

# **INTERGOVERNMENTAL AGREEMENT**

Between

**Virginia Department of Agriculture and Consumer Services**

and

**Albemarle County**

This INTERGOVERNMENTAL AGREEMENT is hereby entered into, in the City of Richmond, Virginia, between the Virginia Department of Agriculture and Consumer Services ("VDACS") and Albemarle County (collectively, "the parties") to provide mutually advantageous terms for cooperation between VDACS and Albemarle County to implement VDACS' contribution of funds in support of Albemarle County's purchase of agricultural conservation easements.

WHEREAS, the General Assembly, by Chapter 879 of the 2008 Acts of Assembly, has appropriated \$500,000 in the fiscal year ending June 30, 2009 to VDACS for the continuation of a state fund to match local government purchase of development rights program funds for the preservation of working farms and forest lands; and,

WHEREAS, § 3.2-201 of the Code of Virginia authorizes VDACS' Office of Farmland Preservation to develop methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements, and to distribute these funds to localities under policies, procedures, and guidelines developed by VDACS' Office of Farmland Preservation; and,

WHEREAS, for all purposes of this INTERGOVERNMENTAL AGREEMENT, the term "agricultural conservation easement" shall mean a negative easement in gross that has the primary conservation purpose of preserving working farm and/or forest land; and,

WHEREAS, the Albemarle County Board of Supervisors has enacted an ordinance or passed a resolution that: authorizes, in accordance with Title 10.1, Chapter 17 of the Code of Virginia ("the Open-Space Land Act") and other applicable law, Albemarle County to purchase agricultural conservation easements from landowners (each hereinafter called "Grantor"); sets forth a clear, consistent, and equitable administrative process governing such purchases; and outlines the goals and purposes of Albemarle County's farmland preservation program; and,

WHEREAS, Albemarle County has agreed to maintain a public outreach program designed to educate various stakeholders in Albemarle County—including farmers, landowners, public officials, and the non-farming public—about Albemarle County's initiatives to preserve working farms and forest lands; and,

WHEREAS, Albemarle County has agreed to establish a transparent and replicable process for valuation of agricultural conservation easements; and,

WHEREAS, the purchase of agricultural conservation easements is one component of Albemarle County's broader farmland preservation program; and,

WHEREAS, Albemarle County has agreed to use a deed of easement that is sufficiently flexible to allow for future agricultural production in purchases of agricultural conservation easements for which Albemarle County uses funds contributed to it by VDACS; and,

WHEREAS, Albemarle County has agreed to establish a clear strategy for monitoring and enforcing the terms of the agricultural conservation easements that Albemarle County purchases; and,

WHEREAS, Albemarle County has agreed to establish a process that Albemarle County will use to evaluate the effectiveness of its farmland preservation program, including a protocol for making changes to Albemarle County's agricultural conservation efforts based on such evaluations; and,

WHEREAS, VDACS, in reliance on the veracity of the foregoing recitals, certifies Albemarle County is eligible to receive contributions of funds from VDACS in reimbursement for certain costs Albemarle County incurs in the course of purchasing agricultural conservation easements; and,

WHEREAS, Albemarle County, and the agents and employees of Albemarle County, in the performance of this INTERGOVERNMENTAL AGREEMENT, are acting on behalf of Albemarle County, and not as officers or employees or agents of the Commonwealth of Virginia;

NOW, THEREFORE, VDACS and Albemarle County agree their respective responsibilities, pursuant to this INTERGOVERNMENTAL AGREEMENT, shall be defined as follows:

**1. VDACS Responsibilities**

- a. VDACS shall, within thirty (30) days of the date of execution of this INTERGOVERNMENTAL AGREEMENT, restrict \$49,900 (hereinafter "the allocation amount") in an account, from which VDACS shall withdraw funds only to pay contributions of funds that Albemarle County is eligible to receive pursuant to this INTERGOVERNMENTAL AGREEMENT, except that upon the expiration of two (2) years from the date of this INTERGOVERNMENTAL AGREEMENT, or immediately upon Albemarle County's failure to perform any of its obligations under the terms of this INTERGOVERNMENTAL AGREEMENT, VDACS shall have the right to withdraw any funds then remaining in such account and the right to redirect those funds to other localities that VDACS certifies as being eligible to receive matching funds and that enter into an intergovernmental agreement with VDACS to govern the distribution of matching funds for the purchase of agricultural conservation easements.
- b. Upon Albemarle County's recordation of a deed evidencing Albemarle County's purchase of an agricultural conservation easement in the circuit court of the city or county where the Grantor's land is located and Albemarle County's submission to VDACS of a completed claim for reimbursement, on a form prescribed by VDACS, together with the supporting documentation required under paragraph 2(e) of this INTERGOVERNMENTAL AGREEMENT, VDACS shall reimburse Albemarle County fifty percent (50%) of the reimbursable costs that Albemarle County actually incurred in the course of purchasing that agricultural conservation easement, limited to that portion of the allocation amount remaining in the account maintained by VDACS pursuant to paragraph 1(a) of this INTERGOVERNMENTAL AGREEMENT. VDACS may make alternative arrangements for the distribution of funds pursuant to this INTERGOVERNMENTAL AGREEMENT, provided Albemarle County presents a written request for such alternative arrangement to the Commissioner of VDACS or the Commissioner's designated agent (referred collectively hereinafter as "the Grant Manager") prior to incurring any expense for which Albemarle County seeks a distribution of funds under the proposed alternative arrangement.

For purposes of this INTERGOVERNMENTAL AGREEMENT, "reimbursable costs" include:

1. The purchase price of the agricultural conservation easement, at present value, including any portion that Albemarle County will pay over time pursuant to an installment purchase agreement;
2. The cost of title insurance;
3. The cost of one appraisal of the land upon which Albemarle County purchases an agricultural conservation easement;

4. The cost of one survey of the physical boundaries of the land upon which Albemarle County purchases an agricultural conservation easement, including the cost of producing a baseline report of the conditions existing on the land at the time of the conveyance of the agricultural conservation easement;
  5. Reasonable attorney fees associated with the purchase of an agricultural conservation easement;
  6. The cost of issuing public hearing notices associated with Albemarle County's purchase of an agricultural conservation easement that Albemarle County is required by law to issue; and
  7. Any recordation fees that Albemarle County is required to pay pursuant to the laws of the Commonwealth of Virginia.
- c. VDACS shall only be responsible for reimbursing Albemarle County under paragraph 1(b) of this INTERGOVERNMENTAL AGREEMENT for reimbursable costs that Albemarle County actually incurs in the course of purchasing an agricultural conservation easement when Albemarle County acquires, by such purchase, a deed of easement that, at a minimum, provides:
1. The primary conservation purpose of the easement conveyed by the deed of easement is the conservation of the land in perpetuity for working farm and/or forestal uses.
  2. The Grantor and Albemarle County agree that the land subject to the agricultural conservation easement shall not be converted or diverted, as the Open-Space Land Act employs those terms, until and unless the Grant Manager, with the concurrence of Albemarle County or an assignee of Albemarle County's interest in the agricultural conservation easement, certifies that such conversion or diversion satisfies the requirements of the Open-Space Land Act.
  3. The Grantor and Albemarle County agree that, in the event of an extinguishment of the restrictions of the agricultural conservation easement that results in the receipt of monetary proceeds by Albemarle County or an assignee of Albemarle County's interest in an agricultural conservation easement in compensation for the loss of such property interest, VDACS shall be entitled to a share of those proceeds proportional to VDACS' contribution toward the total reimbursable cost of acquiring the agricultural conservation easement.
  4. If the Grantor conveys the agricultural conservation easement for less than its fair market value, the Grantor and Albemarle County mutually acknowledge that approval of the terms of this Deed of Easement by VDACS and/or its legal counsel does not constitute a warranty or other representation as to the Grantor's qualification for any exemption, deduction, or credit against the Grantor's liability for the payment of any taxes under any provision of federal or state law.
  5. All mortgagors and other holders of liens on the property subject to the restrictions contained in the deed of easement have subordinated their respective liens to the restrictions of the deed of easement acquired by Albemarle County. All such mortgagors and other holders of liens shall manifest their assent to the easement's priority over their respective liens by endorsing the deed of easement.

6. A baseline report documenting the conditions existing on the land at the time of the conveyance of the agricultural conservation easement is incorporated into the deed of easement by reference.

## 2. Albemarle County Responsibilities

- a. Albemarle County shall, within thirty (30) days of the date of execution of this INTERGOVERNMENTAL AGREEMENT, appropriate funds equal to the allocation amount for the purpose of purchasing agricultural conservation easements.
- b. Albemarle County shall use matching funds that VDACS contributes to Albemarle County, pursuant to this INTERGOVERNMENTAL AGREEMENT, only for the purpose of purchasing agricultural conservation easements that are perpetual and that have the primary conservation purpose of preserving working farm and forest lands.
- c. Within one (1) year from the date of this INTERGOVERNMENTAL AGREEMENT, and for each subsequent year in which the INTERGOVERNMENTAL AGREEMENT or a subsequent agreement is in force, Albemarle County shall submit to VDACS a progress report that:
  1. describes any properties that Albemarle County has identified as prospects for Albemarle County's purchase of agricultural conservation easements and the status of any negotiations for the purchase of such agricultural conservation easements;
  2. estimates the timeframes within which Albemarle County will execute contracts for any such purchases, close on such purchases, and request reimbursement of reimbursable costs for those purchases from VDACS;
  3. describes the measures Albemarle County has undertaken to develop and/or maintain a public outreach program designed to educate various stakeholders in Albemarle County's community—including farmers, landowners, public officials, and the non-farming public—about Albemarle County's agricultural conservation easement program and other initiatives to preserve working agricultural land;
  4. describes the measures Albemarle County has undertaken to develop and/or maintain a formal plan for stewardship and monitoring of the working agricultural land on which Albemarle County acquires agricultural conservation easements; and
  5. describes the measures Albemarle County has undertaken to develop and/or maintain a process that Albemarle County will use to evaluate the effectiveness of its program, including a protocol for making changes to Albemarle County's agricultural conservation efforts based on such evaluations.
- d. For any purchase of agricultural conservation easements for which Albemarle County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Albemarle County shall obtain a policy of title insurance on its purchased interest that covers at least an amount equal to the amount for which Albemarle County requests reimbursement from VDACS.
- e. Prior to closing on a purchase of an agricultural conservation easement for which Albemarle County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Albemarle County shall submit, for review and approval by VDACS and its legal counsel, the following documentation:

1. a written agreement setting forth, in the manner prescribed by Albemarle County's ordinance or resolution governing its program to acquire agricultural conservation easements, the terms of Albemarle County's purchase of the agricultural conservation easement, including the purchase price;
2. any installment purchase agreement;
3. the deed of easement that the Grantor will deliver to Albemarle County at closing, including all exhibits, attachments, and/or addenda;
4. a title insurance commitment for a policy to insure the easement interest under contract indicating an amount of coverage at least equal to the amount of funds for which Albemarle County requests reimbursement from VDACS; and
5. an itemized list of all reimbursable costs that Albemarle County has or will, up to the time of closing, incur in the course of purchasing the agricultural conservation easement.

Albemarle County shall make whatever changes to the proposed deed of easement and/or the installment purchase agreement, where applicable, that VDACS and/or its legal counsel deem necessary to ensure compliance with applicable state law and the requirements and purposes of this INTERGOVERNMENTAL AGREEMENT.

Albemarle County may fulfill its obligation under this paragraph by submitting accurate and complete copies of all documents enumerated in this paragraph, provided that Albemarle County shall deliver or make available the original documents to VDACS for review at VDACS' request.

- f. Together with any claim for reimbursement pursuant to this INTERGOVERNMENTAL AGREEMENT that Albemarle County submits to VDACS, Albemarle County shall also submit the following supporting documentation:
  1. a copy of the recorded deed of easement that VDACS and/or its legal counsel approved prior to closing, showing the locality, deed book, and page of recordation, and including all exhibits, attachments, and/or addenda; and
  2. copies of invoices, bills of sale, and cancelled checks evidencing Albemarle County's incursion of reimbursable costs in the course of purchasing the agricultural conservation easement; and
  3. a copy of any executed installment purchase agreement related to the purchase, which shall indicate the purchase price; and
  4. a copy of any deed of trust related to the purchase.
- g. Albemarle County shall provide the Grant Manager immediate written notice of Albemarle County's receipt of any application or proposal for the conversion or diversion of the use of any land upon which Albemarle County or its assignee, where applicable, holds an agricultural conservation easement, for the purchase of which VDACS contributed funds pursuant to this INTERGOVERNMENTAL AGREEMENT.
- h. Albemarle County, or any assignee of Albemarle County's interest in an agricultural conservation easement for which Albemarle County receives a contribution from VDACS pursuant to this

INTERGOVERNMENTAL AGREEMENT shall at all times enforce the terms of that easement. Albemarle County shall provide the Grant Manager immediate written notice of any actions, whether at law, in equity, or otherwise, taken by locality to enforce the terms of the easement or to abate, prevent, or enjoin any violation thereof by any party. Any failure by Albemarle County or such assignee to perform its enforcement responsibility shall constitute a breach of this INTERGOVERNMENTAL AGREEMENT, for which VDACS shall have a remedy by way of a civil action for specific performance of that enforcement responsibility; or, VDACS shall have the right and authority, at its option, to demand and receive from Albemarle County a portion of the full market value of the agricultural conservation easement at the time of the breach in proportion to the amount VDACS contributed to Albemarle County's purchase of the agricultural conservation easement relative to the full market value of the agricultural conservation easement at the time of the purchase.

- i. For any purchase of an agricultural conservation easement for which Albemarle County requests reimbursement from VDACS pursuant to this INTERGOVERNMENTAL AGREEMENT, Albemarle County shall derive its valuation of the agricultural conservation easement according to the valuation methods prescribed by ordinance or resolution.

### **3. Merger and Superseding of Prior Agreement**

The parties agree that terms of the INTERGOVERNMENTAL AGREEMENT previously entered into between the parties to govern VDACS' distribution of funds to Albemarle County from appropriations set forth in Chapter 847 of the 2007 Acts of Assembly shall be merged into the instant INTERGOVERNMENTAL AGREEMENT, the latter of which shall supersede the former to the extent that there are any inconsistencies between the terms of the two INTERGOVERNMENTAL AGREEMENTS. Notwithstanding the language of this paragraph, VDACS shall only be required to restrict the allocation amount provided in paragraph 1(a) of the prior agreement until the expiration of two (2) years from the date of execution of the prior agreement.

### **4. Recertification**

This INTERGOVERNMENTAL AGREEMENT pertains exclusively to VDACS' contribution of funds that the General Assembly has appropriated to VDACS through the fiscal year ending June 30, 2009. VDACS shall not contribute other funds in the future to Albemarle County except upon VDACS' recertification of Albemarle County's eligibility to receive such funds. VDACS may establish and communicate to Albemarle County certain benchmarks of program development that VDACS will impose upon Albemarle County as preconditions to Albemarle County's recertification for future contributions.

### **5. Governing Law**

This INTERGOVERNMENTAL AGREEMENT is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia. In all actions undertaken pursuant to this INTERGOVERNMENTAL AGREEMENT, preferred venue shall be in the City of Richmond, Virginia, at the option of VDACS.

### **6. Assignment**

Albemarle County shall not assign this INTERGOVERNMENTAL AGREEMENT, either in whole or in part, or any interest in an agricultural conservation easement for the purchase of which VDACS contributes funds pursuant to this INTERGOVERNMENTAL AGREEMENT, without the prior, written approval of the Grant Manager.

**7. Modifications**

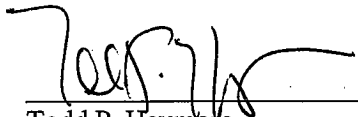
The parties shall not amend this INTERGOVERNMENTAL AGREEMENT, except by their mutual, written consent.

**8. Severability**

In the event that any provision of this INTERGOVERNMENTAL AGREEMENT is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this INTERGOVERNMENTAL AGREEMENT have force and effect and shall not be affected thereby.

In witness, whereof, the parties hereto have executed this INTERGOVERNMENTAL AGREEMENT as of the day and year first written above.

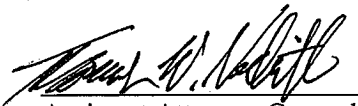
This INTERGOVERNMENTAL AGREEMENT is effective as of the date when all four (4) signatures solicited below are affixed here to.

  
 \_\_\_\_\_  
 Todd P. Haymore                      12/20/08  
 Commissioner                              Date  
 Virginia Department of Agriculture &  
 Consumer Services

\_\_\_\_\_  
 Name    Date  
 County Executive

APPROVED AS TO FORM ONLY:

APPROVED AS TO FORM ONLY:

  
 \_\_\_\_\_  
 Assistant Attorney General              12/19/08  
     Date

\_\_\_\_\_  
 County Attorney                              Date