

State of Michigan
Hazard Mitigation Assistance
Grant Agreement AMENDMENT for 4195-DR-MI.
Hazard Mitigation Grant Program

July 12, 2016 to June 21, 2019

CFDA Number: 97.039 Project Number: P4195.16

This 4195-DR-MI Hazard Mitigation Grant Program (HMGP) grant agreement amendment is hereby entered between the Michigan Department of State Police, Emergency Management and Homeland Security Division (hereinafter called the Subgrantor), and the

CITY OF ANN ARBOR
(hereinafter called the Subgrantee)

I. Purpose

The purpose of this grant agreement is to assist the Subgrantee in the implementation of P4195.16 (hereinafter called the Project) -- a project to provide supplementary financial assistance for the implementation of cost-effective hazard mitigation measures that will permanently reduce or eliminate the long-term risk to human life and property from natural, technological or human-caused disasters and their effects. HMGP program funding is awarded by the Federal Emergency Management Agency (FEMA) and is administered by the Grantee.

II. Objective

The principal objective of this grant agreement is to provide financial assistance to the Subgrantee. The Subgrantee must complete the approved measures detailed in the attached 4195 HMGP formal application submitted by the Subgrantee, and summarized as follows:

Project number P4195.16 is the second phase of a two phase project for the city of Ann Arbor.

The project is for the construction of a flood relief opening in a railroad berm at approximately 42.289451, -83.745878 (latitude, longitude). The project will consist of the construction of: two approximately 200 feet by 12 feet by 7 feet hydraulic box culvert within an existing railroad berm (culvert bottom at approximately 12 feet below grade) with an underground outlet to the Huron River; a new concrete apron and headwalls with riprap; a drainage swale in the berm; a hydraulic weir associated with the hydraulic culverts at approximately 7 feet deep, with bollards for protection; and 286 linear feet of 48-inch pipe storm sewer improvements at approximately 7 feet deep. Further ground disturbance is anticipated at approximately 42.331818, -83.815757 (latitude, longitude) for disposal of excavated spoils from the project site. Temporary roads, staging areas, erosion control measures, and steel sheet piling will be used to prepare for construction.

No modifications to the approved scope of work can be implemented without prior FEMA approval. Failure to obtain FEMA approval prior to implementing a modified scope of work may result in cancellation of the grant and repayment of federal funds. Requests for modifications to the scope of work must be made to FEMA through the Subgrantor and supported by adequate justification in order to be processed. All expenses, including local match, must be appropriately documented and reasonable to be eligible for reimbursement. Expenses that are not related to the approved scope of work and budget are not eligible for reimbursement under the provisions of this grant agreement. Line items in the approved cost estimate (from the attached 4195 HMGP formal application submitted by the Subgrantee) may not fluctuate by more than 10% without prior approval from FEMA.

III. Statutory Authority

This grant agreement is made pursuant to the HMGP, Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5170c.

The Subgrantee agrees to comply with all HMGP Grant Program requirements in accordance with the Hazard Mitigation Assistance (HMA) FY 2013 Unified Guidance, located at: <http://www.fema.gov>. The Subgrantee also agrees to comply with regulations, including but not limited to the following, as applicable:

A. Administrative Requirements

1. 44 CFR, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (OMB Circular A-102)
2. 2 CFR, Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110)
3. 44 CFR, Part 10, Environmental Considerations

B. Cost principals

1. 2 CFR, Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
2. 2 CFR, Part 220, Cost Principles for Educational Institutions (OMB Circular A-21)
3. 2 CFR, Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122)
4. 48 CFR, Part 31.2 Federal Acquisition Regulations (FAR), Contract Cost Principles and Procedures, Contracts with Commercial Organizations

[The above referenced Code of Federal Regulations (CFR) documents are online at <http://www.ecfr.gov>]

C. Audit Requirements and Other Assessments

1. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at http://www.whitehouse.gov/omb/circulars_default
2. Public Law 107-300, Improper Payments Information Act (IPIA) of 2002 located at <http://www.dol.gov/ocfo/media/regs/IPIA.pdf>

IV. Hazard Mitigation Grant Program Award Amount and Restrictions

Phase 1 estimated project total	\$ 398,310.00
Phase 1 estimated local share	\$ 99,577.00
Phase 1 federal share approved (May 2016)	\$ 298,733.00
Phase 1 actual completed project total	\$ 588,796.00
Phase 1 federal share shortfall for cost overrun	\$ 142,864.00
Phase I local share contributed	\$ 147,199.00
Phase 2 estimated project total	\$4,360,980.00
Phase 2 estimated local share	\$1,090,245.00
Phase 2 federal share approved	\$3,270,735.00
Phase 1 additional federal share approved for overrun	\$ 142,864.00
Total federal share approval for both phases	\$3,712,332.00

Federal assistance is made available within the limits of funds available from Congressional appropriations for such purposes in accordance with the Stafford Act, Executive Orders 12148 and 12673, appropriate regulations found in Title 44 of the Code of Federal Regulations (CFR), as amended and currently applicable handbooks. Federal funds provided under the Stafford Act for the Hazard Mitigation Grant Program are limited to a maximum of seventy five percent (75%) of the total eligible costs. If there is a cost under-run for the project, final reimbursement for the federal share of the project costs will be adjusted based on actual costs of the project. **The Subgrantee shall provide the required nonfederal matching funds.**

Adjustments may be made among cost line items in the approved budget (from the 4195 HMGP formal application submitted by the Subgrantee) up to a cumulative threshold of ten percent (10%) of the total budget without seeking formal approval from FEMA. Adjustments exceeding this threshold must be approved in advance by FEMA. Requests for a budget revision must be made to FEMA through the Subgrantor and supported by adequate justification in order to be processed. The federal share will not be increased.

Any costs incurred prior to September 25, 2014 (the date 4195-DR-MI was declared a disaster), are not allowable costs for the grant. Eligible costs incurred prior to the award but on or after September 25, 2014 are allowable if identified as separate (pre-award) line items in the application cost estimate and approved by FEMA.

V. Responsibilities of the Subgrantee

4195 HMGP funds must supplement, not supplant, state or local funds. Federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Potential supplanting will be carefully reviewed in the application review, in subsequent monitoring, and in the audit. The Subgrantee may be required to supply documentation certifying that it did not reduce non-federal funds because of receiving federal funds. Federal funds cannot be used to replace a reduction in non-federal funds or solve budget shortfalls in general fund programs.

The Subgrantee agrees to follow all responsibilities set forth in this grant agreement. Section V includes a list of these responsibilities with further detail provided in following sections. If the Subgrantee becomes unable to fulfill the responsibilities of Section V, refer to Section XI for instructions on how to terminate this agreement. The Subgrantee agrees to comply with all applicable federal and state regulations and program requirements, including the following:

- A. In addition to this 4195 HMGP grant agreement, Subgrantees shall complete, sign, and submit to the Subgrantor the following documents, which are incorporated by reference into this grant agreement:
 1. Standard Assurances
 2. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirement
 3. State of Michigan Audit Certification (EMD-053)
 4. Request for Taxpayer Identification Number and Certification (W-9)
 5. Other documents that may be required by federal or state officials
- B. The 4195 HMGP Grant covers eligible costs from September 25, 2014 until June 21, 2019. Allowable costs are only those specifically detailed in the attached 4195 HMGP formal application submitted by the Subgrantee. For costs incurred between September 25, 2014 and July 12, 2016, only those that are specifically identified in the attached 4195 HMGP formal application submitted by the Subgrantee as "pre-award" costs are eligible for reimbursement.
- C. The Subgrantee shall provide at least 25 percent matching funds from nonfederal sources. Approval of in-kind match is at the sole discretion of the Subgrantor; the Subgrantor reserves the right to deny or adjust in-kind match, if necessary. (Community Development Block Grant funds, though federal in origin, lose their federal identity and are an acceptable matching source.)
- D. Make all purchases and/or procure services in accordance with grant guidance and local purchasing/procurement policies.
- E. Implement the project in conformance with 44 CFR, Part 80, Property Acquisition and Relocation for Open Space located at <http://www.ecfr.gov>.
- F. The Subgrantee shall maintain good standing with the National Flood Insurance Program (NFIP) and comply with local regulations pertaining to the NFIP. **If the Subgrantee fails to maintain good standing in the NFIP and to enforce NFIP requirements for all development in identified flood hazard areas, the Subgrantee shall repay to Subgrantor the 4195 HMGP funds related to the Project.**
- G. The Subgrantee shall comply with all applicable codes, standards, and permitting requirements that pertain to this project and shall **provide maintenance as appropriate and required for the life of the Project.**
- H. Submit quarterly progress reports to the Subgrantor on the status of this approved project. Quarterly progress reports must be submitted on form EMD-16 no later than 15 days following the end of the fiscal quarter. Quarterly reports shall be submitted each quarter until the project is complete and all grant requirements have been met (starting with the quarter in which this grant agreement was issued). The due dates for quarterly reports are identified in Section VII of this agreement.
- I. Comply with applicable financial and administrative requirements set forth in the current edition of 44 CFR, Part 13 including the following provisions:

1. Account for receipts and expenditures, maintain adequate financial records, and refund expenditures disallowed by federal or state audit.
 2. Retain all financial records, supporting documents, statistical records, and all other records pertinent to the 4195 HMGP for at least three years after the financial close-out date of this grant program by FEMA for purposes of federal and/or state examination and audit.
 3. Perform the required financial and compliance audits in accordance with the Single Audit Act of 1984, as amended and OMB Circular A-133 "*Audits of States, Local Governments, and Non-Profit Organizations*" as further described in 44 CFR, Part 13. Random audits shall be performed to ensure compliance with applicable provisions.
 4. Subgrantor and the Subgrantee 4195 HMGP information constitute records subject to the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq. See section XV for more information.
- J. Environmental and Historic Preservation Program (EHP): The federal government is required to consider the potential impacts to the human and natural environment of projects proposed for federal funding. The EHP engages in a review process to ensure that federally-funded activities comply with various federal laws. The goal of these compliance requirements is to protect our nation's water, air, coastal, wildlife, agricultural, historical, and cultural resources, as well as to minimize potential adverse effects to children and low-income and minority populations. The Subgrantee shall not undertake any project having the potential to impact EHP resources without prior approval.

Any activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for federal funding.

All necessary permits must be obtained for the project and are the responsibility of the Subgrantee. The project must be implemented in conformance with 44 CFR, Part 9, *Floodplain Management and Protection of Wetlands*, 44 CFR, Part 10 *Environmental Considerations*, and the environmental conditions that have been identified through the *National Environmental Policy Act* review. These conditions can be found in one or more of the following FEMA documents:

- Record of Environmental Consideration
- Categorical Exclusion ("CATEX") Letter/Memo
- Environmental Assessment
- Finding of No Significant Impact

VI. Responsibilities of Subgrantor

The Subgrantor, in accordance with the general purposes and objectives of this grant agreement, will:

- A. Administer the 4195 HMGP in accordance with all applicable federal and state regulations and guidelines and provide quarterly reports to FEMA documenting this administration.
- B. Provide direction and technical assistance to the Subgrantee.
- C. Provide to the Subgrantee any special report forms and reporting formats (templates) required for operation of the program.
- D. Reimburse the Subgrantee, within the limits of funds available from Congressional appropriations for such purposes and in accordance with this grant agreement, for the federal share of allowable project expenses based upon the Project Application approved by FEMA.
- E. At its discretion, independently or in conjunction with FEMA, may conduct random on-site reviews with Subgrantee(s).

VII. Reporting Procedures

Submit quarterly progress reports to the Subgrantor on the status of all funding using the Hazard Mitigation Grant Program Quarterly Progress Report form (EMD-16). Quarterly progress reports are required whether or not expenditures are incurred.

Failure by the Subgrantee to fulfill quarterly reporting requirements as required by the grant may result in the suspension of grant activities until reports are received.

Reporting periods and due dates for each year are as follows:

- January 1 through March 31; Due April 15
- April 1 through June 30; Due July 15
- July 1 through September 30; Due October 15
- October 1 through December 31; Due January 15

Quarterly progress reports are to be submitted by the 15th of the month following the end of each quarter. Quarterly progress reports should be mailed to the Michigan State Police, Emergency Management and Homeland Security Division, PO Box 30634, Lansing, Michigan 48909, unless the Subgrantee is otherwise notified by the Subgrantor.

VIII. Payment Procedures

The Subgrantee agrees to prepare the **Request for Reimbursement of Mitigation Project Expenses** form and all required attached documentation, including all required authorized signatures, and submit these to Subgrantor.

The Subgrantor's timely receipt and verification of all required documentation is a condition of payment. The Subgrantor may pursue all available remedies for the recoupment of any advance payments that have been inadequately documented or determined by the Subgrantor to have been improperly made or expended for any reason.

Subject to the exercise of Subgrantor's sole discretion, three types of payments may be made to the Subgrantee for this Project:

- A. If the Subgrantee provides the Subgrantor with a letter indicating the amount of reimbursement requested along with completed reimbursement request forms, as well as supporting documentation demonstrating the total expenditures to date for eligible Project activities, the Subgrantee may, at the Subgrantor's sole discretion, receive reimbursement of eligible expenditures of up to 75% of the **federal share** of the grant. The Subgrantor will review the expenditures and make payment of no more than 75% of total eligible expenditures to date. **Prior to Project completion, the Subgrantor will pay to the Subgrantee no more than a total (including all advance and reimbursement payments) of 75% of the federal share of the grant.**
- B. Upon the Subgrantee's completion of the Project, the Subgrantor will inspect the Project and review all expenditures for eligibility prior to making final payment to the Subgrantee. To receive final payment, the Subgrantee shall provide the Subgrantor with a letter indicating the project is complete. Along with the letter, the Subgrantee must provide completed reimbursement request forms that include the total expenditures for the project and separate documentation supporting each expenditure category.
- C. In rare circumstances only, if the Subgrantee provides the Subgrantor with a letter outlining the immediate need for an advance payment and the amount of the requested advance, the Subgrantee may (at the Subgrantor's sole discretion) receive an initial advance payment of up to 50% of the Subgrantee's federal share of the grant. Pursuant to federal regulations, the Subgrantee shall minimize the time between the receipt of advance funds and disbursement of those funds for eligible expenditures. Any interest is earned over \$100 must promptly, but at least quarterly, be remitted to: MSP/EMHSD, Grants and Financial

Management Section, PO Box 30634, Lansing, Michigan 48909. The Subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

No payment will be made unless all quarterly reports have been submitted and are up to date.

IX. Employment Matters

Subgrantee shall comply with Title VI of the *Civil Rights Act of 1964*, as amended; Title VIII of the *Civil Rights Act of 1968*; Title IX of the *Education Amendments of 1972 (Equal Opportunity in Education Act)*; the Age Discrimination Act of 1975; Titles I, II and III of the *Americans with Disabilities Act of 1990*; the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants. The Subgrantee shall not discriminate against any employee or applicant for employment, to be employed in the performance of this grant agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment; or any matter directly or indirectly related to employment because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, limited English proficiency, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Subgrantee agrees to include in every subcontract entered into for the performance of this grant agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of the grant agreement.

The Subgrantee shall ensure that no subcontractor, manufacturer, or supplier of the Subgrantee for projects related to this grant agreement appears on the Federal Excluded Parties List System located at <https://www.sam.gov>.

X. Limitation of Liability

The Subgrantor and the Subgrantee to this grant agreement agree that each must seek its own legal representative and bear its own costs, including judgments, in any litigation that may arise from performance of this contract. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

This is not to be construed as a waiver of governmental immunity.

XI. Third Parties

This grant agreement is not intended to make any person or entity not a party to this grant agreement a third party beneficiary hereof, or to confer on a third party any rights or obligations enforceable in their favor.

XII. Grant Agreement Period

This grant agreement is in full force and effect from July 12, 2016 through June 21, 2019. No costs eligible under this grant agreement shall be incurred before the starting date of this grant agreement except with prior written approval. This grant agreement consists of two identical sets simultaneously executed; each is considered an original having identical legal effect. This grant agreement may be terminated by either party by giving thirty (30) days written notice to the other party stating reasons for termination and the effective date, or upon the failure of either party to carry out the terms of the grant agreement. Upon any such termination, the Subgrantee agrees to return to the Subgrantor any funds not authorized for use, and the Subgrantee shall have no further obligation to reimburse the Subgrantor.