

## APPENDIX D

### GENERAL CONDITIONS FOR AGRICULTURAL AND FARMLAND PROTECTION IMPLEMENTATION AGREEMENTS

#### New York State Department of Agriculture and Markets

**These general conditions apply to the administrative aspects of the Grant Agreement and reflect New York State's contract recordkeeping and payment procedures. These general conditions cannot be changed.**

#### **PAYMENT**

Payment of state funds shall be made to the **Contractor** after approval of this Agreement by the State Comptroller, upon the submission of a payment request (Standard Voucher), and the following supporting documents:

1. a fully executed purchase agreement (even if development rights will be fully donated);
2. a Form B–Project Budget for Disbursement to represent the actual total costs of the farmland protection implementation project as well as the local matching contribution and the state funding requested;
3. a title insurance commitment for a policy to insure the conservation easement interest indicating an amount of coverage at least equal to the State's financial contribution toward the total project costs of the conservation easement transaction for the subject farm – provided that all title curatives required by the Department have been previously approved by the Department prior to disbursement of the State's financial contribution;
4. an appraisal by a New York State Certified General Real Estate Appraiser;
5. a legal survey (including corresponding legal description), which has been prepared by a licensed surveyor, of the proposed conservation easement area for the subject farm and which delineates each farmstead area;
6. an approved conservation easement or deed of development rights;
7. a draft baseline documentation report of the proposed conservation easement area for the subject farm which describes the condition of the property and an inventory of all man-made structures and improvements that will be present at the time when the conservation easement is conveyed;
8. a monitoring plan;

9. any agreement between the municipality and another to hold or maintain the interest in the real property, if applicable; and
10. a signed waiver, if applicable, pursuant to Section 305(4) of the Agriculture and Markets Law.

Prior to the final disbursement of contract funds awarded under this Agreement, the **Contractor** may submit a partial disbursement request for any or all of only the following administrative costs for any farmland protection implementation project(s) associated with this Agreement, provided that each such expense (or prorata portion thereof) shall ultimately be the responsibility of the **Contractor** or a project partner other than the participating landowner(s):

- title search (i.e., title report);
- legal survey;
- appraisal; and
- environmental assessment of the subject property(ies), if deemed necessary.

Any such partial disbursement request must be accompanied by the following supporting documents:

1. a Standard Voucher requesting payment for up to 75% of the costs incurred;
2. project budget identifying each but only those administrative costs (as identified above) that have been incurred for farmland protection implementation project(s) associated with this Agreement; and
3. invoice(s) or paid receipt(s) for services (as identified above) that have been received.

The **Contractor** shall submit all requests for payment, reports and supporting documents to the following address: NYS Department of Agriculture and Markets, Division of Fiscal Management, 10B Airline Drive, Albany, NY 12235. Invoices, standard vouchers and any reports will not be considered received by the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received by the Division of Fiscal Management.

Payment to the **Contractor** under this Agreement shall not be made unless the Contractor shall have submitted to the **Department** a written payment request together with such information as required by the Agreement. Payment shall not be due until the 60th calendar day after receipt of the payment request, where contract funds have been appropriated and made available to the **Department**.

Upon examination of the **Contractor's** payment request and supporting material, the **Department** may, in its sole discretion, modify or adjust the amount requested to reflect contract funds expended as of the date of the request. Subsequent to its review and approval of the payment request, the **Department** will transmit the request to the Comptroller for payment.

The total payment made under this Agreement will not exceed the **Contractor's** actual costs and expenses arising from the completion of the work under this Agreement. Any partial disbursement payment made under this Agreement shall be reconciled with the final disbursement(s) made for each farmland protection implementation project associated with this Agreement.

## **TITLE**

The **Contractor** shall ensure that the title to the lands or interests therein shall be unencumbered or, if encumbered by outstanding or reserved interests, the **Contractor** shall ensure that such encumbrance shall not interfere with the agricultural and farmland protection purpose for which the interest therein is being acquired. The **Contractor** shall provide a title policy and title insurance, at a minimum, for the State's share of the interest in real property being obtained. In the event of a failure of title, the **Contractor** will use the title insurance proceeds towards the purchase of an interest in another approved parcel contained in Appendix C or reimburse the **Department** for the amount of State funds paid.

## **EASEMENT REQUIREMENTS**

The **Contractor** shall require that all easements or other interests in land acquired under this agreement:

1. run with the land in perpetuity;
2. prevent the land from being converted to non-agricultural uses; and
3. require that all amendments to the approved easement be authorized by the **Department**.

## **APPROVED AGREEMENTS AND MONITORING PLANS**

The Contractor shall submit the proposed agreements to purchase development rights or to obtain a conservation easement, the monitoring plan and any sub-agreement to hold or maintain the interest in real property at least sixty (60) days prior to the planned submission of the payment request for that transaction. The **Contractor** and the **Department** shall negotiate the terms and conditions of such agreements and monitoring plans, when necessary. The **Department** shall advise the **Contractor** in writing when the agreements and monitoring plans have been approved. No funds available under this Agreement shall be disbursed until the **Contractor's** agreements and monitoring plan have been approved by the **Department**.

## **COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS**

The **Contractor** is responsible for complying with all local, state and federal laws applicable to the work performed under this Agreement.

## **PAYMENT CONTINGENCY**

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payment under this Agreement were appropriated to the **Department** during the **2007-2008** fiscal year. Payment for work under this Agreement which is completed by the **Contractor** after the **2007-2008** fiscal year is subject to appropriation or reappropriation of funds by the Legislature in each subsequent fiscal year.

## **FINANCIAL LIMIT**

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the signature page of this Agreement and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

## **CONTRACT EXPENDITURES**

Expenditures under this Agreement shall conform to the budget annexed as Appendix B, provided however, that the **Contractor** may vary budget amounts by not more than fifteen percent (15%) within each specific budget category. Any budget variance in excess of fifteen percent (15%) shall be made only upon the prior written approval of the **Department**. This paragraph does not apply to budget amounts of one thousand dollars (\$1,000.00) or less.

## **NON-DUPLICATION OF PAYMENTS**

The payments received by the **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the **Contractor** shall remit to the **Department** the amount which duplicated payment received from other sources.

## **SUBCONTRACTS**

Any subcontracts under this Agreement shall be in writing and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis.

## **FINAL REPORT**

Not later than ninety (90) days from completion of the work under this Agreement, the **Contractor** shall file with the **Department** a final report that includes the documentation set forth in Appendix E of this Agreement.

## **RECORDS MAINTENANCE, EXAMINATION AND RETENTION**

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

## **INDEMNIFICATION**

The **Contractor** agrees to indemnify and hold harmless the State of New York and the Department from all liability incurred by the **Department** for bodily injury and personal property damages resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** promptly notifies the **Contractor** of any such claim and affords the **Contractor** an opportunity to defend such claim and cooperates fully with the **Contractor** in the defense of any claims.

## **NON-SECTARIAN PURPOSE**

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

## **CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT**

Neither the **Contractor**, nor its agents, employees, suppliers or subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

## **DEVIATION FROM WORK**

The **Contractor** shall perform the work under this Agreement as set forth in the application attached as Appendix C. Any substantial deviation from the application shall require the prior written approval of the **Department**.

## **TERMINATION**

The Department may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) day's written notice.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the Contractor's control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

## **MODIFICATION**

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor** and approved by the Attorney General and Comptroller of the State of New York.

## **NECESSARY SIGNATURES**

If the financial limit under this Agreement exceeds Fifty Thousand Dollars (\$50,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by the Attorney General and the Comptroller of the State of New York.

## APPENDIX E

### FINAL REPORT DOCUMENTATION CHECKLIST

The **Contractor** shall provide the **Department** with a copy of each of the following documents within ninety (90) days following the closing of the conservation easement transaction(s):

- A closing statement for each conservation easement transaction.
- All closing checks associated with each conservation easement transaction.
- The final title insurance policy issued for each conservation easement.
- Any subordination agreements and any mortgage discharge statements that were required by the Department for each conservation easement.
- A fully executed stewardship agreement and any other agreement between applicant and easement holder if not the same entity (if applicable).
- A recorded conservation easement (or deed of development rights, or equivalent document).
- Final baseline documentation report (including all attachments thereto and as signed by landowner) for each conservation easement.
- Combined Real Estate Transfer Tax Return (form TP-584) as filed for each conservation easement.
- Easement holder's letter to the NYS Department of Environmental Conservation pursuant to Section 49-0305(4) of the Environmental Conservation Law.
- A statement of any problems encountered during the contract period which may have affected the completion of the plan of work.
- A letter from easement holder to the Department indicating the approximate date(s) of the first monitoring site visit for each conservation easement.