

REVISED AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION
AND
THE STATE OF MICHIGAN

CONCERNING THE IMPLEMENTATION OF
CONSERVATION RESERVE ENHANCMENT PROGRAM

I. PURPOSE

This Revised Agreement (Agreement) is entered into between the United States Department of Agriculture's (USDA) Commodity Credit Corporation (CCC) (together, USDA CCC) and the State of Michigan (Michigan) to implement a Conservation Reserve Enhancement Program (CREP) under the Conservation Reserve Program (CRP). The primary objectives of this CREP are the improvement of water quality, enhancement of wildlife habitat for fish and wildlife, and enhancement of nesting for upland birds and mammals within the project area (see Exhibit 1).

The provisions of this Agreement supersede all provisions of the earlier version of the CREP Agreement entered into between USDA CCC and Michigan on July 14, 2000, as amended. However, the provisions of the earlier Michigan CREP Agreement will continue to apply and be fully adhered to between USDA CCC and Michigan for all still-existing CRP contracts approved under such earlier agreements prior to the implementation of this Agreement, except with regard to eligibility for re-enrollment and the provisions of Section VII.H, herein, both of which shall apply to still-existing CRP contracts approved under such earlier agreement.

The provisions for re-enrollment provided in this Agreement will apply to all land enrolled through the earlier Michigan CREP Agreement.

No more than 80,000 acres can be enrolled through this CREP at any one time.

The purpose of this Agreement is to allow, where deemed desirable and appropriate by the USDA CCC and Michigan, certain acreage preponderantly physically located within the project area to be enrolled or re-enrolled, as applicable, in CRP through this CREP.

II. GENERAL PROVISIONS

When full enrollment is reached, the goals of this CREP Agreement are to annually:

1. Reduce sediment entering rivers and streams by 52,000 tons;
2. Reduce phosphorus entering rivers and streams by 52,000 lbs.;
3. Reduce nitrogen entering rivers and streams by 105,000 lbs.; and
4. Sequester approximately 60,000 metric tons of carbon.

III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3831 et. seq.), and the regulations at 7 CFR Part 1410 to perform all of its activities contemplated by this Agreement. The Farm Service Agency (FSA) administers CRP on behalf of CCC.

Authority for Michigan to participate in this Agreement is Article III, section 5, of the Michigan Constitution, and section 324.8202 of the Natural Resources and Environmental Protection Act, Michigan Public Act 451 of 1994, Part 82, as amended by Act 176 (2001).

This Agreement is not intended to, and does not, supersede any State or Federal laws or regulations, which have been, or may be, promulgated by either USDA or Michigan. CREP is a component of the CRP.

IV. PROGRAM ELEMENTS

USDA CCC and Michigan agree that:

- A. This CREP consists of a Federal continuous CRP signup component, cost-share payments, and annual rental payments, and Michigan cost-share payments and one-time incentive payments. The following lands may be enrolled or re-enrolled in CRP through this CREP, as applicable, provided the land is otherwise eligible for CRP in accordance with the CRP regulations at 7 CFR Part 1410, FSA National CRP Directives, and this Agreement: new land; and, land currently enrolled in CRP through the earlier version of this Agreement. For purposes of this CREP, "new land" is land that is not enrolled in CRP at the time the land is offered for enrollment through this CREP.
- B. All approved conservation plans for land enrolled or re-enrolled through this CREP shall be consistent with CRP regulations at 7 CFR Part 1410, FSA National CRP Directives, Natural Resources Conservation Service's (NRCS) Field Office Technical Guide (FOTG), and this Agreement. All conservation practices installed must meet the minimum specifications and criteria in FSA National CRP Directives, NRCS FOTG, and this Agreement.
- C. The CRP contracts for land enrolled or re-enrolled through this CREP must be for a period of a minimum of 14 years, but not exceed a maximum of 15 years.
- D. Participants will not be denied the opportunity to offer eligible acreage for enrollment in the CRP during general or continuous CRP enrollment periods.
- E. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR Part 1410, FSA National CRP Directives, and the provisions of this Agreement. In the event of a conflict, the CRP regulations will be controlling.
- F. No lands may be enrolled or re-enrolled through this CREP until the FSA National Program Manager for CREP approves a detailed Michigan FSA State Office amendment to the FSA

National CRP Directives, which provides a thorough description of this CREP and applicable practices.

G. Eligible practices for enrollment or re-enrollment through this CREP are:

- CP1, Establishment of Permanent Introduced Grasses and Legumes
- CP2, Establishment of Native Grasses
- CP5A, Field Windbreak Establishment
- CP21, Filter Strips
- CP22, Riparian Buffer
- CP23, Wetland Restoration
- CP23A, Wetland Restoration, Non-Floodplain
- CP26, Sediment Retention Control Structure

H. To be enrolled or re-enrolled as practice:

1. CP1:

- i. All cropland offered to be enrolled as CP1 and CP2, per field, must have a weighted minimum average Erodibility Index for wind or water, but not both combined, of 8 or greater, as determined by FSA;
- ii. The cropland must be immediately adjacent to an eligible waterbody, as determined by CCC, and not exceed a maximum average width of 1,000 feet from the edge of the eligible waterbody, except that the average maximum width may exceed 1,000 feet from the edge of the eligible waterbody only when such additional width is required to address the water quality concern of the waterbody in accordance with the NRCS FOTG; and
- iii. The cropland must be devoted to a cover comprised of a mixed stand consisting of a minimum of five species of vegetation, as follows: at least three introduced grass species, and at least two forb or legume species, all of which are beneficial to wildlife in the area. Trees, shrubs, and other woody vegetation are not authorized as part of the cover for practice CP1.

2. CP2:

- i. All cropland offered to be enrolled as CP1 and CP2, per field, must have a weighted minimum average Erodibility Index for wind or water, but not both combined, of 8 or greater, as determined by FSA;
- ii. The cropland must be immediately adjacent to an eligible waterbody, as determined by CCC, and not exceed a maximum average width of 1,000 feet from the edge of the eligible waterbody, except that the average maximum width may exceed 1,000 feet from the edge of the eligible waterbody only when such additional width is required to address the water quality concern of the waterbody in accordance with the NRCS FOTG; and

- iii. The cropland must be devoted to a cover comprised of a mixed stand consisting of a minimum of nine species of vegetation, as follows: at least three native grass species, and at least six native forb species, all of which must be beneficial to wildlife in the area. In addition, and as an option, the cover may also include one native shrub species, if requested by the producer, and if the conservation planner determines that the shrub species is beneficial to wildlife in the area. Trees and other woody vegetation are not authorized as part of the cover for practice CP2.
- 3. CP5A, the cropland must be devoted to a cover comprised of a minimum of one row of trees and two rows of shrubs, and a maximum of two rows of trees plus three rows of shrubs.
- 4. CP21, the average minimum width of the filter strip will not be less than 50 feet, and the average maximum width will not exceed 150 feet. The minimum width of a filter strip will not be less than 20 feet.
- 5. CP22, the average minimum width of the riparian buffer, will not be less than 50 feet, and the average maximum width will not exceed 180 feet. The minimum width of a riparian buffer will not be less than 35 feet.
- 6. CP26:
 - i. The CP26, sediment retention control structure is a small earthen ridge-and channel or embankment built across (perpendicular to) a small watercourse or area of concentrated flow within a cropland field that is designed to trap agricultural runoff water and sediment as it flows down the watercourse.
 - ii. The earth embankment must not exceed 15 feet in height from the natural ground at the centerline of the embankment to the top of the fill material.
 - iii. The earth embankment and inundated area must be devoted to a cover comprised of a mixed stand consisting of a minimum of two species of vegetation, as follows: at least one introduced or native grass species and at least one forb, legume or additional grass (introduced or native) species best suited for site conditions, in accordance with the NRCS FOTG.
- I. The cumulative total acreage enrolled in CRP through this CREP will not exceed:
 - 1. 12,000 acres for CP1;
 - 2. 12,000 acres for CP2;
 - 3. 24,000 acres for CP23, CP23A, and CP26 combined; and
 - 4. 1,000 acres for CP26.
- J. To be eligible to be re-enrolled through this CREP, land must:

1. Be currently enrolled in CRP through this CREP and be re-enrolled through this CREP before the existing CRP contract ends;
2. Meet all the requirements and criteria for re-enrollment according to the same provisions for re-enrollment under continuous CRP signup, as provided in FSA National CRP Directives and 7 CFR Part 1410, including that the existing cover must be in compliance with the related conservation plan; and
3. Be re-enrolled under the same eligible practice (see Section IV.G) as the practice in which it is already enrolled.

K. As determined by CCC, participants that **re-enroll** eligible land through this CREP:

1. May be eligible for an annual incentive payment, in accordance with Section V.D, provided the participant is eligible for such incentive payment according to 7 CFR Part 1410, FSA National CRP Directives, and this Agreement;
2. Are not eligible for, and shall not receive, a signup incentive payment (SIP) on re-enrolled land, regardless of the practice enrolled;
3. Are not eligible for, and shall not receive, a practice incentive payment (PIP) on re-enrolled land, regardless of the practice enrolled;
4. Except as specified in Section V.L, are not eligible for, and shall not receive, any CCC non-PIP cost-share payment on the re-enrolled land; and
5. Will receive Michigan one-time payments as specified in Section VI.C

L. Land physically located outside Michigan is not eligible to be enrolled or re-enrolled through this CREP.

Further, at least 51 percent of the land to be enrolled or re-enrolled per CRP contract must be physically located within the CREP project area (see Exhibit 1), as determined by CCC.

M. Cropland determined infeasible-to-farm by CCC in accordance with FSA National CRP Directives may be enrolled or re-enrolled, provided such cropland is otherwise eligible for enrollment under this Agreement.

N. Marginal pastureland, as determined by FSA, is only eligible to be enrolled or re-enrolled in CRP through this CREP if it is to be devoted to CRP practice CP22.

V. FEDERAL COMMITMENTS

USDA CCC agrees to:

- A. Provide cost-share payments to eligible participants for new land, for up to 50 percent of the eligible reimbursable costs incurred for installation of approved conservation practices, according to FSA National CRP Directives.

CCC will use the CRP regulations and FSA National CRP Directives in determining the cost of the practice, and any limitations thereto, under this CREP.

- B. Make a one-time PIP, if applicable to the practice and land enrolled, according to FSA National CRP Directives for continuous CRP signup and this Agreement. The PIP will be an amount equal to not more than 10 percent of the eligible reimbursable costs incurred for installation of the approved practice, according to FSA National CRP Directives. The PIP is considered a cost-share payment and is subject to the limitations in Section V.A. CCC will use the CRP regulations and FSA National CRP Directives in determining any limitations to the PIP amount under this CREP.
- C. Make a one-time SIP, if applicable to the practice and land enrolled, in an amount according to FSA National CRP Directives for continuous CRP signup and this Agreement. The SIP will be considered a rental payment by CCC for payment limitation purposes.
- D. Make annual rental payments, consistent with FSA National CRP Directives, comprised of:
 - 1. A per acre base soil rental rate determined by:
 - a. For land offered that is comprised entirely of cropland, calculating the maximum CRP weighted-average soil rental rate for the three predominant soil types of the eligible acreage offered using the current posted soil rental rate for non-irrigated cropland at the time the offer is submitted;
 - b. For land offered that is comprised entirely of marginal pastureland, the applicable current posted marginal pastureland rental rate for the eligible acres offered; or
 - c. For land offered that is comprised of cropland and marginal pastureland, calculating the maximum CRP weighted average soil rental rate using the two predominate soil types of the eligible cropland offered, using the current posted non-irrigated cropland soil rental rates and the posted marginal pastureland rental rate for all the eligible marginal pastureland offered;
 - 2. A per-acre incentive payment, as a percentage of the base soil rental rate, of 40 percent for all land enrolled or re-enrolled, except for land enrolled or re-enrolled under the infeasible-to-farm provisions as specified in Section IV.M.;
 - 3. A CCC per-acre maintenance incentive payment will not be authorized or issued for land enrolled or re-enrolled in CRP through this CREP; and
 - 4. A per-acre Climate-Smart Incentive payment, as a percentage of the base soil rental rate, consistent with FSA National CRP Directives; a Climate-Smart Incentive payment will not be authorized or issued for land enrolled or re-enrolled that is to be devoted to CP26.
- E. Make all land and person CRP eligibility determinations in accordance with CRP regulations at 7 CFR Part 1410, FSA National CRP Directives, and this Agreement.

- F. Administer CRP contracts for lands enrolled and re-enrolled through this CREP in accordance with CRP regulations at 7 CFR Part 1410 and FSA National CRP Directives.
- G. Review and approve, when appropriate, conservation plans for land enrolled and re-enrolled through this CREP in accordance with FSA National CRP Directives.
- H. Conduct compliance reviews in accordance with FSA National CRP Directives.
- I. Provide information to producers regarding this CREP.
- J. Permit successors-in-interest to existing CRP contracts under this CREP in the same manner as allowed for other CRP contracts, in accordance with FSA National CRP Directives.
- K. Share appropriate data with Michigan to facilitate Michigan monitoring efforts and implementation of this CREP. All data shared is subject to the provisions of Section VII.H.
- L. Provide cost-share payments to eligible participants for management of a riparian buffer (CP22, Riparian Buffer) enrolled or re-enrolled in CRP through this CREP. For purposes of this CREP, “management” means an activity conducted after the riparian buffer is established, as determined by CCC, to maintain or enhance the vegetative cover of the riparian buffer. No cost-share payments will be provided to maintain or enhance other non-vegetative cover components of a riparian buffer, including but not limited to fencing, water facilities, stream or livestock crossings, water developments, or pipeline. No cost-share payments will be provided for management of any practice other than CP22, Riparian Buffer.

As determined by CCC, the cost-share payments for management of a riparian buffer will be for up to 50 percent of the eligible cost of the lowest cost activity approved for management of a riparian buffer, regardless of the approved activity the participant(s) elects to perform. The management activity(s) for the riparian buffer must be included in the conservation plan for the land and the conservation plan must indicate the year(s) in which the management activity must be performed.

CCC will provide cost-share payments for management of a riparian buffer not more than two times during the CRP contract period. CCC will use the CRP regulations and FSA National CRP Directives in determining the cost of the practice, and any limitations thereto, under this CREP.

VI. Michigan Commitments

Michigan agrees to:

- A. The following:
 - 1. Except as specified in Section VI.A.2, contribute matching funds of not less than 20 percent of the overall annual program costs of this CREP through direct payments to eligible participants, and through in-kind contributions. At least 10 percent of the overall cost (one-half of the 20 percent) must be in the form of direct payments to participants.

In the event that Michigan has not contributed at least 20 percent of the overall total costs, with the provision of at least 10 percent of the overall costs (one-half of the 20 percent) being in direct payments to participants, as determined by CCC, Michigan is required by CCC to fulfill that obligation and pay the difference within 90 days of written request to do so by CCC, or provide some other mutually agreed upon remedy.

2. The 20 percent contribution described in Section VI.A.1 is premised on the condition that the majority of the matching funds provided by Michigan is not provided by one or more nongovernmental organizations, as determined by CCC. However, in the event that a majority of the funds Michigan uses to meet its matching contributions under this CREP is provided by one or more nongovernmental organizations, as determined by CCC, then the minimum contribution Michigan must provide will immediately rise to 30 percent of the overall annual program costs of this CREP. Should this event occur, then at least 15 percent of the overall cost (one-half of the 30 percent) must be in the form of direct payments to participants, as determined by CCC. Further, within 120 days of the date that CCC determines and informs Michigan that a majority of the funds Michigan uses to meet its contributions under this CREP is provided by one or more nongovernmental organizations, CCC and Michigan will agree to a written amendment to this Agreement that notes this source of funds and specifies the minimum contribution of Michigan.
 3. For purposes of Section VI.A, “funds” may be cash, in-kind contributions, or technical assistance, as determined by CCC, subject to the above specifications.
- B. For new land, make direct cost-share payments to eligible participants in an amount equal to 50 percent of the cost incurred for installation of approved conservation practices according to FSA National CRP Directives
- C. Make one-time payments to participants, as specified in this paragraph. Michigan will be solely responsible for handling all one-time Michigan payments to participants, and any refunds of such payments. All one-time Michigan payments will be divided among the eligible participants according to the shares on the approved CRP contract.

Michigan’s one-time payments will be:

1. \$150 per-acre Michigan enrollment bonus payment for new land or re-enrolled land devoted to CRP practice CP5A, CP21, CP22, CP23, CP23A, or CP26;
2. \$50 per-acre Michigan enrollment bonus payment for re-enrolled land devoted to CRP practice CP1 or CP2;
3. \$100 per-acre Michigan maintenance and management payment for new and re-enrolled land devoted to CRP practice CP1, CP2, CP5A, CP21, CP22, CP23, or CP23A;
4. \$500 per-acre Michigan maintenance and management payment for new and re-enrolled land devoted to CRP practice CP26; and

5. \$50 per-acre Michigan water quality incentive payment for newly enrolled land -- and only for land physically located in the Western Lake Erie Watershed -- as determined by Michigan, devoted to CRP practice CP21, CP22, CP23, CP23A, or CP26.

Newly enrolled land devoted to CRP practice CP1 or CP2 is not eligible for a Michigan one-time enrollment bonus payment. All land not physically located within the Western Lake Erie Watershed, as determined by Michigan, is not eligible for a Michigan one-time water quality incentive payment. Re-enrolled land physically located in the Western Lake Erie Watershed, as determined by Michigan, is not eligible for a Michigan one-time water quality incentive payment. New land devoted to CRP practice CP1, CP2, or CP5A physically located in the Western Lake Erie Watershed, as determined by Michigan, is not eligible for a Michigan one-time water quality incentive payment.

- D. Pay all costs associated with monitoring activities under this CREP.
- E. Provide grants to Michigan conservation districts at the local level to employ technicians who will provide program outreach and education, such as field days and informational meetings, recruit producers, provide technical assistance with signups, complete site visits, and assist with conservation planning and installation, operation, and management of conservation practices.
- F. Implement a broad campaign at the state level for continuous public information, education, and outreach regarding this CREP, including seeking producers willing to offer eligible and appropriate land for enrollment in CRP through this CREP.
- G. Ensure this CREP is coordinated with other agricultural and natural resource conservation programs at the State and Federal level.
- H. Seek the approval of this Agreement by any independent boards or bodies within Michigan as may be necessary or appropriate to implement this Agreement.
- I. By December 31st of each year, provide a report to CCC, in a format determined by FSA, that includes, but is not limited to:
 1. Status of enrollments under this CREP;
 2. Progress in fulfilling Michigan's commitments of this Agreement;
 3. Level of program participation;
 4. Results of all monitoring activities;
 5. Details of all non-federal CREP program expenditures;
 6. Recommendations to improve the program;
 7. Status of meeting each of the goals specified in Section II;
 8. Total of all Michigan cost-share and one-time payments made to participants, in the applicable year and accumulated total, to meet the requirements in Section VI.A;
 9. CCC payments made, by type, to participants in the applicable year, and accumulated total (CCC will provide Michigan with the annual data);
 10. Cost of each separate in-kind contribution made in the applicable year and accumulated total, to meet the requirements in Section VI.A;
 11. Summarization of Michigan's overall cost of the program; and

12. Other data as specified in FSA National CRP Directives.

- J. Temporarily release participants from any contractual or easement restrictions on crop production during the CRP contract period if such release is determined to be necessary by the U.S. Secretary of Agriculture in order to address a national emergency and/or is otherwise undertaken consistent with FSA National CRP Directives.

VII. Miscellaneous Provisions

- A. All commitments by USDA and Michigan are subject to the availability of funds, in accordance with applicable law. In the event either party is subject to a funding limitation, it will notify the other party in writing within 30 days and any necessary modifications will be made to this Agreement, including termination of this Agreement.
- B. All CRP contracts under this CREP shall be subject to all limitations set forth in the regulations at 7 CFR Part 1410, including but not limited to such matters as economic use, transferability, violations, and contract modifications. Agreements between owners and operators and Michigan may impose additional conditions not in conflict with those under the CRP regulations, but only if approved in writing by CCC.
- C. Neither Michigan nor the USDA CCC shall assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- D. Michigan and USDA CCC agree that each party will be responsible for its own acts, omissions, and results thereof, to the extent authorized by law and shall not be responsible for the acts, omissions, and results thereof of any others.
- E. Eligible acreage may be enrolled or re-enrolled under this Agreement until this Agreement is terminated, enrollment is suspended, authority for CCC to enroll land in CRP expires or is otherwise ended, the 80,000 acre project limit is reached, or September 30, 2032, whichever comes first.
- F. Either CCC or Michigan may unilaterally terminate this Agreement at any time upon 30 days written notice to the other party. Further, CCC may unilaterally suspend enrollment through this CREP at any time upon written notice to Michigan. Such termination or suspension will not alter responsibilities regarding existing contractual obligations under this Agreement or either of the earlier Michigan CREP Agreement, between participants and CCC, between CCC and Michigan, or between participants and Michigan.
- G. The Deputy Administrator for Farm Programs, FSA, or her/his designee, has authority to carry out this Agreement, and with the concurrence of the Governor of Michigan, or her/his designee, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The provisions of this Agreement may only be modified by written agreement between USDA CCC and Michigan.
- H. USDA and Michigan will abide fully by the privacy provisions contained in "Information Gathering" found at section 1619 of Public Law 110-246 (codified at 7 U.S.C. 8791) ("Section 1619") and the "Administrative Requirements for Conservation Programs" found

at section 2004 of Public Law 107-171 (codified at 16 U.S.C. 3844), as well as the Privacy Act of 1974, and related laws. For purposes of Section 1619, USDA has determined that Michigan is considered to be working in cooperation with USDA and CCC. Specifically, Michigan will use data provided by USDA only for the purpose of carrying out its responsibilities under, and furthering the goals of, this Agreement. Disclosure of any information beyond the USDA, CCC, and Michigan must be in an aggregate form only, and in a manner that ensures the complete confidentiality of individual landowners and program participants to whom the data pertains. The provisions of this paragraph will also apply to any third-party agency, organization, or individual funded or otherwise supported or utilized by Michigan to conduct any work associated with this Agreement. Additionally, USDA, CCC, and Michigan agree to keep the data in a secure site. All of the other provisions of the above-noted laws will also apply and must be abided with fully; failure of any party to abide by such provisions may result in immediate termination of this Agreement by USDA. Data provided by USDA to Michigan must be returned to USDA and/or destroyed by Michigan, and any third parties with whom Michigan shared the data, once Michigan no longer requires such data to carry out its responsibilities under this Agreement, with notice of such destruction being provided to USDA within 30 days of such destruction; this requirement shall apply on a contract-by-contract basis for producers who participate in CRP under this Agreement. Lastly, the provisions of Section VII.H also apply to still-existing CRP contracts approved under the earlier versions of this CREP agreement.


Further, any USDA-provided data that fall within the privacy provisions of section 1619 are considered federal records and therefore neither subject to Michigan's record retention requirements, nor releasable by Michigan, except in accordance with the disclosure conditions as noted above.

- I. If any clause of this Agreement is found by a competent court of the Federal or State jurisdiction to be void, that clause will be stricken from the Agreement and the rest and remainder of the Agreement will remain in effect or, if both CCC and Michigan agree, the entire Agreement may be voided.
- J. Nothing in this Agreement will in any way limit CCC's ability to deny an application for enrollment or re-enrollment, terminate a CRP contract, or obtain refunds of CCC payments made to any participant.
- K. No haying and grazing is permitted on land enrolled in CRP through this CREP.
- L. No lands may be enrolled in CRP through this Agreement until the FSA National Program Manager for CREP approves a detailed Michigan State FSA Office amendment to the FSA National CRP Directives, which provides a thorough description of this CREP and applicable practices

IT IS SO AGREED:

The individuals signing below represent that they have the authority to sign this Agreement on behalf of their respective parties.

FOR THE U.S. DEPARTMENT OF AGRICULTURE


Deputy Administrator for Farm Programs
U.S. Department of Agriculture


Date

FOR THE STATE OF MICHIGAN


Director
Michigan Department of Agriculture and Rural Development

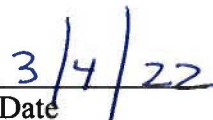

Date

Exhibit 1, Michigan CREP Project Area

