



STORMWATER MANAGEMENT COMMISSION

April 2, 2020

TO: Lake County Stormwater Management Commission
FR: Mike Warner, Executive Director
Sharon Østerby, Water Resource Professional
RE: FEMA Pre-Disaster Mitigation Grant Agreement-Beach Park

ACTION REQUESTED: APPROVAL-Intergovernmental Agreement with Beach Park

The FEMA Pre-Disaster Mitigation Grant Agreement was approved by the SMC on November 7, 2019 and provides funding for the purchase, demolition and site stabilization of four residential structures: two homes at risk from a landslide in Beach Park, and two flood-prone properties in Highland Park. This project is a continuation of the SMC Voluntary Floodplain Buyout Program. In the last two months there have been two additional slope failures along Bull Creek in Beach Park prompting emergency eviction of one of the houses by Beach Park building officials. SMC applied general engineering funding for a structural engineering inspection of the situation, which resulted in a determination of imminent failure.

The federal cost share provided by FEMA through IEMA is \$1,196,983.50. The non-federal cost-share is \$398,994.50, which will be provided by the Village of Beach Park, the City of Highland Park and SMC project funding.

Attached for your approval is the Intergovernmental Agreement with the Village of Beach Park for contribution of funding and in-kind services for a not-to-exceed amount of \$135,193, for this PDM acquisition project.

SMC will administer the project and receive reimbursement for project management and grant administrative services.

If you should have any questions regarding this project, please feel free to contact Sharon Østerby at 847-377-7706 or Mike Warner at 847-377-7716.

RESOLUTION 2020-R-9

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN LAKE COUNTY
STORMWATER MANAGEMENT COMMISSION AND THE VILLAGE OF
BEACH PARK**

WHEREAS, the Village of Beach Park the Lake County Stormwater Management Commission have negotiated a intergovernmental agreement regarding Bull Creek erosion and restoration in the Village of Beach Park; and

WHEREAS, the Village of Beach Park has determined that it would be in the best interests of the Village to enter into said agreement.

NOW, THEREFORE, be it resolved by the Village Board of the Village of Beach Park, Lake County, Illinois, that the Village Administrator is hereby authorized to execute the intergovernmental agreement and all other documents and instruments as needed relating to the attached agreement with Lake County Stormwater Management Commission, labeled Exhibit A.

FURTHER RESOLVED: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

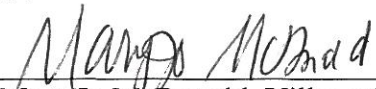
APPROVED this 12th day of March 2020, pursuant to a roll call vote as follows:

	Ayes:	Nays:	Absent:	Abstain:
Richard Gust	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Don Jensen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Regina Miller	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Mark Ottersen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Linda Sittig	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Larry Wells	<u> </u>	<u> </u>	<u>X</u>	<u> </u>

APPROVED:

By:  Date: 3-13-20
John Hucker, Mayor

ATTEST:

By: 
Mary Jo McDonald, Village Clerk

Presented and read, or reading having been waived, at a duly convened meeting of the Corporate Authorities on March 12, 2020.

INTERGOVERNMENTAL AGREEMENT
between
LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
and the
VILLAGE OF BEACH PARK

(9950 and 9968 Marguerite Lane, BEACH PARK; 2017 FEMA Pre-Disaster Mitigation Grant)

THIS AGREEMENT is made between the Lake County Stormwater Management Commission ("SMC"), acting pursuant to a cooperative agreement with the State of Illinois, Illinois Emergency Management Agency (IEMA), ("STATE"), and the Village of Beach Park, Illinois ("VILLAGE").

WITNESSTH:

WHEREAS, the SMC and the VILLAGE are legal entities and existing under the laws of the State of Illinois, having among their powers to contract with one another to perform the undertakings described in this AGREEMENT; and

WHEREAS, the SMC has entered into a cooperative agreement with the STATE (IEMA) dated October 2, 2019 in which the SMC is authorized to acquire certain landslide-prone, real property, and which property is subject to certain perpetual conditions and restrictions; and

WHEREAS, the SMC has adopted a long-range hazard mitigation plan to acquire privately-owned real property, in conjunction with the STATE, located in Lake County's ravine erosion hazard areas, for public use, thereby eliminating threats to public health and damages to private dwellings and other structures caused by ravine erosion; and

WHEREAS, the SMC has been authorized to purchase, by the STATE, certain real property, described in Exhibit A, as a part of the Pre-Disaster Mitigation Project, located within a ravine erosion hazard area and within the corporate limits of the SMC and the VILLAGE; and

WHEREAS, the SMC has determined that it shall be the intent to convey said real property described in Exhibit A, by a vote of 2/3 of its Commissioners in accordance with the Local Government Property Transfer Act (50 ILCS 605/2 (a)), to the VILLAGE, subject to the restrictions contained in this Agreement and upon completion of the parties obligation in this agreement; and

WHEREAS, the VILLAGE has determined that it is necessary and convenient to acquire the real property described in Exhibit A from the SMC for open space public use, subject to the conditions and restrictions contained in the Deed from the STATE to the SMC and the restrictive covenants of this Agreement as described in Exhibit B, pursuant to an ordinance enacted in accordance with the Local Government Property Transfer Act (50 ILCS 605/2 (a)); and

WHEREAS, the VILLAGE shall contribute funding and in-kind services, as the VILLAGE's contribution to the *STATE/SMC* acquisition of the real property described in Exhibit A, including acquisition, structure removal, slope stabilization and site restoration, for a not-to-exceed amount of \$135,193; and

WHEREAS, the entering into, and implementation of, this AGREEMENT will further and enhance the public policy of intergovernmental cooperation.

NOW THEREFORE, for and in consideration of the benefits to be derived from the implementation of the Lake County Pre-Disaster Mitigation Project, the sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions:

1. Mutual Agreement. Village and SMC agree:

- a. The VILLAGE and the SMC will work cooperatively to achieve the following goals and tasks of this PROJECT to mutually gain experience and knowledge in working towards future flood mitigation efforts.
- b. Cost-share. The cost share partnership, as specified in this Agreement, is only valid for this PROJECT.
 - i. The Village shall contribute funding and/or in-kind services for a not-to-exceed amount of \$135,193 for project related expenditures; and
 - a. In-kind services or contributions provided by the Village for project-related expenditures will be based upon a mutually agreed value and will reduce the Village's not-to-exceed amount cost share on the overall construction component, which includes both demolition and slope construction phases.
 - b. Construction bids awarded which are lower than the project budget for construction shall proportionately reduce the Village's cost share on the overall construction component, which includes both demolition and slope construction phases.
- c. Property Purchase.
 - i. The parties agree that the use of the subject real property (Exhibit A) shall be restricted to open space public use, and no improvements shall be made to or on the real property other than flood hazard mitigation improvements, or those improvements permitted under the conditions and restrictions contained in the Deed Restrictions from the STATE to the SMC or the restrictive covenants described in Exhibit B.
 - ii. If the subject real property (Exhibit A) ceases to be used for open space public use, upon thirty (30) days written notice to the Village of Beach Park and a ninety (90) day right to cure, legal title to said real property shall revert to the SMC. These conditions and restrictions shall run with the land.
 - iii. Upon approval by the State and Commission, the SMC shall convey the subject real property to the VILLAGE by Quit Claim deed, subject only to

restrictions of record and to the restrictions provided in Paragraph 2 above and in Exhibit B. The SMC shall provide current date title insurance, at its own cost, identifying VILLAGE as Grantee.

- iv. The VILLAGE agrees that acquisition of the subject property is necessary and convenient for open space public use, subject to the restrictions set forth in Paragraph 2 above and in Exhibit B.
- v. This AGREEMENT does not relieve the VILLAGE from obtaining any necessary federal, state, or local permit(s) required for any flood hazard mitigation improvement(s) or other permitted improvement(s) to or on the subject property
- d. Demolition. Implement demolition process of the building and all appurtenances.
- e. Restoration. Excavation, grading, seeding and necessary construction according to the construction and restoration plans for the property and slope stabilization.
 - i. The Village shall be given the opportunity to comment on design and construction plans; however, SMC and the Village will defer final design decisions to the Professional Engineer responsible for stamping plans.

2. SMC Agreements. SMC agrees as follows:

- a. Documentation. SMC will coordinate with the VILLAGE on all tasks, methods, and outcomes to mutually gain experience and knowledge from this PROJECT.
- b. Engineering & Design. SMC will procure a qualified engineering firm for Engineering & Design plan set for the PROJECT.
- c. Permits and Landowner Agreements. The SMC in coordination with the VILLAGE, shall secure all necessary permits.
- d. Property Purchase. SMC will be the Purchaser of the subject real property and improvements thereon.
- e. Demolition. The SMC will procure a qualified contractor to perform work necessary to properly and safely demolish the structure and appurtenances, include utility coordination and disposal of debris.
- f. Restoration. SMC agrees to procure a qualified contractor for the restoration and slope stabilization work and provide technical and construction assistance as necessary.
- g. Maintenance. The SMC will provide annual inspections of the slope for a 10-year period following the completion of the project and will perform maintenance, as needed within this 10-year period.

3. VILLAGE Agreements. VILLAGE agrees as follows:

- a. Documentation. VILLAGE will coordinate with SMC to document all tasks, methods, and outcomes to mutually gain experience and knowledge from this PROJECT.

- b. Permits and Landowner Agreements. The VILLAGE will provide assistance to the SMC to secure all necessary permits necessary prior to the implementation of the construction plans.
 - c. Demolition. The VILLAGE agrees to provide technical and construction assistance as necessary to the SMC and/or SMC's contracted firm in tasks related to the demolition process.
 - d. Restoration. The VILLAGE agrees to provide technical and construction assistance to the SMC in tasks related to the restoration and slope stabilization process.
 - e. Maintenance. The VILLAGE, after the 10-year period described in paragraph 2.g., in perpetuity, shall perform long term maintenance for the property.
4. This AGREEMENT may only be modified, supplemented, or amended by mutual agreement, in writing, by the parties hereto.

IN WITNESS WHEREOF the parties, by their duly authorized officers, have executed this AGREEMENT, effective the date approved and executed by the Chairman of the SMC.

VILLAGE OF BEACH PARK

LAKE COUNTY STORMWATER
MANAGEMENT COMMISSION



Mayor

Chairman

Date: 3.12.20

Date: _____

ATTEST:

ATTEST:



Village Clerk

Secretary

EXHIBIT A

LEGAL DESCRIPTIONS

PROPERTY A: 9950 Marguerite Lane, Beach Park, Illinois 60099
PIN: 04-34-107-002

LOT 31 IN BEACHVIEW ESTATES, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 34 AND PART OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 46 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 10, 1978 AS DOCUMENT 1909005, IN BOOK 65 OF PLATS, PAGE 8, IN LAKE COUNTY, ILLINOIS.

PROPERTY B: 9968 Marguerite Lane, Beach Park, Illinois 60099
PIN: 04-34-107-052

LOT 32 IN BEACHVIEW ESTATES BEING A SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 46 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 46 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 10, 1978 AS DOCUMENT 1909005, IN LAKE COUNTY, ILLINOIS, EXCEPT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 32; THENCE SOUTH 17 DEGREES 58 MINUTES 19 SECONDS EAST ALONG THE EAST LINE OF LOT 32, A DISTANCE OF 83.78 FEET; THENCE SOUTH 68 DEGREES 28 MINUTES 42 SECONDS WEST, A DISTANCE OF 125.33 FEET TO THE SOUTH LINE OF LOT 32; THENCE NORTH 56 DEGREES 10 MINUTES 09 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 32; A DISTANCE OF 12.50 FEET TO THE SOUTHWEST CORNER OF SAID LOT 32; THENCE NORTH 23 DEGREES 33 MINUTES 59 SECONDS EAST 19.26 FEET TO THE BEND IN THE WEST LINE OF SAID LOT 32; THENCE NORTH 02 DEGREES 03 MINUTES 37 SECONDS WEST, A DISTANCE OF 98.10 FEET TO THE NORTHWEST CORNER OF LOT 32; THENCE NORTH 88 DEGREES 13 MINUTES 05 SECONDS EAST, A DISTANCE OF 97.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 9,228 SQ. FT. 0.212 ACRES MORE OR LESS.

EXHIBIT B

RESTRICTIVE COVENANTS

LAKE COUNTY STORMWATER MANAGEMENT COMMISSION

PIN(S): 04-34-107-002 (9950 Marguerite Lane, Beach Park, Illinois, 60099)
04-34-107-052 (9968 Marguerite Lane, Beach Park, Illinois, 60099)

In reference to the property or properties in Exhibit A ("Property") conveyed by the Deed between the Property Owners participating in the federally assisted acquisition project FEMA ("the Grantor"), through the Illinois Emergency Management Agency ("the Grantee") and the Lake County Stormwater Management Commission, ("the Sub-Grantee"), its successors and assigns:

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, 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 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 severely eroded ravines, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, the STATE has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program Grant Agreement with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

WHEREAS, the properties are located in the Village of Beach Park, and the Village of Beach Park participates in the National Flood Insurance Program (NFIP) and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the LAKE COUNTY STORMWATER MANAGEMENT COMMISSION, acting by and through the Lake County Stormwater Management Commission Board, has applied for and been awarded federal funds pursuant to an agreement with the STATE dated October 2, 2019, 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 COMMISSION agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

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

1. Terms. Pursuant to the terms of the **Pre-Disaster Mitigation Grant Program** statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property as described in Exhibit A and acquired by the COMMISSION 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 restroom; 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 purposes 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 COMMISSION, 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 COMMISSION, 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 COMMISSION may convey a property interest only to a public entity or to a qualified conservation organization. However, the COMMISSION 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 COMMISSION 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 COMMISSION 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 6/1, the COMMISSION, in coordination with any current successor in interest, shall submit through the STATE to the FEMA Regional Administrator a report certifying that the COMMISSION 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 COMMISSION, 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 COMMISSION, and subsequent holders of the property interest at the time of enforcement, shall include the following:

- a. The STATE will notify the COMMISSION 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 COMMISSION 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 for the STATE, and COMMISSION; and current holder of the property interest.
 - b. Requiring transfer of title. The COMMISSION or 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 COMMISSION only to the extent that such amendment does not affect the fundamental 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.

LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
PIN(S):

04-34-107-002 (9950 Marguerite Lane, Beach Park, Illinois, 60099)
04-34-107-052 (9968 Marguerite Lane, Beach Park, Illinois, 60099)

Dated this _____ day of _____, _____

Michael Warner (Signature)
Lake County Stormwater Management Commission

Executive Director
Title (Print/Type)

STATE OF ILLINOIS, COUNTY OF _____ SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY THAT Michael Warner, personally known to me to be the Executive
Director of the Lake County Stormwater Management Commission, personally known to
me to be the same person whose name is subscribed to the foregoing instrument,
appeared before me this day in person, and acknowledged that they signed and delivered
the said instrument, pursuant to the authority given by the Lake County Stormwater
Management Commission Board of Commissioners, as their free and voluntary act, for
the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, _____

Notary Public

My commission expires on _____, _____