

Morris County Department of Planning, Development & Technology  
P.O. Box 900  
Morristown, NJ 07963-0900  
(973) 829-8120

GRANT AGREEMENT

BETWEEN

THE COUNTY OF MORRIS

AND

TOWNSHIP OF MENDHAM

**DATE OF FREEHOLDER BOARD APPROVAL:**

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**THIS GRANT WILL EXPIRE ON:**

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## MORRIS COUNTY PRESERVATION TRUST FUND

### GRANT AGREEMENT

BETWEEN Township of Mendham, having a mailing address of P.O. Box 520, Brookside NJ 07926, hereinafter referred to as the "Municipality," and the Morris County Board of Chosen Freeholders, P.O. Box 900, Morristown NJ, 07963-0900 hereinafter referred to as the "County,"

WITNESSETH:

WHEREAS, the Morris County Board of Chosen Freeholders created the Morris County Open Space, Recreation, and Farmland and Historic Preservation Trust Fund, hereinafter referred to as the "Morris County Preservation Trust Fund" or "Trust Fund," in accordance with P.L. 1997, c.24 (N.J.S.A. 40:12-15.1 et seq.), and any subsequent amendments thereto; and

WHEREAS, the Morris County Board of Chosen Freeholders created the Morris County Open Space and Farmland Preservation Trust Fund Committee, hereinafter referred to as the "Open Space Trust Fund Committee" to review, prioritize and make recommendations on the funding of projects; and

WHEREAS, Municipality has made an application ("Application") to the County for financial assistance in fiscal year 2006 under the Trust Fund and such Application is annexed hereto as Schedule C; and

WHEREAS, Municipality has submitted the Application in accordance with the current Rules and Regulations of the Trust Fund; and

WHEREAS, the Open Space Trust Fund Committee has reviewed said Application and found it to be in conformance with the scope and the mission of the Trust Fund, and recommended to the Morris County Board of Chosen Freeholders that the project be awarded funding; and

WHEREAS, the Morris County Board of Chosen Freeholders confirmed the findings of the Open Space Trust Fund Committee and approved the project titled Mosle Preserve and Recreation Area, hereinafter referred to as the "Approved Project," for funding; and

WHEREAS, Municipality has agreed to hold and use the premises of the Approved Project in compliance with the Rules and Regulations of the Trust Fund.

NOW, THEREFORE, in consideration of the award for funding, and in accordance with the Application heretofore filed, and hereby incorporated into this Agreement as Schedule C, the County and the Municipality agree to perform in accordance with the terms and conditions set forth in this Grant Agreement, hereinafter referred to as "Agreement."

## GENERAL PROVISIONS

### 1. DEFINITIONS

- a) The term "Approved Project" means the acquisition of the project site in fee simple absolute or a lesser interest in real property by gift, purchase, devise or condemnation.
- b) The term "County" as used herein means the Morris County Board of Chosen Freeholders.
- c) The term "Municipality" as used herein refers to the town, township or borough in Morris County, which has submitted an Application, has been awarded a Trust Fund grant and has executed this Agreement with the County.
- d) The term "Cost of Acquisition" means the total cost of all lands to be acquired by Municipality with the assistance of a grant pursuant to this Agreement, expressed either as the negotiated purchase price/contract value or appraised/fair market value, as shown on Schedule D.

Trust Funds may only be used for the land acquisition cost of the Approved Project. Any other ancillary costs, such as demolition, surveys, appraisals, and professional fees, are not eligible for funding under the terms and conditions of this Agreement and are specifically excluded from the Cost of Acquisition.

The Trust Fund grant shall be limited to a maximum percentage of the Cost of Acquisition, which shall not exceed the percentage indicated in Schedule B. If the final land acquisition cost is less than the Cost of Acquisition for the Approved Project as indicated in the original application materials and incorporated in Schedules C and D, the Trust Fund grant amount shall be reduced.

- e) The term "Commencement" as used herein means upon the full execution of this Agreement by all parties.

### 2. RULES AND REGULATIONS

The Municipality is bound to adhere to the Rules and Regulations of the Trust Fund (last amended April 26, 2006) as if set forth here in their entirety.

### 3. PROJECT ADMINISTRATION

- a) Municipality hereby accepts primary responsibility for the administration and success of the Approved Project, including any subagreements made by the Municipality for accomplishing the objectives set forth in this Agreement.
- b) Municipality agrees to secure funding in excess of the County share necessary for the completion of the Approved Project and to complete the Approved Project in

accordance with: (1) this Agreement, including all attached Schedules A through D; (2) the Rules and Regulations of the Trust Fund; and (3) the Application, estimates, and maps submitted to the County and incorporated herein by reference.

- c) Municipality agrees to provide to the County the descriptions required for Schedule A within 45 days after recording of the deed at the Morris County Hall of Records.
- d) Municipality shall submit all necessary documentation and any other information within the time frame and in the manner requested by the County, including a monthly status report.
- e) Municipality, its contractors and subcontractors shall complete all work performed pursuant to this Agreement in accordance with all State, Federal and local laws and regulations. Failure to comply with such laws, rules, regulations or policies shall, after written notices and reasonable opportunity to cure, be grounds for termination of the Approved Project.
- f) Municipality, its contractors and subcontractors shall provide County personnel and any authorized representatives of the County reasonable access to all facilities, premises and records related to the Approved Project. Municipality shall promptly submit to the County any documents and information relating to the Approved project as may be requested by the County.
- g) If the Municipality fails to complete or substantially complete the Approved Project within the time period set forth in this Agreement, or fails to comply with the time period set forth in any other project contract which is the subject of State assistance then, and in that event, County shall have the right in its sole discretion, to withhold any funds that are or may become payable to the Municipality in accordance with this Agreement.
- h) Municipality agrees that any Trust Fund monies received from the County shall be used only for the purposes described in this Agreement. Municipality further agrees that if it uses Trust Fund monies for any purposes other than those specified and approved in this Agreement, the County may recover all such funds with interest.
- i) Upon completion of the project, at the option of the County, the Municipality shall erect and maintain one or more approved permanent signs in a publicly visible location at the Approved Project, which signs shall contain the words, "The Morris County Preservation Trust Fund assisted in this purchase of land."
- j) Municipality shall maintain, protect and preserve all lands and improvements described in Schedule A and provide such police protection as may be required to provide reasonable security to the Approved Project.
- k) The New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1, et seq., is incorporated by reference into this Agreement.

#### 4. PROJECT COSTS

- a) Project costs eligible for Trust Fund assistance shall not exceed the Cost of

#### Acquisition of the Approved Project.

- b) Municipality shall provide documentation to certify the Cost of Acquisition for the Approved Project by submitting the fully executed contract and a certified copy of the Municipal Ordinance authorizing acquisition of the Approved Project. Said documentation shall be submitted not later than 14 days prior to closing. The certification of eligible project costs shall be completed in a manner satisfactory to the County.
- c) Municipality shall provide a draft deed (which shall include a metes and bounds description and the required deed restrictions outlined below in Section 6d), together with a copy of the survey for the Approved Project to the County not later than 14 days prior to closing for its review and approval. In the event the survey of the property determines that the actual amount of acreage is less than the amount outlined in Schedule B, the County reserves the right to declare this Agreement null and void or to reduce its grant award on a per acre basis, unless the variation in the amount of acreage is determined by the County to be de minimis.
- d) The County shall not disburse any grant funds for an Approved Project which the Municipality seeks to acquire through the power of eminent domain (condemnation), except upon submission of a Certification by the appropriate municipal official, confirming that Municipality shall file a Declaration of Taking and Order for Deposit within fifteen (15) days of the date of this Certification. Municipality shall provide the County with a filed copy of the Declaration of Taking and Order for Deposit, within ten (10) days of receipt from the Superior Court. If Municipality fails to file the required Declaration of Taking and Order for Deposit within the prescribed time, Municipality shall be required to return all funds, plus interest at prevailing rate.
- e) Grant payment will be disbursed as payment at the time of closing upon satisfactory review by the County of requested documents outlined above. Funding will be disbursed for costs allocated on Schedule B, provided that such costs itemized on Schedule B were actually expended in the acquisition of the Approved Project.
- f) Municipality shall provide the County with a fully executed copy of the closing documents and recorded deed.

#### 5. FINANCIAL RECORDS AND AUDITING REQUIREMENTS

- a) The Municipality shall provide for the following, at a minimum:
  - 1) Accurate, current and complete disclosure of the financial results of this Agreement and the Approved Project as administered by the Municipality;
  - 2) Records accurately identifying the source and amount of any and all funds used to finance the Approved Project;
  - 3) Effective internal and accounting controls over all funds, property and other assets. The Municipality shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

- 4) Procedures to minimize elapsed time between any payment issued and the disbursement of such funds for the Approved Project by the Municipality. Municipality shall close within thirty (30) days of the date of disbursement of funds for the Approved Project. Municipality shall be required to return all funds, plus interest at prevailing rate, when closing does not occur within 30 days of the date of disbursement of funds; and
- 5) Procedures consistent with the provisions of any applicable County policies and procedures for determining the reasonableness, allowableness and allocability of costs under this Agreement.
- b) The County, or its duly authorized representative(s), shall have access to all records, books, documents and papers pertaining to this Agreement and the Approved Project for audit, examination, excerpt and transcript purposes. Municipality shall provide information in a form and manner practicable for the County.

Such access shall apply during performance of the Approved Project and for five years after the latter date of either final payment or audit resolution.

All records shall be maintained in accordance with the appropriate State, County and Municipal Records Retention Schedules.

- c) Audit reports must address Municipality's compliance with the material terms and conditions of this Agreement and applicable laws/regulations. Municipality shall conduct annual audits in conformance with all Federal and State laws, as amended.

6. LAND USE RESTRICTIONS

- a) Lands acquired by Municipality with the aid of a grant from the County shall not be conveyed, transferred, disposed of or diverted to use for other than recreation, conservation, farmland or historic preservation purposes without the prior approval of the County.
- b) The County may grant such approvals for conveyance, transfer, disposition or diversion under this Section only when Municipality provides its prior written agreement to all of the following conditions:
  - (i) Municipality shall replace any land conveyed by land of at least equal fair market value and of reasonably equivalent usefulness, size, quality and location to the land conveyed; and
  - (ii) Municipality shall repay all monies derived from the conveyance to the Trust Fund based on at least current appraised value.
  - (iii) In the event of conveyance by exchange, the land or improvements thereon to be transferred shall be at least equal in fair market value and of reasonably equivalent usefulness, size, quality, and location to the land or improvements transferred.
  - (iv) In cases dealing with permanent easements, even though individual cases

may appear insignificant, the perpetual nature of public lands and the cumulative effect over a long period of time is significant. In an effort to discourage this type of diversion, a minimum cash value of \$25,000.00 will be placed on any consideration for easements on such property. Charges above this minimum will be determined by the County on an individual project basis.

- c) Land and water areas, and any improvements thereon, acquired by a Municipality through use of a Trust Fund grant shall be used exclusively for purposes authorized pursuant to P.L. 1997, c.24, N.J.S.A. 40:12-15.1, et seq., and any amendments thereto.
- d) Municipality shall cause to be included in all deeds of lands which are purchased using monies awarded herein the deed restrictions outlined below:
  - (i) The lands being conveyed herein are being acquired by Grantee with funds from the Morris County Open Space, Recreation, and Farmland and Historic Preservation Trust Fund. These lands shall be held in trust and used exclusively for the purposes authorized by the Open Space, Recreation, and Farmland and Historic Preservation Act, P.L. 1997, c. 24, N.J.S.A. 40:12-15.1 et seq., and any amendments thereto.
  - (ii) Grantee agrees not to lease, sell, exchange or donate the property being conveyed herein which is being acquired pursuant to P.L. 1997, c. 24, N.J.S.A. 40:12-15.6, except upon approval of the Morris County Board of Chosen Freeholders and upon such conditions as the Morris County Board of Chosen Freeholders may establish. In such event, Grantee shall be obligated to replace the land being conveyed herein as though the property had been conveyed in accordance with the provisions of N.J.S.A. 40:12-15.4 or any amendments thereto.
  - (iii) In the event that Grantee's title to the property is impaired such that the property can no longer be used in accordance with the intent and purposes of the Open Space, Recreation and Farmland and Historic Preservation Act, Grantee shall be obligated to replace the land being conveyed herein as though the property had been conveyed in accordance with the provisions of N.J.S.A. 40:12-15.4 or any amendments thereto.
- e) Any deed restrictions that differ from those specified in this Agreement shall be approved by the County of Morris.
- f) Municipality shall be responsible for confirming any and all deed restrictions which may be required by any funding entity prior to recording any deeds. Failure to confirm required deed restrictions may necessitate the recording of corrective deeds at Municipality's sole cost and expense.

7. RELEASE AND INDEMNIFICATION

- a) The Municipality shall defend, indemnify, protect and save harmless the Trust Fund and the County, its agents, servants and employees from and against all suits, claims,



losses, demands or damages of whatever kind or nature arising out of or claimed to arise out of any negligent act of the Municipality, its agents, servants, employees, contractors and subcontractors in the performance of this Agreement and the Approved Project. The Municipality shall, at its own expense, appear, defend, and pay all attorneys' and other professional fees and costs and all other expenses arising from such suit or claim incurred in connection therewith. If any judgment shall be rendered against the Trust Fund or the County for which indemnification is provided under this paragraph, the Municipality shall, at its own expense, satisfy and discharge the same.

- b) The Municipality shall, within ten (10) days after a claim has been made against it, give written notice thereof to the County along with full and complete particulars of the claim. If suit is brought against the County or any of its agents, servants or employees, for which indemnification is provided under this Agreement, the County shall expeditiously forward to the Municipality every demand, complaint, summons, pleading, or other process received.

8. PROJECT TERMINATION

- a) Municipality may not terminate, modify or rescind this Agreement without the express written approval of the County. Any attempt by the Municipality to terminate, modify or rescind this Agreement after Commencement without the express written approval of the County shall constitute a material breach and subject the Municipality to any and all appropriate remedies at law.
- b) County may terminate this Agreement in whole or in part at any time for good cause. The term "good cause" shall include, but not be limited to, failure to comply with the terms and conditions of this Agreement or the Rules and Regulations of the Trust Fund.

9. REMEDIES

- a) In addition to any other rights and remedies available to the County pursuant to law, in the event of failure to comply with this Agreement and/or with the Rules and Regulations of the Trust Fund, the County may take any of the following actions or any combination thereof:
  - (i) Demand compliance with the provisions of this Agreement;
  - (ii) Withhold County funds;
  - (iii) Declare this Agreement null and void;
  - (iv) Amend this Agreement in its sole discretion to its satisfaction; and/or
  - (v) Require a full refund of all Trust Fund monies, plus interest at prevailing rate, granted to Municipality.
- b) No remedy herein conferred or reserved by the County is intended to be exclusive of



any other available remedy or remedies, but each and every other remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity by statute. No delay or omission to exercise any right or power accruing upon failure of compliance with this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. In order to entitle the County to exercise any remedy reserved to it in this Section, it shall not be necessary to give notice other than such notice as may be provided by this Section.

- c) In addition to the above remedies, if a Municipality commits a breach, or threatens to commit a breach of this Agreement, the County shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the County and that money damages will not provide an adequate remedy therefor.
- d) The County shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to Municipality if any event or failure of compliance shall occur hereunder.

10. MISCELLANEOUS

- a) This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings both written and oral between the parties with respect of the subject matter hereof. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- b) Modifications or waivers of provisions of this Agreement of the Approved Project must be in writing and submitted to the County for prior approval.
- c) In the event of any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- d) In the event that any provision of this Agreement should be breached by the Municipality and thereafter waived by the County, such waiver shall be limited to the particular breach so waived by the County and shall not be deemed to waive any other breach by the Municipality.
- e) This Agreement shall inure to the benefit of and be binding upon the heirs, successors and administrators of Municipality, but no part hereof shall be assigned without the prior written consent of the County.
- f) This Agreement shall be construed and enforced under the laws of the State of New Jersey.
- g) In the event of litigation, Municipality waives whatever right it may have to trial by jury.

By signing below, the Municipality and the County hereby execute this Agreement and confirm that each of them are mutually bound by all provisions contained in its General Provisions and the attached Schedules A through D.

ATTEST:

MORRIS COUNTY BOARD OF CHOSEN  
FREEHOLDERS

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Margaret Nordstrom

Title: Freeholder Director

ATTEST:

TOWNSHIP OF MENDHAM

*Penny Lemell*  
Clerk or Notary

By: *Phyllis Florer*

Date: Jan 14, 2007

Name: PHYLLIS FLORER

Title: Mayor

## ATTACHMENTS

The following are fully incorporated into this Agreement:

- Schedule A: Metes and bounds description of the lands acquired including a list of blocks, lots, and acres actually acquired
- Schedule B: Approved Project Description
- Schedule C: Project application made to the Morris County Preservation Trust
- Schedule D: Final Project Finance Sheet

*(Refer to Files)*

Exhibit B-1

Covenants and Restrictions for Benefit of Morris County

Any material revisions to the following conditions and restrictions must be approved in writing by Morris County and the Fee Interest Parties. For purposes of said declaration, the term "Grantees/Declarants" shall be deemed to refer to the Fee Interest Parties, and the term "Property" shall be deemed to refer to the Property:

The purpose of this restriction is to ensure that the Property, which was purchased in part with funds provided by the Morris County Open Space and Farmland Preservation Trust Fund pursuant to N.J.S.A. 40:12-15.1 *et seq.* and the New Jersey Department of Environmental Protection's ("NJDEP's") Green Acres Program pursuant to N.J.S.A. 13:8C-1 *et seq.* and N.J.A.C. 7:36, is preserved for and used exclusively for recreation and conservation purposes in perpetuity.

The Grantees/Declarants agree as a condition of funding, that the Property shall be held in trust and used exclusively for the purposes authorized by the Open Space, Recreation, and Farmland and Historic Preservation Act, P.L. 1997, c. 24, N.J.S.A. 40:12-15.1 *et seq.*, the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 *et seq.* and the Green Acres rules, N.J.A.C. 7:36, as may be amended and supplemented. However, Grantees/Declarants acknowledge that certain purposes and uses authorized under the Open Space, Recreation and Farmland and Historic Preservation Act may require the approval of the NJDEP and the State House Commission under the Garden State Preservation Trust Act and the Green Acres rules.

The Grantees/Declarants agree as a condition of funding, to make and keep the Property accessible to the public, unless the Board of Chosen Freeholders for the County of Morris determines that public accessibility would be detrimental to the lands, waters or improvements thereon, or to any natural resources associated therewith pursuant to N.J.S.A. 40:12-15.6d(3) and the NJDEP concurs with such determination pursuant to N.J.A.C. 7:36.

The Grantees/Declarants agree as a condition of funding, not to lease, sell, exchange or donate the Property described herein, except upon the approval of the Morris County Board of Chosen Freeholders and upon such conditions Board of Chosen Freeholders may establish pursuant to N.J.S.A. 40:12-15.6d(4).

The Grantees/Declarants agree as a condition of funding, not to divert or dispose of the Property for other than a recreation or conservation purpose without the approval of the Commissioner of the Department of Environmental Protection and the State House Commission pursuant to N.J.S.A. 13:8C-1 *et seq.* and N.J.A.C. 7:36. In addition, the Grantees/Declarants agree not to lease or transfer the property for recreation and conservation purposes, except in accordance with N.J.S.A. 13:8C-1 *et seq.* and N.J.A.C. 7:36.