

FERTILIZER CONVERSION COST SHARE PROGRAM AGREEMENT

THIS FERTILIZER CONVERSION COST SHARE PROGRAM AGREEMENT (this “*Agreement*”), dated [●], 2024 (the “*Effective Date*”), by and between the N.C. FOUNDATION FOR SOIL AND WATER CONSERVATION, INC., a North Carolina nonprofit corporation and tax exempt organization described in § 501(c)(3) of the Code (the “*Grantor*”) and _____, a _____ (“*Grantee*”). The Grantor and Grantee are sometimes referred to individually as a “*Party*” and, collectively, as the “*Parties*”.

RECITALS

A. Pursuant to its Articles of Incorporation and Bylaws, the Grantor is organized and operated for charitable and educational purposes and, specifically, for the benefit of and to carry out the present and long-term mission and purposes of the North Carolina Soil & Water Conservation Districts that locally address statewide conservation needs.

B. Pursuant to House Bill 259, Session Law 2023-134, Page 326, Section 10.4 (the “*Act*”), the Grantor has been granted Four Million Dollars (\$4,000,000.00) by the State of North Carolina, EBS Award Number 2000071927 (the “*State Grant*”), for the purpose of providing cost-share assistance to Eligible Entities for the site engineering, permitting, acquisition, and installation of Fertilizer Equipment used to produce Fertilizer Products meeting applicable state and federal requirements for use in agricultural operations (the “*Cost Share Program*”).

C. In furtherance of its tax-exempt purposes under the Code, the Grantor has accepted the State Grant and administrative responsibility over the Cost Share Program pursuant to the Act and that certain Scope of Work by and between the Grantor and the North Carolina Department of Agriculture and Consumer Services (the “*NCDCA*”) with the intent to disburse grants to Eligible Entities and Eligible Projects, which the Grantor has determined will provide substantial public benefits to the State of North Carolina and its citizens and communities, including through reducing the total volume of Greenhouse Gas emissions and runoff associated with poorly utilized and stored animal waste from Livestock Operations.

D. The Grantor has determined that the Grantee is an Eligible Entity and offered Grantee the opportunity to participate in the Cost Share Program, and Grantee desires to participate in the Cost Share Program pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

1.1 **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth herein:

- (a) “*Act*” has the meaning set forth in the recitals hereof.

- (b) “**Affiliate**” means, with respect to any specified Person, any other Person that (i) directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person; (ii) beneficially owns or holds directly or indirectly fifty percent (50%) or more of the voting securities or other equity interest of the specified Person; or (iii) fifty percent (50%) or more of the voting securities or other equity interest of which is beneficially owned or held directly or indirectly by the specified Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- (c) “**Agreement**” has the meaning set forth in the Recitals hereto.
- (d) “**Alternate Financing**” has the meaning set forth in Section 2.6.
- (e) “**Annual Program Reports**” has the meaning set forth in Section 5.2(c).
- (f) “**Budget Worksheet**” means a budget worksheet proposed by Grantee based upon the Construction Quote provided as part of the Phase II Application, setting forth the Estimated Cost and each component line item of estimated direct costs and expenses directly associated with or related to site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment.
- (g) “**Business Day**” means any day except Saturday, Sunday, or any other day on which commercial banks located in Raleigh, North Carolina are authorized or required by law to be closed for business.
- (h) “**Business Plan**” means a business plan created, entered into, executed, and notarized by Grantee and any third parties involved in the design, construction, installation, or operation of the Fertilizer Equipment and the Fertilizer Purchaser setting forth (a) an executive summary summarizing Grantee’s goals and relevant information about Grantee’s ownership, employees, operations, locations, and experience in the animal waste processing industry, (b) the specific types of Fertilizer Products Grantee intends to produce using the Program Grant and Fertilizer Equipment and any relevant information related thereto, including technical specifications and pricing, (c) a market analysis for the Fertilizer Products, including (i) identification of one or more Fertilizer Purchasers, (ii) a description of and any applicable references to any existing, proposed, or contemplated Fertilizer Purchase and Sale Agreements with such Fertilizer Purchasers, and (iii) the proposed volume or amount of Fertilizer Grantee to be sold to each such Fertilizer Purchaser, (d) marketing strategies to the extent not fully explained by the Fertilizer Purchase and Sale Agreements, and (e) financial plans and projections, including, without limitation, an operating cost projection, for at least the Program Performance Period.
- (i) “**Code**” means the Internal Revenue Code of 1986, as amended.
- (j) “**Contractor**” means _____, or such other contractor as may be designated by Grantee and approved by (a) Grantor and (b) if applicable,

Fertilizer Purchaser pursuant to an applicable Fertilizer Purchase and Sale Agreement. For the avoidance of doubt, no Person may serve as the Contractor unless such Person is licensed and insured to operate as a commercial contractor in the State of North Carolina and provides three (3) references to Grantee and Grantor.

- (k) “**Cost Share Program**” has the meaning set forth in the Recitals hereto, subject to the terms and conditions set forth in this Agreement.
- (l) “**Design Proposal**” means plans and specifications showing the design, character, capacity appearance, and location of the Fertilizer Equipment to be installed by the Contractor on the Premises.
- (m) “**DEQ**” means the North Carolina Department of Environmental Quality.
- (n) “**DEQ Permits**” means any Permit(s) issued by DEQ, including, without limitation, the Animal Feeding Operations Permit for Distribution of Animal Waste Residual Solids.
- (o) “**Effective Date**” has the meaning set forth in the preamble hereof.
- (p) “**Eligible Entity**” means any Person who owns or operates an anaerobic lagoon or other liquid animal waste management system located in the State of North Carolina treating animal waste from Livestock Operations that generates sludge suitable for conversion into Fertilizer Products.
- (q) “**Eligible Project**” means any costs associated with the site engineering, permitting, acquisition, design, or installation of Fertilizer Equipment located in the State of North Carolina.
- (r) “**Estimated Cost**” has the meaning set forth in Section 2.2(a).
- (s) “**Event of Default**” has the meaning set forth in Section 3.2.
- (t) “**Fertilizer**” or “**Fertilizer Products**” means the fertilizer resource, intermediary, or soil additive derived from the collection and procession of sludge from anaerobic lagoons or other liquid animal waste management systems treating animal waste from Livestock Operations that is produced, processed, or otherwise generated on the Premises using the Fertilizer Equipment.
- (u) “**Fertilizer Equipment**” means the equipment, facilities, and associated structures installed by Grantee on the Premises for the production, collection, and transportation of Fertilizer, which constitutes the eligible project subject to the Program Grant.
- (v) “**Fertilizer Equipment Completion**” means that the Fertilizer Equipment is fully installed, connected to all necessary utilities, tested and able to commence delivery of Fertilizer and that Grantee has delivered proof of payment of Contractor to Grantor.

- (w) “**Fertilizer Equipment Completion Date**” means the date of the Fertilizer Equipment Completion.
- (x) “**Fertilizer Equipment Completion Report**” has the meaning set forth in Section 5.2(a).
- (y) “**Fertilizer Production**” means that the Fertilizer Equipment has commenced production and delivery of Fertilizer.
- (z) “**Fertilizer Production Date**” means the date of the Fertilizer Production.
- (aa) “**Fertilizer Production Report**” has the meaning set forth in Section 5.2(b).
- (bb) “**Fertilizer Purchase and Sale Agreements**” means any agreement for the sale and purchase of the Fertilizer Products from Grantee by one or more third-party Persons.
- (cc) “**Fertilizer Purchaser**” means the third-party Person or Persons committing to purchase the Fertilizer Products from Grantee pursuant to a Fertilizer Purchase and Sale Agreement.
- (dd) “**Financer**” has the meaning set forth in Section 2.6.
- (ee) “**Financing Pre-Approval**” has the meaning set forth in Section 2.6.
- (ff) “**Governmental Entity**” means any government, governmental department, commission, board, bureau, agency, court, or other instrumentality, whether foreign or domestic, of any country, nation, republic, federation, or similar entity or any state, province, county, parish or municipality, jurisdiction, or other political subdivision thereof.
- (gg) “**Grant Cap**” has the meaning set forth in Section 2.2(a).
- (hh) “**Grantee**” has the meaning set forth in the preamble hereof.
- (ii) “**Grantee Facilities**” means the equipment, facilities and associated structures relating to the Livestock Operation, independent in all respects of the Fertilizer Equipment.
- (jj) “**Grantee Funds**” has the meaning set forth in Section 2.6.
- (kk) “**Grantor**” has the meaning set forth in the preamble hereof.
- (ll) “**Intellectual Property**” means any and all right, title, and interest in or relating to intellectual property protected, created, or arising under the applicable laws of any jurisdiction or treaty throughout the world, including all copyrights, internet assets, patents, software, trade secrets, trademarks, and moral rights, and all other concepts, inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under any copyright laws), publicity rights, names, know-how, algorithms, models, ideas (whether or not protected under trade secret laws), and all other rights under design and intellectual and industrial property rights of any sort as they exist anywhere in the world.

- (mm) “**Livestock**” means cattle, sheep, swine, goats, farmed cervids, or bison.
- (nn) “**Livestock Operation**” means any operation related to the raising, sheltering, feeding, or processing of Livestock.
- (oo) “**NCDA**” has the meaning set forth in the recitals hereto.
- (pp) “**Permit**” means any permit, license, registration, identification number, franchise, consent, certificate, confirmation, permission, endorsement, waiver, certification or other authorization or approval issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any Applicable Laws including any relevant application for any of the foregoing.
- (qq) “**Person**” means an individual, general partnership, limited partnership, limited liability company, trust, estate, association, corporation, governmental entity or any other legal or commercial entity.
- (rr) “**Premises**” means, collectively, the real property on which is located (i) Grantee’s Livestock Operations, (ii) Grantee Facilities, and/or (iii) the Fertilizer Equipment, all as further described on Exhibit A hereto.
- (ss) “**Program Grant**” has the meaning set forth in Section 2.2(a).
- (tt) “**Program Grant Completion Payment Date**” has the meaning set forth in Section 2.2(b).
- (uu) “**Program Grant Production Payment Date**” has the meaning set forth in Section 2.2(c).
- (vv) “**Project Proposal**” means (a) Grantee’s Design Proposal, (b) Grantee’s Project Schedule, (c) Grantee’s Construction Quote, (d) Grantee’s Budget Worksheet, and (e) Grantee’s Business Plan.
- (ww) “**Project Schedule**” means the schedule for financing, permitting, procuring, constructing, and commissioning the Fertilizer Equipment proposed by Grantee and approved by Grantor as part of the Phase II Application, with such modifications as may have been subsequently approved by Grantor in writing, that sets forth (i) a proposed Required Fertilizer Equipment Completion Date, (ii) a proposed Fertilizer Equipment Completion Date, which shall be no later than the Required Fertilizer Equipment Completion Date, (iii) a proposed Required Fertilizer Production Date, (iv) a proposed Fertilizer Production Date, which shall be no later than the Required Fertilizer Production Date, and (v) such other milestones relating to financing, permitting, procuring, constructing and commissioning that are reasonably acceptable to Grantor and, if applicable, Fertilizer Purchaser, within such timeframe as may be required to receive the Program Grant hereunder.
- (xx) “**Required Fertilizer Equipment Completion Date**” means the date, as set forth in the Project Schedule attached hereto as Exhibit B, on or before which Grantee shall be required

to achieve Fertilizer Equipment Completion, which shall be no later than December 31, 2026.

- (yy) “**Required Fertilizer Production Date**” means the date, as set forth in the Project Schedule attached hereto as Exhibit B, on or before which Grantee shall be required to achieve Fertilizer Production, which shall be no later than March 31, 2027.
- (zz) “**Term**” has the meaning set forth in Section 3.1.

ARTICLE II ACCEPTANCE; PROGRAM GRANT; TERMS AND CONDITIONS

2.1. **Acceptance of Grantee.** Having determined that Grantee meets the eligibility criteria set forth in the Act for an Eligible Entity and the proposed project meets the eligibility criteria set forth in the Act for an Eligible Project, Grantor hereby accepts Grantee for participation in the Cost Share Program, subject to the terms and conditions contained herein.

2.2. **Program Grant; Payment.**

- (a) The estimated direct costs and expenses directly associated with or related to site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment as set forth in the Budget Worksheet is _____ Dollars (\$ _____) (the “**Estimated Cost**”). Based on the Estimated Cost, and contingent on (a) Grantee’s receipt and/or maintenance of all applicable Permits, including the DEQ Permits, copies of which Grantee has attached hereto as Exhibit G, (b) Grantee’s receipt of Financing Pre-Approval, (c) Fertilizer Equipment Completion occurring on or before the Required Fertilizer Equipment Completion Date, (d) receipt by Grantor of the Fertilizer Equipment Completion Report, and (e) Grantee’s compliance with all of the terms and conditions of this Agreement, Grantor hereby agrees to grant to Grantee _____ Dollars (\$ _____) of the amounts paid by Grantee (or Financer) to Contractor for the site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment (the “**Program Grant**”). The Program Grant may be used only for payment of up to fifty percent (50.00%) or Nine Hundred Sixty Thousand Dollars (\$960,000.00), whichever is lower (the “**Grant Cap**”), of the **actual, direct** costs and expenses directly associated with or related to site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment and only if such costs and expenses have been set forth as line items of the total Estimated Cost in the Budget Worksheet, as the same may be amended as permitted herein.
- (b) Grantor will pay eighty-five percent (85.00%) of the Program Grant to Grantee in directly deposited funds within thirty (30) business days after the Fertilizer Equipment Completion Date and receipt of the Fertilizer Equipment Completion Report (the date on which the first eighty-five percent (85.00%) of the Program Grant is actually paid, the “**Program Grant Completion Payment Date**”) pursuant to the payment instructions set forth on Exhibit C or such other payment instructions provided in writing by Grantee to Grantor prior to the Program Grant Completion Payment Date.
- (c) Grantor will pay the remaining fifteen percent (15.00%) of the Program Grant to Grantee in directly deposited funds within thirty (30) business days after the one (1) year

anniversary of the Fertilizer Production Date and receipt of the Fertilizer Production Report (the date on which the remainder of the Program Grant is actually paid, the “**Program Grant Production Payment Date**”) pursuant to the payment instructions set forth on Exhibit C or such other payment instructions provided in writing by Grantee to Grantor prior to the Program Grant Production Payment Date.

- (d) Grantor reserves the right to adjust the absolute dollar value Grant Cap in its sole and absolute discretion for Grantee or any other recipient for Cost Share Program grant funds at any time, with or without notice to Grantee.

2.3. **Grantee Match.** Grantee acknowledges and agrees that the Program Grant is intended to be used only for payment up to the Grant Cap of the *actual, direct* costs and expenses directly associated with or related to site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment and only if such costs and expenses have been set forth as line items of the total Estimated Cost in the Budget Worksheet, as the same may be amended as permitted herein. Grantee further acknowledges and agrees that it will be solely responsible for payment of the remainder of the actual costs and expenses directly associated with or related to site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment, whether such costs and expenses exceed the Estimated Cost, resulting in Grantee paying for at least the other fifty percent (50.00%) in at least a 1:1 match. The Grantee’s estimated contribution will be _____ (the “**Grantee Match**”). The Grantee Match may be cash or in-kind non-cash tangible property, including, without limitation, already-owned equipment (the “**Match Property**”). If the Grantee intends to use any Match Property, the Grantee has listed the Match Property on Exhibit C to the Phase II Application to the Cost Share Program, identifying its appraised value, and attaching a notarized copy of the professional, third-party appraisal of such Match Property, which such Exhibit C and related appraisals are reattached as Exhibit D hereto. Grantee covenants and agrees that Grantee will comply with the terms herein related to use, ownership, and maintenance of any Match Property making up any portion of the Grantee Match. As stated in the Phase II Application, only Grantee’s equity portion of such Match Property may be used towards the total value of the Grantee Match and Grantee represents, warrants, and covenants that the appraisals attached hereto as Exhibit D remain true and correct as of the date hereof and will remain true and correct as of the Program Grant Completion Payment Date and the Program Grant Production Payment Date.

2.4. **Purchase Agreement.** On or before the Fertilizer Production Date, Grantee has entered or will enter into one or more Fertilizer Purchase and Sale Agreements, copies of which are or will be attached as Exhibit E hereto, with a term of at least five (5) years. To the extent Grantee enters into any Fertilizer Purchase and Sale Agreement(s) after the Effective Date hereof, such Fertilizer Purchase and Sale Agreement(s) may be attached hereto as an addition to Exhibit E without the need to formally amend this Agreement.

2.5. **Overpayment; Repayment.**

- (a) To the extent that Grantor pays any Program Grant to Grantee that would exceed the Grant Cap imposed by the Act or by the Grantor, Grantee agrees and covenants to return any Program Grant funds in excess of the Grant Cap to Grantor as soon as alerted in writing to such overpayment.
- (b) If Grantee fails to keep the Fertilizer Equipment in good working order (ordinary wear and tear excepted) and operate the Fertilizer Equipment, or such replacement Fertilizer Equipment as allowed by Section 4.1(f) hereof, as intended in the Project Design for a

period of five (5) years following the Effective Date (the “**Program Performance Period**”), Grantee agrees and covenants to return such prorated portion of the Program Grant as is equal to the Program Grant amount multiplied by a fraction, the numerator of which is the number of days remaining in the Program Performance Period and the denominator of which is the total number of days in the Program Performance Period, to Grantor within sixty (60) days from the date on which the Fertilizer Equipment ceases operation.

- (c) Without limiting the generality of Sections 2.5(a) and 2.5(b), if Grantee sells, assigns, or otherwise transfers the Match Property, except as specifically contemplated by Section 4.1(f) hereof, Grantee agrees and covenants to repay to Grantor the fair market value set forth in the applicable appraisal for such Match Property attached as Exhibit D hereto within thirty (30) days of the date of such sale, assignment, or transfer, and to provide copies of any documentation of such sale, assignment, or transfer to Grantor.

2.6. **Financing.** On or prior to the Effective Date, Grantee has (a) in its possession available cash or cash equivalents in form and amount reasonably satisfactory to the Grantor (“**Grantee Funds**”) and has certified such in a notarized writing to Grantor, or (b) received pre-approvals and/or commitment letters from _____ (the “**Financer**”) pursuant to which Financer has agreed, subject to the terms and conditions required by Financer, to provide _____ Dollars (\$ _____) attached hereto as Exhibit F (the “**Financing Pre-Approval**”), in each case to finance the site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment in an amount sufficient to cover the entire Estimated Cost set forth in the Budget Worksheet. Grantee represents and warrants that, if applicable, subject to receipt of the financing set forth in the Financing Pre-Approval, the Grantee Funds and the aggregate proceeds of the financing contemplated by the Financing Pre-Approval will collectively be sufficient to enable Grantee to pay the Contractor in full for the site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment through Fertilizer Equipment Completion. If applicable, Grantee shall use commercially reasonable efforts to cause the financing contemplated by the Financing Pre-Approval, subject to the terms and conditions set forth therein, to be available within thirty (30) days after the Effective Date; *provided, however*, that if the funds in the amount set forth in the Financing Pre-Approval become unavailable to Grantee on the terms and conditions set forth therein, Grantee shall use commercially reasonable efforts to obtain such funds to the extent available on terms and conditions no less favorable in the aggregate to Grantee than as set forth in the Financing Pre-Approval (the “**Alternate Financing**”). If applicable, Grantee shall retain the Grantee Funds until such funds are required to be paid for the site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment and ensure that no amount of such Grantee Funds are expended for any purpose other than the site engineering, permitting, acquisition, design, or installation of the Fertilizer Equipment.

2.7. **Design and Installation of Fertilizer Equipment.** Grantee, or a designee of Grantee approved by Grantor, agrees to perform, or cause to be performed, all site engineering, design, procurement, construction, setup, maintenance, repair, upkeep and any other activities necessary to ensure the installation and continued operation of the Fertilizer Equipment in accordance with the performance characteristics and Project Schedule set forth in the Project Proposal and any and all requirements of any applicable Permits and applicable law. All Grantee obligations described above in this Section 2.7 shall be at Grantee’s sole cost and expense; *provided, however*, that, Grantor shall provide the Program Grant to Grantee in accordance with the terms and conditions of this Agreement, unless this Agreement is earlier terminated in accordance with Section 3.2.

2.8. **Project Proposal.** On the Effective Date, Grantee will deliver to Grantor the final Project Proposal. The Project Proposal must satisfy any and all requirements provided in (a) any applicable Permits and (b) any other applicable law. The Project Proposal, including (a) Grantee's Design Proposal, (b) Grantee's Project Schedule, (c) Grantee's Construction Quote, (d) Grantee's Budget Worksheet, and (e) Grantee's Business Plan, and any subsequent permitted amendments thereto, is attached as Exhibit B hereto, and such supplements shall not constitute an amendment or modification of this Agreement. Until Fertilizer Equipment Completion has been achieved, Grantee shall report to Grantor quarterly and upon request of Grantor on the status of the construction of the Fertilizer Equipment and the progress of Grantee towards completion of each project milestone set forth in the Project Schedule and any cost overruns beyond the total Estimated Cost or any line-item portion thereof set forth in the Budget Worksheet. The Project Proposal, or any portion thereof, including the Budget Worksheet or any line item thereon, may only be amended or revised with the prior written approval of Grantor, which Grantor may withhold in its sole and absolute discretion; provided, however, that Grantee may revise line items by up to ten percent (10.00%), so long as the total Estimate Cost remains the same and the Program Grant does not increase, without the prior written approval of Grantor. In such an event, Grantee will promptly provide notice of such revision, setting forth the full revised Budget Worksheet and justification for the revision, to Grantor.

2.9. **Fertilizer Equipment Completion and Fertilizer Production.**

- (a) Upon completion of installation of the Fertilizer Equipment, Grantee shall deliver to Grantor documentation that the Fertilizer Equipment is complete, tested and operating within its design specifications, and ready to commence commercial operations. Promptly following receipt of such notice, Grantor, and any third-party Person designated by Grantor, may inspect the Fertilizer Equipment and perform any inspections or testing that Grantor determines are necessary or appropriate to verify Fertilizer Equipment Completion. If Grantor determines that Fertilizer Equipment Completion has been achieved, with or without independent investigation, Grantor shall deliver written notice to Grantee to that effect indicating the date on which Fertilizer Equipment Completion occurred, such date being the Fertilizer Equipment Completion Date. If Grantor determines that Fertilizer Equipment Completion has not been achieved, Grantor shall deliver written notice to Grantee to that effect and indicate corrective actions that need to be taken within forty-five (45) days of original notice of completion. Following such corrective actions, Grantee shall repeat the process set forth in this Section 2.9(a) until Grantor determines in its sole and absolute discretion that Fertilizer Equipment Completion has been achieved.
- (b) Upon initiation of production of Fertilizer on the Fertilizer Equipment, Grantee shall deliver to Grantor documentation that the Fertilizer Equipment has commenced commercial operations. Promptly following receipt of such notice, Grantor, and any third-party Person designated by Grantor, may inspect the Fertilizer Equipment and perform any inspections or testing that Grantor determines are necessary or appropriate to verify Fertilizer Production. If Grantor determines that Fertilizer Production has been achieved, with or without independent investigation, Grantor shall deliver written notice to Grantee to that effect indicating the date on which Fertilizer Production occurred, such date being the Fertilizer Production Date. If Grantor determines that Fertilizer Production has not been achieved, Grantor shall deliver written notice to Grantee to that effect and indicate corrective actions that need to be taken within forty-five (45) days of original notice of production. Following such corrective actions, Grantee shall repeat the process set forth in

this Section 2.9(b) until Grantor determines in its sole and absolute discretion that Fertilizer Production has been achieved.

2.10. **DEQ Permits.** As of the Effective Date, Grantee either has (a) previously obtained the DEQ Permits, or (ii) simultaneous with submission of the Phase II Application submitted by Grantee to Grantor, Grantee has caused the DEQ Permit Application attached to the Phase II Application to be filed with the applicable division of the DEQ, the DEQ Permit Application has been approved by the DEQ, and the DEQ has issued the DEQ Permits attached hereto as Exhibit G to Grantee. Following receipt of the DEQ Permits, Grantee has all necessary and required Permits used or necessary for the lawful conduct of Grantee's business operations as presently conducted by Grantee and as contemplated in the Design Proposal, Project Schedule, Business Plan, and this Agreement during the Program Performance Period, including, without limitation, Grantee's Facilities, Grantee's Livestock Operation, and Grantee's or any third-party Person's operation of the Fertilizer Equipment and manufacture and sale of Fertilizer Products. Each such Permit is valid, binding, and in full force and effect as to the Grantee, and will not be affected by, or require modification or re-issuance, as a result of Grantee's application to, participation in, or receipt of the Program Grant from the Cost Share Program and Grantor. Except as may be disclosed in writing to Grantor in the Phase II Application, Grantee has not received any notice that it is in default (or with the giving or notice or lapse of time or both, would be in default) under any such Permit. Grantee is not the subject of any Governmental Entity proceeding or investigation, nor is aware of any factual basis pursuant to which any Permit of Grantee will or could be revoked, terminated, or rescinded, or issued, renewed, or modified in terms or conditions that are substantially different than those currently in effect (including, without limitation, any violation or infraction related to Grantee's Livestock Operations, Grantee's Facilities, Grantee's Premises, the Fertilizer Equipment, or the Fertilizer Products that could result in any of the foregoing). Grantee acknowledges and agrees that, in addition to the other conditions set forth in the Phase II Application and this Agreement, payment by Grantor of the Program Grant and Fertilizer Equipment Completion is expressly conditioned on Grantee obtaining and maintaining all applicable permits, including, without limitation, the DEQ Permits, and Grantee, and Grantee's officers, employees, agents, and representatives, as applicable, complying with all rules and regulations applicable to Grantee's business operations, Livestock Operations, Grantee's Facilities, the Fertilizer Equipment, and the manufacture and sale of the Fertilizer Products, whether established by North Carolina law or other applicable law.

2.11. **Intellectual Property.** Each Party shall continue to own and retain all right, title, and interest in such Party's Intellectual Property. Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose, from time to time, certain material, non-public business, technical, and financial information, including Intellectual Property ("**Proprietary Information**"). During the Program Performance Period and for two (2) years thereafter, the Receiving Party agrees to keep such Proprietary Information confidential and not to use or divulge such Proprietary Information except as may be reasonably necessary to fulfill the responsibilities and obligations of such Receiving Party under this Agreement. For the avoidance of doubt, Grantor may use and disclose any of Grantee's Proprietary Information with or without notice to Grantee (a) for any purpose reasonably connected to this Agreement, the Cost Share Program, the Act, the mission and purpose of Grantor, or as otherwise required by applicable law, or (b) for any reason if disclosure is being made to any Governmental Entity with regulatory authority over or related to Grantor, the Cost Share Program, Grantee, Grantee's Livestock Operations, Grantee's Facilities, Grantee's Premises, the Fertilizer Equipment, or the Fertilizer Products. Nothing contained in this section will prohibit Grantee from disclosing any Proprietary Information to any Governmental Authority with prior written notice to Grantor if allowed by applicable law.

ARTICLE III TERM; TERMINATION

3.1. **Term.** This Agreement will commence on the Effective Date and, unless earlier terminated as provided herein, shall continue in effect until the Program Grant Production Payment Date (the “*Term*”).

3.2. **Termination.** This Agreement may be terminated prior to the expiration of the Term:

- (a) by mutual agreement of the Parties hereto, given in writing;
- (b) by Grantor with thirty (30) days written notice to Grantee, and, if capable of cure, opportunity for Grantee to cure within such thirty (30) day period, if any of the following occur (each, an “*Event of Default*”):
 - (i) Grantee has made a material misrepresentation under this Agreement, the Cost Share Program application, any Permit, including, without limitation, any DEQ Permits, or any supporting materials or statements related hereto or thereto;
 - (ii) Any Permit is revoked, cancelled, or suspended by DEQ or another applicable Governmental Entity or Grantee takes any action that, in the sole and absolute discretion of Grantor, could result in the revocation, cancellation, or suspension of any Permit by DEQ or another Governmental Entity;
 - (iii) Grantee fails to provide Grantee Funds or secure funding for the installation and purchase of the Fertilizer Equipment pursuant to the Financing Pre-Approval and is unable to secure Alternate Financing within ninety (90) days thereafter;
 - (iv) Grantee defaults or breaches any term of any Fertilizer Purchase and Sale Agreement such that Fertilizer Purchaser is entitled to terminate such Fertilizer Purchase and Sale Agreement;
 - (v) Fertilizer Equipment Completion does not occur by the Required Fertilizer Equipment Completion Date;
 - (vi) a Force Majeure Event affecting Grantee continues for more than ninety (90) days and Grantor determines, in its reasonable discretion, that it is unreasonable to continue efforts, or allow Grantee to continue efforts, to mitigate damages caused by the Force Majeure Event;
 - (vii) Grantee breaches any provision of this Agreement not otherwise enumerated in this Section 3.2(b) and either the breach cannot be cured or, if the breach can be cured, it is not cured by Grantee within thirty (30) days after Grantee’s receipt of written notice of such breach;
 - (viii) Grantee terminates its business or transfers, directly or indirectly, by operation of law or otherwise, any ownership interest in, or substantially all of the assets of, its business or the Premises without the prior written consent of Grantor;

- (ix) Grantee is convicted of, or enters a plea of guilty or nolo contendere to, a crime that constitutes a felony or any crime that involves dishonesty, disloyalty, or misconduct by Grantee that, in the sole and absolute discretion of the Grantor, has an adverse effect on the Premises, operations, business, or reputation of Grantee, the Grantor, or any Fertilizer Purchaser;
- (x) Grantee (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (D) makes or seeks to make a general assignment for the benefit of its creditors, (E) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business, or (F) allows any lien or encumbrance to be placed on the Environmental Attributes, Premises or Fertilizer Equipment that is not removed within thirty (30) days after Grantee's receipt of written notice of such lien or encumbrance;
- (xi) Grantee or any of Grantee's owners, officers, directors, employees, agents, or representatives, engage in any other conduct or take any other action that Grantor, in its sole and absolute discretion, determines (A) could negatively impact Grantor's tax-exempt status, (B) is inconsistent with or violative of the terms of this Agreement, the Cost Share Program, the State Grant, the Act, or any other applicable Law, or (C) reflects negatively on Grantor, the State of North Carolina or any political subdivision thereof, or the Cost Share Program.

3.3. **Effect of Termination; Survival.** In the event of termination of this Agreement in accordance with Section 3.2 or at the expiration of the Term, as applicable, this Agreement shall thereafter become void and there shall be no liability of any party hereto, except that Sections 3.2, 5.1, 5.3, 5.4, 5.5, 5.6, 6.13, 6.16 and 6.17, and any other provision, which, by its terms should survive the termination of this Agreement, shall survive the termination of this Agreement.

ARTICLE IV REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1. **Representations, Warranties and Covenants of Grantee.**

- (a) Grantee represents and warrants that it has sufficient skill, experience, expertise, knowledge, resources and technology capabilities to perform its obligations under this Agreement.
- (b) Grantee covenants that it shall, prior to Fertilizer Equipment Completion and the Program Grant Completion Payment Date, have received, and shall maintain, the approval of all public regulatory bodies (including permits and the DEQ Permits) necessary to perform Grantee's obligations under this Agreement.
- (c) Excluding approvals to be obtained by Grantee from governmental agencies, Grantee represents and warrants that the execution and delivery of this Agreement and Grantee's

performance under this Agreement shall not require the consent of any third party, except as disclosed in the Business Plan.

- (d) Grantee represents and warrants that it is currently, and covenants that it shall remain, in compliance in all material respects with all applicable federal, state and local laws and regulations related to the performance of its obligations under this Agreement, any applicable Fertilizer Purchase and Sale Agreement, and its business operations, including, without limitation, the applicable terms of Section 143C-6-23 of the North Carolina State Budget Act and any and all rules and regulations promulgated thereunder.
- (e) Grantee represents, warrants, and covenants to Grantor that it has good, valid, and indefeasible title to all of the Match Property, free and clear of all liens, except such liens as are clearly disclosed to Grantor on Exhibit D hereto and cover such portion of the Match Property as is not used as part of the value of the Grantee Match.
- (f) Grantee represents, warrants, and covenants to Grantor that all Match Property is in good working condition (except for ordinary wear and tear) to allow Grantee to conduct its Livestock Operation as currently operated and to operate the Fertilizer Equipment as contemplated in the Design Proposal and Business Plan for the duration of the Program Performance Period. Grantee will maintain and repair such Match Property as required to keep such Match Property in good working condition (ordinary wear and tear excepted) and fit for purpose for operation of the Fertilizer Equipment during such Program Performance Period. If any Match Property ceases to be in good working condition, and is not repaired within thirty (30) Business Days during the Program Performance Period, Grantee shall notify Grantor in writing, detailing the Match Property affected, the duration of the disrepair, and whether Grantee intends to repair or replace the affected Match Property. If (i) Grantee cannot or does not cause the Match Property to be repaired within thirty (30) Business Days, or Grantee determines the Match Property should be replaced, Grantee may sell the Match Property at fair market value and covenants and agrees to use the proceeds of such sale (together with any other funds that may be required) to purchase replacement Match Property of similar nature and kind sufficient to replace the function of the broken Match Property and allow proper operation of the Fertilizer Equipment. If such a sale is consummated, Grantee shall immediately notify Grantor in writing, attaching full copies of the purchase and sale documentation. Upon purchase of any replacement Match Property in accordance with this Section 4.1(f), Grantee will (i) obtain and provide to Grantor a notarized copy of a professional, third-party appraisal of such replacement Match Property, which Grantor will subsequently attach hereto as an addition to Exhibit D and (ii) maintain and repair such replacement Match Property as required to keep such replacement Match Property in good working condition (ordinary wear and tear excepted) and fit for purpose for operation of the Fertilizer Equipment during the Program Performance Period or the two (2) year period following the date of purchase of such replacement Match Property, whichever is longer, and (iii) comply with the other repair or sale and replacement provisions for such replacement Match Property as are set forth in this Section 4.1(f).

- (g) Grantee covenants that it shall pay for all labor and associated costs and expenses, including payroll taxes and fringe benefits, necessary to perform its obligations under this Agreement. Applicant shall comply with all federal, state and local labor and employment laws in all material respects.
- (h) Grantee covenants that it shall, subject to any Force Majeure Event, maintain a continuous course of construction and installation activities (in accordance with the Design Proposal and Business Plan provided pursuant to Section 2.8) to achieve Fertilizer Equipment Completion.
- (i) Without limiting Section 4.1(c) above, Grantee covenants that it shall at all times comply with all applicable laws, permits, requirements relating to utilities, environmental compliance, waste disposal, odor control and maintenance, and any applicable Fertilizer Purchase and Sale Agreement.

ARTICLE V COMPLIANCE; LIMITATION ON LIABILITY; INDEMNIFICATION

5.1. **Agreement to Maintain Records.** During the Term of this Agreement, and thereafter (a) for a period of five years, (b) until October 1, 2033, or (c) until any ongoing audits, investigations, or reviews have been resolved, whichever date is later (such period, the “*Record Maintenance Period*”), Grantee shall maintain consistently applied, accurate, and complete books, records, and other documents supporting all costs and expenses of the site engineering, design, acquisition, and installation of the Fertilizer Equipment, arrangements with Contractor, and net sales of Fertilizer to any Fertilizer Purchaser under any applicable Fertilizer Purchase and Sale Agreement. Grantee shall maintain the books, records, and other documents in conformance with generally accepted accounting principles. Such books, records, and other documents shall be kept at or accessible from Grantee’s place of business.

5.2. **Reporting.**

- (a) As soon as possible, and in no event greater than thirty (30) days, following Fertilizer Equipment Completion, Grantee shall provide a comprehensive report to Grantor detailing (a) all costs and expenses of the site engineering, design, acquisition, and installation of the Fertilizer Equipment and (b) expected net sales of Fertilizer to any Fertilizer Purchasers in the following twelve (12) month period (the “*Fertilizer Equipment Completion Report*”).
- (b) As soon as possible, and in no event greater than thirty (30) days, following the one year anniversary of the Fertilizer Production Date, Grantee shall provide a comprehensive report to Grantor detailing (a) all net sales of Fertilizer to all Fertilizer Purchasers since Fertilizer Equipment Completion or the preceding twelve (12) month period, whichever starting date was most recent, (b) all maintenance or replacement costs related to the Fertilizer Equipment, and (c) the total quantity of liquid animal waste management system residual sludges converted to Fertilizer since Fertilizer Production (the “*Fertilizer Production Report*”).
- (c) On or before August 30 of each calendar year during the Record Maintenance Period, unless a shorter period of time is subsequently specified in writing by Grantor, Grantee shall provide a comprehensive report to Grantor detailing (a) all net sales of Fertilizer to all Fertilizer Purchasers since Fertilizer Equipment Completion or the preceding twelve

- (12) month period, whichever starting date was most recent, (b) all maintenance or replacement costs related to the Fertilizer Equipment, and (c) the total quantity of liquid animal waste management system residual sludges converted to Fertilizer since Fertilizer Production or the preceding twelve (12) month period, whichever starting date was most recent (the “*Annual Program Reports*”).
- (d) Any breach of this Section 5.2 by Grantee shall constitute a material breach of this Agreement, not subject to cure.

5.3. **Grantor Right of Entry.** During the Term of this Agreement, and thereafter for the duration of the Record Maintenance Period, from time to time and at reasonable times, upon seven (7) days prior written notice, Grantor and its agents, and the representatives of any applicable regulatory authority, shall have the right to enter upon the Premises to conduct the audit or audits contemplated by Section 5.4, to verify the matters included in the Annual Program Reports, the Fertilizer Equipment Completion Report, or the Fertilizer Production Report contemplated by Section 5.2, and to inspect the Fertilizer Equipment pursuant to Section 2.9; provided, however, that no such inspection shall be construed as an approval of Grantee’s installation, construction, or operation of the Fertilizer Equipment nor an acknowledgment or agreement that any such installation, construction, or operation complies with the approved Design Proposal or the terms and conditions of this Agreement or any applicable Fertilizer Purchase and Sale Agreement. When exercising any of its rights under this Section 5.3, Grantor shall comply with all reasonable and appropriate biosecurity measures required by DEQ, any other Governmental Entity, any Fertilizer Purchaser, or Grantee.

5.4. **Audit.** Grantor has determined that Grantee is a non-governmental entity and is subject to the reporting requirements mandated by N.C. Gen. Stat. Section 143C-6-23. N.C. Gen. Stat. Section 143C-6-23 requires that any Grantee that receives, uses or expends funds provided by the State of North Carolina in an amount greater than Five Hundred Thousand Dollars (\$500,000.00) within any one fiscal year must have “Yellow Book Audit” in accordance with 09 N.C.A.C. 03M.0205. An electronic copy of such audit must be submitted to Grantor within nine (9) months of Grantee’s fiscal year end. In accordance with the foregoing requirements, during the Term of this Agreement, and thereafter for the duration of the Record Maintenance Period, on seven (7) days’ prior notice and during regular business hours, (a) Grantor, its representatives, and the representatives of any applicable regulatory authority, may, at their own expense, or (b) Grantee, upon request of Grantor, must, audit all of Grantee’s books, records, and other documents as are necessary to verify compliance with the terms and conditions of this Agreement, including, without limitation, any “Yellow Book Audit” required by N.C. Gen. Stat. Section 143C-6-23 if Grantee’s Program Grant is in excess of Five Hundred Thousand Dollars (\$500,000.00).

5.5. **Compliance with Applicable Tax Law.** Grantor is organized and operated as a nonprofit corporation under the North Carolina Nonprofit Corporation Act and is a tax-exempt organization described in Section 501(c)(3) of the Code. Grantee covenants and agrees not to take any action which is reasonably likely to cause, immediately or with the passage of time, the Grantor to lose its treatment as a charitable organization under the Code or to be subject to any intermediate sanctions for engaging in any prohibited or excess benefit transactions under Section 4958 of the Code or other applicable law. Accordingly, Grantee represents and warrants to Grantor that as of the date hereof, the Program Grant Completion Payment Date, the Program Production Payment Date, and for the five (5) year periods preceding the date hereof, Grantee, and Grantee’s shareholders, members, partners, investors, directors, managers, officers, employees, or any of the foregoing’s immediate family members are not “Disqualified Persons” as that term is defined in Section 4958 of the Code and Section 53.4958-3T of the Treasury Regulations promulgated thereunder.

Furthermore, Grantee acknowledges that Grantor will not award any Program Grant funds to Grantee if such funds will be used, directly or indirectly, or as reimbursement of other funds used to (i) influence legislation or (ii) participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, and Grantee represents and warrants that no portion of any Program Grant award to Grantee hereunder will be used for such purposes. Finally, Grantee certifies to Grantor that Grantee does not have any overdue tax debts, as defined by Section 105-243.1 of the North Carolina General Statutes, or any other unpaid tax liabilities or assessments under any applicable provision of the Code.

5.6. Grantor Disclaimer. NO ACTION OR INACTION BY THE GRANTOR, INCLUDING GRANTOR'S REVIEW OF THE DESIGN PROPOSAL OR BUSINESS PLAN OR APPROVAL AND PAYMENT OF THE PROGRAM GRANT SHALL ALTER ANY OBLIGATIONS OR RESPONSIBILITIES OF GRANTEE HEREUNDER, NOR SHALL SUCH REVIEW OR APPROVAL (1) CREATE ANY WARRANTIES ON THE PART OF GRANTOR AS TO THE DESIGN, SUITABILITY, CAPABILITY OR EXPECTED PERFORMANCE OF THE FERTILIZER EQUIPMENT OR THE FEASIBILITY OF THE PROJECT SCHEDULE OR (2) IMPOSE ANY LIABILITY OR RESPONSIBILITY WHATSOEVER UPON GRANTOR WITH RESPECT TO LATENT OR PATENT DEFECTS IN OR RELATING TO THE FERTILIZER EQUIPMENT, INCLUDING DEFECTS RELATING TO ENGINEERING MATTERS, STRUCTURAL DESIGN MATTERS AND THE QUALITY OR SUITABILITY OF MATERIALS. IN ADDITION, GRANTEE SHALL BE SOLELY RESPONSIBLE, AND GRANTOR SHALL HAVE NO LIABILITY WHATSOEVER, FOR (A) THE COST AND EXPENSE OF DESIGN, SITE ENGINEERING, CONSTRUCTION, ACQUISITION, AND INSTALLATION OF THE FERTILIZER EQUIPMENT, EXCEPT FOR THE PROGRAM GRANT IN ACCORDANCE WITH THE TERMS HEREOF, (B) THE COST AND EXPENSE OF OPERATION, REPAIR, MAINTENANCE, OR REPLACEMENT OF THE FERTILIZER EQUIPMENT, (C) PROPERTY TAXES WITH RESPECT TO THE PREMISES OR FERTILIZER EQUIPMENT, (D) ANY ACCIDENT OR OTHER OCCURRENCE CAUSING OR INFLECTING LOSS, INJURY, DEATH OR DAMAGE TO ANY PERSON OR PROPERTY (INCLUDING TO THE PERSON OR PROPERTY OF GRANTEE AND ITS EMPLOYEES, AGENTS, OR INVITEES), WHEN SUCH LOSS, INJURY, DEATH OR DAMAGES ARISES OUT OF, OR IN CONNECTION WITH, GRANTEE'S PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, GRANTEE'S OPERATION OF THE FERTILIZER EQUIPMENT, OR THE ACTION (OR FAILURE TO ACT) BY GRANTEE OR GRANTEE'S EMPLOYEES, AGENTS OR INVITEES, (E) ANY BREACH BY GRANTEE OF ANY PROVISION OR REQUIREMENT OF ANY PERMIT, INCLUDING, WITHOUT LIMITATION, ANY DEQ PERMITS, (F) ANY BREACH BY GRANTEE OF ANY PROVISIONS OF ANY APPLICABLE FERTILIZER PURCHASE AND SALE AGREEMENT, OR (G) ANY ENVIRONMENTAL OR NUISANCE ISSUE (WHETHER RELATING TO ODOR OR OTHERWISE) RELATED TO THE FERTILIZER EQUIPMENT OR THE PREMISES.

5.7. Indemnification by Grantee. Grantee shall indemnify, defend, and hold harmless the Grantor and its Affiliates and their respective officials, officers, directors, employees, and agents from and against any and all claims, costs, liabilities, losses, damages and expenses (including reasonable attorneys' fees and expenses and third-party claims) occasioned by, arising out of, or related to (i) Grantee's breach of this Agreement, (ii) any accident or other occurrence causing or inflicting loss, injury, death or damage to any person or property (including to the person or property of Grantee and its employees, agents or invitees), when such loss, injury, death or damage arises out of, or in connection with, Grantee's

performance or nonperformance of this Agreement, Grantee's operation of the Fertilizer Equipment, or the action (or failure to act) by Grantee or Grantee's employees, agents or invitees, (iii) Grantee's breach of any provisions or requirements of any Permit, including, without limitation, any DEQ Permits, (iv) Grantee's breach of any provisions of any applicable Fertilizer Purchase and Sale Agreement, (v) any environmental or nuisance issue (whether relating to odor or otherwise) related to the Fertilizer Equipment or the Premises, or (vi) any of the matters listed as Grantee's sole responsibility under Sections 5.5, 5.6, or 5.7.

5.8. **Insurance.** Grantee agrees that it shall, at its own cost and expense, procure and maintain, at all times during the Term of this Agreement, commercial insurance coverage from insurance companies authorized to provide such coverage by the North Carolina Commissioner of Insurance (a) meeting the requirements provided in any applicable Fertilizer Purchase and Sale Agreement, (b) sufficient to cover the full replacement cost of the Fertilizer Equipment and Match Property, (c) sufficient to cover the indemnity provided herein, (d) reasonable and customary for similar businesses in the area, (e) meeting all requirements under any applicable laws of the State of North Carolina, and (f) meeting at least the following minimum requirements:

- (a) Worker's Compensation Insurance Coverage as required by the laws of North Carolina, as well as Employer's Liability Insurance Coverage with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work or the provision of any services under or related to the Agreement, or, if work or services are sublet or delegated as permitted herein, Grantee shall require such sublessee or delegate to provide the same coverage for any of its employees providing work or services under or related to the Agreement;
- (b) Commercial General Liability Insurance Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit, with defense cost in excess of the limit of liability; and
- (c) Automobile Liability Insurance Coverage, covering all owned, hired, and non-owned vehicles used in performance of Grantee's obligations under the Agreement in the minimum amount of \$500,000.00 Combined Single Limit for bodily injury and property damage, \$500,000.00 Combined Single Limit for uninsured/underinsured motorist liability, and \$25,000.00 Combined Single Limit for medical payment.

Procuring and maintaining the foregoing insurance coverage is a material obligation of the Grantee and any failure to so procure or maintain any required insurance coverage shall be considered a material breach of this Agreement. Grantee shall immediately notify Grantor if it receives any notice or becomes aware of any cancellation or lapse in the required coverage hereunder. If such notice is received or Grantee becomes so aware, Grantee shall have until the cancellation or lapse date to procure a new insurance policy with equivalent coverage to the cancelled or lapsed policy to avoid a material breach. Grantee shall at all times comply with the terms and conditions of any insurance policies required under this Section 5.8 to the extent allowed by applicable law and this Agreement. Nothing contained in this Section 5.8 shall be interpreted to limit Grantee's liability for its obligations under this Agreement.

ARTICLE VI MISCELLANEOUS

6.1. **Assignment and Change of Control.** Grantee shall not assign or transfer this Agreement, or any rights or obligations hereunder, whether directly or indirectly, by operation of law (including merger,

conversion, reorganization, etc.) or otherwise, without Grantor's prior written consent, which consent is in the sole and absolute discretion of Grantor. Grantor may assign this Agreement, or any rights or obligations hereunder, at any time without the consent of Grantee. Any purported assignment in violation of this Section 6.1 is void *ab initio*. For purposes of this Agreement, the sale or transfer of any equity interests of Grantee, whether voluntary or involuntary, or by operation of law, shall be deemed an assignment of Grantee's rights and obligations under this Agreement.

6.2. **Force Majeure.** No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such Party's (the "***Impacted Party***") failure or delay is caused by or results from the following force majeure events (the "***Force Majeure Events***"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or famine; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action, including stay-at-home orders or similar action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other disturbances; (h) telecommunications breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (i) the spread or presence on the Premises or in the surrounding community of any terrestrial or aquatic animal disease or pest, classified as a foreign animal disease by the United States Department of Agriculture, and (j) other similar events beyond the control of the Impacted Party. Upon the occurrence of a Force Majeure Event, the Impacted Party shall give notice within five (5) days of the nature and expected duration of the Force Majeure Event to the other Party. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the cessation of the Force Major Event.

6.3. **Relationship of the Parties.** The Parties acknowledge and agree that the relationship of the Parties is solely that of an independent contractor, and not that of employer/employee, agents, partners, or joint venturers of any kind. Neither Party has any authority to commit, bind, or act for or on behalf of the other Party. Without limiting the generality of the foregoing, the employees, agents and representatives of one Party shall under no circumstances be deemed to be the employees, agents or representatives of the other Party.

6.4. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, successors, and permitted assigns.

6.5. **No Third-Party Beneficiaries.** Except as set forth in this Section 6.5, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. The Parties hereby designate any Fertilizer Purchaser as a third-party beneficiary of this Agreement and nothing in this Section 6.5 shall alter the requirements for Grantee to (a) deliver a duly executed copy of any applicable Fertilizer Purchase and Sale Agreement to the Grantor and any Fertilizer Purchaser, (b) abide by the terms of such Fertilizer Purchase and Sale Agreement, and (c) honor its obligations to any Fertilizer Purchaser under this Agreement and any applicable Fertilizer Purchase and Sale Agreement, pursuant to Sections 2.3, 2.7, 2.8, 3.2, and 4.1 hereof.

6.6. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "***Notice***") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered

by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party if delivered by personal deliver, or (b) one day after such notice is postmarked or given over to a nationally recognized overnight courier.

Notice to Grantor:

N.C. Foundation for Soil and Water
Conservation, Inc.
1401 Sunset Drive, Suite 202
Greensboro, NC 27408
Attn: Amanda Egdorf-Sand, Executive
Director
Email: asand@ncsoilwater.org

Notice to Grantee:

Attn: _____
Email: _____

with copy to Grantee secondary point of contact:

Attn: _____
Email: _____

6.7. **No Waiver.** The waiver by Grantor of any breach or default by Grantee hereunder, or the failure of Grantor to, at any time, insist upon strict performance with any of the terms and conditions of this Agreement, shall not be deemed a waiver by Grantor of any breach or default by Grantee which thereafter may occur or a waiver by Grantor of its right to insist upon strict performance by Grantee thereafter.

6.8. **Governing Law; Jurisdiction.** All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without giving effect to its conflicts of laws principles. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or shall be instituted in the federal courts of the United States of America or the courts of the State of North Carolina in each case located in the City of Raleigh and County of Wake, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by certified mail in accordance with Section 6.6 shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

6.9. **Interpretation.** For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole, including all exhibits hereto. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to

an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

6.10. **Headings**. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

6.11. **Business Days**. If any date on which a Party is required to make a payment or a delivery pursuant to the terms hereof is not a Business Day, then such Party shall make such payment or delivery on the next succeeding Business Day.

6.12. **Severability**. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

6.13. **Equitable Remedies**. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

6.14. **Entire Agreement; Amendment**. This Agreement, together with the Cost Share Program Application and Exhibits hereto, including any applicable Fertilizer Purchase and Sale Agreement, represent the complete understanding between the Parties and supersedes and replaces any and all pre-existing agreements, representations, and understandings between the Parties with respect to the subject matter hereof. No amendment to or modification of this Agreement, other than insertion of the Design Proposal, Project Schedule, and Business Plan as Exhibit B pursuant to Section 2.8, is effective unless it is in writing and signed by an authorized representative of each Party. To the extent of any conflicts between or among the terms in the main body of this Agreement and the terms in the Exhibits hereto, the documents shall control in the following order of precedence: (i) the Exhibits and schedules hereto and (ii) the main body of this Agreement.

6.15. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of a signed document (including this Agreement), and retransmission of such facsimile or PDF transmission, shall be deemed the same as delivery of an original of such document.

6.16. **Further Assurances**. Each Party hereto shall, and shall cause its respective Affiliates to, execute and deliver such additional documents and instruments, give such further assurances, and perform such acts as may be reasonably required to carry out the purposes, intentions and provisions of this Agreement and the Exhibits hereto and thereto.

6.17. **Time of the Essence.** Time shall be of the essence in this Agreement.

(The signature page immediately follows)

PROPOSED DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

GRANTOR:

N.C. FOUNDATION FOR SOIL AND WATER
CONSERVATION, INC.

By: _____
Amanda Egdorf-Sand, Executive Director

GRANTEE*:

Entity: _____

By: _____

Name: _____

Title: _____

*Must be executed by an equity owner or authorized
officer of Grantee, or, if Grantee is a partnership, by a
partner.

STATE OF NORTH CAROLINA)

) ss.

COUNTY OF _____)

I hereby certify that on this _____ day of _____, 202__, before me, the subscriber, a
Notary Public of the State of North Carolina, personally appeared _____,
_____ (the Grantee or an authorized officer or equity owner of the Grantee), known
to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument and
acknowledged that he lawfully, and with full power and authority, executed the same for the purposes
contained therein.

As Witness: my hand and notarial seal. _____

[Notarial Seal]

Notary Public: _____

My Commission Expires: _____

EXHIBIT A
DESCRIPTION OF PREMISES
(see attached)

PROPOSED DRAFT

EXHIBIT B
PROJECT PROPOSAL

(see attached)

PROPOSED DRAFT

EXHIBIT C
GRANTEE PAYMENT INSTRUCTIONS

(see attached)

PROPOSED DRAFT

EXHIBIT D
MATCH PROPERTY
(see attached)

PROPOSED DRAFT

EXHIBIT E
FERTILIZER PURCHASE AND SALE AGREEMENT(S)
(see attached)

PROPOSED DRAFT

EXHIBIT F
FINANCING PRE-APPROVAL(S)
(see attached)

PROPOSED DRAFT

EXHIBIT G
DEQ PERMITS
(see attached)

PROPOSED DRAFT