

MEMORANDUM OF AGREEMENT BETWEEN  
THE TOWN OF OLIVE AND ULSTER COUNTY  
RELATED TO THE FEMA HMGP FLOOD BUY-OUT PROGRAM

**THIS MEMORANDUM OF AGREEMENT**, effective upon full execution, is agreed to and executed by and between the **Town of Olive**, a local government corporation having its principal office at Town Office, West Shokan, New York 12494 (the “Town”), and **Ulster County**, a municipal corporation having its principal office at 244 Fair Street, Kingston, New York 12401 (the “County”) (each, a “Party;” together, the “Parties”).

**WHEREAS**, pursuant to Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170, the Federal Emergency Management Agency (“FEMA”) may contribute through the Hazard Mitigation Grant Program up to 75 percent of the cost of eligible measures designed to substantially reduce the risk of future damage, hardship, loss or suffering in an area affected by a major disaster; and

**WHEREAS**, the Hazard Mitigation Grant Program (HMGP) provides, among other things, funding by the federal government for the acquisition of properties that are located in flood-prone areas and demolition of flood-damaged structures thereon by local governments provided the acquisition of such properties and demolition of structures thereon is determined by FEMA to be cost-effective, and further provided that the permissible uses of all such properties after acquisition and demolition are to be restricted in perpetuity to uses compatible with open space, passive recreation, or wetlands management practice; and

**WHEREAS**, FEMA will reimburse 75% of all eligible costs including pre-flood fair market value, appraisal, title report, survey, recording fees, boundary survey, environmental site assessment as needed, demolition and site restoration; and

**WHEREAS**, under certain circumstances, FEMA will reimburse the remaining 25% of such eligible costs; and

**WHEREAS**, any costs not reimbursed by FEMA and/or New York State are the responsibility of the landowner; and will be reimbursed to the County by the landowner; and

**WHEREAS**, in August and September of 2011, many areas within Ulster County of New York State experienced severe flooding and flood-related property damage as a result of the record rainfalls over a short duration from Hurricane Irene and Tropical Storm Lee (the “Flood Events”); and

**WHEREAS**, as a result of the Flood Events and pursuant to the Hazard Mitigation Grant Program **the County** (as “Sub-Applicant”) will be executing a contract with FEMA and/or NYS Office of Emergency Management (OEM) to fund property acquisition costs from willing sellers, and demolition projects that will be administered and facilitated by the County under a Town-established Flood Buyout Program (the “Flood Buyout Program”); and

**WHEREAS**, the County has agreed to manage, facilitate and administer the program components between the Town and eligible landowners and upfront funds as needed with the understanding the

County will be 100% reimbursed by FEMA and/or New York State for eligible costs through the HMGP, and will be reimbursed by the landowner for any non-reimbursable costs.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and agreements set forth in this Agreement, and of the undertakings of each Party to the other Party, the Parties hereby promise and agree as follows:

1. The Town agrees to work in cooperation with the County to support eligible landowners through the Flood Buyout Program, and provide administrative assistance as needed.
2. The Town shall be responsible for taking title to the following property it has deemed beneficial for town purposes, and shall do so in accordance with deed restriction language as required by 44 CFR Part 80 (Draft Deed and required Exhibit A are attached hereto as "Attachment 1," which is hereby made a part of this Agreement):

4091 Route 28, Boiceville, NY

36.11-1-33

3. As the property is located within the New York City watershed and is to be acquired by the Town with the assistance of the City, the Town also agrees to convey a conservation easement on the property to the New York State Department of Environmental Conservation.
4. The Town understands and agrees that the property it acquires will be permanently converted to open space and shall not be used for future development including future planned improvements to roadways in the Federal aid highway system or US Army Corps of Engineers' flood levee systems.
5. Every three years from the date of conveyance, the Town will complete an inspection of the property it acquired pursuant to this Agreement, and will send to the NYS Office of Emergency Management and to the Ulster County Disaster Assistance Coordinator photo documentation to evidence compliance with the deed restrictions.
6. The Town shall keep records of assistance provided facilitating the acquisition of said property and submit such records to the Ulster County Disaster Assistance Coordinator.
6. Except as otherwise expressly provided for in this Agreement, the County shall be responsible for the administration and management of the Flood Buyout Program.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to enter into this Agreement, effective as of the date of full execution.

COUNTY OF ULSTER

TOWN OF OLIVE

BY: \_\_\_\_\_  
NAME: John R. Parete  
TITLE: Chairman, Ulster County Legislature  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## ATTACHMENT 1

**DRAFT DEED**

THIS INDENTURE

Made the \_\_\_\_\_ day of \_\_\_\_\_  
Two Thousand and \_\_\_\_\_

Between

parties of the first part, and

party of the second part

Witnesseth that the party of the first part, in consideration of \_\_\_\_\_  
ONE \_\_\_\_\_ Dollar (\$1.00) lawful money of the  
United States, and other good and valuable consideration, paid by the parties of the second part,  
their heirs, successors and assigns forever, all

**THAT CERTAIN PIECE OR PARCEL OF LAND**, together with the buildings and  
improvements thereon, being more particularly bounded and described in Schedule "A" annexed  
hereto and made a part hereof.

**THE PREMISES HEREIN CONVEYED ARE SUBJECT TO** the following restrictive  
covenant, which covenants shall run with the land and be binding on all successors and assigns:

The property shall be dedicated and maintained in perpetuity for uses compatible with  
open space, recreational, or wetlands management practices as defined in 44 C.F.R. Part  
80, and no new structures will be built on the property except:

- a. a public rest room;
- b. a public facility that is open on all sides and functionally related to open space  
use;
- c. structures that are compatible with open space, recreational, agricultural, or  
wetland management usage and proper flood plain management policies and  
practices, which the Administrator of the Federal Emergency Management  
Agency (FEMA), the New York State Department of Environmental  
Conservation and the local flood plain administrator approve in writing before the  
project begins, which determination must be initiated at the local government  
level. This determination must begin at the local government level and be  
approved by the State before being submitted to FEMA. If the locality receives all  
approvals to transfer the property, the property must be transferred in accordance  
with Exhibit "A" annexed hereto and made a part hereof.

No future application for disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

**TOGETHER** with the appurtenances and all the estate and rights of the parties of the first part and to said premises,

**To have and to hold** the premises herein granted unto the party of the second part, their heirs, successors and assigns forever.

**And said;**

**First,** That the party of the second part shall quietly enjoy the said premises.

**Second,** That said will forever **WARRANT** to the title to said premises.

**Third,** That, in Compliance with Sec. 13 of the Lien Law, the grantors will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

**In Witness Wherefore,** the parties of the first part have hereunto set their hand and seal the day and year first above written.

In Presence of

\_\_\_\_\_ L.S.

\_\_\_\_\_ L.S.

State of New York)  
  )ss.  
County of                         )

On this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand and \_\_\_\_\_ before me, the subscriber, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known and known to me to be the same persons described in and who executed the within Instrument, and they acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**  
**(Description of Property)**

**ALL THAT CERTAIN PLOT; PIECE OR PARCEL OF LAND,**

**BEGINNING**

**HEREBY**

**SUBJECT TO**

**BEING**

**BEING**

**EXHIBIT "A"**

The deed conveying the property to the locality must reference and incorporate Exhibit A and should be attached to the deed when recorded.

In reference to the property or properties ("Property") \_\_\_\_\_ conveyed by the Deed between (property owner) \_\_\_\_\_ participating in the \_\_\_\_\_ federally-assisted acquisition project ("the Grantor") and \_\_\_\_\_ (the local government), ("the Grantee"), its successors and assigns:

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, Hazard Mitigation Grant Program, including the acquisition and relocation of structures in the floodplain;

WHEREAS, the mitigation grant program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

Whereas, New York State has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program Grant Agreement with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Town of \_\_\_\_\_, and Town of \_\_\_\_\_ participates in the National Flood Insurance Program and is in good standing with NFIP as of the date of the Deed;

Whereas, the County of ~~Ulster~~ acting by and through the County of ~~Ulster~~ Legislature, has applied for and been awarded federal funds pursuant to an agreement with New York State on January 9, 2013 ("State-Local Agreement"), and herein incorporated by reference, making it a mitigation grant program subgrantee;

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement require that the Grantee, and Town of \_\_\_\_\_, agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

Now, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Hazard Mitigation Grant Program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

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- a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.
  - 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 a designated open space or recreational use;
    - (ii) A public rest room; or
    - (iii) A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins. Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be flood proofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator.
  - c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.
  - d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.
    - (i) The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.
    - (ii) The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the FEMA Regional Administrator, and so long as the

- conveyance does not include authority to control and enforce the terms and conditions of this section.
- (iii) If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
    - a) The Grantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or;
    - b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
  - (iv) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible status under this section.
2. Inspection. FEMA, its representatives and assigns including the state or tribe 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 this part, the Property conveyance and of the grant award.
  3. Monitoring and Reporting. Every three years, the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.
  4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:
    - a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.
      - (i) If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant 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.

- (ii) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:
  - a) Withholding FEMA mitigation awards or assistance from the State or Tribe, and Grantee; and current holder of the property interest.
  - b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or
  - c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

- 5. Amendment. This agreement may be amended upon signatures of FEMA, the state, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.
- 6. Severability. Should any provision of this grant 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 grant and their application shall not be affected and shall remain valid and enforceable.

[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with local law.]

Grantor's Signature \_\_\_\_\_ Date \_\_\_\_\_

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

Grantee's Signature \_\_\_\_\_ Date \_\_\_\_\_

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

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

**On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ to me known, who, being duly sworn, did depose and say that he/she is the \_\_\_\_\_, described in and which executed the foregoing instrument, and that he/she executed the foregoing statement by the authority of \_\_\_\_\_.**

\_\_\_\_\_

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Notary Public

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Transferee

Ss:

State of New York

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ to me known, who, being duly sworn, did depose and say that he/she is the \_\_\_\_\_, described in and which executed the foregoing instrument, and that he/she executed the foregoing statement by the authority of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public