



THE EL DORADO COUNTY ACEP FUND

An Expendable Designated Agency Fund
of the
El Dorado Community Foundation

FUND AGREEMENT

1. NAME AND PURPOSE

El Dorado County Department of Agriculture (“Donor”) hereby establishes the *El Dorado County ACEP Fund* (“Fund”) as a component fund under the administration of the El Dorado Community Foundation (“Community Foundation”). The Fund is established to support the El Dorado County Agricultural Conservation Easement program (“Agency”), which was adopted by the El Dorado County Board of Supervisors on June 23, 2020, by Resolution No. 104-2020, the Program Guidelines for which are attached hereto as Exhibit A and incorporated herein by this reference.

2. FUND TYPE

This is an expendable fund, subject to the provisions of Documents 1 and 3.

3. DONATIONS

Donations of any size may be made to this Fund at any time.

4. APPLICABLE TERMS AND CONDITIONS

The terms and conditions governing the Fund are contained in Documents 1 and 3: Provisions Governing All Funds of the Community Foundation and Provisions Governing Expendable Funds of the Community Foundation. These documents are attached to and constitute part of this fund agreement.

Any materials designed to raise money *for* the Fund or to otherwise publicize this Fund must be submitted in writing for review and approval of the Community Foundation.

In accordance with Documents 1 and 3, the Community Foundation shall charge the Fund an annual administrative fee in the amount of 3% of total grants in a given year or \$300, whichever is greater, with said administrative fee to be calculated and deducted on a quarterly basis. The Community Foundation will waive the assessed annual administrative fee if the fund had no balance during the year.

The Community Foundation shall provide a fund statement to the Donor twice per year, at the end of the 2nd quarter and the end of the 4th quarter. The fund statement shall include current balance, gain or loss on investments, administrative fees, grants made, and donations received. The Community Foundation shall also provide the Donor with such information upon request.

5. GRANTS

Upon the request of the donor, the Community Foundation's Board of Directors will approve grants from this Fund to the Agency to support the charitable purposes described in Section 1, subject to the provisions of Documents 1 and 3.

Grants to the Agency will be used at the discretion of its board of directors. All grants made are intended to further the Fund's stated charitable purposes.

Upon dissolution of the Agency, or if the Agency no longer carries out the charitable purposes described above in Section 1, the Community Foundation shall make grants from the Fund to such organizations as in the opinion of the Community Foundation's Board of Directors most nearly serve the purposes and objectives stated above in Section 1.

All grants must be approved by the Community Foundation's Board of Directors.

6. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to Donor/County shall be addressed as follows:

County of El Dorado
Department of Agriculture, Weights, and Measures
311 Fair Lane
Placerville, California 95667
Attn.: Charlene Carveth, Agricultural Commissioner

or to such other location as County directs.

Notices to the Community Foundation shall be addressed as follows:

El Dorado Community Foundation
P.O. Box 1388
Placerville, CA 95667
Attn.: Executive Director

or to such other location as the Community Foundation directs.

7. COUNTY CONTRACT ADMINISTRATOR

The County officer or employee with responsibility for administering this agreement is Charlene Carveth, Agricultural Commissioner, or successor or designee.

8. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

9. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

10. ENTIRE AGREEMENT

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

AGENCY AUTHORIZED SIGNATORS

By: _____ Date _____

By: _____ Date _____

EL DORADO COMMUNITY FOUNDATION

By: William J. Roby, Executive Director _____ Date _____

Exhibit A
El Dorado County Agricultural Conservation Easement
Program Guidelines

Purpose.

The purpose of the Agricultural Conservation Easement Program (ACEP) is to implement the agricultural land conservation policies contained in the County of El Dorado General Plan related to Agricultural Land Conservation. The ACEP will aid in mitigating the loss of agricultural land resulting from residential development in the unincorporated areas of the county. The ACEP is designed to utilize agricultural conservation easements granted in perpetuity as a means of minimizing the loss of agricultural land.

Applicability.

These guidelines shall be applied by the County of El Dorado Agricultural Commission to review agricultural lands for consistency with the County's Agricultural Conservation Easement Program.

Definitions.

- (a) **Agricultural land.** Those land areas of unincorporated County of El Dorado, regardless of current zoning, that are either currently used for agricultural purposes or that are substantially undeveloped and capable of agricultural use.
- (b) **Agricultural use.** The use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry; and related accessory uses for packing, treating, or storing of produce or animal products that are secondary to normal agricultural activities.
- (c) **Agricultural mitigation land.** Agricultural land encumbered by an agricultural conservation easement or other agricultural conservation mechanism acceptable to the County.
- (d) **Agricultural Conservation Easement.** An easement over agricultural land for the purpose of restricting its use to agriculture consistent with these guidelines. Agricultural conservation easements acquired in accordance with these guidelines shall be established in perpetuity.
- (e) **Qualifying Entity.** A nonprofit public benefit 501(c)(3) corporation or other appropriate legal entity operating in the County of El Dorado for the primary purpose of preserving, protecting, or enhancing land for agricultural use.

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Eligible Lands.

Land shall meet all the following criteria in sections (a) through (f), below to qualify as agricultural mitigation lands:

- (a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only
- (b) **Parcel size.** The parcel is of adequate size, configuration, and location to be viable for continued agricultural use. 20 acres minimum size for horticultural crops *or* 50 acres minimum size for grazing land *or* any parcel that meets the high intensive or low intensive farming operation criteria for county Williamson Act Contracts. Multiple parcels less than the minimum net acres listed above, that are adjacent to each other, can be merged to meet the minimum size requirement.
- (c) **Soil Quality.** The agricultural mitigation land shall be of comparable or better soil quality than the agricultural land whose use is being converted to non-agricultural use. Priority for horticultural crops will be given to lands with soils of unique and local importance or better in quality.
- (d) **Water Supply.** The agricultural mitigation land shall have an adequate water supply to support the agricultural use of the land. *The water rights on the agricultural mitigation land shall be protected in the farmland conservation easement.*
- (e) **Long term agricultural viability.** Other criteria that could affect the long-term viability of the agricultural land. This could include such items as proximity to schools, proximity to residential uses, annual crop production, percent of parcel being utilized for agriculture, etc.
- (f) **Location.** The agricultural mitigation land shall be located in the unincorporated areas of the County of El Dorado.

Ineligible Lands.

The property is ineligible to serve as agricultural mitigation land if any of the circumstances below apply:

- (a) The property is currently under public ownership and will remain so in the future.
- (b) The property is subject to physical conditions that legally or practicably prevent converting the property to a non-agricultural use.
- (c) The property could not be developed for agricultural purposes due to other land development restrictions, such as wetland restrictions, endangered species, etc.

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Minimum Conservation Requirements

The following minimum requirements shall be incorporated into all conservation easements or other instruments recorded to satisfy the requirements of this mitigation program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of this mitigation program are achieved.

- (a) All Agricultural Conservation Easements or other agricultural conservation mechanisms shall be implemented through a legal instrument acceptable to County Counsel and the qualifying entity that will receive the easement and signed by all owners with an interest in the mitigation land.
- (b) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land, or that are otherwise inconsistent with the conservation purposes of this mitigation program. The existing water rights shall be protected and be retained with the agricultural mitigation land.
- (c) The instrument shall prohibit new residential and /or commercial development on the agricultural mitigation land that is not directly needed for agricultural production, regardless of existing zoning.
- (d) Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the County in perpetuity. Instruments held by a qualifying entity shall name the County as a third-party beneficiary with full enforcement rights.
- (e) The conservation easement, or other conservation mechanism recorded pursuant to this program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the agricultural mitigation land is received and used or otherwise dedicated to acquire interests in other agricultural mitigation land in the County of El Dorado.
- (f) If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall pass to another qualifying entity.
- (g) The qualifying entity and/or the County shall monitor all lands and easements acquired in accordance with these guidelines and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. It shall also enforce compliance with the terms of the conservation easement.

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TERMS AND CONDITIONS

DOCUMENT 1

PROVISIONS GOVERNING ALL FUNDS OF THE EL DORADO COMMUNITY FOUNDATION

The following terms and conditions of this “Document 1” govern all funds of the El Dorado Community Foundation, regardless of their nature (Geographical, Scholarship, Special Project, Committee, Donor-Advised, Agency, Field of Interest, or Designated Agency), or designation (Permanently Endowed or Expendable).

1. Funds as Component Parts of the Community Foundation

All funds created under the terms and conditions described in this document are intended to be, and will be administered as, funds of El Dorado Community Foundation under *Treasury Regulations*, “Section 1.170A-9(f)(11)” As these Treasury regulations require, and as the articles of incorporation and the bylaws of the Community Foundation set forth, all component funds are specifically subject to the powers of the Community Foundation’s Board of Directors as the governing body of a community trust. Such powers include the power to modify any restriction or condition of any component fund in the event that this restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the needs of the community served by the Community Foundation.

2. Criteria Governing All Funds

All parties to a fund agreement will ensure that the fund being established meets the following criteria. The fund is (a) compatible with the Community Foundation’s purposes and approaches; (b) consistent with the Community Foundation’s tax-exempt status; (c) established with gift instruments acceptable to the Community Foundation’s Board of Directors; and (d) contributions to it and distributions from it can be managed cost-effectively.

3. Additional Contributions to Funds

Anyone may make additional contributions to any fund, subject to the Community Foundation’s approval. The Community Foundation’s Board of Directors may, at its sole discretion, refuse any additional contributions that it finds unacceptable. Additional contributions accepted by the Board of Directors will be subject to the terms and conditions detailed in this and any other relevant document(s).

4. Holding Assets of Funds

For the purposes of investment, the Community Foundation does not need to segregate the assets of any single fund from the assets of the Community Foundation's other component funds but may choose to do so.

However, if a fund's assets are pooled with those of other funds for investment purposes, the Community Foundation's Board of Directors will keep a separate account of that fund's assets, and all investment earnings on its assets (including interest, capital appreciation, and dividends-net of investment fees) will be credited to that fund. All earnings are automatically reinvested unless specifically addressed in another section of the fund agreement.

5. Administrative Fees

"Document 2," which details the terms and conditions specifically governing permanent, endowed funds, and "Document 3," which specifically governs expendable funds, discuss the fees for endowed and expendable fund respectively. This fee is applied to the general operating costs of the Community Foundation, and covers the following expenses associated with the administration of the fund:

- ✓ Customized fund design
- ✓ Investment/asset management services (quarterly fund statements, monitoring investment performance, setting and reviewing investment policies)
- ✓ Administrative services (IRS reporting, acknowledgement of gifts for tax purposes)
- ✓ Donor Services including:
 - One-on-one (or family) sessions to help donors create a social investment strategy or further refine their giving approach for maximum impact
 - Ability to give anonymously
 - Due diligence on all grant recommendation
- ✓ Periodic, detailed accountings to Donors, itemizing contributions, grants, and net earnings/loss
- ✓ As appropriate, addressing pressing community needs or important civic issues through convening community leaders and targeted initiatives
- ✓ Attracting funds from larger private foundations and other outside sources

If the Community Foundation determines that the actual costs of administering any given fund exceed the fee set forth by the terms of its fund agreement, then the Community Foundation may modify the administrative fee based on such actual costs. This modification would be done in consultation with the fund's donor(s). Examples of such exceptional costs for administering funds could be legal fees incurred by the Community Foundation related to a particular fund, costs related to the sale of donated assets, a high volume of receipts to a fund, a high volume of disbursements from a fund, designing a special grants program, an exceptional amount of research before making grants, or intensive tracking and evaluation of grantees after making grants.

Except for such special cases involving exceptional costs, the fees charged to all funds will be equitable* -- i.e., the fee charged to any one fund will be equivalent to the fee charged to other, similar funds of the Community Foundation.

Fees for management of each fund's assets by outside investment managers and custodians will be deducted at cost from the fund's gross earnings before the earnings are credited to the fund's account.

Donors are responsible for payment of all fees to their professional advisors (attorney, accountant, financial advisor, etc.) involved in the set-up of their fund.

6. Inactive Funds

A fund is deemed inactive if no recommendations are made with respect to grants from the fund for a period of three years and, during such period, the advisor or successor advisor does not reply to the Foundation's attempts to contact them.

The fund will also be deemed inactive if after three years either of the following occurs: a) the fund advisor dies or resigns or evidence of his or her incapacity is provided to the Foundation, and if no successor advisor has been named; or b) all named successor advisors are unable or unwilling to serve as such.

If the fund becomes inactive, the Foundation will deem the advisory period to have ended and will initiate distributions from the fund in accordance with the provisions of the fund agreement.

TERMS AND CONDITIONS

DOCUMENT 3

PROVISIONS GOVERNING EXPENDABLE FUNDS OF THE EL DORADO COMMUNITY FOUNDATION

In addition to the terms and conditions governing all funds of the El Dorado Community Foundation (Document 1), the following terms and conditions specifically apply to Expendable funds:

1. Distributions

The Community Foundation's Board of Directors may, with the advice of an expendable fund's donor(s), expend down a fund consistent with the donor's charitable intent.

2. Investment Policy and Administrative Fees

The Community Foundation will invest the assets of an expendable fund and determine administrative fees to that fund based on an assessment of the nature of the fund and amount of time an expendable fund is expected to be open. Because expendable funds are established for a wide variety of donors, including both individuals and organizations, and because they may be short-term or longer-term, the Community Foundation has adopted a policy of investing the assets of these funds in two ways, depending on the amount of time the expendable fund is expected to be open.

1) For shorter-term funds (less than 12 months), or in cases where monies will be contributed and regranted within a short period of time, the Community Foundation may deposit the assets of the fund in a money-market account to maximize their liquidity and to protect the fund balance. The Community Foundation's staff will review this and other options with the donor at the time the fund is established and based on the goals of the fund, jointly determine the most appropriate investment vehicle.

2) For longer-term funds (more than 12 months), or in cases where monies will be contributed and re-granted over a long period of time, the Community Foundation may invest expendable fund assets along with endowment (or permanent) fund assets.

The Community Foundation assesses an administrative fee on each expendable fund.

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