these practices for the lifespan or "period of adoption" identified in this Contract, and to comply with the terms and conditions of this Contract and all applicable Federal, State, Tribal, and local laws;
- (7) Not undertake any action on land under the Participant's control which tends to defeat the purposes of the program, as determined by CCC;
- (8) Discontinue work in the general area of the site and notify NRCS immediately if during the construction of any practice a previously unidentified endangered species, archeological or historical site is encountered;
- (9) Provide receipts, as necessary, as proof of payments, and to maintain proof of payment documentation for three (3) years after the end of the fiscal year in which the practice or activity was completed, and to present this documentation to CCC within 30 days if selected for administrative compliance check;
- (10) Allow access to the land under Contract to the CCC representative for monitoring progress on this Contract;
- (11) Supply records and information as required by CCC to determine compliance with the Contract and requirements of the program;
- (12) Develop and implement all practices identified in a comprehensive nutrient management plan in those contracts that include a waste storage or treatment facility for contracts funded under 16 U.S.C. 3839; and
- (13) Implement a program of conservation measures that will result in a net savings, as defined by the STC, of ground and surface water resources in the agricultural operation of the producer for contracts funded under 16 U.S.C. 3839aa-9, Ground and Surface Water Conservation.

4 CONSERVATION PLAN

A By signing the Contract, the Participant agrees:

- (1) That the conservation plan is hereby incorporated as a part of the Contract; and

- (2) To implement and maintain the practices and activities as identified and scheduled in the conservation plan.

5 PAYMENTS

- A** Subject to the availability of funds, CCC will make cost-share payments at the rates specified in this Contract after a determination by CCC that an eligible conservation practice or activity has been established in compliance with the conservation plan, and in accordance with appropriate standards and specifications. In order to receive payments, the Participant, upon technical certification of the completed practice or activity, must execute and file with CCC a Form NRCS-CPA-1245, Practice Approval and Payment Application, along with any receipts, as necessary.
- B** Payments will be issued based on the unit rates provided in Form NRCS-CPA-1155, Conservation Plan Schedule of Operations. Payment amounts on Form NRCS-CPA-1155 reflect cost and/or payment rates in effect for the year of Contract obligation. **Subject to the availability of funds**, payments for a practice implemented as scheduled after 2007 will be updated to the payment rate in effect for the year the practice application was started. A conservation practice that requires modification to delay application after 2007 will not receive the updated payment rate, but will be paid based on the initial contract payment rate.
- C** In order to be reimbursed for technical services approved under this agreement and performed by a certified TSP hired by the Participant, a Participant must execute a request for payment on Form NRCS-CPA-1245. The Participant must also submit to CCC an invoice from the TSP for the work performed, as well as any documentation CCC may require in order to ensure that the technical services were carried out in accordance with NRCS requirements.

It is the Participant's responsibility to ensure that the technical services obtained from a TSP hired by the Participant meet program requirements. CCC will not reimburse the Participant if the technical services provided by the TSP do not meet the program requirements. If CCC terminates this Contract as provided under paragraph 10 of this appendix, CCC may seek reimbursement of any TSP payments made to the Participant.

- D** All payments received as part of a Contract are reported to the United States Internal Revenue Service (IRS) on Form 1099-G. For information related to tax liabilities, consult with a tax accountant or refer to IRS publication 225, Farmers Tax Guide.
- E** Payments will only be issued for practices or activities that meet or exceed the practice standards described in the NRCS Field Office

Technical Guide.

- F** Any participant that will receive financial benefit from the implementation of this Contract must be a signatory on the Contract. Any participant on the Contract may approve payment applications for the Contract, unless signature authority is limited by the Participant(s) on the Contract.

6 PROVISIONS RELATING TO TENANTS AND LANDLORDS

- A** No payment will be approved for the current year if CCC determines that any of the following conditions exist:
 - (1) The landlord or operator has not given the tenants that have an interest in the unit of concern covered by the conservation stewardship plan, or that have a lease that runs through this Contract period at the time of sign-up, an opportunity to participate in the benefits of the program.
 - (2) The landlord or operator 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 CCC, must be refunded with interest and no further payments shall be made.

7 MISREPRESENTATION AND SCHEME OR DEVICE

- A** A Participant who is determined to have erroneously represented any fact affecting a determination with respect to this Contract and the regulations applicable to this Contract, adopted any scheme or device which tends to defeat the purposes of this Contract, or made any fraudulent representation with respect to this Contract, will not be entitled to payments or any other benefits made under this Contract. The Participant must refund to CCC all payments received plus interest. In addition, CCC will terminate the Participant's interest in all program contracts.
- B** CCC will charge interest on monies it determines to be due and owing to CCC under this Contract from the date such monies were originally disbursed. 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 Treasury.
- C** The provisions of paragraph 7A of this Appendix shall be applicable in addition to any other criminal and civil fraud statutes.

8 CHANGES TO TERMS AND CONDITIONS OF THIS CONTRACT

- A** If any changes to the terms and conditions of this Contract become necessary prior to the date that this Contract is approved on behalf of CCC, CCC will notify, in writing, the Applicant signing the NRCS-CPA-1202 of such change and such person(s) will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from this Contract request. The Applicant agrees to notify, in writing, the CCC of an intention to withdraw the program participation request within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.
- B** CCC may unilaterally modify this Contract when the installed practice would cause adverse impacts to significant cultural and/or environmental resources without mitigation action.
- C** CCC may unilaterally modify this Contract when the amount of payment for a single contract item (practice or activity) increases by not more than one-thousand dollars (\$1,000) as the result of an increase in the number of units performed (quantity variation) by the Participant.
- D** The Participant and CCC may modify this Contract by mutual agreement when:
- (1) Both the Participant and the appropriate approving authority (STC, or Designated Conservationist) agree to this modification;
 - (2) At the request of the Participant, and upon approval of CCC, the modification is consistent with the purposes of the program;
 - (3) A transfer of this Contract occurs, provided CCC approval is obtained and the transferee accepts the terms of this Contract, and the transferee is eligible and accepts all responsibilities under this Contract including operation and maintenance of those practices already installed or to be installed.
- E** All modifications to this Contract processed through paragraph 8D must be approved by the authorized CCC official and the Participant or an individual having been granted signature authority through a valid Power of Attorney filed in the local Service Center.

9 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in this Contract.

10 CONTRACT TERMINATION

- A** If a Participant fails to carry out the terms and conditions of this Contract, CCC may terminate this Contract or determine that such failure does not warrant termination. In either case, CCC may require the Participant(s) to refund, with interest, payments received under this Contract, or require the Participant(s) to accept such adjustments in subsequent payments as are determined to be appropriate by CCC.

Refunds determined by CCC to be due and owing to CCC under this provision will accrue interest at the current value of funds rate, published annually in the Federal Register by the United States Department of Treasury, from the date originally disbursed to the Participant up to the day the repayment is received by CCC.

- B** The CCC may terminate this Contract, in whole or in part, without liability, if CCC determines that continued operation of this Contract will result in the violation of a Federal statute or regulation, or if CCC determines that termination would be in the public interest.

11 RECOVERY OF COST

- A** In the event an Environmental Quality Incentives Program (EQIP) Participant violates the terms of this Contract, the Participant voluntarily terminates this Contract before any contractual payments have been made, or this Contract is terminated with cause by CCC, the CCC will incur substantial costs in administering this Contract which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments plus interest due as set forth in paragraph 10, the EQIP Participant agrees to pay liquidated damages up to an amount equal to 20 percent of the total financial assistance obligated to the Participant in this Contract, at the time of termination [not applicable to a Wildlife Habitat Incentives Program (WHIP) participant]. This liquidated damages payment is for recovery of administrative costs and technical services and is not a penalty.

- B** The Participant may be required by the CCC to refund all or a portion of any assistance earned under the program if the Participant sells or loses control of the land under this Contract and the new owner or transferee is not eligible for the program, or refuses to assume responsibility under the Contract.

12 EFFECTIVE DATE

This Contract is effective when signed by the Participants and an authorized representative of CCC. Except as otherwise provided for herein, this Contract may not be terminated or modified unless by mutual agreement between the

parties. Within the dates established by CCC, this Contract must be signed by all required Participants. In the event that a statute is enacted during the period of this Contract which would materially change the terms and conditions of this Contract, the CCC may require the Participant to elect between modifying this Contract consistent with the provisions of such statute or Contract termination.

13 GENERAL TERMS

- A** The regulations in 7 CFR part 636 for WHIP, and 7 CFR part 1466 for EQIP 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 Contract shall be carried out in accordance with all applicable Federal statutes and regulations. Any ambiguities in this Contract and questions as to the validity of any of its specific provisions shall be resolved in favor of CCC so as to give maximum effect to the conservation purposes of this Contract.
- C** NRCS is administering this Contract on behalf of the CCC. Therefore, where this Contract refers to "CCC", NRCS may act on its behalf for the purposes of administering this Contract. When the term "Participant" is used in this Contract, it shall be construed to mean all Participants signing this Contract. Likewise, when the term "Applicant" is used in this Contract, it means all Applicants signing the program application.
- D** Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions (7 CFR part 3017).
 - (1) The Participant certifies to the best of the Participant's knowledge and belief, that the Participant and his or her principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within the three-year period preceding this agreement had 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;

(c) 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 13D(1)(b) of this certification; and

(d) Have not within the three-year period preceding this agreement had one or more public Contracts (Federal, State or local) terminated for cause or default.

(2) If the Participant is unable to certify to any of the statements set forth in paragraph 13D (1), the Participant shall attach an explanation to this agreement.

E This Contract is a financial assistance agreement, not a procurement contract and is governed by the terms set forth herein.

14 RIGHTS TO APPEAL AND REQUEST EQUITABLE RELIEF

A The Participant may appeal an adverse decision under this Contract in accordance with the appeal procedures set forth at 7 CFR part 11, Subpart A, and part 614. Pending the resolution of an appeal, no payments shall be made under this agreement. Before a Participant seeks judicial review, the Participant must exhaust all appeal rights granted within these regulations.

B The Participant may also request equitable relief as provided under 7 U.S.C. 7996 and 7 CFR 635 with the requirements of that provision.

15 EXAMINATION OF RECORDS

The Participant agrees to give the CCC or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Contract. The Participant agrees to retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable Office of Management and Budget circular.

16 DRUG-FREE WORKPLACE (7 CFR part 3021)

By signing this Contract, the Participant certifies that the Participant will comply with the requirements of 7 CFR part 3021. If it is later determined that the Participant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 7 CFR part 3021,) CCC, in addition to any other remedies available to the United States, may take action authorized under the Drug-Free Workplace Act.

**17 CERTIFICATION REGARDING LOBBYING (7 CFR part 3018)
(Applicable if this agreement exceeds \$100,000)**

A The Participant certifies, to the best of the Participant’s knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Participant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and
- (3) The Participant shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

**18 CERTIFICATION AND ASSURANCES REGARDING COMPLIANCE WITH PROVISIONS APPLICABLE TO FINANCIAL ASSISTANCE
(See generally 7 CFR parts 3015, 3016, and 3019))**

A As a condition of this Contract, the Participant certifies and assures that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3115.205(b) applicable to non-profit institutions, which are hereby incorporated into this Contract by reference, and such other regulatory and statutory provisions as are specifically set forth herein.

B Without limiting the general applicability of paragraph A above, the Participant, if it is a non-profit, further agrees to comply with the provisions of 7 CFR part 3019, including the contract provisions required at Appendix A.

The following owners, operators, and producers by entering their signature acknowledge receipt of this Appendix to Form NRCS-CPA-1202 and agree to its terms and conditions thereof. Further, if the undersigned are succeeding to an existing Contract, the undersigned agree and certify that no agreement exists or will be entered into between the undersigned, the previous owner and operator of the property, or mortgage holder that would, maintain or create an interest in the property for any previous Participant on this Contract for that property, or to receive payments under the contracts.

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