

Morris County Park Commission
P. O. Box 1295
Morristown, New Jersey 07962-1295
(973) 326-7605

TRAIL CONSTRUCTION

GRANT AGREEMENT

BETWEEN

THE COUNTY OF MORRIS

AND

[Redacted]

DATE OF FREEHOLDER BOARD APPROVAL:

Name of Project:

[Redacted]

THIS GRANT WILL EXPIRE ON:

**MORRIS COUNTY PRESERVATION TRUST FUND
GRANT AGREEMENT**

BETWEEN the [REDACTED], having its offices at [REDACTED], hereinafter referred to as the "Grantee," 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 County, created the Morris County Open Space, Recreation, Farmland and Historic Preservation Trust Fund ("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 County created the Morris County Trail Construction Grant Program, hereinafter referred to as the "Program" and the Trail Construction Grant Program Advisory Committee ("Committee") to review, prioritize and make recommendations on the funding of projects; and

WHEREAS, The Grantee is an eligible applicant in accordance with the guidelines; and

WHEREAS, the Committee has reviewed said application and has found it to be in conformance with the scope and intent of the Program's Rules and Regulations and has recommended the Grantee's request for funding; and

WHEREAS, the Board of Chosen Freeholders confirmed the findings of the Committee and granted Approval of the Project titled "[REDACTED]" for funding via Resolution # 23 on December 13, 2017; and

WHEREAS, the Grantee owns or maintains an easement and has designated such as being permanently preserved public parkland; and

WHEREAS, Grantee has agreed to hold and utilize the project in compliance with the Rules and Regulations of the Program.

NOW, THEREFORE, in consideration of the award for funding, and in accordance with the Approved Project Application heretofore filed, and hereby incorporated into this Agreement as Schedule C, the County and the Grantee 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 "County" as used herein means the Morris County Board of Chosen Freeholders.
- b) The term "Grantee" 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.
- c) The term "Award" means the total Trust Fund grant approved by the County as part of this Agreement, expressed as shown on Schedule D.

Trust Funds may only be used for construction costs. Soft Costs are not eligible for reimbursement.

The Trust Fund grant shall be limited to approved projects and cannot be transferred to another project or utilized for any unrelated costs. If the final construction cost is less than the projected cost of construction 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.

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

The term "Soft Costs" as used herein includes but is not limited to non-construction related costs such as appraisals, survey, title commitment, legal fees, administrative costs, engineering and design, permitting fees, and environmental analysis.

- e) The term "Program" as used herein means the Morris County Trail Construction Grant Program.
- f) The term "Committee" as used herein means the Morris County Trail Construction Grant Program Advisory Committee.
- g) The term "Project" as used herein means the trail located at _____, _____, in the _____, Morris County.

2. RULES AND REGULATIONS

The Grantee is bound to adhere to the Rules and Regulations of the Trust Fund last revised March 22, 2017.

3. PROJECT ADMINISTRATION

- a) Grantee hereby accepts primary responsibility for the administration and success of the approved Project, including any subagreements made by the Grantee for accomplishing the objectives set forth in this Agreement.
- b) Grantee agrees to secure funding in excess of the County award necessary for the completion of the construction of 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 Program; and (3) the Application, estimates, and maps submitted to the County and incorporated herein by reference.
- c) The approved project shall remain on permanently preserved public parkland in perpetuity in accordance with P.L. 1997 c.24, N.J.S.A. 40:12-15, et seq. 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.
- d) The approved project shall be open to the general public.
- e) No official or employee of the Grantee who is authorized in his/her official capacity to negotiate, make, accept or approve, or take part in such decisions regarding a contract or subcontract in connection with the Project shall have any financial or other personal interest in any such contract or subcontract.
- f) The Grantee shall prepare a progress report and submit it to the County within 10 calendar days after the date requested. The report shall include a narrative description of the status, anticipated milestones, completion date, and outline any issues, which affect scope, budget and schedule of the Project. The County may, at its discretion, make visits to the site to monitor project compliance at any time.
- g) Grantee agrees to provide to County with a draft copy of the deeds and/or deeds of easement required for Schedule A at least 14 days prior to any request for reimbursement of funds. All recorded deeds and/or deeds of easement shall be provided to the County within 45 days after recording at the Morris County Hall of Records and prior to the reimbursement of any funds. Deeds shall be recorded by the Grantee.
- h) Grantee shall submit all necessary documentation and any other information within the timeframe and in the manner requested by the County, including a **quarterly status report**, which details the information outlined in paragraph (f).
- i) Grantee, 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 this agreement.
- j) Grantee, 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 Parcel acquisition. Grantee shall promptly

submit to the County any documents and information relating to the Approved Project as may be requested by the County.

- k) If the Grantee 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 or Federal 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 Grantee in accordance with this Agreement.
- l) Grantee agrees that any Trust Fund monies received from the County shall be used only for the purposes described in this Agreement. Grantee 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. Funding cannot be transferred outside of approved Scope of Work to other projects.
- m) Grantee 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 Project.
- n) 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. PERIOD OF PERFORMANCE

- a) Grantee shall return both copies of the executed Grant Agreement by March 31st of the year immediately following Freeholder approval of the grant award. Failure to return the executed grant agreement to the County within this timeframe may result in the forfeiture of the grant award.
- b) The period of performance under this Agreement shall commence on March 31 of the year immediately following Freeholder action on the grant award.
- c) The timeframe of performance to complete the Project as outlined in this agreement shall be specified as three years beginning on March 31st of the year immediately following Freeholder approval of the grant award. There shall be no obligation on the part of the County to renew or extend this time period.
- d) Grantee shall be eligible for up to two six-month grant extensions if it is shown that there are challenging circumstances, which inhibit a Pproject's completion within the initial three-year work period identified in the grant agreement.

Grantee requests for consideration of challenging circumstances shall be reviewed on a case-by-case basis by the Trail Program Advisory Committee.

5. REIMBURSEMENTS

- a) Grant payment will be reimbursed to the Grantee as payment at the time of project completion and satisfactory approval by the County. Funding will be reimbursed for costs allocated on Schedule B, provided that such costs itemized on Schedule B were actually expended in the construction of the approved Project.
- b) No partial reimbursements shall be permitted.
- c) All payments of reimbursement must be specific to the Scope of Work in the Cost Estimate (Schedule D). Eligible forms of documentation for reimbursement include but are not limited Payment Vouchers, cancelled checks, valid proof of payment, and costs certified by the municipal Certified Finance Officer as paid and applicable to the Project. All documentation shall reference the approved Project.
- d) Project costs eligible for reimbursement shall not exceed the costs outlined in the application as outlined in Schedule C.
- e) Site visits shall be performed intermittently by the County as appropriate to verify the extent of work completed and to confirm satisfactory project completion prior to ANY reimbursements to Grantee.
- f) Grantee shall provide the County with a draft copy of the fully executed updated deeds and deeds of easement, if applicable, at least 14 days prior to reimbursement of any funds.
- g) Grantee shall provide electronic coordinates of approved Project per the direction of the County, prior to reimbursement of any funds.
- h) Grantee agrees that any Program funds received from the County shall be used only for the purposes described in the application and not for any ineligible activities as provided for under the statute or Trust Fund Rules and Regulations. Grantee further agrees that if it uses program funds for any other purposes other than those specified and approved in this agreement, the county may recover all such funds with interest.

6. MATCHING FUNDS

- a) The Grantee agrees to provide all matching funds as necessary for the completion of the Project as stipulated in the Cost Estimate (Schedule D) and in accordance with this Agreement and the conditions, specifications, plans, estimates, project proposals submitted to the County and incorporated herein by reference. Specifically, the grantee will provide at least a 20% match.
- b) If using municipal Open Space Trust Fund dollars, Grantee shall submit a

certified ordinance/resolution confirming funds were encumbered and utilized for the approved Project.

If using In-Kind Services as matching funds, Grantee shall submit a signed certification from the municipal Certified Finance Officer that the wages of municipal employees, volunteer man hours and cost of donated supplies were expended on the Project. Donated supplies will be valued at the market value of the supplies at the time of donation. All documentation shall reference the approved Project.

All documentation of costs to be reimbursed must be in a format acceptable to Morris County prior to release of funds.

- c) Indirect costs are eligible sources of matching funds. Indirect costs include but are not limited to professional services, site design, engineering, supervision, legal fees, advertising, permit fees, preliminary planning or engineering, historic research, professional advice, estimates, reports, services or studies and other incidental costs related to the project construction.
- d) Indirect cost not eligible as matching funds include professional services paid for the preparation of the grant application, administrative or other staff time spent preparing the grant application or managing the grant award.

7. PRE-CONSTRUCTION MEETING

- a) Grantee shall submit Final Construction Documents (Engineering Plans & Specifications) of Approved Project at least 10 days prior to the **mandatory** on-site Pre-Construction Meeting.
- b) Grantee shall contact County to request and schedule Pre-Construction Meeting in writing at least 10 days.
- c) A mandatory on-site Pre-Construction Meeting shall include the Grantee's Project Contact, Licensed Professional, and any individuals overseeing the day-to-day management of the Project.

8. PERMITTING

- a) Grantee is solely responsible to obtain all reviews and permits necessary to obtain required approvals of local, county, state, and Federal agencies involved.

9. ACKNOWLEDGEMENT

- a) Upon completion of the Approved Project, at the option of the County, the Grantee shall erect and maintain one or more approved permanent signs in a publicly visible location, which credits the Morris County Preservation Trust Fund as a funding source. The sign shall be erected as soon as possible after the completion of the Approved Project. The County shall provide the sign to the Grantee.
- b) Grantee shall install sign as directed by the County.

10. COMPLIANCE

- a) The Grantee shall comply with all applicable State and Federal Laws in connection with activities for services related to the specific grant.
- b) The execution of this Agreement has been authorized by the Grantee's Governing Body and the Morris County Board of Chosen Freeholders.

11. REQUIRED MAINTENANCE

The Grantee shall maintain all trails in good working condition accessible to the public and free from inappropriate use for a period of 20 years after reimbursement of the Approved Project.

12. FINANCIAL RECORDS AND AUDITING REQUIREMENTS

- a) The Grantee's financial management system shall provide for the following:
 - 1) Accurate, current and complete disclosure of the financial results of this Agreement and any other agreement with the County, contract, grant, program or other activity administered by the Grantee;
 - 2) Records adequately identifying the source and application of all Grantee funds specific to this project and all funds administered by the Grantee.
 - 3) Effective internal and accounting controls over all funds, property and other assets. The Grantee shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
 - 4) Accounting records supported by source documentation;
- b) The County, or its duly authorized representative(s), shall have access to all records, books, documents and papers pertaining to this Agreement and/or the Project for audit, examination, excerpt and transcript purposes. Obtaining information shall be made practicable for the County.

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

All records shall be maintained accordingly.

Grantee shall cite this provision in all project related contracts.

- c) Audit reports must address Grantee's compliance with the material terms and conditions of this Agreement and applicable laws/regulations. Grantee shall conduct annual audits in conformance with the Single Audit Act, Federal OMB Circular A-128: "Audits of State and Local Governments," and State OMB Circular 92-05: "Single Audit Policy."
- d) Grantee's account will be adjusted, if necessary, upon the County's review of the annual audit reports.

13. LAND USE RESTRICTIONS

- a) Grantee agrees to conditions, which are intended to restrict the use of the land to open space in perpetuity in order to establish and maintain the trail.
- b) Lands containing trail construction funded by the Program grant shall not be conveyed, transferred, disposed of or diverted to use for other than recreation, conservation and farmland preservation purposes without the prior approval of the County.
- c) The County may grant such approvals for conveyance, transfer, disposition or diversion under this Section only when Grantee meets the requirements of Section 3.3.8 of the Trust Fund Rules and Regulations regarding Diversions of Preserved Lands.
 - (i) 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 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.
- d) Municipality shall cause to be included in all deeds of lands which are purchased using monies awarded herein the deed restrictions provided by the County. Draft deed, including all restrictions and metes and bounds description(s), shall be submitted for review and must be approved by the County not later than 14 days prior to closing. Required deed restrictions shall be obtained from the County.
- e) Municipality shall be solely responsible for confirming all permitted uses and/or deed restrictions, which may be required or necessitate approval by all funding entities, particularly those which deviate from the standard county deed restrictions, prior to executing purchase contract and/or recording any deeds. Failure to confirm

acceptable and required deed restrictions may necessitate renegotiating contract terms and/or the recording of corrective deeds at Municipality's sole cost and expense.

14. RELEASE AND INDEMNIFICATION

- a) The Grantee shall defend, indemnify, protect and save harmless the Trust Fund, the Committee 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 Grantee, its agents, servants, employees, contractors and subcontractors in the performance of this Agreement and the Approved Project. The Grantee 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, the Committee or the County for which indemnification is provided under this paragraph, the Grantee shall, at its own expense, satisfy and discharge the same.
- b) The Grantee 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 Grantee every demand, complaint, summons, pleading, or other process received.

15. PROJECT TERMINATION

- a) Grantee may terminate or rescind this Agreement upon 30 days written notice to the County prior to receipt of Project reimbursement.
- 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 Program or the Trust Fund.

16. 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 Grantee.
- 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 Grantee 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 and 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 Grantee if any event or failure of compliance shall occur hereunder.

17. 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 Grantee 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 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 County.

- 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.
- h) The parties agree to jointly coordinate any publicity or press releases regarding the Project.

2017 COPY

By signing below, the Grantee 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:

Clerk

MORRIS COUNTY BOARD OF CHOSEN
FREEHOLDERS

By: _____

Date: _____

Name: Douglas Cabana

Title: Freeholder Director

ATTEST:

Clerk or Notary

By: _____
MAYOR

Date: _____

Name: _____

Title: _____

ATTACHMENTS

The following are fully incorporated into this Agreement:

- Schedule A: Approved Property Description - Metes and bounds description of the lands containing trail improvements.
- Schedule B: Approved Project Description
- Schedule C: Approved Project Application
- Schedule D: Approved Cost Estimate

2017 COPY

SCHEDULE A

APPROVED PROPERTY DESCRIPTIONS CONTAINING TRAIL IMPROVEMENTS AND/OR APPROPRIATE DEED RESTRICTIONS

- Original Deed, and/or
- Re-recorded deed; and/or
- Deed of Easement (including metes and bounds)

2017 COPY

SCHEDULE B

APPROVED PROJECT DESCRIPTION

GRANTEE: _____

ADDRESS: _____

PHONE: _____

FAX: _____

E-MAIL: _____

PROJECT NAME: _____

TYPE OF PROJECT: _____

PROJECT ADDRESS: _____

CONTACT PERSON: _____

PHONE OF CONTACT PERSON: _____

E-MAIL OF CONTACT PERSON: _____

GRANT AWARD: _____

GRANTEE MATCH: _____

PROJECT PERIOD: Three years from date of execution by the County, this date being _____

SCOPE OF WORK: _____

PROJECT PERIOD: Grantees shall have three (3) years to complete the project. The period of performance under this agreement shall commence on March 31 of the year immediately following Freeholder approval of the grant award. If the Grantee fails to complete the project within the three years, the grant shall be forfeited and termination shall ensue unless extended in accordance with the provisions of this Agreement.

SCHEDULE C

APPROVED PROJECT APPLICATION

To: Morris County Trail Construction Grant Program

2017 COPY

SCHEDULE D

APPROVED COST ESTIMATE

Grant Award:

\$

Cost Share Allocation

Morris County – 80 %

\$

Grantee – 20 % (or more)

\$

* Total Project Cost:

\$

* Attach a copy of the approved cost estimate