

# **SAMPLE**

Prepared By: Mercer County Planning Department  
Updated December 2022

**PROJECT AGREEMENT  
BETWEEN  
THE COUNTY OF MERCER  
AND**

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FILE NO:

DATE:

THE COUNTY OF MERCER  
MUNICIPAL AND NON-PROFIT ASSISTANCE PROGRAM  
PROJECT AGREEMENT

BETWEEN County of Mercer ("County"), a body politic of the State of New Jersey, having its principal office at: 640 South Broad Street, Trenton, New Jersey, 08611 ("Grantor"),

AND \_\_\_\_\_, having its principal office at: \_\_\_\_\_("Grantee").

WITNESSETH:

WHEREAS, the County has established the Open Space, Recreation, and Farmland and Historic Preservation Trust Fund pursuant to the provisions of N.J.S.A. 40:12-15.1 et seq. (the "Statute") to preserve and improve open space, preserve farmland and preserve historic resources within the County; and,

WHEREAS, the Statute permits the County to enter into project agreements with municipalities and qualified non-profits as defined herein; and

WHEREAS, in order to further its goals for conservation and preservation, the County has adopted the Mercer County Open Space and Recreation Plan (the "Plan"); and

WHEREAS, the County has created the Mercer County Municipal and Non-Profit Assistance Program (the "Program") to provide funding for projects which are consistent with the goals of the Plan; and

WHEREAS, Grantee has made application to the Grantor for financial assistance under the Program in accordance with the Plan and has agreed to hold and use the premises hereinafter described in accordance with such Plan; and,

WHEREAS, the Grantor has reviewed said application and has found it to be in conformance with the scope and intent of the Plan and has approved Grantee's request for funding;

NOW, THEREFORE, in consideration of the award of funding, and in accordance with the application heretofore filed, the Grantor and Grantee agree to perform in accordance with the terms and conditions set forth in this Agreement.

PROJECT DESCRIPTION

Grantee:

Project Number:

Project Title:

Project Period: The property acquisition that is contemplated by this Agreement must be concluded within two years from the date of execution of this Agreement, utilizing the funds provided by the Grantor. Upon written request from the Grantee, the Grantor may extend this project period in increments of six (6) months or for such longer period as agreed upon by the parties in writing.

Project Scope (general description):

Project Use Statement: [PROVIDE PUBLIC ACCESS STATEMENT]

Project Location: Block\_\_\_\_, Lot\_\_\_\_;(address)

Project Cost (breakdown):

**County Grant to \_\_\_\_\_:**

(other grants):

Total Project Cost:

## GENERAL PROVISIONS

### 1. Definitions

- a) The term "land" or "lands" as used herein means real property, including improvements now or hereafter located thereof or thereon, rights-of-way, life estates remainder interests, development rights, water, riparian and other rights, leases, easements, privileges and all other rights or interests of any kind or description related to or connected with real property.
- b) The term "Non-Profit" as used herein means that certain tax-exempt New Jersey Non-Profit organization which qualifies as a charitable conservancy for the purposes of P.L. 1979, c. 378(c.13-8B-1 et seq.), that has executed this Agreement with the Grantor pursuant to and in connection with the Program.
- c) The term "Grantor" as used herein means the County of Mercer.
- d) The term "Hazardous Substances" as used herein means any toxic, hazardous, ignitable, reactive or corrosive substance, material or waste and any pollutant or contaminant, or infectious or radioactive substance or material, and/or any substances, materials or wastes defined or regulated under any Environmental Laws including, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde and petroleum products.
- e) The term "Municipality" as used herein means a body politic of the State of New Jersey.
- f) The term "Project" as used herein means the acquisition of the Project Site in fee simple or easement.
- g) The term "Project Site" as used herein means all the land and interest in such land that constitutes a contiguous or unified recreation or conservation open space area and which the Grantee will acquire as described in the approved grant application, regardless of how acquired including, but not limited to, the Project Location described on Page 3 of this Agreement.
- h) The term "public access" as used herein means use that is visible and available for use by the public on a regular basis. Access points must be clearly recognizable and inviting to the public.
- i) The term "recreation and conservation purposes" as used herein means the use of lands for parks, natural areas, ecological and biological study, historic areas, forests, camping, fishing, water reserves, wildlife reserves, hunting, boating, winter sports and similar uses for either outdoor recreation or conservation of natural resources or both.

## 2. PROJECT ADMINISTRATION

- a) If applicable, Grantee shall be and agrees to be bound by all terms and conditions of the NJ Department of Environmental Protection Green Acres Program.
- b) Upon written request of the Grantor, Grantee shall submit all development plans to the Grantor for review and approval prior to advertisement for bids.
- c) Grantee shall submit all necessary materials, plans, certifications, reports or information within the time frame and in the manner requested by the Grantor. Grantee shall notify the Grantor in writing of any changes to the scope of the Project and provide with such notification a fully description of the changes and funding implications, if any, for Grantor's review and approval. Grantor reserve the right to disapprove any changes which negatively impact the basis on which the application was approved.
- d) Upon written request of the Grantor, Grantee shall complete and submit an Annual Property Status Report. An annual financial audit must be made available for the Grantor's review upon request.
- e) Grantee, its contractors and subcontractors shall provide Grantor's personnel and representatives with reasonable access to all facilities, premises and records related to this Project. Grantee shall submit to the Grantor any documents and information requested by the Grantor relating to this Project.
- f) Grantee agrees that any Mercer County Open Space Preservation funds received from Grantor shall be used only for recreation and conservation purposes and the specific purposes described in this Agreement in accordance with the Project Use Statement, and for no other purpose. Grantee further agrees that if Grantee uses Mercer County Open Space Preservation funds for any purpose other than those specified and approved in this Agreement, the Grantor may recover all such funds with interest, and Grantee agrees to repay such funds immediately upon demand by Grantor.
- g) At the Grantor's request, Grantee will erect, maintain and replace one or more permanent signs approved by the Grantor in a publicly visible location on the Project Site.
- h) Grantee shall provide public access, as described in the Use Statement, and shall maintain, protect and preserve all lands and improvements included in the Project and described in this Agreement.
- i) If Grantor is obtaining Green Acres funds for this Project, Grantee shall cause to be included in the deed with which the Grantee takes title to the Project Site the following deed restrictive language:

The lands being conveyed herein are being purchased with Mercer County open space grant trust funds provided by the County of Mercer, State of New Jersey. A Project Agreement governing the terms of that grant is being entered into with the County of Mercer simultaneously herewith. The Grantee herein agrees to accept these lands subject to such restrictions as shall be required by Grantor as well as subject to Green Acres restrictions, including restrictions against disposal or diversion to a use for other than recreation and conservation purposes.

- j) If Grantor is not obtaining Green Acres funds for this Project, Grantee shall cause to be included in the deed with which the Grantee takes title to the Project Site the following deed restrictive language:

The lands being conveyed herein are being purchased with Mercer County open space grant trust funds provided by the County of Mercer, State of New Jersey. A Project Agreement governing the terms of the grant is being entered into with the County of Mercer simultaneously herewith. The Grantee herein agrees to accept these lands subject to such restrictions and requirements as shall be determined by the Grantor, including, but not limited to: (i) retention of the Property in a natural, scenic, and open condition, open and accessible for public use and enjoyment; (2) use of the Property for recreation and conservation purposes only; (3) no subdivision of the Property; and (4) no use of the Property that will significantly impair or interfere with the recreation and conservation values of the Property.

- k) A copy of the deed for the Project Site which was acquired pursuant to this Agreement shall be provided to the County when executed by the seller. In addition, a copy of the recorded deed shall be provided to the Grantor immediately upon receipt of same from the County Clerk. In addition, Non-Profits must execute a Deed of Conservation Restriction provided by the Grantor in substantially the form as annexed hereto as Exhibit A, which must be recorded with the Mercer County Clerk concurrently with the deed to the Project Site and copies of both recorded documents must be forwarded to the Grantor, Attention: Mercer County Planning Department, upon receipt of same from the Mercer County Clerk.
- l) The Grantee shall procure, at its own cost and expense, a title insurance policy in connection with the acquisition of the Project Site, which must name the County of Mercer as an additional insured.

### 3. PROJECT COSTS

- a) Eligible project costs are limited to the fair market value of the land in accordance with County policy.

- b) Funding will be disbursed to the municipal official/authorized Non-Profit representative, upon notification to the Grantor of a scheduled closing date for the property acquisition contemplated in this Agreement, provided such eligible costs are incurred during the project period and expended in accordance with this Agreement. **Grantee must provide the Grantor with written notification along with a copy of the survey of the Project Site at least thirty (30) days prior to closing in order to obtain a check. If for any reason closing is postponed, Grantee must immediately notify Grantor and, at Grantor's request, shall return the grant check.**

#### 4. FINANCIAL RECORDS AND AUDITING REQUIREMENTS

- a) All financial records of Grantee, its contractors and subcontractors shall conform to generally accepted accounting principles.
- b) The Grantor, or its duly authorized representative(s), shall have access to all records, books, documents and papers pertaining to this Agreement and/or the approved Project for audit, examination, excerpt and transcript purposes. Obtaining information shall be made practicable for the Grantor.

#### 5. LAND USE RESTRICTIONS

- a) If the Grantee is a Municipality, the Grantee must follow all Green Acres rules and regulations, including those governing land management and diversion as found at N.J.A.C. 7:36-1.1 et seq., as may be amended from time to time.
- b) If Grantee is a Non-Profit, the Grantee must:
  - i. agree to make and keep the lands accessible to the public, unless the County determines that public accessibility would be detrimental to the lands or to any natural or historic resources associated therewith;
  - ii. agree not to sell, lease, exchange, transfer, or donate the lands for which the monies received were allocated for use pursuant to this Agreement, except upon written approval of the governing body of the County under such conditions as such governing body may establish;
  - iii. agree to execute and donate to the County at no charge (a) a conservation restriction, pursuant to P.L. 1979, c. 378 (C. 13:8B-1 et seq.), or (b) a development easement, as defined pursuant to section 3 of P.L. 1983, c.32 (C. 4:1C-13), at the County's election and as appropriate, on the lands for which the monies received were allocated for use pursuant to this section;
  - iv. in the case of a proposed diversion where Green Acres funds have been used, agree to follow the established Green Acres procedure for a diversion as such process may be amended from time to time;
  - v. in the case of a proposed diversion where no Green Acres funds have been used, agree to follow a proscribed County diversion process.

- c) Grantee shall not further encumber the Project Site without the express written consent of the Grantor, which may be withheld in the Grantor's sole discretion.
- d) The Grantee acknowledges that the Grantor has not performed any investigation with respect to the environmental condition of the Project Site. The Grantee represents to the Grantor that Grantee has performed its own investigation as to the environmental condition of the Project Site and accepts the Project Site in its "AS-IS" condition. As a condition of the receipt of funding from the Grantor, the Grantee agrees to comply with all Environmental Laws (as defined in Section 6 below) applicable to the Project Site or concerning any environmental conditions at, on, near or from the Project Site in effect on or after the date of this Agreement, and the Grantee agrees to indemnify, defend, hold harmless and release the Grantor from all responsibility with respect to the environmental condition of the Project Site or the Grantee's failure to comply with Environmental Laws.

## 6. RELEASE AND INDEMNIFICATIONS

Grantee assumes all risks and responsibilities for, and hereby agrees to indemnify, defend and save harmless the County of Mercer, its agents, servants, officers, freeholders, employees or volunteers from and against any and all claims, demands, actions or lawsuits that may be made by third parties against the Grantor, its agents, servants, officers, employees or volunteers for damages of any kind or description arising from the Project or Agreement or the operation of the Program, on account of or resulting from the acts or omissions of Grantee, its employees, agents, contractors or subcontractors, including but not limited to: (1) any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the Project; (2) any damages or injury to persons or property of Grantee, its contractors, subcontractors, officers, agents, servants or employees or any other person who may be about the Project caused by any act of negligence of any person (other than the Grantor or its officers, agents, servants or employees); (3) any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the Grantor in connection with the Project; and (4) any costs, expenses or damages incurred as a result of any environmental condition that may exist and/or may be discovered at any time on the Project Site.

Grantee shall indemnify, protect, defend and hold the County of Mercer, and its agents, servants, officers and employees harmless from and against any and all such losses, damages, injuries, costs or expenses and from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except by Grantee) and arising or purportedly arising from this Agreement or from the ownership and operation of this project.

Grantee expressly agrees to pay, protect, indemnify, defend and hold the County and its agents, servants, officers and employees harmless from and against any and all claims, liens, damages, defenses, judgments, suits, proceedings, costs,

disbursements, and expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' fees, consultants' fees and experts' fees) which may at any time be associated with, result from or be attributed to (i) the existence of any Hazardous Substances on, in, over, under or from the Project Site (including, without limitation, groundwater) at any time, (ii) Grantee's violation of any applicable federal, state or local law, rule regulation, ordinance or requirement relating to health, safety, and protection of the environment ("Environmental Laws"), (iii) any environmental condition that exists now, may exist in the future, and/or is known now or may be discovered at any time on the Project Site including, without limitation, any condition or area of concern identified in any environmental reports obtained now or in the future.

## 7. PROJECT TERMINATION

- a) Grantee may unilaterally rescind this Agreement in writing at any time prior to the receipt of County funds. Following the receipt of County funds, Grantee may not terminate, modify or rescind this Agreement without the express written approval of the Grantor. Any attempt by Grantee to terminate, modify or rescind this Agreement after receipt of County funds without the express written approval of the Grantor shall constitute a material breach and subject Grantee to any and all appropriate penalties at law.
- b) Grantor 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 of Grantee to perform any of the obligations or responsibilities provided under this Agreement, or to comply with the terms and conditions of this Agreement or the rules and regulations adopted by the Grantor. The occurrence of any of the named Events of Default (as set forth in Paragraph 8 below) shall also constitute "good cause" for termination of this Agreement. In the event of a termination, the County shall have no further liability to the Grantee and in no event with the County be liable or obligated to pay for any portion of the Project.

## 8. DEFAULT

- a) Any one or more of the following events shall constitute an Event of Default by Grantee:
  - (i) If any representation or warranty made herein or in any certifications, reports, plans, financial statements or other information furnished in connection with this Agreement shall prove to be false or misleading;
  - (ii) Failure of Grantee to observe and perform any covenant, condition or requirement of this Agreement, and continuance of such failure for a period of thirty (30) days after receipt by Grantee of written notice by the Grantor, specifying the nature of such failure and requesting that it be remedied, or if by reason of the nature of such failure the same

cannot be remedied within the said thirty (30) days, Grantee fails to proceed with reasonable diligence after receipt of said notice to cure same;

- (iii) Grantee shall have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudged as bankrupt, or filed a petition or an answer seeking an arrangement with creditors or taken advantage of any insolvency law, or an answer admitting the material allegations of a petitioner in bankruptcy or insolvency proceedings; or an order, judgment or decree shall have been entered, without the application, approval, of or consent of Grantee by any court of competent jurisdiction approving a petition seeking reorganization of Grantee, or appointing a receiver, trustee or liquidator of Grantee or a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of forty-five (45) consecutive days; or Grantee shall have filed a voluntary petition in bankruptcy, or failed to remove an involuntary petition in bankruptcy filed against it within forty-five (45) days of the filing thereof;
- (iv) A deviation of more than ninety (90) days from the Project schedule unless otherwise waived or approved by the County; or
- (v) Failure of the Municipality to construct the improvements within the specified schedule; or

## 9. REMEDIES

- a) In addition to any other rights or remedies available to the Grantor pursuant to law, upon the occurrence of an Event of Default by Grantee, the Grantor may take any or all of the following actions or combinations thereof:
  - (i) Issue a Notice of Noncompliance.
  - (ii) Terminate or annul this Agreement.
  - (iii) Demand immediate repayment of grant funds provided by Grantor and/or withhold any grant funds not yet disbursed by Grantor.
  - (iv) Require restoration of the Project Site to remove the violation and additionally to seek damages and costs incurred in bringing the action and curing the violation. By execution of this Agreement, Grantee further agrees to pay whatever costs Grantor incurs in enforcing the Grantee's obligations pursuant to this Agreement.

- b) No remedy herein conferred or reserved by the Grantor is intended to be exclusive of any other available remedy or remedies, but each and every such 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 or by statute. No delay or omission to exercise any right or power accruing upon any default 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 may be deemed expedient. In order to entitle the Grantor 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 Grantee commits a breach, or threatens to commit a breach of this Agreement, the Grantor 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) In the event that Grantee should default under any of the provisions of this Agreement and the Grantor shall require and employ attorneys or the services of the County Counsel's office, or incur other expenses for the collection of payments due or to become due or the enforcement or performance or observance of any obligation or agreement on the part of Grantee herein contained, Grantee shall on demand therefor pay to the, Grantor the reasonable fees of such attorneys and other costs and expenses incurred by the Grantor.
- e) The Grantor reserves the right to, but shall not be required to, do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to Grantee if any Event of Default 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 to the subject matter hereof and 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 any provisions of this Agreement or the project proposal must be in writing and submitted to the Grantor for prior approval.

- c) In the event any provision of this 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 Grantee and thereafter waived by the Grantor, such waiver shall be limited to the particular breach so waived by the Grantor and shall not be deemed to waive any other breach by Grantee.
- e) This Agreement shall inure to the benefit of and be binding upon the heirs, successors and administrators of Grantee, but no part hereof shall be assigned without the prior written consent of the Grantor.
- f) This Agreement shall be construed and enforced under the laws of the State of New Jersey.
- g) In the event of litigation, Grantee waives whatever right it may have to trial by jury.

By the signature below, the Grantee and the Grantor execute this Agreement and confirm that they are mutually bound by all provisions contained in its General provisions.

ATTEST:

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

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

\_\_\_\_\_  
print name and title of  
authorized officer

\_\_\_\_\_  
print name and title of  
authorized officer

\_\_\_\_\_  
Date

Reviewed and approved  
on \_\_\_\_\_,

\_\_\_\_\_  
print name

WITNESS:

COUNTY OF MERCER

By: \_\_\_\_\_  
Name: Jerlene H. Worthy  
Title: Clerk to the Mercer County  
Board of Chosen Commissioners

By: \_\_\_\_\_  
Name: Brian M. Hughes  
Title: County Executive

\_\_\_\_\_  
Date

EXHIBIT A  
FORM OF DEED OF CONSERVATION RESTRICTION  
FOR NON-PROFIT GRANTEES