

SPECIAL MILITARY PROJECT COOPERATIVE AGREEMENT
[Durham County / Camp Butner / NC]

AGREEMENT NO. W9133L-XX-2-XXXX

PAGE 1 OF 37 PAGES

ISSUED BY: NATIONAL GUARD BUREAU

ISSUED TO: **PARTNER**

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EXECUTION

By executing this Special Military Project Cooperative Agreement, the parties agree to the terms and conditions contained herein, including attachments.

IN WITNESS WHEREOF, the parties by their authorized representatives, execute this Special Military Project Cooperative Agreement.

<p>PARTNER BY:</p> <p>_____</p> <p align="center">Wendell M. Davis, County Manager</p> <p>Date _____</p>	<p>NATIONAL GUARD BUREAU BY:</p> <p>_____</p> <p>Theresa Glasgow, NGB-AQ-C (Contracting and Grants Officer)</p> <p>Date _____</p>
<p>Attest (or insert other signature as required):</p> <p>_____</p>	<p>Approved as to Legal Form:</p> <p>_____</p> <p>NGB-JA (Office of the Chief Counsel)</p> <p>Date _____</p>
	<p>_____</p> <p>NGB-OPR-PM (acknowledged) (ARNG Installations & Environment Directorate)</p> <p>Date _____</p>

ACKNOWLEDGED:

NAME
RANK
STATE Army National Guard
The Adjutant General

ARTICLE I - SCOPE, PURPOSE AND AUTHORITY

Section 101. General.

a. The National Guard Bureau (NGB) and the Grantee, hereinafter referred to as PARTNER, have entered into this Special Military Project Cooperative Agreement (CA) to establish the terms and conditions applicable to the contribution of Federal funds to assist the PARTNER in the acquisition of long-term interests in or title to parcels of land in the vicinity of, or ecologically related to the INSTALLATION in accordance with Title 10 U.S.C. Chapter 159 Section 2684a (10 USC §2684a) and any subsequent amendments.

b. This CA with attachments includes all terms and conditions related to the military's (NGB or Office of the Secretary of Defense (OSD)) contribution of funds for the above stated purpose. Attachment (A. PARTNER Specifics and Approved Buffer) is an integral part of this CA.

c. This CA is also governed by 2 Code of Federal Regulations (CFR) Part 200, the Department of Defense Grants and Agreements Regulation (DoDGARS), and National Guard Regulation (NGR) 5-1 as amended or republished, each of which is incorporated herein by reference.

Section 102. Scope.

The scope of this CA includes all activities enumerated in this agreement and the attachments.

Section 103. Performance Specifications.

Specifications for the performance of the activities that are contained within the scope of this CA are contained in Article VII and the attachments.

Section 104. Authority.

NGB authority: 10 USC §2684a authorizes the Secretary of the Army to enter into agreements with State or Local governments or private conservation organizations to address the use or development of real property in the vicinity of a military installation. Such agreements are for the purposes of (a) limiting any development or use of the property that would be incompatible with the mission of the installation; or (b) preserving habitat on the property that is compatible with environmental requirements and that may eliminate or relieve environmental restrictions that would restrict, impede or interfere with military training, testing, or operations on the installation, or maintains or improves installation resilience; or (c) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation.

Section 105. Office of Primary Responsibility.

The NGB Office of Primary Responsibility (NGB-OPR-PM) for this agreement is the Army National Guard Directorate Installations & Environment Directorate, Conservation Branch (ARNG-IEN), Temple Army National Guard Readiness Center (TARC), 111 South George Mason Drive, Arlington, VA 22204-1373.

ARTICLE II - OBLIGATIONS OF THE PARTIES

Section 201. Obligations of PARTNER.

a. PARTNER shall exercise its best efforts to supervise, manage, operate and/or maintain all activities or projects within the scope of this CA according to sound, efficient, commercial practices and the terms, conditions, and specifications of this CA and its Attachments.

b. PARTNER shall provide sufficient funds and/or in-kind services or contributions to pay its share of the costs of this CA, should PARTNER choose to utilize funds from this CA to acquire any of the lands or interest in those lands in Attachment A.

c. PARTNER shall submit a written Request to Proceed (RTP) to the Installation ACUB Point of Contact before incurring any costs for which the PARTNER will request an advance or reimbursement payment. The INSTALLATION Point of Contact will issue a written Notice to Proceed (NTP) that details the actions and costs authorized. Any unusual circumstances should be vetted with ARNG-IEN prior to incurring costs to ensure those costs are authorized and allowable for reimbursement.

d. PARTNER shall, not less than 30 days prior to closing, submit draft deeds to NGB to receive legal sufficiency.

e. PARTNER's obligations under the provisions of this CA are contingent upon NGB funding of this CA; provided, however, that NGB's failure to provide funds for an acquisition of lands by PARTNER in the vicinity of or ecologically related to INSTALLATION, shall not prohibit PARTNER from proceeding with such acquisitions independent of NGB and the terms of this CA.

f. PARTNER shall be responsible for management of the land (fee simple) or monitoring and enforcement of the interest in the land (less than fee simple) acquired and held by PARTNER or its Eligible Entity through this CA, subject to the transfer/assignment provisions in Sections 507, 718 and 719.

g. PARTNER shall, within ten days of closing, provide proof to ARNG-IEN that the acquired interest—whether a fee simple or a lesser interest—was filed in the appropriate registry of deeds (book and page number).

h. PARTNER shall, within 60 days of closing on a parcel, provide copies of documentation sufficient for Reconciliation to ARNG-IEN and the INSTALLATION to include final appraisals, HUD form or settlement statement, financial receipts of all reimbursable expenses, copies of all due diligence documents and the final deed.

Section 202. Obligations of NGB.

a. NGB shall share in acquisition costs of the property or interest in a property to which this CA applies, as set forth in Section 401. NGB shall reimburse or advance to PARTNER NGB's share of the allowable acquisition costs as defined in Article III incurred in performance of this CA according to its terms and conditions for reimbursement or advance.

b. Whenever the terms of this CA provide for approval by NGB, the approval will not be unreasonably withheld. Any written request for approval shall be considered and acted upon by NGB in a timely fashion.

c. The obligations of NGB are subject to the availability of Federal funds for the CA and PARTNER's contribution of the partner's minimum cost share requirements of this CA.

d. In accordance with applicable Office of Management and Budget (OMB), Department of Defense (DoD), Army and NGB regulations and requirements, ARNG-IEN shall reconcile continuing awards at least annually and evaluate program performance. Financial reports will be submitted on an annual basis no later than 31 October.

Section 203. Obligations of Both Parties.

a. PARTNER shall deliver to the NGB Federal Program Manager an accounting of funding and disbursements under the CA for each Fiscal Year (FY) of the agreement by 31 October annually. The accounting shall include the property where military funds were expended. The ARNG-IEN, STATE ARNG, and PARTNER share in the responsibility to complete an accurate and timely annual funding closeout of this CA in accordance with the annual report template provided by ARNG-IEN).

b. Within 90 days after the end of the Federal FY, or upon termination or closeout of this CA and/or its subsequent modifications, whichever is earlier, PARTNER and NGB-OPR-PM shall prepare a final accounting of all funding and disbursements under the agreement for the fiscal year (1 October through 30 September).

c. Funds provided for this CA are one-year monies with no more than five years available for execution. Funds not expended for parcels outlined in Attachment A or cannot be expended within the maximum allowable execution period, must be returned to ARNG-IES if already dispersed or, if not disbursed, will be de-obligated.

d. PARTNER will sign a statement that all administrative and financial actions are completed under the terms of the CA and/or its subsequent funding modifications and no further requests will be made under the CA for each applicable FY. The ARNG-IEN, in conjunction with NGB-AQ-C, shall close out funding for the CA, in accordance with NGR 5-1 Chapter 11, and 2 CFR §200.343 or subsequently published government guidance for a specific FY when all applicable administrative and financial actions have been completed.

ARTICLE III - COSTS

Section 301. General.

a. This CA is a cost-share agreement by which PARTNER may meet its cost share requirement with cash, land owner donations, and or in-kind services. NGB shall advance to or reimburse the PARTNER for NGB's share of all activities and costs that are allowable, allocable and reasonable in the performance of this CA.

b. Notwithstanding the minimum cost share requirements, this is a mutually beneficial collaborative partnership with PARTNER wherein PARTNER will leverage military funds as well as other sources of funds identified by PARTNER, including State and Federal agencies, to achieve the overall program and funding goals. All funds and in-kind services must be used to achieve the overall project effort set forth in this CA. If the recipient chooses to provide in-kind services, the value of the services may be counted toward the cost-sharing requirement if those services are related to the pre-acquisition, acquisition or post-acquisition stewardship and management of an interest in real property and have been specifically agreed upon by the parties to this CA. PARTNER may include staff time to accomplish tasks as a cost share (including maintaining resource and parcel data relevant to the ACUB, negotiations with the landowner, negotiating and developing land transactions, landowner outreach, monitoring and enforcement of easements and/or restrictions on real property interests acquired, acquisitions of land interests through donation, etc.), and overhead costs specifically associated with working on acquisitions under this CA. All in kind services or other costs associated with the implementation of this CA must be attributable to individual land transactions and itemized appropriately on each request for advance or reimbursement and reconciliation request for NGB review and concurrence.

c. PARTNER may solicit funds from third party sources to add to the military's contributions and support the purposes of this CA. All funds solicited and obtained by PARTNER from any third party source outside the DoD (including non-DoD federal or state programs, donors and other non- governmental organizations) may be attributed to PARTNER as part of its agreed upon share of costs for specific interests in real property under this CA.

d. Expenditures of military funds under the CA will be subject to the availability of funds. No provision of this CA shall be interpreted to require the payment or obligation of funds by the installation or NGB in violation of the Anti- Deficiency Act, 31 USC §1341. If funds are available, NGB will pay for an agreed upon share of direct project costs.

Section 302. Types of Costs Associated with this CA.

a. Acquisition of identified parcels within Attachment A, either fee simple or less than fee simple may include the following allowable costs, these allowable costs can be met with reimbursement from NGB with military funds or itemized as PARTNER cost share:

1. Purchase price of the property interest, as well as any down payment and option consideration if not included in the purchase price. **Military funds cannot exceed Fair Market Value of the purchase price of the interest being acquired.**

2. Pre-acquisition requirements which may include legal costs related to acquisitions of real estate interests, drafting of purchase and sale agreements, boundary surveys, title investigations and title reviews, mapping costs, appraisals, due diligence, preparation of deeds for transfer and other inspections or searches deemed necessary by the recipient to accurately ascertain the value and condition of the real property interest acquired. **Staff time, travel or program administration costs to accomplish these tasks must be PARTNER's.**

3. Acquisition requirements, including the costs to close the transaction, title transfer taxes and taxes paid or triggered at purchase or sale (such as real property taxes paid at closing, excise taxes, transfer taxes, documentary stamps), title insurance, escrow fees and recordation fees and other similar expenses that are attributed to the specific real estate acquisition.

b. Post-acquisition Stewardship and Management Costs. All costs associated with the post-acquisition must be attributable to individual land transactions and itemized appropriately on each RTP/NTP request for NGB review and concurrence.

1. Cost of regular monitoring real property interests acquired under this agreement. Military funds for this purpose are limited to \$10,000 with justification in the RTP and as approved in the NTP. All funds paid by the PARTNER are eligible cost share.

2. Cost of enforcement of conservation easements acquired under this agreement, if set aside as a lump sum separate from monitoring. This expense cannot be reimbursed with military funds but can be PARTNER cost share.

3. Land Management costs. This is limited to the initial 5 years unless a set dollar amount is set aside (endowment). These expenses cannot be reimbursed with military funds without prior authorization.

c. All requests for military funding reimbursements for fee simple or less than fee simple acquisitions will be at or below Fair Market Value as established by an appraisal in compliance with Uniform Standards of Professional Appraisal Practices.

d. Any costs not clearly identified on the RTP shall not be reimbursed or credited towards the PARTNER cost share unless agreed to in writing by ARNG-IEN prior to the commitment or expenditure of funds.

Section 303. Estimated Cost.

a. The total estimated costs under this CA are specified in subsequent Modifications.

b. The PARTNER share in the costs under this agreement are provided for in each associated Modification.

c. Whenever any item of cost for the performance of this CA is identified to be funded in part by PARTNER contributions and in part by military contributions, as listed in Article IV of this agreement, NGB shall be obligated to advance or reimburse PARTNER only for its percentage share of the total costs that would otherwise be allowable under this agreement.

Section 304. Cost Sharing.

a. NGB requires a minimum 25% match from the partner of the NGB contribution. The cumulative cost share of the partner's contribution will not fall below 25%.

b. The contribution of an entity or entities to the acquisition costs of fee simple or less than fee simple interest in real property within the ACUB Project Area may include, with the approval of NGB, the following or any combination of the following:

1. The provision of funds, including funds received by PARTNER, or from a Federal agency outside the DoD or a state or local government in connection with a Federal, state or local program.

2. The provision of in-kind services, including services related to the acquisition of fee simple or monitoring and enforcement of less than fee simple interests in real property within the ACUB Project Area.

3. The exchange or donation of fee simple or less than fee simple interest in real property within the ACUB Project Area.

d. The minimum contribution from PARTNER will be listed in each subsequent modification to this agreement. PARTNER contribution to the acquisition of lands in the project area may include land management of fee simple, monitoring and enforcement of less than fee simple interest, negotiation of bargain sale purchase prices, travel expenses, and other allowable costs as specified in Section 306. PARTNER contribution shall be more fully defined on the Request for Advance/Reimbursement process and approved in advance by ARNG-IEN.

Section 305. Allowability of Costs

a. Except as otherwise stated in this Article or elsewhere in the CA, the allowability of costs incurred by the PARTNER in performance of this CA and subsequent Modifications shall be determined according to the terms and conditions of **2 CFR Part 200, as amended**, and current Grants Officer policy, NGR 5-1 Chapter 5 or successor C, NGB I & M, effective at the time the cost is incurred.

b. The allowability of costs has no effect on the maximum funding level of this CA. NGB has no obligation to reimburse any cost over and above the maximum amount of funding obligated to this CA, even if such cost would otherwise be allowable.

c. NGB may contribute to the purchase price of fee simple or less than fee simple interest in properties within the approved ACUB project area (Attachment A), or approved future modifications thereof, provided that NGB's portion does not exceed Fair Market Value of the interest to be acquired and that PARTNER provides the minimum cost share of the total funding provided by the military.

d. NGB may contribute to all valid authorized activities associated with the acquisition including those listed in Section 302 a.

Section 306. Allowable and Authorized Cost Guide

a. The table below provides a guide to a list of costs typically associated with ACUB. The PARTNER should provide as accurate an estimate as possible on their RTP to ensure those costs proposed for an Advance or Reimbursement are allowable and authorized. Should extenuating circumstances exist, and/or estimated costs increase significantly, the PARTNER should update their RTP. No costs are to be incurred without a written NTP from the INSTALLATION and/or NGB.

b. While a cost may be listed as allowable and authorized, it does not guarantee reimbursement. A cost must be allowable in order to be used as partner match. This is dependent on the amount and type of funding available, necessity of the cost to the ACUB project, and benefit to the Army. The partner is expected to contribute to costs of the ACUB project, at least the minimum specified cost share, but to the maximum amount possible.

Column 1 identifies possible direct costs associated with the ACUB program, by category;
Column 2 indicates whether those costs are allowable under current regulations;
Column 3 indicates whether those costs are authorized to be paid under the CA
Column 4 indicates if the costs can be counted as partner match;
Column 5 includes a legal citation where an appropriate citation could be found.

1. Cost	2. Allowable /Unallowable Per Reg. (A/U)	3. Authorized Cost (Y/N/C)	4. Authorized Partner Match (Y/N/C)	5. Citation
A. Pre-Acquisition Costs				
1) Appraisal ¹	A	Y	Y	2 CFR §200.459
2) Appraisal Review	A	Y	Y	2 CFR §200.459
3) Boundary Survey	A	Y	Y	2 CFR §200.459
4) Phase 1 Environmental Assessment	A	Y	Y	2 CFR §200.459
5) Biological Survey	A	Y	Y	2 CFR §200.459
6) Baseline Condition Survey	A	Y	Y	2 CFR §200.459
7) Geological Survey	A	N	Y	2 CFR §200.459
8) Title, Abstract Search, Examination	A	Y	Y	2 CFR §200.459
9) Title Commitment	A	Y	Y	2 CFR §200.459
10) Attorney Fees	A	Y	Y	2 CFR §200.459
11) Courier Fee	A	Y	Y	2 CFR §200.473
12) Wiring Fee	A	Y	Y	2 CFR §200.473
B. Acquisition Costs				
1) Purchase Price of Property – Fee Simple Title	A	Y	Y	2 CFR §200.403 10 USC §2684a(d)(1)
2) Purchase Price - Easement	A	Y	Y	2 CFR §200.403 10 USC §2684a(d)(1)
C. Closing Costs/Recordation				
1) Closing Fee	A	Y	Y	2 CFR §200.459
2) Title Fee	A	Y	Y	2 CFR §200.403
3) Title Insurance	A	Y	Y	2 CFR §200.459
4) Recording Fee	A	Y	Y	2 CFR §200.459
D. Natural Resource (NR)/Land Management				
1) NR/Land Management Actions ²	A	C ³	Y	10 USC §2684a(d)(3) 2 CFR §200.459
2) NR/Land Management Plan preparation	A	N	Y	10 USC §2684a(d)(3) 2 CFR §200.459
3) Endowment for Stewardship / Land Management	A	N	Y	2 CFR §200.403 10 USC §2684a(d)(3)(B)

¹ Appraisal may be waived "...in cases involving the acquisition by sale or donation of property with a low fair market value." 42 USC §4651(2). All professional services costs under this citation must not be contingent upon recovery of the costs from the federal government.

² NR Management actions must result in a direct regulatory benefit to the installation and must be approved in advance by the Army. Partner may include as partner cost share a one-time estimate of a maximum of 5 years' worth of land management activities unless a set amount is set aside in a fund.

³ With prior approval from NGB and be included in the ACUB Plan approved by the ACSIM.

1. Cost	2. Allowable /Unallowable Per Reg. (A/U)	3. Authorized Cost (Y/N/C)	4. Authorized Partner Match (Y/N/C)	5. Citation
E. Monitoring and Enforcement				
1) Monitoring (one-time fee)	A	Y ⁴	Y	2 CFR §200.430 10 USC §2684a(d)(3)
2) Labor – Monitoring Visit	A	N	N	2 CFR §200.430
3) Enforcement Fee	A	N	Y	2 CFR §200.430 10 USC §2684a(d)(3)
F. Personnel and Facility Costs				
1) Labor / Staff Hours –				2 CFR §200.430
a) Labor – Meeting and negotiations with landowner	A	N	Y	2 CFR §200.430
b) Labor – Meeting with installation ACUB POC	A	N	Y	2 CFR §200.430
c) Labor – ACUB Program Reporting (Annual Report and financial reporting)	A	N	Y	2 CFR §200.327-328 2 CFR §200.430 2 CFR §200.459
d) Labor – Invoicing/Accounting	A	N	N	2 CFR §200.430
G. Miscellaneous				
1) Property Taxes	A	Y ⁵	Y	2 CFR §200.470
2) Interest on Loans (not on borrowed capital)	A	N	Y	2 CFR §200.449
3) Travel	A	N	Y	2 CFR §200.474
4) Mapping and/or GIS Products	A	Y	Y	2 CFR §200.439
5) Insurance	A ⁶	N	N	2 CFR §200.447
6) Bonding	A	N	N	2 CFR §200.427
7) Outreach (includes individual landowner contacts, public meetings to promote the ACUB program)	A ⁷	N	Y	2 CFR §200.430
8) Office supplies, Computing devices or peripherals	A	N	N	2 CFR §200.453
9) Postage / Shipping	A	Y	Y	2 CFR §200.473
10) Pre-Agreement Costs	U	N	N	2 CFR §200.458

⁴ Authorized costs for monitoring are limited to \$10,000, with justification and prior approval, paid up-front as a one-time cost. If the PARTNER has a known cost higher than what is reimbursed or does not request reimbursement of monitoring costs, those costs may be considered match.

⁵ Authorized cost as a one- time fee at closing.

⁶ Allowable “pursuant to the Federal award”, but not required for ACUB

⁷ Only for “...specific purposes necessary to meet the requirements of the Federal award.”

c. The Office of the Secretary of Defense (OSD) places restrictions on the use of Readiness and Environmental Protection Integration (REPI) funding. **Specific restrictions should be verified based on annual REPI guidance.** If any cost is unauthorized to be paid for with REPI funds, but is listed as allowable and authorized, it may be eligible to be paid for by the ARNG funds. The current year REPI guidance takes precedence, but based on FY19 REPI guidance, REPI funding eligibility are listed below. Note: Army policy restricts the use of any military funds for natural resource management and management accounts

REPI FUNDING ELIGIBLE	REPI FUNDING INELIGIBLE
Due diligence (e.g., appraisals, surveys, title searches, insurance, and reviews of mineral and water rights) and easement monitoring and enforcement activities performed by partners	Due diligence and easement monitoring and enforcement activities performed by DoD personnel
Natural resources management, restoration, enforcement, or maintenance (e.g., invasive species control, exclusive devices such as signs and fences, species monitoring, species translocation or reintroduction, necessary reports, future updates to adaptive management plans)	Administrative and planning costs (e.g., administrative overhead, mapping, landowner contacts and outreach, preliminary natural resources management planning in support of the transaction)
Management accounts to pay for future costs of natural resources management as a lump sum and with the ability to earn interest	Education/interpretation
	Research
	NEPA, ESA, or other compliance activities
	Public use facilities
Establishment of a pre-compliance mitigation or conservation bank, or pre-compliance acquisition of credits from an existing bank	Establishment of a mitigation or conservation bank to comply with regulatory requirements
	Land encompassing airfield CZs
	Land to comply with any non-discretionary conservation measures or terms and conditions of an ESA BO, per 16 U.S.C. § 7(a)(2)
	Land to be acquired for the primary purpose of training or testing

ARTICLE IV - FUNDING LIMITATIONS

Section 401. Funding Limitation

- a. The annual funding limitation amount for NGB for any fiscal year is specified in the Modifications. Increases/decreases to the annual funding in a particular FY will be by a bilateral modification.
- b. The addition of program income to the funds obligated in a cooperative agreement will not require an increase in the federal funding limitation.
- c. The Federal reimbursement under this agreement is conditioned upon the availability of Federal funds.
- d. The PARTNER shall have no obligation to incur costs which would cause NGB's share of those costs to exceed the specified maximum federal funding limitation.
- e. PARTNER's minimum 25% funding contribution may be met by in-kind services that are allowed per Section 306. Costs for expenditures which are not themselves allowable may not be used as partner match.

Section 402. Funding Sources and Agency Restrictions.

- a. Office of the Secretary of Defense (OSD): Funds for this CA may be provided by the OSD Readiness and Environmental Protection Integration (REPI) program based upon the INSTALLATION's application for such funds. In addition to Section 306 c, the following limitations apply to OSD REPI funding:
 1. PARTNER shall expend requested funds within 18 months of funding allocation or request an extension not to exceed the five year limit on the funds.
 2. All OSD REPI funds must be used for actions that directly implement the proposed action(s) included in the REPI application and may include the PARTNER's due diligence costs such as appraisals, surveys, title searches, insurance, legal fees, taxes due at closing, reviews of mineral and water rights, cultural resources evaluations and environmental impact analysis.
 3. The value of administrative tasks and planning costs, such as administration costs, mapping, planning, land ownership research, and landowner contacts and outreach, are costs that are beyond those associated with the acquisition of the property interest. OSD REPI funds may not be used for these costs.
 4. OSD REPI funds may be used for easement monitoring and enforcement up to the amount permitted in section 302 above.
 5. Only those projects that have received a certified Project Description from OSD and have submitted an annual Parcel Specific Information in the current FY are eligible for OSD REPI funding subject to any other limitations OSD stipulates in the given FY.

b. National Guard Bureau: Funds for this CA may be provided by the NGB either as Environmental Funds (VENQ) or end of year Operation and Maintenance funds. Only those parcels identified in Attachment A may be pursued and funded with NGB funds. Only those parcels with environmental benefits to the installation can be pursued and funded with programmed Environmental VENQ funding. The following limitations apply to NGB funding:

1. NGB funds may only be used for post-acquisition costs outlined in Section 302 b. and other costs outlined in Section 306.

2. NGB funds are limited to the allowable costs outlined in Section 302 a. and must be itemized on the RTP and NTP. PARTNER must submit a Standard Form (SF) 270 to request military funds along with the applicable supporting documentation for either a Reimbursement or an Advance Request as outlined in 502 and 503.

Section 403. Limitation on the Availability of Funds for PARTNER Obligation.

Funds provided by NGB under this CA for any Federal FY are available for obligation (as the term "obligation" is defined in 2 CFR §200.71) by the PARTNER only as long as PARTNER initiates action during the FY to accomplish real estate transactions for parcels listed in Attachment A. "Initiates action" as the phrase is used herein shall mean and refer to the inclusion of the property on an acquisition list-plus any one of the following: preparing appraisal mapping for the property, having the property appraised, or initiating negotiations with the owner for the sale of the property or easement as applicable. It is critical that PARTNER's initiating actions be documented and that such documentation reflects the dates on which such actions occurred.

ARTICLE V- PAYMENTS

Section 501. General.

a. There are only two payment methods authorized in the execution of this Special Military CA, the reimbursement method and the advance method.

b. The request for either Reimbursement or Advance shall be on a SF 270 REQUEST FOR ADVANCE OR REIMBURSEMENT form.

Section 502. Payment by the Reimbursement Method.

a. Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B, NGR 5-1, Chapter 11, and 2 CFR §200.305.

b. PARTNER will provide the following supporting documentation to support the SF 270 Reimbursement Request: detailed invoice, receipts, and Memorandum detailing the expenditures.

Section 503. Payment by Advance Method.

a. The advance payment method shall be according to procedures established in, NGR 5-1, Chapter 11, applicable provisions of the DoDGARs, and 2 CFR §200.305.

b. Funds shall be deposited into an escrow account or into a similar account indicating the source and purpose of the funds. Any interest earned in escrow must be used in accordance with 2 C.F.R. 200.305.

c. PARTNER agrees to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by PARTNER.

d. The funds provided by this advance payment arrangement are to be used solely by PARTNER for the items of allowable acquisition costs incurred in the performance of this CA as defined in Article III.

e. PARTNER will request the Advance funds on the SF270 form along with copies of the RTP/NTP.

f. PARTNER will reconcile the Advance Funds request within 60 days of closing on a parcel/set of parcels. The Reconciliation must document expenditures for which Federal funds have been advanced. Such documentation (invoices, closing statements, receipts etc.) must be sufficient to substantiate the amount, date and purpose of the expenditure. The Reconciliation package includes an SF270 draw down of the advance, a detailed invoice, receipts and Memorandum detailing the expenditures and should be submitted to the ARNG-IEN.

Section 504. Direct Federal Payment of PARTNER Obligations.

In no event shall NGB make direct payment to PARTNER's contractor, PARTNER's employee, contractor employee, or PARTNER's vendor for any costs incurred by PARTNER under this CA.

Section 505. Interest.

The amount of interest due the United States on funds advanced to PARTNER or interest due PARTNER shall be determined and paid in accordance with 2 CFR §200.305. Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of

Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the PARTNER for administrative expenses.

Section 506. Program Income.

a. A partner may conduct income generating activities on land acquired through this CA if the activities are compatible with the goals and restrictions of §2684a and the specific terms of the applicable real estate instrument. This income is deemed to be “program income” in accordance with 2 CFR §200.80 and 2 CFR §200.307. Examples include, but are not limited to, income from hunting leases, timber leases, timber sales or the sale of carbon sequestration credits.

b. The default percentage of net program income attributed to the NGB is 75% unless the PARTNER’s cost share is greater than 25% and the PARTNER requests the actual percentage and that it is sufficiently documented. The remaining 25% or actual percentage attributed to the PARTNER of the net program income may be retained by the PARTNER.

c. For the purpose of this CA, the source of the PARTNER’s program income does not include interest earned on Federal funds.

d. Costs incidental to the generation of program income may be deducted from gross income to determine net program income provided these costs have not been charged to the NGB share. Land management activities not related to the generation of program income are not eligible for reduction from the gross income. Only those activities required to generate the program income on a specific parcel are allowable for deduction from the gross income generated by that parcel.

e. The NGB percentage of program income must be accounted through the duration of this CA and used to support the INSTALLATION ACUB program and comply with the conditions of this CA. The PARTNER may use its portion of Program Income at their sole discretion and is not required to account for and report its portion to NGB.

f. The NGB percentage of program income may be used to meet the partner’s cost sharing or matching requirement of the CA but must be documented as program income on the applicable forms.

g. To the extent available, the partner must disburse funds available from Program Income before requesting additional cash payments.

h. There is no requirement for the partner to track Program Income after the closeout or conclusion of the full term of the agreement.

507. Real Property

a. Title. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity, which is the Cooperative Agreement PARTNER or Eligible Entity.

b. Use. Except as otherwise provided by Federal statutes or by NGB, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

c. Disposition. When an interest in real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from NGB.

1. If a non-federal entity seeks to dispose of a fee interest or less than fee interest in real property obtained pursuant to this CA, the non-federal entity must seek, in writing, disposal instructions from NGB. For fee interest property, the non-federal entity must retain a recorded easement restricting use of the property, such as a conservation easement, consistent with the purposes of this CA and 10 USC §2684a.

2. The NGB disposition instructions to the non-federal entity must provide for one or more of the following:

(a). Retain title after compensating NGB. The amount paid to NGB will be determined by applying NGB's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where the non-federal entity is disposing of real property acquired or improved with military funds and acquiring replacement real property under the CA, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(b). Sell the property and compensate NGB. The amount due to NGB is determined by applying NGB's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable costs of improvements required to sell.

(c) Transfer title to the Army or to a third party designated/approved by NGB. The non-federal entity is entitled to be paid an amount calculated by applying the PARTNER's percentage of participation in the purchase of the real property to the current fair market value of the property.

ARTICLE VI - DEFINITIONS

Section 601. Army National Guard.

The Army National Guard (ARNG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that --

- a. is a land force;
- b. is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution.
- c. is organized, armed, and equipped wholly or partly at federal expense; and
- d. is federally recognized (32 USC §101).

Section 602. Chief, National Guard Bureau.

The Chief, National Guard Bureau means the head of the National Guard Bureau or his designee.

Section 603. Cooperative Agreement.

A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 USC 6302-6305:

a. Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 USC §6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

b. Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

c. A Special Military Project Cooperative Agreement is a specific, non-standard/unique agreement used to provide Federal domestic assistance to an eligible recipient (PARTNER/Eligible Entity).

Section 604. Cooperative Agreement Program Manager

A federal official appointed to oversee one or more specific assistance awards. Does not have the authority to approve deviation from the terms of the award.

Section 605. Fiscal Year.

Fiscal Year (FY) means the Federal Funding Year that begins on Oct 1 and ends on Sep 30.

Section 606. Grantee / PARTNER / Non-Federal Entity

The *non-Federal entity* means a state, local government or nonprofit organization that carries out a Federal award.

Section 607. Grants Officer/Grantor.

Grants Officer or Grantor means NGB's Senior Contracting Official (SCO) or designee. The Grants Officer is authorized to provide approvals, receive reports, modify or change the terms of the CA, provide

funds under the CA or take any other action for NGB under this CA except for deciding any appeal of a dispute under this CA and any other action delegated to a specific person by this CA or Appendices.

Section 608. Grants Officer Representative.

Grants Officer Representative (GOR) means a representative of the Grants Officer acting within the limits of his or her authority as delegated, in writing, by the Grants Officer. If the Grants Officer designates a GOR, the Grantee will receive a copy of the written designation. It will specify the extent of the GOR's authority to act on behalf of the Grants Officer. The GOR is not authorized to make commitments or changes that will affect terms or conditions of the CA.

Section 609. Military Installation.

The term 'military installation' has the same meaning as provided in section 670(1) of title 16, United States Code. The term 'State-owned National Guard installation' has the same meaning as provided in section 670(3) of title 16, United States Code.

Section 610. Military Installation Resilience.

The capability of a military installation to avoid, prepare for, minimize the effect of, adapt to, and recover from extreme weather events, or from anticipated or unanticipated changes in environmental conditions, that do, or have the potential to, adversely affect the military installation or essential transportation, logistical, or other necessary resources outside of the military installation that are necessary in order to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions, as defined in 10 U.S.C. §101 (e)(8).

Section 611. National Guard Bureau.

The National Guard Bureau (NGB) is a joint activity of the DoD pursuant to 10 USC §10501. The Chief, NGB is under the authority, direction, and control of the Secretary of Defense.

Section 612. NGB-OPR-PM.

A Federal employee (AGR or Civilian) at the A-Staff, G-Staff or J-Staff level, appointed by their respective Commander/Director/Division Chief, to be the program manager for a Master Cooperative Agreement, Military Construction Cooperative Agreement, Cooperative Agreement Appendix or Special Military Project Cooperative Agreement.

Section 613. PARTNER / Eligible Entity.

An eligible entity per 10 USC 2684a that is either a State or political subdivision of a State or a private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned that is responsible for the performance and administration of this award.

ARTICLE VII - GENERAL PROVISIONS

General. The full text of applicable 2 CFR Part 200 Terms and Conditions are incorporated by reference.

Section 701. Duration of the Agreement.

Unless sooner terminated by its terms or extended for project completion, this CA shall terminate on 30 September 20xx. Should the parties desire to fully or partially terminate prior to 30 September 20xx, the terms and conditions of the applicable federal regulation (currently 32 CFR §33.44) will apply.

Section 702. Primary Benefit.

This CA is intended for the primary benefit of NGB, the State Army National Guard, the INSTALLATION, and PARTNER, and is not intended to create any other beneficiaries.

Section 703. Modification.

This CA may be modified only by a written instrument signed by the parties hereto. Attachments may be modified separately. However, no attachment modification may modify this CA by reference.

Section 704. Successors and Assigns.

This CA may not be assigned by a party without the express written consent of NGB. All covenants made under this CA shall bind and inure to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

Section 705. Entire Agreement.

This CA forms the entire agreement between the parties as to scope and subject matter of this CA. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this CA.

Section 706. Severability.

If any provision of this CA is held judicially invalid, the remainder of the CA shall continue in force and effect to the extent not inconsistent with such holding.

Section 707. Waiver of Breach.

If a party waives enforcement of any provision of this CA upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

Section 708. Notices.

Any notice, transmittal, approval, or other official communication made under this CA shall be in writing and shall be delivered by hand, transferred electronically, or by mail to the other party at the address, telephone number, or email set forth below or at such other address as may be later designated with a copy furnished to the ARNG-IEN:

Theresa Glasgow Contracting and Grants Officer NGB-AQ-C 111 South George Mason Drive Arlington, VA 22204-1382 703-607-0983	PARTNER. POC PARTNER NAME ADDRESS PHONE
Chief, Installations & Environment Directorate ARNG-I&E 111 South George Mason Drive Arlington, VA 22204 703-607-7967	INSTALLATION ADDRESS PHONE
Alisa Dickson ACUB Program Manager / OPR-PM ARNG-IEN 111 South George Mason Drive Arlington, VA 22204 703-607-9620	

Section 709. Execution.

This CA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all Attachments shall not affect the legality or enforceability of this CA.

Section 710. Conflict of Interest.

PARTNER shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

Section 711. Access to and Retention of Records.

PARTNER shall afford any authorized representative of NGB, the DoD, or the Comptroller General access to and the right to examine all records, books, papers, and documents ("Records") that are within PARTNER's custody or control and that relate to its performance under this CA. PARTNER shall retain all such records, for at least ten years following expiration or termination of this CA.

Section 712. Change of Circumstances.

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this CA.

Section 713. Liability and Indemnity.

Nothing in this CA shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this CA, or arising from any other action that may arise as a result of this agreement. Any claims or any liabilities for claims for property loss or damage or for death or personal injury by a party or its

agents, employees, contractors or assignees or by third persons, arising out of and during the performance of this CA shall be determined according to applicable law.

Section 714. Reports.

a. Financial Reporting Requirements. During the duration of the agreement, the Non-Federal Entity must submit, at a minimum, an annual financial report. Some Modifications cannot be liquidated of all obligations made during the period of fund availability. Some disbursements, are made months and sometimes years after fund availability has expired. However, a CA cannot be closed out until all outstanding obligations have been paid or, with justification, cancelled by the Grants Officer. Timely close out of agreements is a key internal control measure.

1. Within 90 days after the end of the federal fiscal year, or upon termination or closeout of an Agreement, whichever is earlier, the PARTNER shall provide to ARNG-IEN, a final accounting of all funding and disbursements under the agreement for the fiscal year by submitting a Federal Financial Report (OMB SF-425).

2. If un-liquidated claims and un-disbursed obligations arising from the PARTNER's performance of the agreement will remain 90 days or more after the close of the fiscal year, the PARTNER shall provide to the Grants Officer and ARNG-IEN (no later than December 31) a written request to keep the agreement modification open. The request will include a consolidated, detailed listing of all un-cleared obligations and a projected timetable (date) for their liquidation and disbursement.

3. ARNG-IEN shall close out the modification for a specific fiscal year when it has been determined that all applicable administrative and financial actions have been completed, but not until all such actions have been completed.

b. Reporting on Real Property. During and after the duration of the agreement, for as long as the Federal Government retains an interest in real property, the PARTNER must annually submit a Real Property Status Report to the INSTALLATION and notify the installation and the OPR-PM of any violations, proposed remedies and enforcement actions. If the PARTNER is not the deed or easement holder, they must ensure the Eligible Entity ultimately holding the deed provides annual Real Property Status Reports to the INSTALLATION.

c. Annual ACUB Reports. In addition to the reports required above, during the duration of the agreement, the PARTNER will assist the INSTALLATION in preparing an annual report to document the contributions of the PARTNER, Eligible Entities, and other resources toward the acquisitions in the project area. NGB may request PARTNER to provide additional information relating to administration of this CA.

d. PARTNER agrees to provide NGB any additional information within a reasonable time of request and in such detail as may be required and is available to PARTNER.

Section 715. Special State Requirements.

None.

Section 716. Confidentiality of Appraisals.

In accordance with Army Regulation 405-10, *Acquisition of Real Property and Interests Therein*, paragraph 1-7b and applicable state law, NGB will maintain the confidentiality of all appraisals, offers and

other negotiation matters until the data becomes public. NGB may disclose such confidential information only to the individuals who sign a confidentiality agreement with PARTNER.

Section 717. Availability of Public Records.

Except as provided in Section 716 above or as otherwise may be exempt from public disclosure, NGB understands and agrees that all documents, papers, letters, maps and other materials specifically relating to the acquisition of a parcel are public data.

Section 718. Ownership of Real Estate.

a. Ownership of fee simple or of such lesser interest in real property acquired with federal funds under this CA shall be subject to 10 USC §2684a, and shall be held by PARTNER or Eligible Entity in accordance with Section 719.

b. If requested by the Secretary of the Army in the future, PARTNER or its Eligible Entity agrees to transfer any portion of the property or interest acquired under this agreement or a lesser interest therein to the United States. The deed transferring a real property interest acquired with federal funds awarded under this agreement must contain the transferee's agreement to the terms of this provision.

c. Any request from the Secretary of the Army shall be limited to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of 10 USC §2684a as outlined in Section 104a. Adequate notice shall be provided in writing by the Grants Officer to the then-current interest holder notifying them of any concern upon which action may be taken to request a transfer of property or interests.

d. If the transaction in which an interest in real property is acquired pursuant to the CA, but not being held by the PARTNER, but rather a transaction in which the PARTNER is the transferor of the interest in real property to the United States, a state or local government, or a similar private conservation eligible entity, the PARTNER:

1. May request military funds under the CA for allowable costs associated with the real property acquisition and transfer those funds to the Eligible Entity,

2. Shall ensure that an appropriate instrument is reviewed by NGB and is acceptable under applicable state law that sets forth the Secretary of the Army's rights under 10 U.S.C. §2684a(d)(5) and the CA is recorded in the local land records, and

3. Shall ensure that the Eligible Entity assumes all rights, restrictions, and obligations that would be imposed on PARTNER under the CA as the holder of the real property acquired with military funds.

e. If a PARTNER or Eligible Entity seeks to transfer a fee interest or less than fee interest in real property obtained pursuant to this CA, the PARTNER or Eligible Entity must seek, in writing, transfer instructions from NGB. For fee interest property, the PARTNER must retain a recorded easement restricting use of the property, such as a conservation easement, consistent with the purposes of this CA and 10 USC §2684a, unless otherwise agreed to in writing by NGB. If the PARTNER chooses to transfer its fee simple interest or less than fee simple interest in a property to an Eligible Entity, as authorized in Section 718.f.1, the PARTNER must cover the transfer costs.

f. Authorized Real Estate Ownership Scenarios when the fee simple or less than fee simple interest in real property acquired pursuant to the CA is acquired or held by an Eligible Entity other than the PARTNER:

1. Transfer. The PARTNER may acquire a fee simple or less than fee simple interest in real property, and subsequently transfer that interest to a Transferee during the duration of this agreement and for the originally authorized purpose. This is distinct from the requirements imposed by Section 507.c.1. which apply to disposition/transfer when the property is no longer needed for the originally authorized purpose. Under this approach, the PARTNER may get an advance or reimbursement of military funds for its acquisition of the fee simple or less than fee simple interest, and then subsequently transfer the fee simple or less than fee simple interest to a Transferee.

2. Assignment. The PARTNER may assign its right to acquire a fee simple or less than fee simple interest to an Assignee at closing for the originally authorized purpose, resulting in the PARTNER never entering the chain of title and the Assignee directly acquiring the fee simple or less than fee simple interest.

3. Acquisition by an Eligible Entity. The PARTNER may serve as a pass-through entity to an Eligible Entity to acquire a fee simple or less than fee simple interest in real property subject to this CA. Under this approach, the PARTNER could acquire the fee simple or less than fee simple interest utilizing its own funds and then subsequently the Eligible Entity would utilize the military funds to purchase the fee simple or less than fee simple interest from the PARTNER. Additionally, the Eligible Entity could utilize the military funds to purchase the fee simple or less than fee simple interest directly from the landowner, or the PARTNER could assign its contract at closing to an Eligible Entity that would utilize military funds to acquire the fee or easement directly from the landowner.

Section 719. Interest to Be Acquired.

a. The real property interest to be acquired may be fee simple absolute or less than fee simple; provided, however, that if a less than fee interest is to be acquired the parties shall, for each parcel, have agreed to the form of the acquisition, the property rights to be acquired and the legal rights and responsibilities to be obtained or assumed.

b. The following shall apply for any fee simple interest in real property acquired pursuant to the CA:

1. The interest shall be recorded in the local land records and shall recite that the land was acquired with assistance from, and is subject to rights of, the United States Army under the provisions of 10 USC §2684a. Prior to closing, the draft instrument shall be forwarded to the ARNG-IEN and approved by NGB and shall be effective to put prospective assignees or transferees on notice of the Army's rights and interests in the property. PARTNER shall promptly provide proof of such filing or recording.

2. If the transferee is contributing funds to the acquisition of the fee simple interest that are only available when the transferee acquires the fee simple interest from the PARTNER, the Army's rights and interests required in Section 719.b.1 shall be recorded in the instrument under which the transferee acquires the fee simple interest from the PARTNER, rather than in the instrument under which the PARTNER pre-acquired the fee simple interest.

3. Any assignment or transfer of PARTNER's interest may only be to the United States, a state or local government, or a similar private conservation organization. An Assignee or Transferee of a fee simple interest to a private conservation organization must be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986 as amended (or any successor provision) and the applicable regulations thereunder. Prior to any assignment or transfer of interest, PARTNER or its successor shall provide a written request to proceed to NGB. The language of such assignment or transfer document shall require the assignee or transferee to assume all rights, restrictions, and obligations that would be imposed on PARTNER under the CA as the holder of the real property acquired with military funds.

c. The following shall apply for any less than fee simple real property interest acquired pursuant to the CA.

1. PARTNER shall ensure that the United States Department of the Army is granted a third party right of enforcement in the conveyance document of the real property interest.

2. If the transferee is contributing funds to the acquisition of the less than fee simple interest that are only available when the transferee acquires the less than fee simple interest from the PARTNER, the Army's third party right of enforcement shall be recorded in the instrument under which the transferee acquires less than fee simple interest from the PARTNER, rather than in the instrument under which the PARTNER pre-acquired the less than fee simple interest.

3. Should PARTNER or its Eligible Entity fail to enforce any material term or conditions of said easement, covenant, or other interest in real estate and permit the property to be used or developed in any manner inconsistent with said term or conditions, then the United States through the Secretary of the Army shall have the right to enforce said terms or conditions or request the transfer of an interest in the property sufficient to protect his interest as required by 10 USC §2684a.

4. Any assignment or transfer of PARTNER interest may only be to the United States, a state or local government, or a similar private conservation organization. An Assignee or Transferee of a conservation easement that is a private conservation organization must be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986 as amended (or any successor provision) and the applicable regulations thereunder. The interest acquired under this CA may not be assigned by a party without the express written consent of NGB. Prior to any assignment or transfer of interest, PARTNER or successor shall notify NGB. The language of such assignment shall require the assignee or transferee to assume the rights, restrictions, and obligations under the easement, covenant, or other real property interest.

5. PARTNER will ensure that any conservation easement or other less than fee simple interest in real property contains a provision stating that the terms and conditions, and restrictions contained in the instrument will be inserted by reference into any subsequent deed or legal instrument by which the grantor divests either fee simple title or a possessory interest in said property.

Section 720. Negotiations.

Negotiations with the owner of the Parcel will be conducted by PARTNER or its authorized representative, in a manner intended to assure that the most favorable price and terms are obtained for NGB, State ARNG INSTALLATION and PARTNER.

Section 721. Management and Monitoring of Lands and Property Acquired by PARTNER or Eligible Entity

a. Fee Simple Interest:

1. The costs of long-term management are the responsibility of PARTNER. The NGB and INSTALLATION shall cooperate in development of the land management plan and/or a species habitat management plan where appropriate and practicable.

2. The parcel(s) shall be managed such that development or use of the land will be compatible with the mission of the installation and such that natural resources on the parcel are preserved to help eliminate or relieve current or anticipated environmental restrictions that might otherwise restrict, impede, or otherwise

interfere, either directly or indirectly, with current or anticipated military training and operations on INSTALLATION.

3. The PARTNER or Eligible Entity retaining the fee simple interest should coordinate with the INSTALLATION on any activities proposed on parcel(s) purchased in fee simple to ensure they are compatible land uses. The generation of program income from those activities must be tracked and accounted for the duration of this agreement.

4. The PARTNER or Eligible Entity retaining the fee simple interest must coordinate with the INSTALLATION and ARNG-IEN on development activities proposed that are meant for installation resilience prior to making any commitments to ensure those activities are within the scope of 10 U. S. C. §2684a, 2 CFR Part 200 and Army/ARNG policies.

c. Less Than Fee Simple Interest:

a. The long term monitoring and enforcement of easements are the responsibility of the PARTNER or Eligible Entity retaining the less than fee simple interest. The PARTNER or Eligible Entity retaining the less than fee simple interest shall provide the INSTALLATION with copies of the annual monitoring and enforcement reports and will notify ARNG-IEN of any violations and provide a plan for enforcement of the deed restriction.

ARTICLE VIII - REPRESENTATIONS AND CERTIFICATIONS

General. The full text of applicable 2 CFR Part 200 required statutes are incorporated by reference

Section 801. Applicable Law.

a. This CA is incidental to the implementation of a Federal program. Accordingly, this CA shall be governed by and construed according to Federal law as it may affect the rights, remedies, and obligations of the United States.

b. If PARTNER contracts for services or products related to acquisitions under the provisions of this CA that are to be paid for with military funds, then PARTNER shall incorporate into the service or product contracts the provisions of Sections 802 through 807 below.

c. The requirements of this Article shall not be construed to require PARTNER to include provisions of Sections 802 through 812 in the land purchase agreement.

Section 802. Governing Regulations.

Title 2 CFR Part 200, the DoDGARS and NGR 5-1 as amended, are hereby incorporated into this CA by reference as if fully set forth herein, shall govern this Agreement.

Section 803. Nondiscrimination.

The Contractor/Vendor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with PARTNER performance under this CA, on the grounds of race, religion, color, national origin, sex, or handicap. Accordingly, and to the extent applicable, PARTNER covenants and agrees to comply with the following:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 USC §2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.

b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 USC §1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 USC §6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

Section 804. Lobbying.

a. PARTNER covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and

the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or CA.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 USC §1352) is incorporated by reference and PARTNER agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Section 805. Drug-Free Work Place.

PARTNER covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 USC 701, et seq.).

Section 806. Environmental Protection.

PARTNER covenants and agrees that its performance under this Agreement shall comply with all applicable Federal, state and local environmental laws and regulations.

Section 807. Use of United States Flag Carriers.

a. PARTNER covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 USC 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118) and the inter- operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. PARTNER agrees that it will comply with the Cargo Preference Act of 1954 (46 USC Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

Section 808. Debarment and Suspension.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The PARTNER agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at www.sam.gov, or successor website, to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement. PARTNER and subrecipients shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in PARTNER and subrecipient contract files, and shall be subject to audit by NGB and Federal/State audit agencies

Section 809. Buy American Act.

PARTNER covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 USC10a et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

Section 810. Uniform Relocation Assistance and Real Property Acquisition Policies

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) is applicable to this agreement and incorporated herein by reference. For purposes of the STURAA and for all purposes under this CA, all transactions under this CA shall be voluntary transactions with willing sellers only. NGB and PARTNER acknowledges and agrees that (i) no specific site or property needs to be acquired, (ii) any real property interest to be acquired under this CA is not part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits, and (iii) neither the Government nor the Recipient will acquire the property pursuant to this CA in the event negotiations fail to result in an amicable agreement. For real property interests to be acquired by the Recipient or other non-governmental eligible entity, the Recipient may follow the procedures set forth under the STURAA for voluntary transactions by a person that does not have authority to acquire property by eminent domain.

Section 811. Copeland "Anti-Kickback" Act.

PARTNER agrees that it will comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this CA, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Section 812. Contract Work Hours and Safety Standards Act.

PARTNER covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC §3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

Section 813. System for Award Management and Data Universal Numbering Requirements

PARTNER covenants and agrees to comply with the System for Award Management (SAM) and Data Universal Numbering Requirements (DUNS) as indicated below:

a. Requirement for SAM. You as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this Agreement or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for DUNS Numbers. If you are authorized to make sub-awards under this Agreement, you: must notify potential subrecipients that no entity (see definition in paragraph (c) of this Agreement term) may receive a subaward from you unless the entity has provided its DUNS number to you; and may not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions. For purposes of this Agreement:

1. SAM means the official U.S. Government system that consolidated the capabilities of CCR and EPLS. There is NO fee to register in SAM. Entities may register at no cost at www.sam.gov, or successor

website. Additional information about registration procedures, updating your recipient account, searching records, as well as user guides and helpful hints may be found at the SAM website. If you had an active record in CCR, you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity record(s) in order for you to be paid or to receive an award or you need to renew your Entity(s) prior to its expiration. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the Entity. To update or renew your Entity records(s) in SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by typing the DUNS number or business name into the search box.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

- A Governmental organization, which is a State, local Government, or Indian Tribe;
- A foreign public entity;
- A domestic or foreign nonprofit organization;
- A domestic or foreign for-profit organization; and
- A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward: means an award provided by a pass-through entity to a sub-recipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

5. Subrecipient means an entity that: Receives a subaward from you under this Agreement; and is accountable to you for the use of the Federal funds provided by the subawards.

Section 814. Reporting Subawards and Executive Compensation

PARTNER does not intend to award any subawards or use any funds obtained pursuant to this CA for any compensation of recipients' executives. To the extent PARTNER awards any subawards or uses any funds obtained pursuant to this CA PARTNER covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if-

- the total Federal funding authorized to date under this award is \$25,000 or more;
- in the preceding fiscal year, you received--
 - 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term: As part of your registration profile at <http://www.ccr.gov>. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

- in the subrecipient's preceding fiscal year, the subrecipient received--
 - 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term: To the recipient and by the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: Subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR Part 200:

- A Governmental organization, which is a State, local government, or Indian tribe;
- A foreign public entity;
- A domestic or foreign nonprofit organization;
- A domestic or foreign for-profit organization;
- A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing PARTNERS, or any other employees in management positions.

3. Subaward:

- This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- The term does not include your procurement of property and services needed to carry out the project or program.
- A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that: Receives a subaward from you (the recipient) under this award; and is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- Salary and bonus.
- Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- Above-market earnings on deferred compensation which is not tax-qualified.
- Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

815. Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.

a. The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

b. The recipient must notify its employees, contractors, or subrecipients that the prohibitions and

restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.

c. The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

d. If the Government determines that the recipient is not in compliance with this award provision:

1. Will prohibit the recipient's use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Pub. L. 113-235) or any successor provision of law; and

2. May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

e. In addition, PARTNER must affirmatively represent the absence of the disqualifying policy. The representation form requirements should include the following:

Representation regarding the Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.

In compliance with the statutory requirement (PL 113-235, Division E section 743), PARTNER hereby represents that it does not require any of its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting those employees, contractors, or subrecipients from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Note that: (1) the basis for this representation is a prohibition in section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235) and any successor provision of law on making funds available through grants and cooperative agreements to entities with certain internal confidentiality agreements or statements; and (2) section 743 states that it does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

If PARTNER policy or practices change in such a way that the above representation is no longer accurate, the appropriate official or authorized representative will so apprise the federal grants officer.

ARTICLE IX - LEGAL AUTHORITY

Section 901. Legal Authority.

a. Neither PARTNER nor NGB is under any existing or foreseeable legal disability that would prevent or hinder it from fulfilling the terms and conditions of this CA. The parties shall promptly notify each other of any legal impediment that arises during the term of this CA that may prevent or hinder its fulfillment of its obligations under this CA.

b. NGB authority: NGB enters into this CA pursuant to the provisions of 10 USC §2684a and any subsequent amendments and 31 USC §6305, *Using Cooperative Agreements*.

c. PARTNER authority: In accordance with 10 USC §2684a (b), NGB has determined that PARTNER is an eligible entity. See Attachment A.

ARTICLE X - TERMINATION, ENFORCEMENT, CLAIMS, DISPUTES RESOLUTION AND APPEALS

Section 1001. Termination.

This CA may be terminated by either party according to the terms and conditions of 2 CFR §200.339, the DoDGARS and NGR 5-1 as amended or republished.

Section 1002. Enforcement.

NGB may take such actions to enforce the terms of this CA as may be provided for in and under the terms of 2 CFR §200.339, the DoDGARS and NGR 5-1 as amended or republished.

Section 1003. Claims, Disputes Resolution and Appeals.

a. Any claim made by PARTNER arising out of this CA shall be presented in writing to the Grants Officer. The claim shall include: the amount of monetary relief claimed or the nature of other relief requested; the basis for relief; and, the documents or other evidence pertinent to the claim.

b. Claims shall be made within 60 days after the basis of the claim is known or should have been known, whichever is earlier. It is the Compatible Lands Foundation's duty to include in its claim all information needed to demonstrate its timeliness.

c. Upon receipt of a claim, the Grants Officer shall provide a written decision denying or sustaining the claim, in whole or part, which decision shall include the reason for the action, within 60 days of the receipt of a claim. If the Grants Officer needs additional time to resolve the claim or dispute, the parties shall be so notified before expiration of the initial 60 days. The determination shall be final unless appealed by PARTNER pursuant to the provisions of this section.

d. Alternative Dispute Resolution (ADR).

1. Policy. It is NGB policy to try to resolve all issues concerning cooperative agreements at the Grants Officer's level. Grant Officers are encouraged to use ADR procedures to the maximum extent practicable.

2. Procedures. If PARTNER decides to appeal a Grants Officer's decision, the Grants Officer shall encourage PARTNER to enter into ADR procedures. The ADR procedures to be used shall be agreed to at the time the parties determine to employ them.

e. Appeals.

1. Grant Appeal Authority. The Chief NGB shall designate a Grants Appeal Authority at the time of receipt of appeal.

2. Right of Appeal. PARTNER has the right to appeal a Grants Officer's decision to the Grant Appeal Authority.

f. Appeal Procedures.

1. Notice of appeal. PARTNER may appeal a decision of the Grants Officer within 90 days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the Grants Officer.

2. Appeal file. Within 30 days of receiving the notice of appeal or such other time as may be specified by the Grant Appeal Authority, the Grants Officer shall forward to the Grant Appeal Authority and PARTNER the appeal file, which shall include copies of all documents relevant to the appeal.

3. Decision. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

g. Nothing in this section is intended to limit PARTNER's right to any remedy under the law.

ARTICLE XI – AGREEMENT PARTICULARS

Section 1101. Agreement Particulars.

The information below shall be recorded by the Grants Officer's Representative (GOR) for compliance with the reporting requirements of the Defense Assistance Award Data System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006, and 2 CFR Part §200.210.

- a. Grantee/Recipient/PARTNER Name Category:
- b. Grantee/Recipient/PARTNER Name Type:
- c. Grantee/Recipient/PARTNER Name DUNS:
- d. Primary Place of Performance (if different from 'Issued To' on CA Modification Form):

(To include Zip + 4)

- e. Grantee/Recipient/PARTNER Name County
(Primary Place of Performance):
- f. Grantee/Recipient/PARTNER Name Congressional District
(Primary Place of Performance):
- g. Major Agency: DOD
- h. Agency Code: 2065 / 0100
- i. Funding Agency: Army
- j. Program Source Agency: 21
- k. Transaction Type: Cooperative Agreement
- l. CFDA: 12.401
- m. CFDA Program Title: Operation and Maintenance,
Army National Guard
- n. Program Source Account-Funding: 2065 / 0100
- o. Treasury Appropriation Code: 2065
- p. Award/Obligation/Action Date: _____
- q. Starting Date: _____
- r. Ending Date: 30 September 20
- s. Record Type:
- t. Fiscal Year/Quarter:
- u. Unique Federal Award identification Number (FAIN)
- v. Approved Budget Amount* \$
- w. R&D Award (Yes or No) NO
- x. Indirect Cost Rate or CPP Rate: N/A

* The *approved budget* is the amount the PARTNER has determined is the total Federal amount needed to execute the agreement. The approved budget amount should be the total dollar amount the NGB anticipates, subject to the availability of Federal funds, being available for reimbursement for the PARTNER.

Attachment A: PARTNER Specific Information and Approved Buffer

Insert statement that XXX is an eligible entity (previously captured in Section I).

Partner intends to secure their match via A, B and C

The real estate component of this partnership is as follows (address any other partners and their roles):

- a. Fee Simple
- b. Less than Fee Simple
 - 1) Deed Restriction
 - 2) Purchase of Development Rights
 - 3) Conservation Easement

PARTNER shall pursue a parcel or parcels valued at such amount as contributed by NGB via the Cooperative Agreement and subsequent modifications towards an approved project within the Camp XXXX ACUB Project Area. The Camp XXX ACUB Project Area includes those parcels recognized in the Camp XXX ACUB approved on XXX and amended subsequent to any biennial review.

Whether a parcel or parcels is sufficiently in the vicinity of Camp XXX shall be determined by NGB and Camp XXX.