

ITEM RES 2015-6061

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
2/3/2015

SUBJECT:	SUBMITTED BY:
Hazard Mitigation Grant Program Assistance Agreement	Nan Newlon Director of Public Works

SYNOPSIS

A resolution has been prepared to authorize the execution of the Assistance Agreement between the Illinois Emergency Management Agency (IEMA) and the Village of Downers Grove for the Hazard Mitigation Grant Program (HMGP) requesting federal funding in an amount up to \$820,211 to support the purchase of flood prone properties.

STRATEGIC PLAN ALIGNMENT

The Strategic Goals for 2011-2018 identified *Steward of Financial and Environmental Sustainability* as well as *Exceptional Municipal Services*.

FISCAL IMPACT

The acquisition of properties may not exceed a total project cost of \$1,093,614, of which the Village is required to provide up to \$273,403 (25% of total project costs) as the local match component. Funds have been budgeted in the 2015 budget.

RECOMMENDATION

Approval on the February 3, 2015 consent agenda.

BACKGROUND

In April 2013, the Village experienced severe flooding like much of northern Illinois. A Federal Disaster was declared, allowing eligible jurisdictions to submit pre-applications to participate in the HMGP, administered by IEMA and funded by the Federal Emergency Management Agency (FEMA).

The Village is in good standing with the National Flood Insurance Program and has adopted a Hazard Mitigation Plan, which allowed us to apply for these funds. Staff submitted a pre-application to IEMA for the acquisition of certain properties in the flood plain that have experienced repetitive flooding.

Staff originally identified 16 potential properties for acquisition for a total cost of \$3.8M in the application made in December 2013. Since that time a dozen properties have dropped from the program; most due to the cost/benefit ratio requirements in the HMGP. In compliance with the HMGP, if purchased, the remaining four properties will be deed restricted to be used only for purposes compatible with open space, recreation, or wetlands management practices. The participation of the homeowners is voluntary, and they may choose to drop out of the program at any time prior to sale of the property.

ATTACHMENTS

Resolution

IEMA Assistance Agreement

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF A STATE LOCAL HAZARD
MITIGATION GRANT PROGRAM ASSISTANCE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND THE
ILLINOIS EMERGENCY MANAGEMENT AGENCY (IEMA)**

WHEREAS, the Village of Downers Grove, an Illinois municipal corporation, submitted a pre-application to the Illinois Emergency Management Agency (IEMA) for federal assistance for the acquisition of certain properties in the flood plain that have experienced repetitive flooding; and

WHEREAS, the Village of Downers Grove has been found to be eligible to enter into a final agreement to receive federal funding in the amount of \$820,211 for costs related to the purchase of flood prone properties; and

NOW, THEREFORE, be it resolved by the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Grant Agreement (the "Agreement"), between the Village of Downers Grove (the "Subgrantee") and the Illinois Emergency Management Agency (the "IEMA"), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village of Downers Grove authorize the Hazard Mitigation Grant Program (HMGP) Agreement between the Village of Downers Grove and the Illinois Emergency Management Agency (IEMA) for funding in the amount of \$820,211 from IEMA and \$273,403 (or 25% of total project costs) as a local match component from the Village.

3. That the Village of Downers Grove agrees to the conditions required by the Agreement.

4. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

5. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

6. That this resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**ILLINOIS EMERGENCY MANAGEMENT AGENCY
STATE-LOCAL HAZARD MITIGATION GRANT PROGRAM (HMGP)
ASSISTANCE AGREEMENT
(FEMA-DR-4116-IL)**

Fiscal Years 2015 - 2017 (Date of Execution – December 31, 2016)

This Grant Agreement between the Illinois Emergency Management Agency (the IEMA/Grantee) and the Village of Downers Grove (the Subgrantee), Federal Taxpayer Identification Number 36-6005857 shall be effective on the date signed by the IEMA. It shall apply to all Hazard Mitigation Grant Program (HMGP) assistance provided by the Federal Emergency Management Agency (FEMA) through the IEMA to the Subgrantee as a result of the presidentially declared disaster occurring within the State of Illinois (FEMA-DR-4116-IL).

Be it resolved by the Subgrantee, that the individual named below

Martin Tully, Mayor

has the legal authority and is hereby authorized to execute documents for and in behalf of the Subgrantee, an eligible jurisdiction as determined by the Federal Emergency Management Agency. The purpose of this designation is so that the individual whose name appears above will be the authorized representative for obtaining Federal or State Hazard Mitigation Grant Program funds.

The Subgrantee hereby assures and certifies that the project will comply with the State of Illinois and the Federal Emergency Management Agency regulations. Also, the Subgrantee gives assurance and certifies under oath that all information in the grant agreement is true and correct to the best of the Subgrantee's knowledge, information, and belief; that the funds shall be used only for the purposes described in the Agreement; with respect to and as a condition for the grant that the following provisions will be adhered to:

FINANCIAL INFORMATION AND REQUIREMENTS

1. This Grant Agreement in the amount of \$820,211 will serve as the contract between the IEMA and the Subgrantee for the purpose of acquiring and demolishing structures from property owners who voluntarily participate in the buyout project.

Project areas: 4 properties located in Downers Grove at:

5634, 5638, 5704 Webster and 5317 Grand Ave.

- a. Total estimated cost of acquisition is \$1,093,614
Total IEMA share is \$820,211. This figure includes the cost of property acquisition, closing fees, title/legal fees, demolition, and management costs.
2. The Subgrantee will provide all necessary financial and managerial resources to meet the terms and conditions of receiving HMGP funds.
3. The Subgrantee is aware that the HMGP requires cost-sharing on the basis of not more than 75

percent Federal and at least 25 percent non-Federal contributions and that the Subgrantee may be required to provide and/or secure the full non-Federal share for mitigation activities. The cost-sharing may be met through global match within the disaster mitigation funds for disaster 4116.

4. The HMGP funds requested for this project shall not and will not duplicate benefits received for the same loss from any other funds.
5. This Grant Agreement may be amended by the Grantee as required because of:
 - changes in State laws or regulations;
 - an extension in the term;
 - an increase in the amount; and/or
 - any other provision requiring a modification.
6. The Subgrantee may send a written request for a portion of the total contract amount shown in Item 1 upon the following conditions: a) this Grant Agreement is signed by the Subgrantee and the IEMA; and b) the Subgrantee will spend the funds requested within a twenty-day period after receipt of the funds from the IEMA. Additional funds may be drawn down upon request from the authorized representative based on need and the ability to spend within a twenty-day period.
7. In the event that the applicant fails to expend or is over advanced HMGP funds, the Governor's Authorized Representative reserves the right to recapture funds in accordance with the applicable Federal or State laws and requirements. Funds remaining at the expiration of the grant agreement shall be returned to the State within 45 days.

REQUIREMENTS FOR ALL HAZARD MITIGATION PROJECTS

8. The Subgrantee agrees to maintain good standing in the National Flood Insurance Program (NFIP).
9. The Subgrantee will begin project work within 90 days of the approval of the Grant Agreement and complete all items of work by the time of the grant expiration unless an exception is granted, extending the time with an amendment to this Agreement.
10. The Subgrantee will comply with all applicable ordinances, codes and standards as pertains to this HMGP project and agrees to provide maintenance as appropriate.
11. The IEMA, the Illinois Auditor General, the Illinois Attorney General or any of their duly authorized representatives reserve the right to review, inspect or audit all contracts, records and documents related to the expenditure of the HMGP funds. The IEMA reserves the right to disallow any expenditures that are deemed ineligible, unreasonable, and/or excessive. In the event that questioned costs are ultimately deemed disallowed, as determined by the IEMA, the Subgrantee shall be responsible for repayment of such costs.
12. The Subgrantee will not enter into cost-plus-percentage-of-cost contracts for completion of the HMGP projects.

13. The Subgrantee will not enter into any contract with any party which is debarred or suspended from participating in Federal assistance programs.
14. The authorized representative for the Subgrantee is required to submit quarterly reports to the Hazard Mitigation Officer on or before the first day of each quarter following the signing of this Grant Agreement. Said report will include the status of the project and the estimated percentage of project completed. For acquisition projects, the report should quantify the closings to be conducted in the next quarter and other information as requested.
15. A final report covering all aspects of the project will be prepared for the Subgrantee after the final closing.
16. The Subgrantee is required to submit a single audit conducted in accordance with Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments and Non-profit Organizations," when expending \$750,000 or more in Federal funds, including Public Assistance, Hazard Mitigation Grant Program (HMGP), and FMAP funds during a fiscal year.
17. The Subgrantee is required to submit a copy of each report as a result of an audit to the Chief Fiscal Officer, for each fiscal year where \$750,000 or more in Federal funds were expended, beginning the fiscal year of the Presidential declaration of major disaster and ending the fiscal year of the final reimbursement.
18. The Subgrantee will be responsible for timely action in resolving any audit finding and/or questioned project costs. The Subgrantee will return to the IEMA, within 15 days of such request by the Chief Fiscal Officer, any advance funds which are not supported by audit or other Federal or State review of documentation maintained by the Subgrantee.
19. The Subgrantee agrees that all funds remaining at the end of this Agreement or at the expiration or obligation by the Grantee shall be returned to the State within 45 days.

REQUIREMENTS FOR ACQUISITION AND RELOCATION PROJECTS

20. The Subgrantee agrees to include in the letter of agreement signed by the property owner, a certification that: (1) the owner has revealed any other funds received for structural repairs which would represent duplicated disaster-recovery benefits such as Federal grants/ assistance or insurance proceeds, and that (2) the owner will relocate outside of any floodplain mapped by FEMA.
21. Included in the scope of work of the formal HMGP application provided by the Subgrantee in support of this Grant Agreement is a list of property owners corresponding to each parcel being acquired. These are the only properties that may be acquired.

22. The Subgrantee shall take possession of all acquired structures and parcels at time of closing.
23. A copy of the closing documentation, which includes the certified appraised value of the property, all deductions, the net balance to the seller, and legal description of the parcel shall be forwarded to the IEMA upon closing of the property.
24. If the Subgrantee is participating in the Salvage Program, permanently affixed items and appliances can only be removed from an acquired structure based upon the Property Owner Salvage List, which must be signed by both the local appraiser and the homeowner. These items must be removed prior to closing, and the value of those items must be deducted from the offer price. Be advised that IEMA strongly discourages the removal of porous items primarily due to health concerns.
25. If the Subgrantee is participating in the Structure (Home) Relocation Program, the Subgrantee must work with homeowner on a case-by-case basis.
26. Structures purchased under the HMGP must be demolished within 90 days of its purchase except in instances where the Subgrantee is implementing the Structure Relocation Program.
27. Prior to demolition or relocation, the structure may not be sold to any party without written consent from the Grantee.
28. As a result of a specific disaster, the Subgrantee may be eligible to receive funds through the Federal Public Assistance Program for the demolition of structures in the buyout. If eligible, the jurisdiction will need to implement the bidding process, select a demolition contractor, and have a Project Worksheet (formerly Disaster Survey Report (DSR)) completed by FEMA in order for the IEMA to reimburse the Subgrantee up to 75 percent of the demolition expenses. (Not Applicable)

REQUIREMENTS FOR ALL STATE CONTRACTS

29. Obligations of the State will cease immediately without penalty of further payment being required if in any fiscal year the Illinois General Assembly or Federal funding source fails to appropriate or otherwise make available sufficient funds for this agreement.
30. The Subgrantee certifies that it will comply with the requirements of the federal Drug Free Workplace Act, 41 U.S.C.A. 702 as amended, and 49 C.F.R. Part 29, subpart F, including Appendix C as amended. The Subgrantee is required to sign the enclosed Drug-Free Workplace Certification and return it with this contract.
31. Pursuant to Section 6i. of the Illinois Purchasing Act the Subgrantee shall maintain, for a

minimum of 3 years after the completion of the Grant Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the Grant Agreement; that the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the grantor agency (IEMA), the Illinois Auditor General, the Illinois Attorney general or any of their duly authorized representatives and to provide full access to all relevant materials. The IEMA reserves the right to disallow any expenditures that are deemed ineligible, unreasonable, and/or excessive, or for which supporting documentation is not available. In the event that questioned costs are ultimately deemed disallowed, as determined by the IEMA, the Subgrantee shall be responsible for repayment of such costs.

32. The Subgrantee assures that it will comply with all applicable federal statutes, regulations, executive orders, and other federal requirements in carrying out any project supported by federal funds. The Subgrantee recognizes that federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Subgrantee agrees that the most recent federal requirements will apply to the project. The Subgrantee will comply with all applicable provisions of Federal and State law and regulations in regard to procurement of goods and services.
33. The Subgrantee will comply with all Federal and State statutes and regulations relating to non-discrimination.
34. The Subgrantee will comply with provisions of the Hatch Act limiting the political activities of public employees.
35. The Subgrantee will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and to the extent applicable, Subgrantee will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Grant Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted sub agreements.
36. The Subgrantee will prohibit employees, contractors, subcontractors for a purpose that is or gives the appearance of 1) using their positions for personal gain of themselves or those with whom they have family business or ties; 2) a conflict of interest; or 3) kickbacks.
37. The Subgrantee and its employees, contractors, and subcontractors shall hold harmless the United States and its agents and employees, the State of Illinois and its agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the approval of work regardless of whether or not such claim, damage, loss of expense is caused entirely or in part by the United States or the State of Illinois.

38. The Subgrantee shall certify that (a) no Federal or State appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with 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. (b) 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 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 undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction. (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed 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.
39. The Subgrantee shall certify that they are not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State Agency if they know or should know that they are delinquent in the payment of any debt to the State as defined by the Debt Collection Board. The Subgrantee further acknowledges that the contracting State agency may declare this Grant Agreement (contract) void if this certification is false or if the Subgrantee is determined to be delinquent in the payment of any debt during the term of the Grant Agreement.
40. In accordance with the Buy American Act, 41 U.S.C. 10-10d, only steel, iron, and manufactured products produced in the United States may be purchased with Federal funds unless an exception under section b(2) or b(3) of the Buy American Act applies. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Federal Government.
41. The Subgrantee certifies to the best of his or her knowledge and belief that for each contract for federal assistance exceeding \$100,000:
- (a) No federal appropriated funds have been or will be paid by or on behalf of the Subgrantee to any person to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress regarding the award of federal assistance, or the extension continuation, renewal, amendment, or federal assistance, or the extension, continuation, renewal, amendment, or modification of any federal assistance agreement; and
 - (b) If any funds other than federal appropriated funds have been or will be paid to any person

to influence or attempt 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 any application for federal assistance, the Subgrantee assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

- (c) The language of this certification shall be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).
- 42. The subgrantee agrees to comply with the conditions established in the Record of Environmental Consideration approved by the FEMA Regional Environmental Officer.

Model Deed Restriction

Each parcel acquired with HMGP funds shall be deed restricted to include the requirements in the below Model Deed Restriction:

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.

SIGNATURES

Signature of Subgrantee's Authorized Representative:

_____ Date Signed: _____

Name Typed: Martin Tully Title: Mayor

Subgrantee Jurisdiction: Downer's Grove

Mailing Address for Disbursements:

801 Burlington
Downer's Grove, IL 60515

Signature of the Grantee (Illinois Emergency Management Agency):

_____ Date Signed: _____

Jonathon Monken
Governor's Authorized Representative

_____ Date Signed: _____

Jenifer Johnson
Legal Counsel

_____ Date Signed: _____

Kevin High
Chief Fiscal Officer