

[Community]

Project No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

## Exhibit B

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in real property, demolish or relocate structures on acquired property, and convert the property into open space;

WHEREAS, the [State] has made such application and has entered into a grant agreement with FEMA, date [date], and herein incorporated by reference;

WHEREAS, Grantee, acting by and through the [Community] Board, has entered into a cooperative sub-grant agreement with [State], date [date], and herein incorporated by reference;

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the grant sub-grant agreement require that Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

WHEREAS, [State] also has recognized the need to preserve the natural and open condition of the land and so authorizes conveyance of an easement to that end under the provisions of [the state law, cite];

WHEREAS, the [Community] Board has determined that it is necessary in order to promote the public interest for the purposes provided in the Stafford Act to acquire a conservation easement to this certain real property owned by the Grantor;

NOW, THEREFORE, the Grantor, for and in consideration of the opportunity to participate in the FEMA-funded acquisition project, does voluntarily grant and convey to the Grantee a conservation easement in perpetuity over the property situated in the [Community], County of [county], State of [state] and described in Attachment A.

1. Purpose. This grant of a conservation easement is made for conservation purposes in order to restrict the use of the land to open space in perpetuity to protect and preserve natural floodplain values and to prevent any future use of the property that will significantly impair or interfere with the open space values of the property.
2. Terms. In order to accomplish the purposes of this easement and, pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, the FEMA-State Agreement, and the Grant Agreement, the following conditions and restrictions shall apply in perpetuity and shall run with the land as an incorporeal interest in the property described in Attachment A:
  - a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.
  - b. Structures. No new structures or improvements shall be erected on the property other than:

- i. A public facility that is open on all sides and functionally related to the open space use;
- ii. A public rest room;
- iii. A structure that is compatible with the uses described in Paragraph 2(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure; or
- iv. Simple agricultural structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, and limited to—
  - a) General purpose which are open on at least one side and are for the temporary storage of livestock.
  - b) Pole frame buildings with open or closed sides used exclusively for storage of farm machinery and equipment, and related agricultural items.
  - c) Steel grain bins and steel frame corn cribs.

[*OPTIONAL include the following if applicable:* provided that (a) the structure is the subject of approval by the County in accordance with the provisions of the [County Flood Plain Code, Section number et seq. of the County Flood Plain Code name, State, as they now read and as they may be amended in the future, and (b) NFIP requirements for wet-floodproofing (or dry-floodproofing or elevation, where practicable) are met, pursuant to 44 C.F.R. 60.3;]

Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;
- d. Transfer. The Grantee agrees that it shall convey the easement only with prior approval by the Regional Director of FEMA of the transferee. The easement may be transferred only to someone other than the title holder and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements.
  - i. The Grantor may convey title, an easement, license, lease, or other interest in the land. Such conveyance, whether implied or express, shall be subject to all conditions and restrictions described herein, which shall run with the land in perpetuity.
3. Inspection. The Grantee and FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the easement.
4. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the easement.
5. Enforcement. If the subject property is not maintained according to the terms of the easement, the Grantee[State], and FEMA, its representatives, and assigns, are responsible for taking measures to bring the property back into compliance.

- a. The Grantee will notify the titleholder of the violation in writing and advise the title holder that it has 60 days to correct the violation.
  - b. If the title holder fails to demonstrate a good faith effort to come into compliance with the terms of the easement within the 60-day period, the Grantee shall notify [State] of the violation.
  - c. The State shall enforce the terms of the easement by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
  - d. FEMA, its representatives and assigns may enforce the terms of the easement by taking any measures it deems appropriate, including but not limited to the following:
    - i. Requiring transfer of the conservation easement in accordance with Paragraph 2d, or;
    - ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.
6. Severability. Should any provision of this easement, or the application thereof to any person or circumstance, be found to be invalid or unenforceable, the rest and remainder of the provisions of this easement and their application shall not be affected and shall remain valid and enforceable.

The Grantee accepts the easement and acknowledges its obligations pursuant to the grant and sub-grant agreements and this document to monitor the use of the land and enforce the provision of the easement. Upon execution of this easement by the parties, the Grantee will officially record the easement.

\_\_\_\_\_  
*Grantor's Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Name (printed or typed)*

\_\_\_\_\_  
*Grantee's Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Grantee's Name*

\_\_\_\_\_  
*Grantee's Title*