

ALABAMA EMERGENCY MANAGEMENT AGENCY

Hazard Mitigation Assistance

How to Manage Your Sub-Grant

Disclaimer

This guide has been prepared by the Alabama Emergency Management Agency (AEMA) and approved by the Federal Emergency Management Agency (FEMA) Region IV to serve as a tool for municipalities, counties, and nonprofits who have been awarded federal grant assistance under the Hazard Mitigation Assistance (HMA) grant program. Neither FEMA or AEMA nor any of their employees make any warranty, expressed or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, services by trade name, mark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the U.S. Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

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Management of an HMA Sub-grant: Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM), Flood Mitigation Assistance (FMA), Repetitive Flood Claims (RFC), and Sever Repetitive Loss (SRL)

- Responsibility for managing a sub-grant is shared between the State AEMA (the grantee) and the applying agency (the sub-grantee). It is the State's responsibility to monitor the performance and compliance of the sub-grantee, inform the sub-grantee of all requirements set by laws, regulations and the terms and conditions of the grant and report such to FEMA.
- The sub-grantee's role in project and grant management is to direct project work and submit required financial and performance reports to the State. They must comply with State and Federal requirements in regards to such things as procurement, financial management, audits and program management. Some of the sub-grantee's post award responsibilities include compliance with program criteria and successfully completing the scope of work as described in the application.
- Program criteria such as terms and conditions for specific grant projects are outlined in the State/Sub-grantee agreement and other award documents, which must be reviewed, signed and returned within 30 days of award. The State/Sub-grantee agreement is a binding document between the State and the Sub-grantee. Grant program policies and guidance vary among programs such as Pre-Disaster Mitigation, Hazard Mitigation Grant Program, Flood Mitigation Assistance, Repetitive Flood Claims and Severe Repetitive Loss, however may be very similar. For more unified guidance on the HMA program, please refer to FEMA-issued guidance at:



<http://www.fema.gov/library/viewRecord.do?id=3309> (FY 2009)



<http://www.fema.gov/library/viewRecord.do?id=3649> (FY 2010)



<http://www.fema.gov/library/viewRecord.do?id=4225> (FY 2011)

Accounting System Requirements

- All accounting system requirements should follow Federal, State and Local laws. The sub-grantee must keep a separate master file for *each* project, regardless of their similarity. Your financial accounting system should be able to track costs by grant program and by each project. Your accounting system must also record all expenses claimed during a project. General accounting records should include: transaction dates, cost descriptions, source document reference (purchase order, invoice, voucher, and check numbers, etc.) and amounts; payroll documents; listing of materials and/or equipment purchased with grant and matching funds.
- While you are required by law to maintain all documentation on file for at least 3 years after project close-out, AEMA recommends keeping HMGP records for at least 3 years after the disaster is closed out by AEMA and FEMA, which usually occurs 8 years after its declaration. The sub-grantee should keep all original documentation at the local level.

Bidding Process

- Your organization must have written procedures that cover all procurement actions, which must, at a minimum, comply with Federal requirements, as stated by CFR 44 part 13.36. When procuring goods/services, you must use and document a competitive process and a cost analysis. Procurement must be conducted pursuant to applicable regulations and procedures or project costs may be considered as disallowable expenses. In arranging for services, buyers are required to follow the procurement standards applicable to their agency on competition as prescribed in the appropriate state laws, and *Uniform Administrative Requirements for Grants and Agreements* provided in OMB Regulations and/or 2 CFR.
- Please note that cost-plus-percentage contracting shall not be used.
- In order to avoid awarding a contract to barred contractors, the sub-grantee must research bidders and sub-contractors on the *Excluded Parties List System* before award of contract at:



<http://www.epls.gov/>

Approved Scope of Work

- The Scope of Work (SOW) is based on the information submitted, reviewed, and approved in the application. The SOW is very specific to the sub-grant goal as described in the application and is reiterated in FEMA's approval letter. The SOW may include such details as: type of materials, summarized eligible labor and fees, and the physical location of the project. The budget line items are also derived directly from the SOW. In the event of a change in budget, materials, labor/services paid, locations, etc. a change in SOW will need to be requested and approved prior to the change being implemented. A request for change in SOW must be sought in writing through the AEMA. SOW changes are not guaranteed to receive approval and may require a new benefit cost analysis, new engineering and/or environmental review on some mitigation projects. These changes could also require an amendment to the grant agreement.

Cost Over-runs and Under-runs

- Excess funds for cost over-runs may become available only under HMGP. While executing the award, any cost over-runs must be approved prior to their incurrence, except when the costs will be met without additional Federal funds. Cost under-runs demonstrate reasonable funds expenditure and are desired whenever possible. However, under-runs cannot be moved to another/new item or cannot be used to increase the quantity in another line item without prior approval. In other words, the cost over-runs on one line item cannot be offset by cost under-runs on other line items (unless the project is a non-construction project with a federal share of less than \$100,00 and the change is less than 10% of the total budget). Under-runs do not require immediate action and can be de-obligated at project closure. In the event of an over- or under-run the full scope of work on all affected projects must still be met. All other circumstances are considered a change in the approved scope of work and must gain prior approval. After approval, only the maximum allowable federal share of the total over-run can be reimbursed. A good request for a change in budget should include a comparison between the approved and new budget, preferably in a table, by line-item. It should also include a

reasonable explanation for the change in costs and should provide clarification on how the sub-grantee tried to keep cost within approved amount.

Period of Performance (POP)

- The POP is based on the timeline that the sub-grantee submits in the application and should therefore contain measurable milestones for project completion. The sub-grantee must gain prior approval to extend eligible project activities and provide a new timeframe for all expenditures. A time extension must be requested at least 90 days prior to the set expiration.
- Unfortunately, time extensions may not be honored if quarterly reports are not up-to-date. Any work done outside of the period of performance cannot be considered as an expense for the project and is an ineligible cost. Time extensions may only be approved if the sub-grantee can provide sufficient documentation showing what has been accomplished to date, amount of additional time needed for award completion, a revised/detailed timeline to complete the award, and a restated commitment to achieving the award's goal. A *POP Extension Request Form* may be found in Annex A on page 2.

Program Income

- Program income is encouraged to defray approved program costs. This type of income occurs when the sub-grantee receives income during the execution of the grant, such as the sale of salvage material or items scheduled for demolition, rebates, credits, discounts, refunds, etc.
- Program income shall be used to defray the overall FEMA approved project cost. The total project cost will be reduced by the amount of program income. Any income earned after the end of the period of performance or after the grant has been closed-out may reside with the sub-grantee and does not have to be reported toward the grant.

Non-Federal Match Requirement

- The required cost-share may vary by program. The local match cannot be made with Federal funds that do not lose their federal identity, pursuant to 44 CFR 13.24(b). However, some Federal grants have an authorizing statute that explicitly allows these funds to be used as a match. Some allowable matching funds include: HUD Community Development Block Grants (CDBG), US Small Business Administration (SBA) and Farmer's Home Administration (FHA), Appalachian Regional Commission (ARC) and Indian Health Services funds. AEMA must be notified in writing if any additional awards are being used with an HMA grant.
- Local match must be documented by submitting copies of all invoices and the method of payment for 100% of the project costs.
- Under HMGP, PDM and SRL at least 25% of total project cost must be met by the sub-grantee. RFC does not require a local match. FMA also requires a minimum 25% non-Federal match; however, ½ of the match is a cash requirement.
- With the exception of FMA, the local share does not have to be made with cash; it can be met with in-kind labor or materials, as long as they are allowable and pre-approved costs. In-kind may come from the use of supplies, materials, equipment, and personnel donated by a 3rd

party employer. Volunteer services, loaned equipment or space may also qualify as in-kind. Please see 44 CFR part 13.24 for detailed regulations.

- Any in-kind labor and equipment rates must be actual and reasonable. If using employees of another organization a sub-grantee may not claim fringe benefits. Please use the actual local rate of benefits when claiming fringe benefits on in-kind labor.
- In-kind equipment costs should be claimed at the same reimbursement rate charged to any other project or program. If the sub-grantee or donor has not established a pre-determined, reasonable rate, you should use FEMA PA equipment rates found at the following website (please make sure to use the rates applicable to your disaster):



http://www.fema.gov/government/grant/pa/eqrates_2005.shtm (prior to 4/30/08)



<http://www.fema.gov/government/grant/pa/eqrates.shtm> (after 4/30/08)

- Any labor or use of equipment being charged to or paid for by federal funds is not eligible as expenses or cost-shares.
- The sub-grantee must seek prior approval if using any of these methods to meet their cost-share. Funds acquired through program income cannot be used as a non-federal match unless approved prior to the award, under 44 CFR 13.24(b)(4).

Documenting Your Grant

- Proper documentation should exhibit that the approved budget was followed and purchases were made within the approved Period of Performance (POP). A sub-grantee's records should document that all expenses are consistent with policies, regulations and procedures that apply uniformly to both Federal awards and other activities of the sub-grantee. Proper documentation ensures the full, allowable reimbursement and a quicker compliance audit at close-out. The sub-grantee should make sure to keep all invoices, payroll expenses, etc. on file, along with supporting documentation such as contracts and time cards. Additional documentation may be requested after close-out if deemed necessary by FEMA. It is imperative to make sure that each grant has a separate master file for multiple grant awards.

Examples of Required Documentation:

Request for close-out form (see Annex A page 7).

Copies of invoices/receipts and checks written to contractors.

In-Kind Worksheet for any in-kind services (see Annex A page 3 and 4)

Updated list of addresses for all site locations along with the latitudes, longitudes and two photos of each site from different views/angles.

Engineer Certifications as required (see Annex A page 8).

Copies of Settlement Statements, Attorney Fees and Appraisals if required.

Updated maintenance plan.

Requests for Payment

- In order to receive reimbursement of incurred costs, sub-grantees must submit a Request for Reimbursement (see Annex A page 5). It must have enclosed appropriate documentation (which includes all invoices and proof of payment) in order to expedite the reimbursement. An authorized signature is required as it assures compliance with regulations. The authorized signature is usually the same as on the application. If the sub-grantee wishes to designate another authorized official, a letter from the sub-grantee may be required. Improperly completed pay requests result in delayed or denied payments.
- Although not guaranteed, the average payment timeline is 15-20 workdays after the pay request has been received and approved.
- HMA generally does not advance funds, but reimburses expenses to the sub-grantee. Only 75% of total submitted expenses can be reimbursed under HMGP, FMA and PDM. Advances are only made in the case of emergency or demonstrated financial hardship. It is imperative that an advance is deposited and expended within three days of receipt per Federal guidelines.

Site Visits

- A site visit will be conducted by your assigned planner once per quarter. Your planner will ask questions regarding the progress of your project. If you think you may need to request an extension or an over-run, a site visit is an excellent time to discuss your options and receive technical assistance.
- The sub-grantee may request a site visit whenever deemed necessary. We aim to assist our sub-grantees in the most efficient and timely manner. Therefore, if you feel that you may need a site visit, or kick-off meeting (pre-project briefing), please feel free to request a visit.

Quarterly Reports (QRs)

- Sub-grantee quarterly reports provide AEMA with the progress on your sub-grant, such as percentage of project completed. AEMA uses your report in the State's report to FEMA. Please be sure to provide a sequence of events for possible time extensions or scope of work changes.
- Quarterly progress reports (see Annex A page 6) should include cumulative expenditures, possible over-runs or time extensions, percentage of project completed, and a narrative description of progress to include any problems encountered.
- Make every effort to thoroughly complete each item requested on your quarterly report. AEMA relies on your reports to monitor the status of your project.
- Quarterly reports are due every January 15, April 15, July 15, and October 15.

State Project Closeout Process

- Sub-grants are closed when all applicable administrative and required work has been completed or when the period of performance has ended, whichever is sooner as described in 44 CFR 13.50. State project close-out process will begin when the Sub-grantee submits a

close-out request. It is the sub-grantee's responsibility to notify the State in writing with the Request for Close-out form (see Annex A page 7).

- AEMA will review submitted project documentation for accuracy, reasonable expenses, and compliance with the approved SOW. AEMA may require additional documentation and will contact the sub-grantee if needed. A site visit may be necessary or can be requested by the sub-grantee when they deem necessary. Before close-out it is necessary to review and compare the scope of work submitted and completed, on both project and planning grants.
- AEMA will notify the sub-grantee of our assessment in form of a close-out certification, which will need to be signed and returned to AEMA. Once the certification is received, AEMA will submit a close-out packet to FEMA and issue any final payments or de-obligate excess funds.

Accounting for Property

- You should use, manage, and dispose of equipment acquired under a sub-grant according to State laws and procedures. If you have federally owned property provided for grant program purposes, you are required to submit an inventory of the property at least once every two years (44 CFR 13.32 (d)(2)). Request disposition instructions from your State program contact for property you no longer need.
- Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. For more information on the equipment policy, please see the 44 CFR 13.32.

Audit Requirements for your Federal Grant

- Your agency may be subject to an audit besides the Single Audit.
- An independent audit is required for total expenditures of \$500,000 or more in Federal funds for all programs within the recipient's fiscal year as in accordance with the Single Audit Act of 1984, P.L. 98-502 – OMB Circular A-133 and 44 CFR 13.26. A copy of the audit must be forwarded to the Alabama Emergency Management Agency. The original audit along with a Data Collection Form must be submitted to the auditor clearinghouse no later than nine months after the end of the sub-grantee's fiscal year or 30 days after the audit is completed, whichever is sooner. For additional information and resources of the Single Audit Act, please visit any of the following sites:



http://www.whitehouse.gov/omb/circulars_a133_compliance_04_04toc/



<http://www.gao.gov/aac.html>



<http://www.tgci.com/magazine/Understanding%20Single%20Audits.pdf>

- Audits are to be conducted by an independent auditor as required by OMB Circular A-133 and in accordance to Generally Accepted Accounting Principles (GAAP). If there is evidence of non-compliance, the State will ensure that appropriate corrective action is taken within six months and will provide a copy of the audit to the DHS Inspector General (IG).
- The original audit must be mailed to:
Federal Audit Clearinghouse, Governments Division
Bureau of the Census

Washington, DC 20233-6800
800.253.0696

- Inspector General's web site:



<http://www.dhs.gov/xoig/index.shtm>

Important Information to Monitor throughout the Life of the Project

- Approved Scope of Work
- Budget Line Items
- Conditions established by FEMA and the State
- Period of Performance
- Documentation of all expenses

Project Specific Guidance

Acquisitions

- The *Property Acquisition and Relocation for Open Space* program is detailed in 44 CFR part 80, which can be found at:



http://www.access.gpo.gov/nara/cfr/waisidx_08/44cfr80_08.html

- Although FEMA does currently not require mandatory appraisals for acquisition projects, AEMA strongly suggests the sub-grantee obtain a certified appraisal of the Fair Market Value (FMV) of a property. Appraisals must be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) and with federal regulations as prescribed in 49 CFR part 24.103. In Alabama, the FMV of a property may be based on the tax assessment value plus percentage, which is a multiplier provided by your local tax appraisal office. The tax appraisal office should be able to provide you with the average multiplier applied to homes in your area.
- Uniform Relocation Assistance (URA) may be available for qualifying tenants, which serves to assist with moving expenses and rent/utility increase resulting from the implementation of an HMA project. More information on the URA may be found in the 49 CFR 24.1. To calculate a fixed payment for moving rate, please use the Residential Moving Cost Schedule which may be found at:



<http://www.fhwa.dot.gov/////realestate/fixsch96.htm>

- FEMA also requires that the acquired property be used in perpetuity for open space without future construction and in compliance with conservation easements. Open space must be documented in the deed transferring title to the property and will be recorded with restriction according to State law within 14 days after settlement. These deeds must include easements and mineral rights.

- An acquisition handbook, sample deed (available in Annex B, pages 2-6), and other resources are available at:

 www.fema.gov/government/grant/resources/acqhandbook.shtm

 www.fema.gov/government/grant/resources/hma_deed_restriction.shtm

 www.fema.gov/government/grant/vol_participation.shtm

- A Duplication of Benefit (DOB) search must be requested by the sub-applicant. Please be sure to include the full names of all adults in the household and address of property to be acquired. **Benefits dated on or after the opening of the application period for the program being applied for, shall be taken into consideration.** These amounts must be discounted from the determined fair market value (FMV), unless receipts and/or proof of repair can be provided. In the case that another disaster occurs within the related application period, **any newly received benefits must also be considered.** In the event that a new property owner purchases the property during the application or project period, only post-event value may be offered.



Elevations

- The sub-grantee must submit an elevation certificate signed by a Professional Engineer, certifying that the construction of the elevation was accomplished in accordance with local government's housing codes. After an elevation, flood insurance will be required for the property for perpetuity.



Community and Individual Safe Rooms

- AEMA requires an updated operation and maintenance plan for close-out of a community safe room (this excludes individual safe rooms). In order to receive reimbursement for a safe room, the sub-grantee must submit a Contractor/Installer certificate signed by an Alabama licensed contractor (see Annex A page 8), certifying that the construction of the safe room was accomplished in accordance with the design drawings in FEMA 320 or FEMA 361. All drawings must be certified by an Alabama licensed Professional Engineer. Beginning with projects funded under Gustav all drawings and certifications must be current as of August 2008 to meet the new requirements of FEMA 320, third edition and FEMA 361, second edition. Projects funded prior to Gustav must only meet FEMA requirements of 320 and 361 first editions.
- Please note that FEMA will only consider ‘life-saving’ expenses as allowable projects costs (i.e. foundation, structural systems, signage, planning). Unallowable expenses include, but are not limited to such items as landscaping, purchase of land, fixtures, and maintenance. If you feel that you may have questionable costs, please contact the AEMA financial specialist. For further guidance, please visit:



<http://www.fema.gov/library/viewRecord.do?id=4225>



QUESTIONS?



<http://ema.alabama.gov/Organization/Preparedness/Mitigation.cfm>

Debbie Peery
State Hazard Mitigation Officer
5898 County Road 41
Clanton, AL 35046
(205) 280-2476 Office
debbie.peery@ema.alabama.gov

Kelli B. Alexander, CFM
Emergency Management Planner, Senior
(205) 280-2269 Office
kelli.alexander@ema.alabama.gov

Zakiya Darby
Planning & Economics Development Specialist
(205) 280-2459 Office
zakiya.darby@ema.alabama.gov

(205) 280-2493 Fax

Please contact us for electronic copies of the enclosed Annex.

ANNEX A

Agency Forms



SUB-GRANTEE REQUEST FOR TIME EXTENSION OF PERIOD OF PERFORMANCE

Sub-Grantee Name: _____
Sub-Grant Number: _____
Current Period of Performance: _____
Project Type: _____

***Please note that this request must be submitted 90 days prior to end of POP.**

Requested End Date of Period of Performance: _____

Please list specific reasons for the request and delay in project completion:

Please list amended milestones to reflect the requested end date (use additional page(s) if necessary):

Signature of Sub-Grantee

Date

If you need assistance in completing this form, please contact the planner assigned to your area. Return this form by mail to P.O. Drawer 2160 Clanton, AL 35046 or fax to (205) 280-2493.

**STATE OF ALABAMA EMA
GENERAL REQUEST FOR PAYMENT/REIMBURSEMENT**

1. Payment Request No: _____ 2. Disaster: Project No. _____
3. Type of Request: _____ Advance** _____ Reimbursement
4. Name of applicant: _____

COMPUTATION OF PAYMENT AMOUNT REQUESTED

5. Project Funding
a. Approved Federal Share (from approval letter) \$ _____
b. Approved Sub-grantee admin (from approval letter) \$ _____
c. Amount Requested this Disbursement \$ _____

CERTIFICATION

6. I certify to the best of my knowledge and belief the above is correct and that all disbursements were made in accordance with the grant conditions or other agreements and that payment is due and has not been previously requested. This is also to certify that appropriate documentation is on hand in support of the payment requested.

(Signature of Authorized Certifying Official)

(Date)

(Typed name)

(Title)

(Address)

(Agency)

Administrative Point of Contact (Name and Telephone No)

**All mitigation grants will be paid on a reimbursement basis. The one exception to this policy is acquisition projects.

Please submit the following information along with your final request for payment at the time of project completion:

1. Final Billing Memorandum and request for close-out.
2. Copies of invoices/receipts and checks written to contractors.
3. For any in-kind services provided by County/City, provide a completed In-Kind Worksheet.
4. List of addresses for ALL site locations.
5. List the latitude and longitude and provide two (2) photos of each site.

NOTE: Sub-grantees must keep all original documents at local level for at least 3 years. Programmatic audit may be completed by AEMA and/or FEMA.

Shelter Certification Instructions

CONTRACTORS & INSTALLERS

1. Construction of above-ground Safe Rooms must be accomplished by an Alabama licensed contractor according to design drawings in FEMA 320 or certified contractor design drawings. These individual design drawings must be certified by a licensed Professional Engineer or Registered Architect stating the shelter design meets the requirements of FEMA 320.
2. Construction of other residential shelters, including community shelters (more than 12 occupants) and in-ground or underground shelters must be constructed according to the appropriate design and construction standards contained in FEMA 320 (August 2008*), FEMA 361 (August 2008*), and the National Performance Criteria for Tornado Shelters (NPCTS). Any contractor design drawings (i.e., As-Built) used in construction must be certified by a licensed Professional Engineer or Registered Architect, who meets the requirements of the applicable FEMA document.

PROFESSIONAL ENGINEERS & REGISTERED ARCHITECTS

3. All shelter blueprints or design drawings must be stamped with a Professional Engineer (PE) or Registered Architect (RA) seal and must state in a conspicuous place on the first blueprint page: "This shelter design complies with the applicable standards as set forth in FEMA Publications 320 (Aug. 2008*), FEMA 361 (Aug. 2008*), and the National Performance Criteria For Tornado Shelters (NPCTS) (Aug 1999)". Prefabricated underground shelters must also have PE/RA sealed blueprints that detail how to waterproof the shelter, provide anchorage or ballast to resist flotation forces in saturated soils, and resist lateral soil and groundwater forces and must be installed by a contractor licensed in the State of Alabama. This requirement states that shelter ballast and anchorage shall be designed to resist 150% of the buoyancy force for the installation of the shelter. The vendor/manufacture shall include the anchorage calculations made during the design of his shelter that ensure his shelter will remain stable:

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4. Shelter occupancy information shall be placed on the notes page of the shelter blueprints stating: "According to FEMA 320, FEMA 361, and/or NPCTS standards, this shelter will accommodate (X) standing adults (5 SF/Person), (Y) people in wheelchairs (10 SF/Person) and (Z) bedridden people.

Contractor/Installer Certification Form

I, (print name) _____ a licensed contractor certify that the completed shelter construction/installation at (address: _____) has been constructed according to the blueprints in FEMA 320 (Aug. 2008*) or FEMA 361 (Aug. 2008*), or in accordance with the Professional Engineer (PE) or Registered Architect (RA) sealed blueprints. **All underground shelters have been constructed to meet the requirements of the NPCTS document referenced in paragraph 2 and 3 above.**

Name of Firm and Title _____ Date _____

Signature _____ Contractor License Number _____

Subscribed and sworn to before me this _____ day of _____ 20 _____

Notary Public

My commission expires _____

*Effective for all projects funded under Gustav and thereafter

ANNEX B

Sample Letters

Exhibit A (Sample Warranty Deed)

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

SELECT THE APPROPRIATE MITIGATION GRANT PROGRAM AND DELETE ALL OTHERS:

WHEREAS, the **Flood Mitigation Assistance Program (“FMA”)**, as authorized in the National Flood Insurance Reform Act of 1994, Sections 1366 and 1367, (42 USC §§ 4104c, 4104d), identifies the use of FMA funds for planning and carrying out activities designed to reduce the risk of flood damage to structures insurable under the National Flood Insurance Program (“NFIP”);

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

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (“The Stafford Act”), 42 U.S.C. § 5121 et seq., identifies the use of pre-disaster mitigation grants under § 5133, **Pre-Disaster Mitigation (“PDM”)**, to assist States and local governments in implementing cost-effective hazard mitigation measures to reduce injuries, loss of life, and damage and destruction of property;

WHEREAS, the **Repetitive Flood Claims program (“RFC”)**, as authorized by Section 1323 of the National Flood Insurance Act of 1968 (42 USC §§ 4030), as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, identifies the use of RFC funds for reducing flood damages to individual properties for which one or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Fund in the shortest period of time;

WHEREAS, the **Severe Repetitive Loss Pilot Program (“SRL”)**, as authorized under Sections 1361(A) of the National Flood Insurance Act of 1968 (NFIA, or “the Act”), 42 USC 4011 et seq., as amended by the National Flood Insurance Reform Act of 1994 (NFIRA); Public Law 103-325, and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, identifies the use of SRL funds for uses that reduce flood damages to properties insured under the National Flood Insurance Program (“NFIP”);

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, [State or Tribe] has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency (“FEMA”) and has entered into a

mitigation grant program Grant Agreement dated [date] with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

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 [State] dated [date] (“State-Local Agreement”), and herein incorporated by reference, making it a mitigation grant program subgrantee;

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

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

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

a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.

b. Structures. No new structures or improvements shall be erected on the Property other than:

i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;

ii. A public rest room; or

iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or

greater, if required by FEMA, or if required by any State, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator.

c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

i. The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the FEMA Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

iii. If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

a) The Grantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

iv. Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible status under this section.

2. Inspection. FEMA, its representatives and assigns including the State or Tribe shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this part, the Property conveyance and of the grant award.

3. Monitoring and Reporting. Every three years on [date], the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

ii. FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

a) Withholding FEMA mitigation awards or assistance from the State or Tribe, and Grantee; and current holder of the property interest.

b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or

c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

5. Amendment. This agreement may be amended upon signatures of FEMA, the State, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.

6. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

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

Grantor's Signature _____

Date _____

Name (printed or typed) _____

Grantee's Signature _____

Date _____

Grantee's Name _____

Grantee's Title _____

Last Modified: Wednesday, 02-Jul-2008 13:17:32 EDT

**Statement of Voluntary Participation for
Acquisition of Property for Purpose of Open Space
FEMA’s Hazard Mitigation Assistance Programs**

THIS AGREEMENT is made and entered into on (date) _____, by and between (name of Subgrantee) _____, hereinafter referred to as “Subgrantee,” and (property owner) _____, hereinafter referred to as “Seller.” The parties agree as follows:

1. Seller affirms that I/we own the property located at (legal address) _____, hereinafter referred to as “property.”
2. Subgrantee has notified Seller that the Subgrantee may wish to purchase the referenced property, and, if Seller agrees to sell, Seller must permanently relocate from property.
3. Subgrantee has identified that the purchase offer valuation of the property as of (date) _____ is \$ _____, as determined by appropriate valuation procedures implemented by Subgrantee and based on FEMA acquisition requirements provided in 44 C.F.R. Part 80), and relevant program guidance as documented below (i.e., Pre-Disaster Mitigation, Hazard Mitigation Grant Program, Flood Mitigation Assistance)

4. Subgrantee has notified Seller that neither the *State* nor the *Local Government* will use its eminent domain authority to acquire the property for open-space purposes if the Seller chooses not to participate, or if negotiations fail.
5. Subgrantee has notified Seller that if the Seller agrees to sell the property to the Subgrantee the transaction is voluntary and the Seller is not entitled to relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which are available to property owners who must sell their properties involuntarily.
6. Subgrantee affirms that it has provided the notifications and explained the information described in the preceding paragraphs to the seller, and property identified above is not a part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

This Agreement shall expire on (date of closing) _____, unless Seller has voluntarily sold property to the Subgrantee by that date.

Property Owner Signature _____
Date _____

Subgrantee’s Authorized Agent Signature _____
Date _____