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2 **BILL NO. S-17-10-06**

SPECIAL ORDINANCE NO. S-128-17

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4 AN ORDINANCE approving 2016 PRE-DISASTER  
5 MITIGATION GRANT PROGRAM STATE-LOCAL  
6 AGREEMENT CFDA 97.047 – Flood Buyout  
7 Project #19510 between INDIANA  
8 DEPARTMENT OF HOMELAND SECURITY and  
9 the City of Fort Wayne, Indiana, in connection with  
10 the Board of Public Works.

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

13 **SECTION 1.** That the 2016 PRE-DISASTER MITIGATION  
14 GRANT PROGRAM STATE-LOCAL AGREEMENT - CFDA 97.047 – Flood  
15 Buyout Project #19510 by and between INDIANA DEPARTMENT OF  
16 HOMELAND SECURITY and the City of Fort Wayne, Indiana, in connection  
17 with the Board of Public Works, is hereby ratified, and affirmed and approved  
18 in all respects, respectfully for:

19 Approving the Grant from Indiana Department of Homeland  
20 Security for the purchase of up to 4 flood prone homes  
21 around the City.

22 involving a total grant amount of THREE HUNDRED THIRTY-ONE  
23 THOUSAND SIX HUNDRED FIVE AND 00/100 DOLLARS - (\$331,605.00).

24 Federal Government share - 75% - \$248,703.75

25 Remaining 25%

26 City share - \$ 47,901.25

27 Maumee River Basin Commission share - \$ 35,000.00

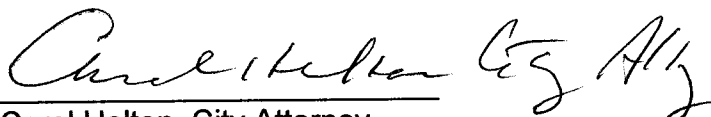
28 A copy of said Contract is on file with the Office of the City Clerk and made  
29 available for public inspection, according to law.  
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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney  
by LB



# CITY OF FORT WAYNE

TOM HENRY, MAYOR

October 4, 2017

City Council Members  
City of Fort Wayne Indiana

Re: State-Local Agreement  
Pre-Disaster Mitigation Grant Program  
#0222P 2016 PDMG Flood Buyout Project # 19510

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 4 flood prone homes around the City. The grant is for a total of \$331,605.00 of which the federal government provides 75% or \$248,703.75 and the local share is the remaining 25% or \$82,901.25. 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 \$47,901.25 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 2017.

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, appearing to read "Patrick Zaharako".

Patrick Zaharako, P.E.  
Flood Control Manager

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An Equal Opportunity Employer

**2016 PRE-DISASTER MITIGATION GRANT PROGRAM  
STATE-LOCAL AGREEMENT  
INDIANA DEPARTMENT OF HOMELAND SECURITY AND  
CITY OF FORT WAYNE  
CFDA 97.047  
Contract #0000000000000000000019510**

This 2016 Pre-Disaster Mitigation Grant Program State-Local Agreement (the "Agreement"), entered into by and between the Indiana Department of Homeland Security (the "State") and City of Fort Wayne (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:

**The term of the Agreement begins February 7, 2017 and shall remain in effect until August 30, 2019.**

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 Grant Program (PDM). The PDM program is authorized by Section 203 of the Stafford Act (42 USC § 5133).

The State has entered into a FEMA-State Agreement dated February 2, 2017. The State is required by the FEMA-State Agreement to monitor and evaluate the implementation of mitigation projects and control the disbursement of PDM funds from FEMA.

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 this Agreement.**

The purpose of this Agreement is to enable the State to make a sub award to the Subrecipient from the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), Fiscal Year 2016 Pre-Disaster Mitigation (PDM) grant program, Award Number EMC-2017-PC-0004 (awarded to the State on February 2, 2017) for the eligible costs of this approved project (the "Project") for the acquisition and demolition of single-family residential structure and its associated real property. 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 and, if applicable its contractors, shall comply with the federal grant provisions contained in **Exhibit B** which is attached to and fully incorporated into this Agreement and when the duly authorized representative for the Subrecipient signs this Agreement, the signatory is making the certifications required by Exhibit B. 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 Sub award.**

This sub award is for an amount not to exceed \$248,703.75.

The total Project costs and match requirements are as follows:

Total approved Project cost:	\$331,605.00
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PDM Grant Award Amount	\$248,703.75
Local Cost Share	\$82,901.25

The Subrecipient agrees to provide the necessary local cost share as required by 2 CFR § 200.306. The Subrecipient must provide sufficient documentation to substantiate the local cost share contribution.

The funds received by the Subrecipient 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 on **February 7, 2017 (“Effective Date”)** and shall remain in effect through **August 30, 2019 (“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 sub award. 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.

Notwithstanding, the expiration date of this Agreement, the Subrecipient shall complete the project by no later than the Project Completion Deadline established in or pursuant to Clause 5.C. of this Agreement.

### 4. Payment of Funds.

The payment of this sub-grant by the State to the Subrecipient shall be made in accordance with and subject to the following schedule and 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 Subrecipient in writing. No payments will be made in advance of the Subrecipient's receipt of the goods or services.
- C. Prior to making a payment under this Agreement, the Subrecipient 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 Subrecipient shall minimize the time elapsing between the transfer of funds from the State to the Subrecipient and the disbursement of funds by the Subrecipient. To implement this requirement, the period of time between the transfer of funds from the State to the Subrecipient and the disbursement of funds by the Subrecipient shall not exceed three (3) days, unless the Subrecipient 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 Subrecipient needs more than three (3) days to disburse the funds.
- E. Notwithstanding any other provision of this Agreement, the State may not pay the Subrecipient the final ten percent (10%) of the agreement amount until after the following steps have been completed:
  - i. The Subrecipient 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. 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.
- G. 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 Subrecipient of the terms of this Agreement. The Subrecipient shall return to the State any and all funds provided to the Subrecipient 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 Subrecipient becomes aware of such excess fund or funds due or is notified by FEMA or the State. If the Subrecipient fails to pay the State such funds within thirty (30) days, and if FEMA assesses interest charges on these unpaid balances, the Subrecipient 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. 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 C, (4) Exhibit A; and (5) Application submitted by the Subrecipient.
- B. The Subrecipient 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 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 pay out the funds, submit a final report and documentation of expenditures made, and submit all requests for payment within thirty (30) 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 all of the requirements established in this paragraph.
- D. 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. Quarterly reports are due on the following dates:
  - April 15<sup>th</sup>
  - July 15<sup>th</sup>
  - October 15<sup>th</sup>
  - January 15<sup>th</sup>
- E. The Subrecipient expressly represents and warrants to the State that the information set forth in its grant application is true, complete and accurate.
- F. The Subrecipient shall comply with the Federal Emergency Management Agency documents titled "Hazard Mitigation Assistance Unified Guidance" dated February 27, 2015 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/103279>.
- G. The Subrecipient shall comply with the applicable provisions of the federal regulations governing these grant funds, including, but not limited to: 44 CFR §§ 13, 80, 201, and 206 and OMB Circular A-87. References to 44 CFR §13 in this Agreement are a reference to 44 CFR § 13 as it was in effect on July 24, 2014.
- H. The Subrecipient 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. OHS 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 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 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 USC §§ 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 USC § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 USC §§ 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 USC §§ 290 dd-3 and 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 USC §§ 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 USC §§ 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 USC §§ 276a to 276a-7), the Copeland Act (40 USC § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction sub agreements.
- 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 USC §§ 1451 et seq.); (f) conformity Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 USC §§ 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).
  - vii. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.).
  - viii. 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.
  - ix. 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 Subrecipient shall ensure that an 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 Subrecipient shall comply with the following environmental review project conditions from the Record of Environmental Consideration:
- i. If ground-disturbing activities occur during implementation, the Subrecipient shall monitor excavation activity, and if any artifacts or human remains are found during excavation all work is to cease and the Subrecipient will notify FEMA, the State, and the State Historic Preservation Officer (SHPO) within two (2) business days.
  - ii. The Subrecipient must follow all applicable local, state, and federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, or other routinely encountered material(s), the Subrecipient 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 Subrecipient 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 habitat range of the Indiana Bat, a federally listed endangered species. As such, the community should refrain from cutting down any trees from April 15<sup>th</sup> through September 15<sup>th</sup>. If a tree must be removed for the structural demolition, the applicant must contact the State.
- ix. If it is determined that any of the properties to be acquired contain a home-heating oil, petroleum or other hazardous substance 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 Subrecipient 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. The Subrecipient must submit all the copies of permits or other required documentation to the State.
- M. 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.

## **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 CFR § 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 Exhibit C. The Subrecipient shall replace the italicized text in the Exhibit C with the appropriate replacement language (an electronic version of 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. Exhibit C shall be attached to the deed when recorded.  

The Subrecipient shall take an 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.
- C. Exhibit C definitions. Within Exhibit C, the "Grantor" is the property owner participating in the federally-assisted acquisition project and the "Recipient" is the Subrecipient designated in this Agreement which will be purchasing the property from the Grantor.

## **7. Federal Procurement and Contracting Requirements.**

The Subrecipient 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 Subrecipient'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 Subrecipient 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 recipient or Subrecipient 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 recipient's or Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Recipient and Subrecipients 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 recipient's and Subrecipient'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. Notice to Parties.**

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

- A. Notices, statements or other communications to the State shall be sent in writing to:  
Torrey Glover  
State Hazard Mitigation Officer  
Indiana Department of Homeland Security  
302 West Washington Street, Room E321  
Indianapolis, Indiana 46204
- B. Notices to the Subrecipient shall be sent to:  
Rodney Renkenberger  
Executive Director  
Maumee River Basin Commission  
3864 New Vision Dr.  
Fort Wayne, IN 46845

#### **10. Project Monitoring By the State.**

The State may conduct a monitoring review and evaluation of this Project as deemed appropriate by the State. The Subrecipient will effectively ensure the cooperation of the Subrecipient's employees and agents 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.

#### **11. 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 August 30, 2029.
- 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 (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 Subrecipient shall adhere to these federal requirements.
- D. Closeout of this project will not alter the Subrecipient's responsibilities under this Paragraph.

## **12. 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, Subrecipient 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 Subrecipient 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 Subrecipient's fiscal year.
- D. The Subrecipient 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 Subrecipient, and not of a parent, member, or Subsidiary Corporation of the Subrecipient, 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 Subrecipient is not out of compliance with the financial aspects of this Agreement.

## **13. Termination of the 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 Subrecipient 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 Subrecipient 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.

#### 14. Compliance with Laws.

- A. The Subrecipient 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 Subrecipient to determine whether the provisions of this Agreement require formal modification.
- B. The Subrecipient 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 Subrecipient 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 sub award, the Subrecipient shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Agreement. If the Subrecipient is not familiar with these ethical requirements, the Subrecipient 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 Subrecipient or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the Subrecipient. In addition, the Subrecipient 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 Subrecipient 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 Subrecipient agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Subrecipient. Additionally, payments may be withheld, delayed, or denied and/or this Agreement suspended until the Subrecipient is current in its payments and has submitted proof of such payment to the State.
- D. The Subrecipient 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 Subrecipient agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Subrecipient'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 Subrecipient, the Subrecipient 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 Subrecipient warrants that the Subrecipient 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 Subrecipient affirms that, if it is an entity described in IC § 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 Subrecipient and any principals of the Subrecipient certify that:
    - (A) the Subrecipient, 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 Subrecipient 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 Subrecipient and any principals of the Subrecipient certify that an affiliate or principal of

the Subrecipient and any agent acting on behalf of the Subrecipient or on behalf of an affiliate or principal of the Subrecipient:

- (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.

#### **15. 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 Subrecipient'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 Subrecipient hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Subrecipient will give written notice to the State within ten (10) days after receiving actual notice that the Subrecipient, or an employee of the Subrecipient 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 Subrecipient 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 Subrecipient'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 Subrecipient'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 Subrecipient 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.

#### **16. Employment Eligibility Verification.**

This provision is only applicable to a Subrecipient 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 Subrecipient hereby swears or affirms under the penalties of perjury that:

- A. The Subrecipient has enrolled and is participating in the E-Verify program;
- B. The Subrecipient has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Subrecipient does not knowingly employ an unauthorized alien.
- D. The Subrecipient shall require its contractors who perform work under this Agreement to certify to the

Subrecipient 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 Subrecipient shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

#### **17. 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.

#### **18. Governing Laws.**

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

#### **19. 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 USC § 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

#### **20. 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 CFR § 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

#### **21. 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.

#### **22. 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.

#### **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 CFR § 3000.332 for U.S. DHS/FEMA grants and 2 CFR § 1200.332 for U.S. DOT grants, the Subrecipient shall:
  - i. Comply with Subpart C of the OMB guidance in 2 CFR § 180; and

- ii. Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. Lobbying Certification.**

- A. As required by 31 USC § 1352 and implemented at 44 CFR § 18 (for U.S. DHS/FEMA grants) and at 49 CFR § 18 (For U.S. DOT grants), the Subrecipient certifies that:
  - i. 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.
  - ii. 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.
  - iii. The Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients 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 31 USC § 1352. 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.

**29. Authority to Bind Subrecipient.**

- A. Notwithstanding anything in this Agreement to the contrary, the signatory 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.

**30. Recoupment of Funds/Termination.**

A. As provided in the FEMA Award, if Subrecipient does not meet the deliverable criteria of a FEMA-approved mitigation acquisition project by the end of the federal performance period, FEMA will recoup these mitigation grant funds. If FEMA requests such a recoupment from the State, the State will request the return of these funds from the Subrecipient. Repayment shall be made to the State within thirty (30) days after the Subrecipient is so notified by the State.

B. The FEMA Award provides FEMA with the authority to terminate this grant to the State by providing the State at least seven (7) calendar days prior to the effective date of the termination. If FEMA does so terminate the Agreement, the State will notify the Subrecipient as soon as possible. The Subrecipient's authority to incur new costs will be terminated upon the date of Subrecipient's receipt of the notice or the date set forth in the FEMA notice. Any costs incurred up to the earlier of the date of the receipt of the notice or the date of termination set forth in the notice will be negotiated for final payment.

**31. Termination for Breach.**

A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and suspend the Subrecipient's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.

B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Subrecipient explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant agreement.

**32. Termination for Convenience.**

Unless prohibited by a statute or regulation relating to this award, this Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Subrecipient of a Termination Notice, specifying the extent to which such termination becomes effective. The Subrecipient shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Subrecipient exceed the original grant.

**33. Termination for Breach**

Failure to complete the Project and expend Federal, State, local, and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and suspend the Grantee's participation in State grant programs. The expenditure of State or federal funds other than in conformance with the Project or the budget may be deemed a breach.

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## 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 Sub award, the Subrecipient 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://hr.gmis.in.gov/paprd/signon.html>

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.

City of Fort Wayne, Representative

Indiana Department of Homeland Security

By: *Thomas C. Henry*

By: Jonathan L.

Whitham

Digitally signed by Jonathan L. Whitham (for) Bryan J. Langley  
DN: cn=Jonathan L. Whitham (for) Bryan J. Langley, o=Indiana Department of Homeland Security, ou=Executive Director, email=JWhitham@dhs.in.gov, c=US  
Date: 2017.06.28 13:46:02 -04'00'

Title: Mayor

Title: (for) Bryan J.

Langley

Date:

Date:

<p>Electronically Approved by: Department of Administration</p> <p>By: _____ (for) Jessica Robertson, Commissioner <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i></p>	
<p>Electronically Approved by: State Budget Agency</p> <p>By: _____ (for) Jason D. Dudich, Director <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i></p>	<p>Electronically Approved as to Form and Legality: Office of the Attorney General</p> <p>By: _____ (for) Curtis T. Hill, Jr., Attorney General <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i></p>

**EXHIBIT A**  
**Scope of Work for the Acquisition Project**

The Subrecipient will acquire some or all of the following properties:

<b>Property To Be Acquired</b>			
<b>Owner Name</b>	<b>Property Address</b>	<b>City</b>	<b>Parcel #</b>
Carolyn E. Meyer	1711 Gruber Ave.	Fort Wayne	02-12-15-202-007.000-074
Michael & Victoria Smith	3431 Covington Rd.	Fort Wayne	02-12-16-126-005.000-074
Gilberto & Quirina A. Vasquez	2929 Taylor St.	Fort Wayne	02-12-09-403-001.000-074
Michael J. Reissig	2502 Freeman St.	Fort Wayne	02-12-09-380-002.000-074

<b>Item Name</b>	<b>Subrecipient Budget Class</b>	<b>Unit</b>	<b>Unit of Quantity Measure</b>	<b>Unit Cost (\$)</b>	<b>Cost Estimate (\$)</b>
Appraisals	Contractual	8.00	Each	\$475.00	\$3,800.00
Acquisition of 4 Structures	Other	1.00	Each	\$243,805.00	\$243,805.00
Title Search /Title Insurance Policy	Contractual	4.00	Each	\$850.00	\$3,400.00
Legal Services & Closing Costs	Contractual	4.00	Each	\$2,500.00	\$10,000.00
Environmental Assessment /Abatement	Contractual	4.00	Each	\$5,500.00	\$22,000.00
Demolition / Site Restoration	Contractual	4.00	Each	\$8,400.00	\$33,600.00
Project Management	Personnel	1.00	Each	\$15,000.00	\$15,000.00
				<b>Total Cost</b>	<b>\$331,605.00</b>

**EXHIBIT B**  
**2016 PRE-DISASTER MITIGATION GRANT PROGRAM**  
**FEDERAL REQUIREMENTS**

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

**1. Federal Regulations: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.**

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. [2 CFR § 200, Subpart D, 2 CFR § 200.318 through 200.326]**

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 (a legal instrument used to purchase property or services needed to carry out the Project) 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.”

**B. Conflicts of Interest. [2 CFR § 200.318 and Federal Emergency Management Agency “Hazard Mitigation Assistance Guidance” dated February 27, 2015]**

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.

In addition, as required under the Federal Emergency Management Agency “Hazard Mitigation Assistance Guidance” dated February 27, 2015, Page 30, conflicts of interest may arise during the process of U.S. DHS/FEMA making a Federal award in situations where an employee, officer, or agent, any members of his or her immediate family, his or her partner has a close personal relationship, a business relationship, or a professional relationship, with an applicant, sub applicant, recipient, Subrecipient, or U.S. DHS/FEMA employee.

The Subrecipient must disclose to FEMA in writing any real or potential conflict of interest, as defined by the Federal, State, local, or tribal statutes or regulations or their own existing policies that arise during the administration of the Federal award. The Subrecipient must disclose any real or potential conflicts to the Federal Approving Official within 15 days of learning of the conflict of interest. Similarly, Subrecipients must disclose any real or potential conflict of interest to the State as required by the State’s conflict of interest policies or any applicable State, local, or tribal statutes or regulations. This requirement starts when the application period opens, continues during the entire period of performance, and ends when the last audit is completed.

**C. Mandatory Disclosures. [2 CFR § 200.113]**

As required by 2 CFR § 200.113, the Subrecipient 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 sub award. 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 § 180 and 31 USC § 3321).

**2. Federal Award Requirements.**

**A. Prohibition on Using Federal Funds.**

The Subrecipient understands and agrees that it cannot use any Federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of the State and FEMA.

**B. Construction Project Requirements.**

1. Acceptance of Federal funding requires FEMA, the Recipient and any Subrecipients 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.
2. Any change to the approved scope of work will require re-evaluation by FEMA for Recipient and Subrecipient compliance with the National Environmental Policy Act and other laws and Executive Orders.
3. If ground disturbing activities occur during construction, the Recipient and any Subrecipients must ensure monitoring of ground disturbance and, if any potential archeological resources are discovered, the Subrecipient will immediately cease construction in that area and notify the Recipient and FEMA.

**C. Funds Transfer.**

No transfer of funds to agencies other than those identified in the approved federal grant award shall be made without prior approval of the State and FEMA.

**D. Insurance.**

In compliance with Public Law 103-325, Title V National Flood Insurance Reform Act of 1973, section 582 requires that any person receiving 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.

**E. Duplication of Programs.**

FEMA will not provide assistance under its programs for activities that FEMA determines another Federal program has a more specific or primary authority to provide. FEMA also will not provide assistance for the State or Subrecipient's legal obligations. FEMA may disallow or recoup amounts that duplicate funding from other authorities.

**F. Duplication of Benefits.**

Hazard Mitigation Assistance (HMA) funds cannot duplicate or be duplicated by funds received by or available to the State, the Subrecipient or project or planning participants from other sources for the same purpose, such as benefits received from insurance claims, other assistance programs (including previous project or planning grants and sub awards from HMA programs), legal awards, or other benefits associated with properties or damage that are or could be subject of litigation.

Because the availability of other sources of mitigation grant or loan assistance is subject to available information and the means of each individual Subrecipient, HMA does not require proof that other assistance (not including insurance) has been sought. However, it is the responsibility of the property owner to report other benefits received, any applications for other assistance, the availability of insurance proceeds, or the potential for other compensation, such as from pending legal claims for damages, relating to the property. Amounts of other grants, loans or other assistance designated for the same purpose as

HMA funds, if received, may be used to reduce the non-Federal cost-share.

Where the property owner has an insurance policy covering any loss to the property which relates to the proposed HMA project, the means are available for receiving compensation for a loss or, in the case of increased cost of compliance (ICC), assistance toward a mitigation project. FEMA will generally require that the property owner file a claim prior to the receipt of HMA funds.

**G. Reporting Executive Compensation.**

Unless the Subrecipient had a gross income from all sources of under \$300,000 in the previous tax year, the Subrecipient must report to the State, the names and total compensation of each of the Subrecipient's five most highly compensated executives for the Subrecipient's preceding completed fiscal year if in the Subrecipient's preceding fiscal year, the Subrecipient received:

- i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and sub awards); and
- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and sub awards).

By the end of the month following the month that this Agreement is fully executed, the Subrecipient must report to the State this Subrecipient executive total compensation described above. The Subrecipient can obtain additional information and guidance regarding this requirement from the State.

**H. Acceptance of Post-Award Changes.**

In the event that FEMA determines that changes are necessary to the federal award document after an award has been made, including changes to period of performance or terms and conditions, Subrecipient will be notified of these changes in writing. Once notification has been made, any subsequent request for payment under this Agreement will indicate the Subrecipient's acceptance of the changes to the award.

**I. Refund, Rebate, Credits.**

The Subrecipient shall transfer to the State, which will transfer to FEMA, the appropriate share, based on the Federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this Agreement, along with accrued interest, if any. The Subrecipient shall take necessary action to effect prompt collection of all monies due or which may become due and to cooperate with the State and FEMA in any claim or suit in connection with amounts due.

**3. Fiscal Year 2016 Pre-Disaster Mitigation Funding Opportunity Announcement (FOA).**

The U.S. DHS Federal Fiscal Year 2016 Pre-Disaster Mitigation Funding Opportunity Announcement requires compliance with the 2017 U.S. DHS Standard Administrative Terms and Conditions (Page 11 of the FFY 2017 FOA); therefore the Subrecipient shall comply with the following such conditions:

**A. Acknowledgment of Federal Funding from U.S. DHS.**

All Subrecipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

**B. Activities Conducted Abroad.**

All Subrecipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

**C. Age Discrimination Act of 1975.**

All Subrecipients must comply with the requirements of the Age Discrimination Act of 1975 (42 USC § 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

**D. Americans with Disabilities Act of 1990.**

All Subrecipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12101–12213).

**E. Best Practices for Collection and Use of Personally Identifiable Information (PII).**

All Subrecipients who collect PII are required to have a publically-available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate.

The Subrecipient may also find as a useful resource the U.S. DHS Privacy Impact Assessments: Privacy Office Official Guidance dated June 2010 and the Privacy Impact Assessment template, [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_guidance\\_june2010.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf) and [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_template.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_template.pdf), respectively.

**F. Title VI of the Civil Rights Act of 1964.**

All Subrecipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations for the Act are found at 6 CFR § 21 and 44 CFR § 7.

**G. Title VIII of the Civil Rights Act of 1968.**

All Subrecipients must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 USC § 3601 *et seq.*), as implemented by the Department of Housing and Urban Development at 24 CFR § 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 CFR § 100.201).

**H. Copyright.**

All Subrecipients must affix the applicable copyright notices of 17 USC §§ 401 or 402 and an acknowledgement of Government sponsorship (including federal award number) to any work first produced under Federal financial assistance awards, unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations).

In addition as stated in the FEMA Award, FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for Government purposes. Any publication resulting from work performed under this Agreement shall include a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

**I. Debarment and Suspension.**

All Subrecipients must comply with Executive Orders 12549 and 12689, which provide protection against waste, fraud and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government.

**J. Duplication of Benefits.**

Any cost allocable to a particular Federal award provided for in 2 CFR § 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.

**K. False Claims Act and Program Fraud Civil Remedies.**

All Subrecipients must comply with the requirements of 31 USC § 3729 which set forth that no recipient of federal payments shall submit a false claim for payment. See also 38 USC § 3801-3812 which details the administrative remedies for false claims and statements made.

**L. Federal Debt Status.**

All Subrecipients is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424B, item number 17 for additional information and guidance.

**M. Fly America Act of 1974.**

All Subrecipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**N. Hotel and Motel Fire Safety Act of 1990.**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC § 2225a, all Subrecipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 USC § 2225.

**O. Limited English Proficiency. (Civil Rights Act of 1964, Title VI)**

All Subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. In order to facilitate compliance with Title VI, recipients are encouraged to consider the need for language services for LEP persons served or encountered in developing program budgets. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Subrecipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

**P. SAFECOM.**

All Subrecipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the *SAFECOM Guidance for Emergency Communication Grants*, including provisions on technical standards that ensure and enhance interoperable communications.

**Q. Title IX of the Education Amendments of 1972. (Equal Opportunity in Education Act)**

All Subrecipients must comply with the requirements of Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational

program or activity receiving Federal financial assistance. Implementing regulations are codified at 6 CFR § 17 and 44 CFR §19.

**R. Trafficking Victims Protection Act.**

All Subrecipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 USC § 7104). This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15. If the Subrecipient is a private entity, as defined under 2 CFR § 175.25, the following provision is applicable:

Provisions applicable to a recipient that is a private entity: You as the Subrecipient, your employees, Subrecipients under this award, and Subrecipients' employees may not:

- I. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or sub awards under the award.

**S. Rehabilitation Act of 1973.**

All Subrecipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 USC § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

**T. USA Patriot Act of 2001.**

All Subrecipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 USC §§ 175–175c. Among other things, the USA PATRIOT Act prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.

**U. Use of DHS Seal, Logo, and Flags.**

All Subrecipients must obtain U.S. DHS's approval prior to using the U.S. DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**V. DHS Specific Acknowledgments and Assurances.**

All Subrecipients must acknowledge and agree—and require any Subrecipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing U.S. DHS access to records, accounts, documents, information, facilities, and staff.

- I. Subrecipients must cooperate with any compliance review or complaint investigation conducted by U.S. DHS.
- ii. Subrecipients must give U.S. DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by U.S. DHS regulations and other applicable laws or program guidance.
- iii. Subrecipients must submit timely, complete, and accurate reports to the appropriate U.S. DHS officials and maintain appropriate backup documentation to support the reports.
- iv. Subrecipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
- v. If, during the past three years, the Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subrecipient must provide a list of all such proceedings, pending or completed,

including outcome and copies of settlement agreements to the U.S. DHS awarding office and the U.S. DHS Office of Civil Rights and Civil Liberties.

- vi. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the Subrecipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the U.S. DHS Component and/or awarding office.

The United States has the right to seek judicial enforcement of these obligations.

#### **4. Federal Assurances.**

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

- A. 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.
- B. 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.
- C. Will comply with the Hatch Act (5 USC §§ 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.
- D. Will comply, as applicable, with the provisions of the Davis- Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 USC § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327- 333), regarding labor standards for federally-assisted construction sub agreements.
- E. 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 USC §§ 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 USC §§ 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).
- F. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

## EXHIBIT C

### Hazard Mitigation Deed Restrictions

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 USC § 5121 *et seq.*, identifies the use of disaster relief funds under § 5170c, Pre-Disaster 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 EMC-2017-PC-0004 with FEMA dated February 2, 2017 and on March 21, 2017 received approval from FEMA for this specific mitigation project both documents herein incorporated by reference; making it a mitigation grant program Subrecipient.

Whereas, the Property is located in *[Village/City/County]*, and *[Village/City/County]* participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

Whereas, the *[local government]*, 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 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 Subrecipient 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 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 Recipient 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 I.a., above, and approved by the FEMA

Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be flood proofed or elevated to at least the base flood level plus one (1) foot of freeboard, or greater, if required by FEMA, or if required by the State of Indiana, 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 Recipient, 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 of Indiana, 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 of Indiana 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 Recipient; 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 \_\_\_\_\_

**BILL NO. S-17-10-06**

**REPORT OF COMMITTEE ON PUBLIC WORKS  
October 17, 2017**

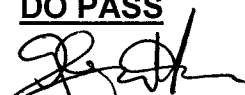
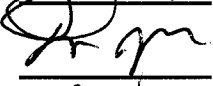

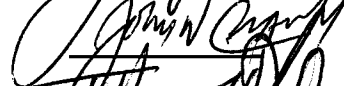
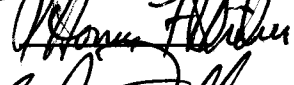
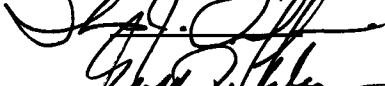


***Russ Jehl Chair***

***Glynn Hines Co-Chair***


***All Council Members***

An Ordinance approving 2016 PRE-DISASTER MITIGATION GRANT PROGRAM STATE-LOCAL AGREEMENT CFDA 97.047 – Flood Buyout Project #19510 between INDIANA DEPARTMENT OF HOMELAND SECURITY and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

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

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
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**LANA R. KEESLING CITY CLERK**

  
\_\_\_\_\_

Public Hearing Date: N/A

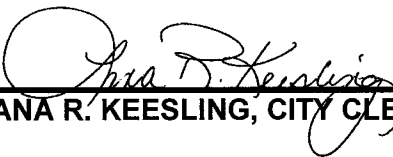
Read the first time in full and on motion by Councilman Jehl.

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

Read the third time in full and on motion by Councilman Jehl, 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: October 24, 2017

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
 Special Ordinance No. S-17-10-06 on the 24th day of October, 2017

ATTEST:


  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 THOMAS F. DIDIER  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th  
 of October 2017, at the hour of 11:30 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 25<sup>th</sup> day of October  
 2017, at the hour of 2:00 O'clock PM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR