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BILL NO. S-16-04-21

SPECIAL ORDINANCE NO. S-49-16

AN ORDINANCE approving THE STATE-LOCAL AGREEMENT - PRE-DISASTER MITIGATION GRANT PROGRAM - #0131P 2016 HMGP FLOOD BUYOUT PROJECT between INDIANA DEPARTMENT OF HOMELAND SECURITY and the City of Fort Wayne, Indiana, in connection with the Board of Public Works. (\$119,112.00)

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 - #0131P 2016 HMGP FLOOD BUYOUT PROJECT by and between INDIANA DEPARTMENT OF HOMELAND SECURITY 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:

State-Local Agreement - Pre-Disaster Mitigation Grant Program #0131P 2016 HMGP Flood Buyout Project for the purchase of up to eight (8) flood prone homes around the City of Fort Wayne, Indiana	
Total Grant	\$600,450.00
Federal Government 75% Share	\$450,338.00
Maumee River Basin Commission Share	\$ 31,000.00
City Share	\$119,112.00:

involving a total cost of ONE HUNDRED NINETEEN THOUSAND ONE HUNDRED TWELVE AND 00/100 DOLLARS - (\$119,112.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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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



CITY OF FORT WAYNE

TOM HENRY, MAYOR

April 14, 2016

City Council Members
City of Fort Wayne Indiana

Re: State-Local Agreement
Pre-Disaster Mitigation Grant Program
#0131P 2016 HMGP 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 8 flood prone homes around the City. The grant is for a total of \$600,450.00 of which the federal government provides 75% or \$450,338.00 and the local share is the remaining 25% or \$150,112.00. The City has partnered with the Maumee River Basin Commission once again to cover the local share. The MRBC is contributing \$31,000 of the local share and the City is contributing \$119,112.00 of the remaining local share. The City funds are to come out of Public Works funds.

The agreement will be executed by the State and we will then start the process of acquiring these homes. We hope to be complete with this work by sometime in 2017.

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

Sincerely,

Patrick Zaharako, P.E.
Flood Control Manager

SAFE CITY • QUALITY JOBS • B.E.S.T.

**CITY OF FORT WAYNE
STATE-LOCAL AGREEMENT
HAZARD MITIGATION GRANT PROGRAM
CFDA #97.039
FEMA-4173-DR
DECLARED April 22, 2014
Contract #0000000000000000000015677**

This State-Local Agreement (the “Agreement”), entered into by and between the **Indiana Department of Homeland Security** (the “State”) and the **CITY OF FORT WAYNE** (the “Sub-grantee”), 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 Grantee to receive, administer, and disburse FEMA mitigation funds for local government mitigation projects in areas of Indiana and to provide technical assistance with the Hazard Mitigation Grant Program (HMGP). The HMGP is authorized by Section 404 of the Stafford Act (42 USC 5170c).

The State has entered into a FEMA-State Agreement dated May 5, 2014 and subsequently amended three times. The State is required by the FEMA-State Agreement to monitor and evaluate the implementation of mitigation projects and control the disbursement of HMGP funds from FEMA.

The Sub-grantee 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 this Agreement.

The purpose of this Agreement is to enable the State to make a sub-grant to the Sub-grantee from Federal Emergency Management Agency (FEMA), Hazard Mitigation Grant Program (HMGP) funds for the eligible costs of this approved project (the “Project”) for the acquisition and demolition of eight flood prone residential structures and their associated real property. All structures on the parcels will be removed. Acquiring the properties will establish permanent open spaces which will result in a reduction of damages and lessen the impact of flooding to the local community. A deed restriction will be placed on each parcel to prohibit future development and dedicate the land to open space in perpetuity. This Project is further described in **Exhibit A**, which is attached to and fully incorporated into this Agreement.

2. Amount of Subaward.

This Agreement is for an amount not to exceed \$450,338.00. The total Project cost, local cost share and Agreement amount are as follows:

Total approved Project cost:	\$600,450.00
HMGP Grant Amount	\$450,338.00
Local Cost Share	\$150,112.00

The Sub-grantee agrees to provide the necessary local cost share as required by 44 CFR Part 13.24. The Sub-grantee must provide sufficient documentation to substantiate the local cost share contribution.

The funds received by the Sub-grantee pursuant to this Agreement shall be used only to implement the Project in conformance with this Agreement and for no other purpose.

3. Term.

This Agreement shall begin as of January 12, 2016 (“Effective Date”) and shall remain in effect through October 18, 2018 (“Expiration Date”). This Agreement may only be extended upon the written

agreement of the parties and as permitted by the state and federal laws governing this subaward. In no event shall payments be made for obligations incurred, equipment purchased or work performed before the Effective Date or after the Expiration Date of this Agreement.

4. Payment of Funds.

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

- A. This Agreement must have been executed and approved by all required signatories and approvers.
- B. All payments shall be made in arrears in conformance with State fiscal policies and procedures. As required by IC §4-13-2-14.8, all payments will be by direct deposit by electronic funds transfer to the financial institution designated by the Sub-grantee in writing. No payments will be made in advance of the Sub-grantee's receipt of the goods or services.
- C. 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.
- D. 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.
- E. Notwithstanding any other provision of this Agreement, the State will not pay the Sub-grantee the final ten percent (10%) of the agreement amount until after the following steps have been completed:
 - i. The Sub-grantee has provided the State with documentation proving that all local cost share requirements have been met; and
 - ii. The State has verified that the Project has been completed in accordance with this Agreement.
- F. Payment of an expenditure is not a final State decision about the allowability or eligibility of such cost and is not a waiver of any violation by the Sub-grantee of the terms of this Agreement. The Sub-grantee shall return to the State any and all funds provided to the Sub-grantee which are in excess of current needs, in excess of amounts approved by the State or the Federal Emergency Management Agency (FEMA), or found by audit or investigation to be owing to the State or FEMA. Repayment shall be made to the State within thirty (30) days after the Sub-grantee becomes aware of such excess fund or funds due or is notified by FEMA or the State. If the Sub-grantee fails to pay the State such funds within thirty (30) days, and if FEMA assesses interest charges on these unpaid balances, the Sub-grantee shall be obligated to pay these interest charges. If immediate repayment is not possible, then a reasonable repayment schedule with, if applicable, interest charged on the unpaid balance, will be submitted to the State for approval.

5. Sub-grantee's Duties and Responsibilities.

- A. The Sub-grantee shall be solely responsible for the proper implementation of the approved Project. The Sub-grantee 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 by the Sub-grantee.

- B. The Sub-grantee shall only use the 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 Sub-grantee 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 Sub-grantee must obtain this written approval from the State PRIOR to making an expenditure that is not in compliance with Exhibit A.
- C. The Sub-grantee 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 Sub-grantee shall pay out the funds, submit a final report and documentation of expenditures made, 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 Sub-grantee for an expenditure that does not comply with all of the requirements established in this paragraph..
- D. Until this Project has been completed, the Sub-grantee 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.
- E. The Sub-grantee expressly represents and warrants to the State that the information set forth in its grant application is true, complete and accurate.
- F. The Sub-grantee shall comply with the Federal Emergency Management Agency documents titled "Hazard Mitigation Assistance Unified Guidance" dated July 12, 2013 and "Addendum to the Hazard Mitigation Assistance Unified Guidance", available upon request from the State or at the following federal website: <https://www.fema.gov/media-library/assets/documents/33634>.
- G. The Sub-grantee shall comply with the applicable provisions of the federal regulations governing these grant funds, including, but not limited to: 44 CFR Part 13, Part 80, Part 201, Part 206 and OMB Circular A-87. References to 44 CFR Part 13 in this Agreement are a reference to 44 CFR 13 as it was in effect on July 24, 2014.
- H. The Sub-grantee shall comply with the most recent version of the following Administrative Requirements, Cost Principles, and Audit Requirements. A non-exclusive list of regulations commonly applicable to U.S. DHS grants are listed below:
- i. Administrative Requirements:
 - a. Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule") and U.S. DHS regulations at 44 CFR 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
 - b. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
 - ii. Cost Principles: The cost principles applicable to this grant originate from one of the following sources:
 - OMB Circular A-21, Cost Principles for Educational Institutions.
 - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.
 - OMB Circular A-122, Cost Principles for Non-Profit Organizations.
 - iii. Audit Requirements: OMB Circular A-133, Audits of States, Local Governments and Non-

Profit Organizations.

I. Federal Assurances.

As the duly authorized representative of the Sub-grantee, I certify that the Sub-grantee:

- 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 all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- iv. 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.
- v. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- vi. Will comply, as applicable, with the provisions of the Davis- Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333), regarding labor standards for federally-assisted construction subagreements.
- vii. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- viii. 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).
- ix. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 - x. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
 - xi. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
- J. Construction Requirements: Prior to the start of any construction activity, the Sub-grantee shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.
- K. The Sub-grantee shall comply with the following environmental review project conditions from the Record of Environmental Consideration:
- i. If ground-disturbing activities occur during implementation, the Sub-grantee shall monitor excavation activity, and if any artifacts or human remains are found during excavation all work is to cease and the Sub-grantee will notify FEMA, the State, and the State Historic Preservation Officer (SHPO) within two (2) business days.
 - ii. The Sub-grantee must follow all applicable local, state, and federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If there is an unusual material encountered or there is an extraordinary amount of lead, asbestos, or other routinely encountered material, the Sub-grantee must also contact the relevant agency with authority for regulation of the material.
 - iii. If deviations from the proposed scope of work result in substantial design changes, the need for additional ground disturbance, additional removal of vegetation, or in any other unanticipated changes to the physical environment, the Sub-grantee must contact the State, which will contact FEMA, and a re-evaluation under NEPA and other applicable environmental laws will be conducted by FEMA.
 - iv. During demolition of the structures, placement of equipment and stockpiling of structural debris will be confined to the front and back of the structure; heavy equipment will, where possible, be kept on the driveway, the street, or other hard surfaces.
 - v. No on-site disposal of demolition debris will be allowed; all debris resulting from the demolitions must be deposited in an approved landfill area; no debris can be deposited in wetland or floodplain areas.
 - vi. No on-site granular material will be excavated or stripped to use for capping the foundation

and/or for final landscaping.

vii. Best management practices will be applied to these properties.

viii. The project area lies within the range of the Indiana Bat, a federally listed endangered species. As such, the community should refrain from cutting down any trees from April 15th through September 15th. If a tree must be removed for the structural demolition, the applicant will contact the State.

ix. If it is determined that any of the properties to be acquired contain a home heating oil underground storage tank (UST), the UST must be closed/removed properly in accordance with Indiana state laws and rules. Questions on following the correct State of Indiana procedures should be directed to the IDEM UST Program at (317) 308-3024 or <http://www.in.gov/idem/landquality/2336.htm>.

L. The Sub-grantee shall comply with all project close out requirements, and as part of these requirements must verify the conditions stated in the Record of Environmental Consideration, FONSI or Environmental Assessment, or any other environmental approval documentation are met. The Sub-grantee must submit all copies of permits or other required documentation to the State.

6. Real Property Acquisition.

As part of this project, the Sub-grantee 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 CFR Part 80 requirements are in **Exhibit B** which is attached to and fully incorporated into this Agreement.
- B. The deed conveying the property to the Sub-grantee must reference and incorporate this Exhibit B. The Sub-grantee shall replace the italicized text in the Exhibit B with the appropriate replacement language (an electronic version of this Exhibit B 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 B shall be attached to the deed when recorded.
- C. The Sub-grantee 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 B definitions. Within Exhibit B, the "Grantor" is the property owner participating in the federally-assisted acquisition project and the "Grantee" is the Sub-grantee designated in this Agreement which will be purchasing the property from the Grantor.

7. Federal Procurement and Contracting Requirements.

The Sub-grantee shall use its own procurement procedures which reflect applicable State and local laws and regulations, provided that such procurement procedures comply with the federal procurement standards established in 44 CFR 13.36. The Sub-grantee's contracts which use funds provided through this Agreement must contain the provisions listed in 44 CFR 13.36(i).

8. Conflict of Interest.

The Sub-grantee will maintain a written code of standards of conduct, in compliance with 44 CFR 13.36(b)(3), governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or sub-grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. The employee, officer or agent,

- B. Any member of his immediate family,
- C. His or her partner, or
- D. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

9. Requirements Applicable to Property/Equipment Purchased Using Subaward Funds.

For all tangible, nonexpendable, personal property having a useful life of more than one year and a per unit cost of more than \$500 acquired in whole or in part with funds provided under this Agreement, the Sub-grantee must comply with the following requirements:

- A. Maintain records that include the following:
 - i. A description of the property;
 - ii. Manufacturer's model number;
 - iii. Manufacturer's serial number or other identification number;
 - iv. Vendor or other source of the property;
 - v. Identification of the title holder of the property;
 - vi. Acquisition date;
 - vii. State Award/Agreement number;
 - viii. Federal award identification number or FAIN;
 - ix. Percentage of Federal participation in the cost of the property;
 - x. Cost of the property;
 - xi. Physical location of the property;
 - xii. If the property was assigned to an individual, the name and title of the individual to whom the property was assigned;
 - xiii. Use of the property;
 - xiv. Condition of the property; and
 - xv. The ultimate disposition of the property, including the date of disposal how and to what entity property was disposed, and sale price of the property.
- B. Conducting a Physical Equipment Inventory. At least once every year, the Sub-grantee shall take a physical inventory of the property and the result reconciled with the property records. Any differences between quantities determined by the physical inspection and those in the accounting records shall be investigated to determine the cause of the difference. The Sub-grantee shall, in connection with the inventory, verify the existence, current utilization, current location, and continued need for the property. The Sub-grantee shall enter and maintain this inventory information using the Equipment Inventory module of the Indiana Grants Management System (iGMS). The required annual updates shall be entered into iGMS by the deadline established by the State.
- C. Implementing Safeguards to Prevent Loss, Damage or Theft of Equipment. A control system shall be developed and implemented to ensure adequate safeguards to prevent loss, damage, or

theft of the property. The Sub-grantee must submit a description of its control system either in its grant application or when otherwise requested by the State. Any loss, damage, or theft shall be investigated and fully documented and made a part of the official project records. A copy of such documentation shall be promptly submitted to the State.

- D. Adequate maintenance procedures shall be developed and implemented to keep the property in good condition.
- E. The Sub-grantee shall not dispose of any property acquired in whole or in part with funds provided under this Agreement, except in accordance with 44 CFR 13.32(e), if applicable, and any applicable state and local laws, rules and regulations.
- F. For all property having an acquisition cost of over \$5,000, acquired in whole or in part with funds provided under the Agreement, the Sub-grantee must also comply with the applicable federal requirements pertaining to equipment in 44 CFR 13.32.
- G. The Sub-grantee agrees to the following:
 - i. The property and any required support personnel shall be made available to the State of Indiana if requested as part of a state incident response.
 - ii. The property shall be made available to other jurisdictions within the Homeland Security District as a district asset. The use of the property shall be addressed through existing inter-jurisdictional mutual aid, district mutual aid or equipment-specific use agreements.
 - iii. Personal use of the equipment is not permitted.
- H. If a Sub-grantee fails to comply with any part of this provision; the Sub-grantee may be required to repay to the State some or all of the funds provided to the Sub-grantee under the Agreement for the purchase of the property. In addition, such a failure to comply may jeopardize the Sub-grantee's ability to obtain future grants from the State.
- I. These requirements are on-going and survive the expiration or termination of the Agreement and will remain in effect until the property is disposed of in accordance with the Agreement and applicable federal regulations.

10. Notice to Parties.

Whenever any notice, statement or other communication is sent to the State or Sub-grantee it must be sent to the following addresses, unless otherwise specifically advised in writing.

- A. State: Notices, statements or other communications to the State shall be sent in writing to:

Mary Moran
Director of Mitigation
Indiana Department of Homeland Security
302 West Washington Street, Room 321
Indianapolis, Indiana 46204

- B. Sub-grantee: Notices to the Sub-grantee shall be sent in writing to:

Rodney Renkenberger
Executive Director
Maumee River Basin Commission
3864 New Vision Dr.
Fort Wayne, IN 46845

11. Project Monitoring By the State.

The State may conduct a monitoring review and evaluation of this Project as deemed appropriate by the State. The Sub-grantee will effectively ensure the cooperation of the Sub-grantee's employees and agents in such monitoring and evaluation efforts. The Sub-grantee 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.

12. Recordkeeping and Access to Records.

- A. Financial records, supporting documents, statistical records, and all other Sub-grantee records pertinent to the Federal award must be retained until April 16, 2022.
- B. The Sub-grantee must retain real property and equipment records as long as they own the real property or equipment and for three (3) years after the date the real property is disposed of or transferred.
- C. 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 Sub-grantee 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 Sub-grantee'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.
- D. Notwithstanding this provision, if the federal regulations governing record retention and access for this grant (44 CFR 13.42) require additional records to be maintained, require the records to be maintained for a longer period of time, or impose other requirements; the Sub-grantee shall adhere to these federal requirements.
- E. Closeout of this project will not alter the Sub-grantee's responsibilities under this Paragraph.

13. Close-Out Audit.

If required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) or 2 CFR 200, whichever is applicable, following the date on which all sub-grant funds provided pursuant to this Agreement are expended, upon termination of this Agreement, or upon expiration of this Agreement, whichever is earliest, Sub-grantee shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Agreement in accordance with the following:

- A. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with the following:
 - i. The Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources;" and
 - ii. Applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) or 2 CFR 200, whichever is applicable.
- B. The Sub-grantee is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement.
- C. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Sub-grantee's fiscal year.
- D. The Sub-grantee agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits.
- E. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Sub-grantee, and not of a parent, member, or subsidiary corporation of the Sub-grantee, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.
- F. The audit shall include a statement from the Auditor that the Auditor has reviewed this

Agreement and that the Sub-grantee is not out of compliance with the financial aspects of this Agreement.

14. Termination of Agreement.

- A. This Agreement may be suspended or terminated, in whole or in part, by the State whenever, for any reason, the State determines that such suspension or termination is in the best interest of the State. Suspension or termination shall be effected by delivery to the Sub-grantee of a Suspension or Termination Notice, specifying the extent to which such suspension or termination becomes effective.
- B. Costs resulting from obligations incurred by the Sub-grantee during a suspension or after termination of this Agreement are not allowable unless the State expressly authorizes them in the notice of suspension or termination. Other costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
 - i. The costs result from obligations which were properly incurred before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are not cancelable, and,
 - ii. The costs would be allowable if the Agreement were not suspended or expired normally at the end of the funding period in which the suspension or termination takes place.

15. Compliance with Laws.

- A. The Sub-grantee 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 Sub-grantee to determine whether the provisions of this Agreement require formal modification.
- B. The Sub-grantee 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 Sub-grantee 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 this subaward, the Sub-grantee shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If the Sub-grantee is not familiar with these ethical requirements, the Sub-grantee 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 Sub-grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the Sub-grantee. In addition, the Sub-grantee 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 Sub-grantee 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 Sub-grantee agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Sub-grantee. Additionally, payments may be withheld, delayed, or denied and/or this Agreement suspended until the Sub-grantee is current in its payments and has submitted proof of such payment to the State.
- D. The Sub-grantee 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 Sub-grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Sub-grantee'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 Sub-grantee, the Sub-grantee 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 suspend under this section shall not be subject to penalty or interest.

- E. The Sub-grantee warrants that the Sub-grantee 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 of Indiana.
- F. The Sub-grantee 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 Sub-grantee and any principals of the Sub-grantee certify that:
 - (A) the Sub-grantee, 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 Sub-grantee will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.
 - (2) The Sub-grantee and any principals of the Sub-grantee certify that an affiliate or principal of the Sub-grantee and any agent acting on behalf of the Sub-grantee or on behalf of an affiliate or principal of the Sub-grantee:
 - (A) except for de minimis and nonsystematic violations, 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 Agreement, even if IC 24-4.7 is preempted by federal law.

16. 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 Sub-grantee'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 Sub-grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Sub-grantee will give written notice to the State within ten (10) days after receiving actual notice that the Sub-grantee, or an employee of the Sub-grantee 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 Agreement 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 Agreement is in excess of \$25,000.00, the Sub-grantee 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 Sub-grantee'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 Sub-grantee'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 Sub-grantee 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.

17. Employment Eligibility Verification.

This provision is only applicable to a Sub-grantee that is not a political subdivision, as defined under IC 36-1-2-13, or a state educational institution, as defined under IC 27-7-13-32.

As required by IC §22-5-1.7, the Sub-grantee hereby swears or affirms under the penalties of perjury that:

- A. The Sub-grantee has enrolled and is participating in the E-Verify program;
- B. The Sub-grantee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Sub-grantee does not knowingly employ an unauthorized alien.
- D. The Sub-grantee shall require its contractors who perform work under this Agreement to certify to the Sub-grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Sub-grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Sub-grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

18. 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 Agreement, the Agreement 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.

19. Governing Laws.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

20. 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>.

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 Sub-grantee 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 Sub-grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.
- B. The Sub-grantee understands that the State is a recipient of federal funds, and therefore, where applicable, the Sub-grantee and any Sub-grantees, contractors and subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

22. Remedies for noncompliance.

If the Sub-grantee 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.

23. 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.

24. Debarment and Suspension.

- A. The Sub-grantee 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 Sub-grantee.
- B. As required by 2 CFR 3000.332 for U.S. DHS/FEMA grants and 2 CFR 1200.332 for U.S. DOT grants, the Sub-grantee shall:
 - i. Comply with Subpart C of the OMB guidance in 2 CFR part 180; and
 - ii. Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

25. 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.

26. 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.

27. 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.

28. 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.

29. Lobbying Certification.

A. As required by Section 1352, Title 31 of the U.S. Code and implemented at 44 CFR 18 (for U.S. DHS/FEMA grants) and at 49 CFR 18 (For U.S. DOT grants), the Sub-grantee certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-grantee, 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 Sub-grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Sub-grantee 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.

30. Copyrights.

The U.S. Department of Homeland Security reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- A. The copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and

- B. Any rights of copyright to which a grantee, sub-grantee or a contractor purchases with grant support.

31. Authority to Bind Sub-grantee.

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

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Sub-grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Sub-grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Sub-grantee, 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 Subaward, the Sub-grantee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST

In Witness Whereof, the Sub-grantee 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.

CITY OF FORT WAYNE

Indiana Department of Homeland Security

By:

By:

Title:

Title:

Date:

Date:

<p>Approved by: Department of Administration</p> <p>By: _____ (for) Jessica Robertson, Commissioner <i>This document will be reviewed and approved electronically. Please refer to the final page of the Executed Contract for details.</i></p>	
<p>Approved by: State Budget Agency</p> <p>By: _____ (for) Brian E. Bailey, Director <i>This document will be reviewed and approved electronically. Please refer to the final page of the Executed Contract for details.</i></p>	<p>Approved as to Form and Legality: Office of the Attorney General</p> <p>By: _____ (for) Gregory F. Zoeller, Attorney General <i>This document will be reviewed and approved electronically. Please refer to the final page of the Executed Contract for details.</i></p>

EXHIBIT A
Scope of Work and Project Budget

The Sub-grantee will acquire some or all of the following properties.

Property To Be Acquired			
Property Address	City	Parcel Number	Local Parcel Number
1521 Babcock Lane	Fort Wayne	021222327003000074	9539180158
1525 Babcock Lane	Fort Wayne	021222327004000074	9539180141
2913 Broadripple Dr	Fort Wayne	021228258001000074	9542100324
2233 Eby Avenue	Fort Wayne	021210306010000074	9425520134
411 Millside Court	Fort Wayne	021226256001000074	9433160094
3004 Prairie Grove Drive	Fort Wayne	021228254004000074	9542100273
		021228254005000074	9542100274
		021228254006000074	9542100275
3014 Prairie Grove Drive	Fort Wayne	021228254002000074	9542100269
5631 Winchester Rd	Fort Wayne	021222477008000074	9539180125

The below table contains the budget for this project.

* Cost Estimate			
Item Name	Unit Quantity	Unit Cost	Cost Estimate
Appraisals	10	\$475.00	\$7,600.00
Purchase of Property	1	\$437,450.00	\$437,450.00
Title Search/Title Policy	8	\$850.00	\$6,800.00
Legal Services & Closing Costs	8	\$2,200.00	\$17,600.00
Environmental Assessment/Abatement	8	\$5,500.00	\$44,000.00
Demolition/Site Restoration	8	\$7,500.00	\$60,000.00
Project Management	1	\$27,000.00	\$27,000.00
* Total Cost Estimate			\$600,450.00

* The above total cost estimate includes both the federal award amount and the required local share contribution.

Match Sources			
Total Cost Estimate	\$600,450.00		
Federal Share Percentage	75%		
Non-Federal Share Percentage	25%		
	Dollars		Percentage
* Proposed Federal Share \$ %	\$450,338.00		75%
* Proposed Non-Federal Share \$ %	\$150,112.00		25%
Matching Funds			
Source Agency (Local, Stes, etc.)	Name of Source Agency	Funding Type (cash, in-kind)	Amount (\$)
Local Agency Funding	City of Fort Wayne	Cash	\$119,112.00
Local Agency Funding	Maumee River Basin Commission	Cash	\$31,000.00
Grand Total			\$150,112.00

EXHIBIT B
Hazard Mitigation Grant Program Deed Restrictions

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, 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 FEMA-State Agreement for FEMA-4173-DR-IN with FEMA dated May 5, 2014 and on January 12, 2016 received approval from FEMA for this specific mitigation project both documents herein incorporated by reference; making it a mitigation grant program grantee.

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 [local government] Board, 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 subgrantee;

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 Hazard 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, 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 sub-grantee), 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 sub-grantee), 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 _____

REPORT OF COMMITTEE ON PUBLIC WORKS

May 3, 2016

*Michael Barranda, Chair
Paul Ensley, Co-Chair
All Council Members*

AN ORDINANCE approving THE STATE-LOCAL AGREEMENT - PRE-DISASTER MITIGATION GRANT PROGRAM - #0131P 2016 HMGP FLOOD BUYOUT PROJECT between INDIANA DEPARTMENT OF HOMELAND SECURITY and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

Total project cost of \$119,112.00

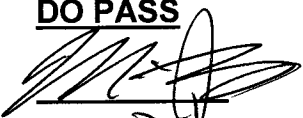


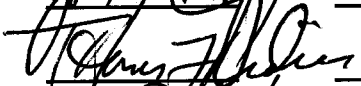



COMMITTEE ON PUBLIC WORKS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

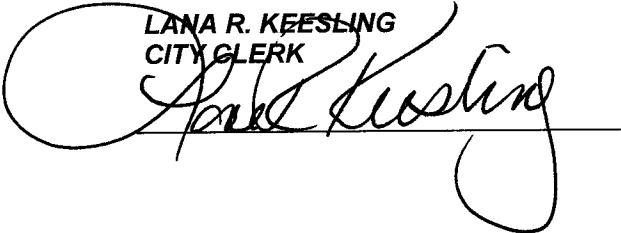
DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

LANA R. KEESLING
CITY CLERK


Public Hearing Date, if applicable N/A

Read the first time in full and on motion by Councilman Barranda.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilman Barranda, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: May 10, 2016


LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
Special No. S-16-04-21 on the 10th day of May, 2016

ATTEST:

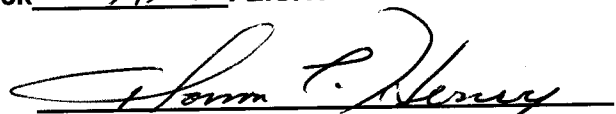

LANA R. KEESLING
CITY CLERK


PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th
of May 2016, at the hour of 9:45 o'clock A.M. E.S.T.


LANA R. KEESLING, CITY CLERK

Approved and signed by me this 11TH day of MAY
2016, at the hour of 11:00 O'clock AM . E.S.T.


THOMAS C. HENRY, MAYOR