



**COMMONWEALTH OF PENNSYLVANIA
TREASURY DEPARTMENT
AGRICULTURE-LINKED INVESTMENT
PROGRAM AGREEMENT**



THIS AGREEMENT, made this _____ day of _____, _____, by and between the Treasury Department of the Commonwealth of Pennsylvania (hereinafter “TREASURY”),

AND

_____,
(Lending Institution Name/Address) an entity which qualifies as a “lending institution” as the term is defined in the Agriculture-Linked Investment Program Act, as amended, (hereinafter “LENDER”).

WHEREAS, Act 37 of 2019, known as the Agriculture – Linked Investment Program Act (hereinafter “the Act”), reinstated the Agricultural-Linked Investment Program (hereinafter “Program”) and sets forth the parameters for the Program;

WHEREAS, Section 605(d)(1) of the Act authorizes the Commission, at its discretion, to enter into an agreement with the State Treasurer to subsidize the interest rate charged to eligible borrowers under this program with funds provided to the Commission under the Nutrient Management Act;

WHEREAS, the said Act sets forth the terms and conditions under which an eligible borrower may qualify for a program loan, under which a lending institution may qualify for a linked deposit by TREASURY in connection with such a loan, and under which the State Conservation Commission (hereinafter “COMMISSION”) may subsidize the interest rate for such loan;

WHEREAS, the mechanism by which the loan interest rate is subsidized is for TREASURY to place an Agri-Linked Deposit of funds with the LENDER which is equal to the amount of the loans at an interest rate which is a specified number of percentage points below the prevailing rate for such deposits, with the requirement that the BORROWER’s loan interest rate be reduced by the same number of percentage points;

WHEREAS, if the LENDER is an Agricultural Credit Association affiliated with the Farm Credit Bank, the mechanism by which the loan interest rate is subsidized may be for TREASURY to invest an amount equal to the loan in bonds, notes, debentures or other obligations or securities issued by the Farm Credit Bank. The interest due on the security will be reduced by the approved number of percentage points for the average daily balance of all Agri-Linked loans.;

WHEREAS, the COMMISSION on _____, 2021, has placed on deposit in a restricted escrow account in the State Treasury an amount sufficient to reduce by three (3.00) percentage points the loan interest rate on a \$2,500,000 block of loans to be issued pursuant to the Act;

WHEREAS, the LENDER has approved an application from the BORROWER for a program loan;

WHEREAS, LENDER has reviewed the BORROWER’s application and confirmed that the BORROWER is an “eligible borrower” as defined by the Act, that the LENDER is a “lending institution” as defined by the Act, and that the transaction qualifies in all other respects for treatment as a subsidized loan under the Act;

WHEREAS, the parties wish to consummate the transaction pursuant to the provisions of the Act.

NOW THEREFORE, in consideration of the premises, and of the mutual promises, covenants and conditions set forth herein, and intending to be legally bound, the parties agree as follows:

SECTION I: AGRICULTURE – LINKED DEPOSIT

A. TERMS FOR LENDERS OTHER THAN AGRICULTURAL CREDIT ASSOCIATIONS

1) LINKED DEPOSIT; TERM; INTEREST RATE

In consideration of LENDER agreeing to make Program loans to individual BORROWERS in a principal amount of no more than \$250,000, TREASURY agrees to deposit funds with LENDER in an amount equivalent to the outstanding loans balance in a collateralized Certificate of Deposit (hereinafter “CD”) in the name of the Commonwealth which, except as provided in the Act, conforms to the legal requirements for deposits in state depositories. The CD will have an initial term of no more than six (6) months from date of deposit, and will bear interest at an interest rate of equal to the established Board of Finance and Revenue interest rate on state deposits in effect at the time of initial funding, minus the COMMISSION’s subsidy of three (3.00) percentage points. The rate setting mechanism can result in a negative interest rate on the CD.

2) AUTOMATIC RENEWAL; PRINCIPAL REDUCTION

At the end of the initial six-month term, and at six-month intervals thereafter, the LENDER will pay TREASURY the accrued interest on the CD, as well as principal in an amount equivalent to the principal reduction due from the BORROWER on the Program loan, or the amount of principal actually repaid by the BORROWER, whichever amount is greater, on the 15th day of the month following the six-month term. In the event of a negative interest rate, any funds due to the LENDER will be deducted from any principal due to TREASURY or will be remitted to the LENDER by wire transfer.

3) RENEWAL INTEREST RATE; FINAL MATURITY

The principal balance on the Agri-Linked Deposit, as adjusted, will automatically renew for a subsequent six-month term at the then-prevailing Board of Finance and Revenue interest rate minus the three (3.00) percentage point COMMISSION subsidy, and so forth at six-month intervals until the Program loan with which it is associated is paid in full. However, in no event shall the final maturity date of the CD exceed twelve (12) years from the date of the initial deposit.

4) MISCELLANEOUS TERMS AND CONDITIONS

If the due date for any six-month term occurs on a weekend or State holiday, such payment shall be due on the next business day. Interest due on the CD shall be computed using the actual number of days in the deposit period, based upon a 365-day year. All transfers of funds between LENDER and TREASURY shall be accomplished by wire transfer or other mutually acceptable method.

B. TERMS FOR AGRICULTURAL CREDIT ASSOCIATIONS

1) TERM, AMOUNT

LENDER agrees that, upon execution of this Agreement, it will make an Agriculture-Link Investment Loan to a BORROWER in an amount not to exceed \$250,000, which loan shall be amortized over a period not to exceed twelve (12) years at an interest rate which shall be either a fixed rate for the entire term of the loan or a variable rate.

2) LOAN INTEREST RATE

LENDER hereby certifies that its usual lending criteria is applied for all loans being initiated subject to the Program, the current prevailing market loan interest rate applicable to BORROWERS, and that the initial interest rate payable on the loans by BORROWER shall reflect a reduction equivalent to the three (3.00) percentage point subsidy paid by the COMMISSION with respect to the linked deposit corresponding to the loan. The current prevailing market loan interest rate shall be deemed to be the interest rate that the LENDER would charge to BORROWERS in the absence of the Program.

3) SUBSIDY REMITTANCE

In consideration of LENDER agreeing to make loans to BORROWERS, TREASURY agrees to remit that specific sum of money which represents the interest due on Agri-Linked Deposits based upon the calculation of the rate subsidy applied to the average outstanding daily balance of the loan(s) in a six-month period. The funds will be remitted to Farm Credit Bank (hereinafter "FCB") twice a year, no later than fifteen days following the six-month interval. The payment period will be determined on the basis of the initial Agri-Linked Loan execution by the LENDER.

C. CREDIT RISK TO BE BORNE BY LENDER

It is understood and agreed that credit decisions and credit risks involved in the granting of the loan to the BORROWER rest solely with LENDER. Neither TREASURY nor the COMMISSION shall be responsible or liable for the repayment of any loan made by LENDER in conjunction with the Agriculture-Linked Investment Program. Except as modified by the requirements of the Act and the terms of this Agreement, LENDER may apply its usual policies and practices with respect to the administration, collection and enforcement of the loan to BORROWER.

D. LENDER'S REPRESENTATIONS

This Agreement is predicated upon the following representations by LENDER, which shall be conditions of the Agreement:

- 1) LENDER is a "lending institution" as defined by the Act;
- 2) BORROWER is an "eligible borrower" as defined by the Act;
- 3) BORROWER has obtained from the COMMISSION or its delegated agent a Letter of Approval, approving a Best Management Practices for implementation pursuant to the Act, a copy of which Letter of Approval is submitted herewith;
- 4) BORROWER has obtained from a project designer an estimate of reasonable costs for implementation of best management practices listed in the Best Management Practices which has been concurred in by the COMMISSION or its delegated agent, a copy of which is submitted herewith;
- 5) The principal amount of the program loan to BORROWER, when combined with any grant or grants made for the same improvements, does not exceed the actual cost of the improvements necessary to implement the best management practices in the BORROWER's Best Management Practices, and in no event shall the amount loaned exceed \$250,000 or the term of the loan exceed twelve years. BORROWER's Affidavit setting forth all sources of funding for the improvements is submitted herewith;

- 6) The use of all sums loaned to BORROWER is restricted to paying for said improvements;
- 7) The loan is structured as a construction loan, with draws contingent upon attainment of levels of completion, and the final draw (of not less than 20% of the total loan) is contingent upon BORROWER obtaining certification of satisfactory completion from the COMMISSION, its delegated agent or other qualified professional designated or approved by COMMISSION.

E. LOSS OF SUBSIDY AND LINKED DEPOSIT UPON FAILURE TO COMPLETE IMPROVEMENTS

Failure by BORROWER and LENDER to obtain certification of satisfactory completion from the COMMISSION or its delegated agent will result in the loss of the subsidy and withdrawal from LENDER by TREASURY of the linked deposit.

F. LOSS OF SUBSIDY UPON DEFAULT BY BORROWER; RETURN OF LINKED DEPOSIT UPON WRITE-OFF OF LOAN

A default by BORROWER in repayment of the loan will result in the loss of the subsidy, in which event the interest rate payable by LENDER on the linked deposit shall revert to the full interest rate established by the Board of Finance and Revenue. For the purposes of this paragraph, the term “default” shall mean a loan which is more than ninety (90) days in arrears in payments. LENDER agrees to promptly notify TREASURY and the COMMISSION of the occurrence of such a default. LENDER further agrees to return the balance of the linked deposit to TREASURY as soon as any program loan is written off.

G. LOSS OF SUBSIDY UPON EXHAUSTION OR UNAVAILABILITY OF FUNDING

Section 5(c) of the Act provides: “The subsidy provided by this act shall continue only so long as commission furnishes the funds to pay for it. In the event funding is exhausted or otherwise unavailable, the interest payable by lending institutions shall revert to the interest rate on deposits in State depositories as established from time to time by the Board of Finance and Revenue as otherwise provided by law.”

H. CHANGE IN LENDER CLASSIFICATION OF APPROVED DEPOSITORY; FAILURE TO COLLATERALIZE

LENDERS, other than Agricultural Credit Associations, must be an Approved State Depository and are subject to the terms and condition of the designation. Treasury will redeem the Agri-link deposit prior to Borrower pay-off or regular maturity due to change in a Lending Institution’s eligibility as a depository including but not limited to: change of ownership; failure to maintain adequate collateralization requirements, violations of their Depository Agreement with the Commonwealth or Treasury, failure to maintain licensure, violation of the Lender Agreement, violations of state or federal law.

SECTION II: CONFIDENTIALITY

It is understood that information submitted to TREASURY by the LENDER or the BORROWER in applying for approval to participate in the Agriculture-Linked Investment Loan Program may be considered to be public information. Accordingly, information about the BORROWER as to creditworthiness or which is otherwise sensitive or confidential need not be included with the documentation submitted to TREASURY.

SECTION III: COLLATERAL REQUIREMENT

Pursuant to Section 606 (c) of the Act, LENDER shall pledge sufficient collateral to be held at the Federal Reserve in either an existing or newly established Joint Custody Account or through a Federal Home Loan Bank Letter of Credit. LENDER shall comply with policies relating to the deposit, release, and substitution of securities pledged as collateral on Commonwealth deposits, as required by the Fiscal Code provisions governing deposits of State funds, and as set forth in the Depository and Custodial Agreement between LENDER and TREASURY.

SECTION IV: AMENDMENTS AND MODIFICATIONS

No amendment or modification of this Agreement shall have any force or effect unless it is in writing and signed by authorized representatives of the parties. This Agreement contains all the terms and conditions upon which the parties have agreed, and no other Agreements, oral or otherwise, relating to the subject matter of this Agreement shall be deemed to exist or bind any of the parties.

SECTION V: GOVERNING LAW

A. THE ACT INCORPORATED BY REFERENCE

This Agreement is governed by all the provisions of the Act, which are accordingly incorporated herein by reference and made a part hereof.

B. INTERPRETATION

This Agreement shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, and performance.

C. JURISDICTION

Exclusive jurisdiction with respect to the parties and the subject matter in connection with the performance of the terms of this Agreement shall lie with the courts of the Commonwealth of Pennsylvania.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement.

COMMONWEALTH OF PENNSYLVANIA
TREASURY DEPARTMENT

BY: _____ DATE: _____

LENDER: _____

BY: _____ DATE: _____

NAME:

TITLE:

Attachments:

- 1) Borrower Assurance of Eligibility
- 2) Statement of Costs
- 3) Borrower Affidavit
- 4) Agri-Link/Loan Inventory Report