

BILL NO. S-15-11-19

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving STATE-LOCAL AGREEMENT, PRE-DISASTER MITIGATION GRANT PROGRAM #0098P 2015 PDMG FLOOD BUYOUT PROJECT between the INDIANA DEPARTMENT OF HOMELAND SECURITY AND THE MAUMEE RIVER BASIN COMMISSION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the STATE-LOCAL AGREEMENT, PRE-DISASTER MITIGATION GRANT PROGRAM #0098P 2015 PDMG FLOOD BUYOUT PROJECT by and between INDIANA DEPARTMENT OF HOMELAND SECURITY AND THE MAUMEE RIVER BASIN COMMISSION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the purchase of up to 18 flood prone homes around the City.	
DHS GRANT PROVIDES 75% =	\$ 862,946.25
MRBC CONTRIBUTIONS =	\$ 35,000.00
CITY'S SHARE =	\$ 252,648.75
TOTAL GRANT =	\$1,150,595.00

involving a total cost to the City of TWO HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED FORTY-EIGHT AND 75/100 DOLLARS - (\$252,648.75) -. A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

CS

RUSH



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
 2. Please type all information.
 3. Check all boxes that apply.
 4. For amendments / renewals, attach original contract.
 5. Attach additional pages if necessary.

Received

OCT 19 2015

DOA Contracts

1. EDS Number: C44P-6-036B		2. Date prepared: 9/28/2015	
3. CONTRACTS & LEASES			
☐ Professional/Personal Services ☒ Grant ☐ Lease ☐ Attorney ☐ MOU ☐ QPA		☐ Contract for procured Services ☐ Maintenance ☐ License Agreement ☐ Amendment# _____ ☐ Renewal # _____ ☐ Other _____	
FISCAL INFORMATION			
4. Account Number: 61800-38300.571010		5. Account Name: DHS DHS Fund	
6. Total amount this action: \$862,946.25		7. New contract total: 862,946.25	
8. Revenue generated this action: \$0.00		9. Revenue generated total contract: \$0.00	
10. New total amount for each fiscal year:			
Year 2015 \$0.00			
Year 2016 \$862,946.25			
Year _____ \$ _____			
Year _____ \$ _____			
TIME PERIOD COVERED IN THIS EDS			
11. From (month, day, year): 6/30/2015		12. To (month, day, year): 9/30/2016	
13. Method of source selection:			
☐ Bid/Quotation ☐ Emergency ☐ Negotiated ☐ RFP# _____ ☒ Other (specify) GRANT			
35. Will the attached document involve data processing or telecommunications system _____ Yes; IOT or Delegate has signed off on contract			
36. Statutory Authority (Cite applicable Indiana or Federal Codes): IC10-14-3			
37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) To acquire and demolish up to twenty (20) flood damaged structures and/or adjacent vacant lots.			
38. Justification of vendor selection and determination of price reasonableness: Selection of vendor was done due to the nature of this grant and working with the locals to ensure this was the best use of funds.			
39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)			
40. Agency fiscal officer or representative approval <i>[Signature]</i>		41. Date Approved 10/20/15	
44. Attorney General's Office approval MM		45. Date Approved 10/22/15	
42. Budget agency approval <i>[Signature]</i>		43. Date Approved 10-22-15	
46. Agency representative receiving from AG		47. Date Approved	

AGENCY INFORMATION

14. Name of agency:
Homeland Security

15. Requisition Number:
0000013341

16. Address: IN Dept of Homeland Security
Main Office
302 W WASHINGTON ST RM E208
INDIANAPOLIS, IN 46204

AGENCY CONTACT INFORMATION

17. Name:
Brad Gavin

18. Telephone #:
317/233-4928

19. E-mail address:
bgavin@dhs.in.gov

COURIER INFORMATION

20. Name:
Kolapo Egunyomi

21. Telephone #:
317-234-8896

22. E-mail address:
kegunyomi@dhs.in.gov

VENDOR INFORMATION

23. Vendor ID # 0000056767

24. Name:
CITY OF FORT WAYNE

25. Telephone #:
999-999-9999

26. Address:
1 MAIN ST
FORT WAYNE, IN 46802

27. E-mail address: rrenken-mrbc@verizon.net

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) Yes ☒ No ☐

29. Primary Vendor: M/WBE/IN-Vetera
Minority: Yes ☒ No ☐
Women: Yes ☒ No ☐
IN-Veteran Yes ☒ No ☐

30. Primary Vendor Percentages
100.0 %

31. Sub Vendor: M/WBE/IN-Veteran
Minority: Yes ☒ No ☐
Women: Yes ☒ No ☐
IN-Veteran Yes ☒ No ☐

32. If yes, list the %:
Minority: _____ %
Women: _____ %
IN-Veteran _____ %

33. Is there Renewal Language in _____ Yes ☒ No ☐

34. Is there a "Termination for Convenience" clause in the document? ☒ Yes ☐ No

RECEIVED

OCT 22 2015

OAG-ADVISORY

**CITY OF FORT WAYNE
STATE-LOCAL AGREEMENT
PRE-DISASTER MITIGATION GRANT PROGRAM
CFDA 97.047
EDS # C44P-6-036B**

This State-Local Agreement ("Agreement"), entered into by and between the Indiana Department of Homeland Security (hereinafter referred to as the "State") and the City of Fort Wayne (hereinafter referred to as the "Subrecipient"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

Pursuant to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (the "Stafford Act"), 42 USC 5121 *et seq.*, the Federal Emergency Management Agency ("FEMA") has been authorized by Congress to make grants to states to mitigate natural disasters.

The State has been designated by FEMA as the Recipient to receive, administer, and disburse FEMA mitigation funds for local government mitigation projects in areas of Indiana and to provide technical assistance with the Pre-Disaster Mitigation (PDM) grant program. The PDM grant program is authorized by Section 203 of the Stafford Act (42 USC 5133).

The Subrecipient has submitted an application to the State setting forth a list of mitigation activities (herein referred to as "Project"). The State and FEMA have approved the Project along with any exceptions that have been made prior to signing of this Agreement.

1. Purpose of Agreement

The purpose of this Agreement is to enable the State to make a subaward to the Subrecipient from the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), Fiscal Year 2014 Pre-Disaster Mitigation (PDM) grant program, Award Number EMC-2015-PC-0010 (awarded to the State on June 30, 2015) for the eligible costs of this approved project (the "Project") to acquire and demolish up to twenty (20) flood damaged structures and/or adjacent vacant lots. This Project is further described in **Exhibit A**, which is attached to and fully incorporated into this Agreement.

The administrative and audit requirements and cost principles under 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as adopted at 2 CFR 3002 are applicable to this Agreement.

The Subrecipient shall comply with the federal grant provisions contained in **Exhibit B**, which is attached to and fully incorporated into this agreement. Additionally, Subrecipient will comply with the Pre-Disaster Mitigation Grant Program Deed Restrictions contained in **Exhibit C**, which is also attached to and fully incorporated into this Agreement.

2. Amount of Subaward and Local Cost Share

This Agreement is for an amount not to exceed \$862,946.25. The total Project cost, local cost share and Agreement amount are as follows:

Total approved Project cost:	\$1,150,595.00
PDM Grant Amount	\$862,946.25
Local Cost Share	\$287,648.75

The Subrecipient shall comply with the cost-sharing requirements mandated by program guidance, statutes and regulations and in compliance with 2 C.F.R. 200.306. The subaward funds shall be used exclusively in accordance with the provisions contained in this Agreement.

3. Term

This Agreement shall commence as of June 30, 2015 ("Effective Date"). The term of this Agreement shall

end September 30, 2016 ("Expiration Date").

4. Payment of Funds

The payment of this subaward by the State to the Subrecipient shall be made in accordance with and subject to the following conditions:

- A. This Agreement must have been executed by all signatories.
- B. Prior to making a payment under this Agreement, the Sub-Grantee will be required to provide the State with documentation showing that they have incurred an allowable cost in accordance with procedures and in the form and manner established by the State. Within sixty (60) days
- C. As required by 44 CFR 13.21 and 31 CFR 205, the Sub-Grantee shall minimize the time elapsing between the transfer of funds from the State to the Sub-Grantee and the disbursement of funds by the Sub-Grantee. To implement this requirement, the period of time between the transfer of funds from the State to the Sub-Grantee and the disbursement of funds by the Sub-Grantee shall not exceed three (3) days, unless the Sub-Grantee has, in writing, requested an extension of this deadline and the State has, in writing, granted an extension. Any such request for an extension shall be accompanied by a justification which demonstrates that the Sub-Grantee needs more than three (3) days to disburse the funds.
- D. As required by IC §4-13-2-14.8, all payments shall be made by electronic funds transfer to the financial institution designated by the Subrecipient in writing.

5. Subrecipient's Duties and Responsibilities

- A. The Subrecipient shall be solely responsible for the proper implementation of the approved Project. The Subrecipient shall implement and complete the Project in accordance with ~~Exhibit A~~ and its Application, which is on file with the State and is incorporated by reference. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) This Agreement; (2) ~~Exhibit B~~; (3) ~~Exhibit A~~; and (4) Application submitted to the State.
- B. The Subrecipient shall only use funds provided under this Agreement for the itemized expenditures identified in Exhibit A of this Agreement and shall not spend more than the specified amount for each such itemized expenditure. The Subrecipient may request, in writing, approval from the State to modify the expenditures itemized or the amounts specified in ~~Exhibit A~~. This request shall be submitted in the form and manner specified by the State. At its sole discretion, the State may, in writing, approve this request. The Subrecipient must obtain this written approval from the State PRIOR to making an expenditure that is not in compliance with ~~Exhibit A~~.
- C. The Subrecipient shall complete the Project ("Project Completion"), which includes, but is not limited to ordering, accepting delivery, installing equipment and full completion of performance of any service agreements or contracts, by the expiration date of this Agreement (the "Project Completion Deadline"). The Subrecipient shall Liquidate (expend) the funds, submit a final report and documentation of expenditures made, documentation of all required local share amounts and submit all requests for payment within forty-five (45) days of the Project Completion Deadline. The State has the discretion, and reserves the right, to NOT reimburse the Subrecipient for an expenditure that does not comply with both the Project Completion and Liquidation requirements established in this paragraph.
- D. Subaward funds shall not be used to pay for obligations incurred, equipment procured or work performed prior to the Effective Date of this Agreement or after the Expiration Date of this Agreement.
- E. The Subrecipient shall ensure that funds awarded under this Agreement do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. The Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.
- F. Until this Project has been completed, the Subrecipient shall submit to the State written quarterly reports detailing the progress toward completion of the Project. These reports shall include the

information, be in the format specified and be submitted in accordance with the schedule established by the State.

- G. The Subrecipient expressly represents and warrants to the State that the information set forth in its grant application is true, complete and accurate.
- H. The Subrecipient shall comply with all applicable provisions in the Federal Emergency Management Agency "Hazard Mitigation Assistance Guidance" and "Hazard Mitigation Assistance Guidance Addendum" both dated February 27, 2015, available from the State or at the following federal website: <https://www.fema.gov/media-library/assets/documents/103279>.

6. Real Property Acquisition

As part of this project, the Subrecipient will purchase real property. In addition to the other requirements in this Agreement, the following conditions are applicable to this purchase of the real property.

- A. FEMA's model deed restrictions that support 44 C.F.R. Part 80 requirements are in **Exhibit C** which is attached to and fully incorporated into this Agreement.
- B. The deed conveying the property to the Subrecipient must reference and incorporate this Exhibit C. The Subrecipient shall replace the italicized text in the **Exhibit B** with the appropriate replacement language (an electronic version of this Exhibit C is available from the State). Any variation from this model deed restriction, other than replacement of the italicized text, can only be made with prior approval from FEMA's Office of Chief Counsel. Such requests shall be made to the FEMA Regional Administrator through the State. The **Exhibit C** shall be attached to the deed when recorded.
- C. The Subrecipient shall take all actions necessary to ensure that the tax records for each of the Properties contain the information that the property was purchased with federal grant funds and has deed restrictions.
- D. Exhibit C definitions. Within **Exhibit C** the "Grantor" is the property owner participating in the federally-assisted acquisition project and the "Grantee" is the Subrecipient designated in this Agreement which will be purchasing the property from the Grantor.
- E. The Subrecipient shall comply with the provisions set out in 2 C.F.R. 200.311.

7. Notice to Parties

Whenever any notice, statement or other communication is required under this Grant, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:
Mary Moran
Emergency Response and Recovery Division
Indiana Department of Homeland Security
302 W. Washington Street, Rm. W046
Indianapolis, IN 46204
- B. Notices to the Subrecipient shall be sent to:
Rodney Renkenberger
Executive Director
Maumee River Basin Commission
3864 New Vision Drive
Fort Wayne, IN 46845
rrenken-mrbc@verizon.net

8. Monitoring By the State

The State may conduct a monitoring review and evaluation of activities as deemed appropriate by the State. The Subrecipient will effectively ensure the cooperation of the Subrecipient's employees in such monitoring and evaluation efforts. The Subrecipient will take all actions necessary to correct or cure any findings

identified by the State during its monitoring and evaluation. This provision survives the expiration or termination of the Agreement.

9. Recordkeeping and Access to Records

- A. Financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Federal award must be retained until March 29, 2020.
- B. The State (including an authorized representative of the State Board of Accounts), the U.S. Department of Homeland Security, Federal Inspectors General, or the United States Comptroller General, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the Subrecipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. These rights of access are not limited to the required retention period but last as long as the records are retained. Copies thereof shall be furnished at no cost to the State if requested.
- C. Notwithstanding this provision, if the federal regulations governing record retention and access for this grant (2 C.F.R. 200.333 through 200.337) require additional records to be maintained, require the records to be maintained for a longer period of time, or impose other requirements; the Subrecipient shall adhere to these federal requirements.

10. Close-Out Audit

If required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Recipient shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 *et seq.*

11. Remedies for Noncompliance

If the Subrecipient fails to comply federal or State statutes, rules, regulations or this Agreement, the State may impose additional conditions as described in 2 CFR 200.207 or take any of the actions allowed by 2 CFR 200.338.

12. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Compliance with Laws

- A. The Recipient shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the Recipient to determine whether the provisions of this Agreement require formal modification.
- B. The Recipient and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Recipient has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Recipient shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If the Recipient is not familiar with these ethical requirements, the Recipient should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Recipient or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon

- notice to the Recipient. In addition, the Recipient may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- C. The Recipient certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Recipient agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Recipient. Additionally, payments may be withheld, delayed, or denied and/or this Agreement suspended until the Recipient is current in its payments and has submitted proof of such payment to the State.
 - D. The Recipient warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Recipient agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Recipient's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to suspend funding to the Recipient, the Recipient may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.
 - E. The Recipient warrants that the Recipient and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of grant opportunities with the State.
 - F. The Recipient affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
 - G. As required by IC §5-22-3-7:
 - (1) The Recipient and any principals of the Recipient certify that:
 - (A) the Recipient, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Recipient will not violate the terms of IC §24-4.7 for the duration of this Grant Agreement, even if IC §24-4.7 is preempted by federal law.
 - (2) The Recipient and any principals of the Recipient certify that an affiliate or principal of the Recipient and any agent acting on behalf of the Recipient or on behalf of an affiliate or principal of the Recipient, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of this Grant Agreement even if IC §24-4.7 is preempted by federal law.

14. Information Technology Accessibility Standards

Any information technology related products or services purchased used or maintained through this Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

15. Penalties/Interest/Attorney's Fees

The State will, in good faith, perform its required obligations under this Agreement and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8-5, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

16. Severability

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

17. Survival

Any expiration or termination of this Agreement shall not affect the ongoing provisions of this Agreement or the ongoing requirements of the guidance documents, laws and regulations, or other requirements referenced in this Agreement that will survive the expiration or termination in accordance with their terms.

18. Remedies Not Impaired

No delay or omission of the State in exercising any right or remedy available under this Agreement impairs any such right or remedy or constitutes a waiver of any default or any acquiescence thereto.

19. Waiver of Rights

No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless the waiver is in writing and signed by the party claimed to have waived such right.

20. Drug-Free Workplace Certification

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Recipient's employees within the State of Indiana and cannot be further modified, altered or changed.

As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Recipient hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Recipient will give written notice to the State within ten (10) days after receiving actual notice that the Recipient, or an employee of the Recipient in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of \$25,000.00, the Recipient certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Recipient's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Recipient of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

21. Nondiscrimination

- A. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Subrecipient covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Subrecipient certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.
- B. The Subrecipient understands that the State is a recipient of federal funds, and therefore, where applicable, the Subrecipient and any Subrecipients, contractors and subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 C.F.R. Chapter 60, as amended, and Section 202 of Executive Order 11246, as amended by Executive Order 13672.

22. Lobbying Certification

- A. As required by Section 1352, Title 31 of the U.S. Code and implemented at 44 C.F.R. 18, the Subrecipient certifies that:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

23. Debarment and Suspension

- A. The Subrecipient certifies by entering into this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Subrecipient.
- B. As required by 2 C.F.R. 3000.332, the Subrecipient shall:
 - i. Comply with Subpart C of the OMB guidance in 2 C.F.R. part 180; and
 - ii. Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

24. Governing Laws

This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

25. Authority to Bind Subrecipient

- A. Notwithstanding anything in this Agreement to the contrary, the signatory(ies) for the Subrecipient represents that execution of this Agreement has been duly authorized by all necessary action required under Indiana law.
- B. The Subrecipient shall not assign, sublet or transfer interest in this Agreement without the prior written consent of the State.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Subrecipient, or that the undersigned is the properly authorized representative, agent, member or officer of the Subrecipient. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Subrecipient, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Subrecipient attests to compliance with the disclosure requirements in IC 4-2-6-10.5.

In Witness Whereof, the Subrecipient and the State have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

Subrecipient: City of Fort Wayne

By: _____

Tom Henry
Mayor

Date: _____

9/10/15

Department of Homeland Security:

David W. Kane
Executive Director

Date: _____

10/20/15

APPROVED BY:

Department of Administration

(for)

Jessica Robertson
Commissioner

Date: _____

10/20/15

APPROVED BY:

State Budget Agency

(for)

Brian E. Bailey
Director

Date: _____

10.22.15

APPROVED as to Form and Legality
Office of the Attorney General:

(for)

Gregory F. Zoeller
Attorney General

Date: _____

10/22/2015

EXHIBIT A
Scope of Work and Project Budget

Acquisition and Demolition of up to 20 properties in the city of Ft. Wayne.

Properties to be acquired:		
Owner Name(s)	Property Address, City	Parcel #
James & Angela Hughes	2204 Fillmore St, Ft. Wayne, IN	02-12-09-302-006.000-074
Virgil & Cheri Garner	2430 Elyetta St, Ft. Wayne, IN	02-12-09-376-012.000-074
Jon & Phyllis Rehlau	4108 Cadena Ln, Ft. Wayne, IN	02-08-26-203-009.000-072
STK Properties LLC	4912-4914 Vermont Ln, Ft. Wayne, IN	02-08-33-357-001.000-070
Gerald & Bernice Johnson	4217 Reed Rd, Ft. Wayne, IN	02-08-29-232-007.000-072
Chad Whipple	3102 Prairie Grove Dr. Ft. Wayne, IN	02-12-28-252-005.000-074
Jason & Allison Nicklin	2338 Elyetta St, Ft. Wayne, IN	02-12-09-376-007.000-074
Evan Ehinger	2337 Elyetta St, Ft. Wayne, IN	02-12-09-377-003.000-074
Gary Alan Kleeber	2402 Elyetta St, Ft. Wayne, IN	02-12-09-376-008.000-074
William & Wilda Davis	2210 Elyetta St, Ft. Wayne, IN	02-12-09-329-008.000-074
John Mosure	1817 Gruber Ave, Ft. Wayne, IN	02-12-15-131-007.000-074
Scott & Michelle Bailey	3008 Broadripple Dr, Ft. Wayne, IN	02-12-28-252-012.000-074
William, Brent & Frederick Underwood, & Lorreta Charlton	2806 Taylor St, Ft. Wayne, IN	02-12-09-252-016.000-074
Luciano & Hannah Martinez	3012 Broadripple Dr, Ft. Wayne, IN	02-12-28-252-010.000-074
Steve Ransom	2014 Catalpa St, Ft. Wayne, IN	02-12-09-404-017.000-074
Patrick Dahman	3340 Middle St, Ft. Wayne, IN	02-12-09-327-017.000-074
Jonathon Gomez-Nino	3809 Geneva St, Ft. Wayne, IN	02-12-08-482-005.000-074
John Lester Dahman	3315 Middle St, Ft. Wayne, IN	02-12-09-330-008.000-074
Patrick Hickman	2504 Callman Ave, Ft. Wayne, IN	02-12-08-479-006.000-074
WD & Starr Hitzfield	2111 Catalpa St, Ft. Wayne, IN	02-12-09-404-023.000-074

Project Budget	
Item	Cost
Property Appraisal	\$17,100.00
Property Acquisition	\$829,995.00
Demolition	\$102,600.00
Closing	\$39,600.00
Project Management	\$52,000.000
Total Project Cost	\$1,150,595.00

EXHIBIT B
Federal Requirements

The Subrecipient agrees to comply with all of the following requirements as listed below.

- 1. Federal Regulations:** The Subrecipient shall comply with the administrative and audit requirements and cost principles under 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as adopted at 2 CFR 3002. Some of these federal regulatory requirements are as follows:

A. Federal Procurement and Contracting Requirements

In addition to complying with all applicable documented Subrecipient procurement requirements which reflect applicable Indiana and local laws and regulations, the Subrecipient shall comply with the federal Procurement Standards established under 2 CFR 200, Subpart D, 2 CFR 200.318 through 200.326.

As required by 2 CFR 200.326, in addition to all other provisions required by U.S. Department of Homeland Security and the State, all contracts made by the Subrecipient using funds provided under this Agreement must comply with Appendix II of Part 200 "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards". The requirements under Appendix II of Part 200 include, but are not limited to, the following requirements:

- i. A Subrecipient that has a contract exceeding \$150,000 must address in that contract administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.
- ii. A Subrecipient that has a contract exceeding \$10,000 must address in that contract termination for cause and for convenience by the Subrecipient including the manner by which it will be effected and the basis for settlement.

B. Conflicts of Interest

As required by 2 CFR 200.318(c)(1), the Subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

C. Mandatory Disclosures

As required by 2 CFR 200.113, the Sub-recipient must disclose, in a timely manner, in writing to the State all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this subaward. Failure to make required disclosures can result in any of Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180 and 31 U.S.C. 3321).

2. Federal Award Requirements

A. Davis-Bacon Act

If funds provided under this Agreement are used for a construction project [including alteration or repair (including painting and decorating)], the Subrecipient must comply with the Davis-Bacon Act

(40 U.S.C. §§ 3141 et seq.). Subrecipients must ensure that their contractors or subcontractors for construction projects pay workers no less than the prevailing wages for laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the state in which the work is to be performed. Additional information regarding compliance with the *Davis-Bacon Act*, including Department of Labor (DOL) wage determinations, is available from the following website: <http://www.dol.gov/compliance/laws/comp-dbra.htm>.

B. Construction Requirements

- i. Acceptance of Federal funding requires the Subrecipient to comply with all Federal, state and local laws prior to the start of any construction activity. Failure to obtain all appropriate Federal, state and local environmental permits and clearances may jeopardize Federal funding.
- ii. Any changes to the approved scope of work will require re-evaluation by FEMA for Subrecipient compliance with the National Environmental Policy Act, as well as other laws and Executive Orders.
- iii. If ground-disturbing activities occur during construction, the Subrecipient must ensure monitoring of ground disturbances and, if any potential archaeological resources are discovered, the Subrecipient will immediately cease construction in that area and notify the State and FEMA.

C. Insurance

In compliance with Public Law 103-325, Title V National Flood Insurance Reform Act of 1973, section 582 requires that, if the Subrecipient is in receipt of Federal assistance for the repair, replacement or restoration for damage to any personal or residential property at any time must maintain flood insurance if the property is located in a Special Flood hazard Area.

D. Duplication of Benefits

Any cost allocable to a particular Federal award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the Subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

E. Procurement of Recovered Materials

All Subrecipients must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

3. Federal Assurances

As the duly authorized representative of the Subrecipient, I certify that the Subrecipient:

- i. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this Agreement.
- ii. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

- iii. Will comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or part with federal funds.
- iv. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- v. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

EXHIBIT C
Pre-Disaster Mitigation Grant Program Deed Restrictions

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 City of Fort Wayne, ("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 pre-disaster mitigation grants under § 5133, Pre-Disaster Mitigation, to assist States and local governments in implementing cost-effective hazard mitigation measures to reduce injuries, loss of life, and damage and destruction of property;

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, the State of Indiana has applied for and been awarded such funding from the U.S. Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program agreement dated June 30, 2015 with FEMA and herein incorporated by reference; making it a mitigation grant program recipient.

Whereas, the Property is located in the City of Fort Wayne, and the City of Fort Wayne participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

Whereas, the City of Fort Wayne, acting by and through the City of Fort Wayne, has applied for and been awarded federal funds pursuant to an agreement with the State of Indiana, Indiana Department of Homeland Security ("State") dated [date] ("State-Local Agreement"), and herein incorporated by reference, making it a mitigation grant program subrecipient;

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the FEMA-State Grant Agreement, and the State-local Agreement require that the Grantee 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 Pre-Disaster 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:
 - 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 floodproofed 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 on **September 30**, the Grantee (mitigation grant program subrecipient), 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 subrecipient), 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: _____

Grantor's Name (printed or typed) _____

Grantee's Signature _____ Date: _____

Grantee's Name (printed or typed) _____

Grantee's Title _____



CITY OF FORT WAYNE

TOM HENRY, MAYOR

November 9, 2015

City Council Members
City of Fort Wayne Indiana

Re: State-Local Agreement
Pre-Disaster Mitigation Grant Program
#0098P 2015 PDMG Flood Buyout Project

Dear Council Members:

As you may be aware the City of Fort Wayne received a grant from the Indiana Department of Homeland Security for the purchase of up to 18 flood prone homes around the City. The grant is for a total of \$1,150,595 of which the federal government provides 75% or \$862,946.25 and the local share is the remaining 25% or \$287,648.75. The City has partnered with the Maumee River Basin Commission once again to cover the local share. The MRBC is contributing \$35,000 of the local share and the City is contributing \$252,648.75 of the remaining local share. The City funds are already budgeted to come out of Public Works funds.

The agreement has been executed by the State and we are just awaiting the Council's approval to start acquiring these homes. We hope to be complete with this work by the end of 2016.

If you have any questions on this information, please feel free to contact me at (260) 427-2789.

Sincerely,

A handwritten signature in black ink, which appears to read "Patrick Zaharako", is written over a horizontal line.

Patrick Zaharako, P.E.
Flood Control Manager

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