

Agreement Number: 18HL-A7-11-16-02-040

Project Number: HLMP18-023

**MODIFICATION TO STATE GRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
CITY OF POMPANO BEACH**

This Modification Number One is made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and the City of Pompano Beach ("the Recipient") to modify Agreement Number: 18HL-A7-11-16-02-040, dated August 16, 2017 ("the Agreement").

WHEREAS, the Division and the Recipient have entered into the Agreement, pursuant to which the Division has provided a state grant to the Recipient under the Hurricane Loss Mitigation Program of \$194,000.00, in State Funds; and

WHEREAS, the Division and the Recipient desire to modify the Agreement; and

WHEREAS, the Division and the Recipient desire to modify the Budget and Scope of Work by increasing the State funding by \$100,000.00 under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is amended to increase the State Funding by \$100,000.00, for the maximum amount payable under the Agreement to \$294,000.00, (Two Hundred Ninety Four Thousand Dollars and No Cents).
2. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in the 1st Revised Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.
3. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.
4. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.
5. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

RECIPIENT: _____

By: _____

Name and Title: _____

Date: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Wesley Maul, Director

Date: _____

ATTACHMENT “A”
SCOPE OF WORK AND BUDGET
1st Revision

HISTORICAL BACKGROUND

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (“Cat Fund”). Codified in section 215.555, Florida Statutes, the Cat Fund: (1) provides a form of reinsurance for residential property insurers; and, (2) authorizes the expenditure of certain moneys to support programs that mitigate hurricane losses.

Section 215.555 requires that each insurance company pay premiums into the Cat Fund; those premiums are calculated based on actual catastrophic exposure. Initially, the Cat Fund collected from both “Participants” and “Non-Participants.” The term “Participants” refers to insurers who provide residential policies and small business commercial policies covering structures and contents; the term “Non-Participants” refers to insurers who provide property and casualty coverage. The latter is broader than the former; and, the former falls under the broader category of the latter. In other words, “Non-Participant” coverage includes “Participant” coverage; but, “Non-Participant” coverage also includes other types of insurance.

The State Board of Administration oversees the Cat Fund, which qualifies as a trust fund under state law.

In 1994, the Internal Revenue Service (“IRS”) issued a letter addressing the status of the Cat Fund for Federal income tax purposes. Recognizing that Participant contributions to the Cat Fund make the Fund look like a taxable, reinsurance program, the IRS nonetheless concluded that revenue earned by the Cat Fund qualifies as tax-exempt. In reaching this conclusion, the IRS focused on two, key components of the program: (1) the Non-Participant contributions; and, (2) the fact that the “State will appropriate moneys from the Fund each year and expend such moneys for specified purposes which are unrelated to its obligations under the Contracts.” Thus, in finding the Cat Fund tax exempt, the IRS relied at least in part on the mandatory use of some Cat Fund moneys for the public purpose of hurricane loss mitigation.

For fiscal year 1997-1998, the Legislature appropriated the \$10 million from the Cat Fund and split that appropriation into three categories: \$4.1 million to match grants from the Federal Emergency Management Agency; \$3.1 million going to the Residential Construction Mitigation Program under the Department of Community Affairs; and, \$2.8 million for sand dune restoration.

Citing policy considerations, Governor Chiles vetoed the \$2.8 million appropriation for sand dune restoration. In his veto message, Governor Chiles stated that “funding of these projects from these funds would set the wrong precedent; these funds should be for the purpose of enhancing residential mitigation.”

Despite the IRS’ reliance on Florida’s assertion that it would annually appropriate at least \$10 million in Cat Fund moneys for hurricane loss mitigation programs, Governor Chiles’ decision to veto the sand dune appropriation reduced that year’s overall mitigation appropriation down to \$7.2 million.

In 1999, the Florida Legislature passed the “Bill Williams Residential Safety and Preparedness Act” (“the Act”). With an effective date of July 1, 2000, the Act created the Hurricane Loss Mitigation Program (“HLMP”) as outlined in section 215.559, Florida Statutes.

The House of Representatives staff analysis describes the purpose of the Act as follows: “This bill creates the Hurricane Loss Mitigation Clearing Trust Fund (“HLMCTF”) to receive transfers from the Florida Hurricane Catastrophe Fund (“Cat Fund”) to provide funding for hurricane mitigation programs.” Addressing the concern that another line item veto could threaten the tax exempt status of the Cat Fund, the analysis goes on to state: “The creation of the HLMCTF assures that the \$10 million will be appropriated from the Cat Fund, thus making it less likely that a line item veto will jeopardize the tax exempt status of the Cat Fund.”

PRESENT SITUATION

Currently, the Legislature annually appropriates \$10 million from the Florida Hurricane Catastrophe Fund to the Florida Division of Emergency Management (“Division”) for the Division to administer the HLMP. By statute, that \$10 million is allocated as follows:

- \$3.5 million to “to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.”
- \$3 million “to retrofit existing facilities used as public hurricane shelters”
- \$2.8 million “to inspect and improve tie-downs for mobile homes”
- \$700,000 “to the Florida International University center dedicated to hurricane research”

Previously, the Division allocated \$3.5 million for the Residential Construction Mitigation Program (“RCMP”), which provided grant funding to governmental entities, nonprofit organizations, and qualified for-profit organizations as a means to improve the resiliency of residential structures within their communities. The RCMP utilized a benefit-cost analysis (BCA) for each of the submitted projects in order to determine whether the mitigation retrofits were cost-effective.

Presently, the Division seeks to expand the \$3.5 million HLMP appropriation beyond just the RCMP. Going forward, the Division will allocate \$3.5 million for construction mitigation efforts that will “prevent or reduce losses or reduce the cost of rebuilding after a disaster” – provided that the construction:

- Involves a structure; and,
- Does not supplant any other mitigation grant program funded by or through the Division.

Current mitigation grant programs funded by or through the Division that involve structures include:

- Elevating residential structures; and,
- Tearing down residences and converting the real property into perpetual greenspace;

Therefore, no HLMP construction mitigation proposal shall duplicate either of the two mitigation grant programs outlined above.

The Recipient will provide mitigation retrofit improvements as identified in RFP-DEM- 16-17-048 on as many qualified structures as possible during the period of performance for this Agreement and within the awarded amount. The Division of Emergency Management's (Division) Property Information Sheet (PIS) will be the controlling document that monitors expenditures for the approved mitigation properties.

All structures shall be located in the geographical boundaries of the State of Florida and be approved by the Division. The Recipient shall focus on a comprehensive approach that ties together all aspects of mitigation.

The Recipient shall be responsible for the implementation, management, coordination, and facilitation of all aspects related to the mitigation retrofit projects approved under this RFP.

After the execution of a State-Funded Grant Agreement, the Recipient shall conduct an inspection of properties and identify a group of properties eligible for mitigation retrofit improvements. The Recipient shall submit a list of those properties to the Division within forty-five days of the signed and executed contract. The Recipient shall submit property information and the estimated mitigation costs on a 2018 Property Information Spreadsheet (PIS) pdf provided by the Division at the time of award or contract execution. Color photographs of the structures (four elevations, all openings to include doors, roof pictures at least level with the roof, condition of the soffit and fascia, interior attic pictures, and any other visual documentation for additional mitigation) are required with the submission of the PIS. Color photographs are to be sent in jpeg form to the Division for review. The Recipient may identify additional properties over the course of the fiscal year until all awarded funds are expended (see table 1).

Authorized mitigation retrofit improvements include:

- a) Replacement of roof sheathing;
- b) Replacement of roof covering;
- c) Strengthening of roof deck attachment;
- d) Installation of secondary water barrier;
- e) Installation of hurricane straps;
- f) Installation of window and door opening protection;
- g) Installation of hurricane resistant windows and doors;
- h) Brace bottom chord gable end;
- i) Anchoring of wall or floor units to the foundation; and,
- j) Other mitigation construction efforts involving structures provided that the construction does not supplant any other mitigation grant program funded by or through the Division.

The intent of the program is to mitigate a structure comprehensively. Comprehensive mitigation takes into account as many facets of mitigation as can be achieved given the Recipient's budget for an identified structure. Where a comprehensive approach cannot be implemented, the Recipient must clearly justify (i.e., structure has already been partially mitigated or structure does not otherwise require certain measures) the reasons for the deviation. All awarded funds must be directly related to mitigation improvements.

The Division will conduct a benefit-cost analysis (BCA) for each of the submitted properties to determine if the mitigation retrofits are cost-effective. The BCA results in a numerical ratio expression of the cost-effectiveness of a mitigation project and is calculated as: total project mitigation benefits divided by total project mitigation costs. A property with a BCA ratio of one or greater has more benefits than costs and is therefore considered cost-effective. Some of the submitted properties may receive a BCA ratio of less than one (1). However, if the combined BCA ratio for the submitted group of properties is equal to one (1) or greater the group of properties may be approved. Specific properties may be added or withdrawn if necessary in order to achieve a combined BCA of one (1) or greater.

Upon the Recipient receiving a BCA score of (1) or greater, the Division will alert the Recipient to begin the processing of open bidding for construction services. **It is important to note that no construction shall be started prior to the Division's approval of the mitigation improvements.**

The HLMP grant is a reimbursable grant. Therefore, no Pre-award costs are authorized. Further, the Recipient should secure funding in order to ensure maximum performance. The Division expects that each Recipient will fully spend their awarded grant amount. The Division retains the right to review Recipient performance and take corrective action at any time. The following Tasks and Deliverables will be achieved in order for the Recipient to be reimbursed.

Task 1 (Identification and inspection): The Recipient shall identify structures for possible mitigation improvements. Then, the Recipient shall conduct a comprehensive mitigation inspection of all identified structures. The mitigation inspection shall be performed by a state certified mitigation inspector or local building official. The inspector shall identify any previous mitigation improvements as well as any mitigation deficiencies. The inspector shall further ensure that all necessary information is given to the Recipient (i.e. measurements, counts, and applicable notes). Additionally, the inspector shall opine whether the structure can be retrofitted to effectively improve structural survivability.

Task 2 (Submission of the PIS): The Recipient shall submit to the Division a PIS for each structure identified for possible mitigation retrofits. The Recipient will provide all the requested information for each structure, to include color photographs. The electronic PIS will be provided to the Recipient by the Division. The original document should not be altered in any way. As part of the submission, the Recipient shall identify whether:

- a) the structure is on grade or not;
- b) any unpermitted work has occurred at the structure; and,
- c) , if any outstanding liens or judgments are attached to the structure or its underlying property.

Task 3 (Scope of work development): The Recipient shall develop a Scope of Work (SOW) for each property approved by the Division. The SOW shall be based on all the mitigation retrofit measures identified on the PIS and approved by the Division. If required by the local building official, certified drawings will be developed for mitigation improvements and approved by a State of Florida Registered Professional Engineer or Florida Registered Architect as required. The Recipient shall select a Qualified, Licensed Florida Contractor in accordance with the Recipient's procurement policy to complete the SOW for each Division approved structure.

Task 4 (Construction): Upon completion and approval of Tasks 1 through 3 by the Division, the construction phase shall commence. The Recipient, or its Subcontractors, shall complete all mitigation retrofit measures as approved by the Division that have been identified on the PIS. The minimum level of required service includes, but is not limited to the completion of all or some of the mitigation retrofit measures identified the PIS. All construction work shall be completed by a Qualified and Licensed, Florida Contractor.

Task 5 (Final inspection): Upon completion of the mitigation retrofit improvements, a post inspection must be performed by the Recipient and a member of the Division's Technical Unit to ensure that all activities on the scope of work have been properly completed in compliance with issued building permits, as well as, any and all applicable Florida Building Codes, local building codes, industry standards and Manufacturer's Specifications.

Requests for reimbursement: During the course of the Fiscal Year, the Recipient is required to submit, at a minimum quarterly, Request for Reimbursements (RFR). The recipient is required to submit a quarterly report on the progress of the overall project. The quarterly report is due no later than 15 calendar days past the end of the quarter (see table 1). Documentation is required to support each RFR, Examples of supporting documentation are provided below for both construction expenses and administrative expenses. In some cases, all the mitigation retrofit improvements may not be fully completed; however, a partial reimbursement request may be submitted. Additional documentation in the form of an Affidavit signed by the project manager attesting to the completion of the work identified in RFR is required.

Construction expenses (Direct): The Recipient will pre-audit bills, invoices, and/or charges submitted by the subcontractors and pay the subcontractors for approved bills, invoices, and/or charges. Recipient will submit Reimbursement Requests (Attachment D) to the Division with copies of Subcontractor's bills, invoices, and/or charges and Proof-of-Payment by the Recipient in the form of cancelled checks, payroll records, electronic payment verification, etc. The Recipient shall ensure that the Contractor's Invoice clearly identifies each mitigation item installed.

Administrative expenses (Indirect): The Recipient shall provide source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits must be clearly shown. Ten percent of the amount completed in pursuit of direct activities may be claimed for administrative expenses. The Recipient is eligible to claim up to \$19,400 in a total indirect rate if the Recipient expended all \$194,000.

DELIVERABLES:

Deliverable 1 (Identification and inspection): The Recipient will provide to the Division a copy of the mitigation report provided by a certified mitigation inspector or building official.

Due Date: Mitigation reports identifying the recipients selected structures are due within forty-five (45) days of the final contract execution date. The Recipient may continue to identify additional properties for addition to the project until April 15, 2018 at which no additional properties will be considered for mitigation activity.

Reimbursement: Provided the expenses do not exceed the amounts authorized by this Agreement, the Division will reimburse the Recipient for the Administrative expenses (at a rate of 10% of the direct activities billed) and expenses associated with property identification, plan development, and inspection services.

Deliverable 2 (Submission of the PIS): Based on the work described in Tasks 1 and 2, the Recipient shall submit, in an electronic format, the completed Initial Property Information Spreadsheet (PIS). All the requested information identified by the PIS is required and shall be provided, including multiple color photographs provided in digital format. The color photographs may be sent by email, one structure per email, or via the Division's File Transfer Protocol (FTP) site. The HLMP Project Number and property owner name must be in the subject line of an email. In the FTP method, each property shall be in a separate file. The file names need to be short but identifiable. File names such as last name and address number (jones1234), or recipient's tracking number on the PIS. Approval of individual properties will be based on a combined BCA ratio.

Due Date: Initial PIS is due within forty-five (45) days of the final contract execution date. Recipient requested addition or deletion of properties is due by April 15, 2018.

Reimbursement: Provided the expenses do not exceed the amounts authorized by this Agreement, the Division will reimburse the Recipient for the Administrative expenses (at a rate of 10% of the direct activities billed) and Construction Expenses associated with property identification, plan development, completion, and submission of the initial Division's Property Information Spreadsheet (PIS).

Deliverable 3 (Scope of work development): Based on the work described in Task 3, the Recipient shall submit, in an electronic format, a spreadsheet that contains the following information:

- a) Recipient Name and HLMP Project Number;
- b) Property Owner's Name;
- c) Selected Contractor's Name and date of Contractor selection for each mitigation measure;
- d) Detailed description of mitigation activities to be implemented on each structure that includes unit count, measurements, material and labor costs; and,

- e) Florida Product Approval Code for each mitigation product to be installed.

Due Date: Within fourteen days of Contractor selection.

Reimbursement: Provided the expenses do not exceed the amounts authorized by this Agreement, the Division will reimburse the Recipient for the Administrative Expenses (at a rate of 10% of the direct activities billed) associated with each approved Property's SOW, bidding process, or Contractor selection and creation of detailed spreadsheet.

Deliverable 4 (Construction): Based on the work described in Task 4, the Recipient shall provide a Request for Reimbursement (RFR) Package that includes the following information:

- a) Recipient's Invoice, to include;
 - 1. The Period of Performance;
 - 2. A breakdown of material and labor cost;
 - 3. Description of Work Performed; and,
 - 4. Payment amount requested for reimbursement.
- b) Request for Reimbursement; (Attachment D)
 - 1. Signed and dated Summary Page with relevant Detail Pages;
 - 2. Sub-Contractor's Invoice:
 - a. Sub-Contractor Name;
 - b. Property owner name and address;
 - c. Date work performed;
 - d. Exact mitigation measure completed; and,
 - e. Amount requested for each mitigation measure,
 - 3. Copies of Canceled Checks or Electronic Funds Payment Verification;
 - 4. Quarterly Report; and,
 - 5. Affidavit of Partial Competition (if applicable).

Due Date: Deliverable 4, is due on a regular basis, but shall be submitted at least quarterly, starting with the first quarter after the final Agreement execution date and every quarter thereafter. It shall include the quarterly report. The quarterly submission is due fifteen (15) calendar days after the close of the quarter.

Reimbursement: Provided the expenses do not exceed the amounts authorized by this Agreement, the Division will reimburse the Recipient for the Administrative Expenses (at a rate of 10% of the direct activities billed) and Construction Expenses associated with all the mitigation retrofit improvements. The mitigation retrofit improvements may not be fully completed; however, a partial reimbursement request may be submitted.

Deliverable 5 (Final inspection): Based on the work described in Task 5, the Recipient shall provide a Final Close-Out Package digital media device that will include the following:

- a) Request for Final Inspection, which may be sent ahead of the storage device to expedite scheduling of final inspection, on agency/company letter head identifying the HLMP Project number, contract number and must include the following statements:
 - 1. The project is 100% complete;
 - 2. Scope of Work for each structure has been completed; and,
 - 3. All relevant building Codes and Standards have been satisfied.
- b) A digital media device that contains electronic folders for each individual property. The folders must have PDF formatted documents for each of the following:
 - 1. Approved PIS;
 - 2. Scope of Work;
 - 3. Color Photographs, in digital format, documenting mitigation work (pre and post);
 - 4. Building Permit;
 - 5. Post-Inspection Reports/Certificates of Completion for each structure;
 - 6. Florida Approved Product Codes, Miami-Dade Approval Codes, Notice of Acceptance/Product Approvals; and,
 - 7. All applicable Lien Waivers.
- c) An Electronic Spreadsheet to include;
 - 1. Homeowner's Name;
 - 2. Homeowner's Address;
 - 3. Pre and Post Inspection Dates;
 - 4. Retrofit Measures Completed; and,

5. Retrofit Cost;

Due Date: A request for closeout is to be received by the Division on or before June 15, 2018.

Reimbursement: Provided the expenses do not exceed the amounts authorized by this Agreement, the Division will reimburse the Recipient for the Administrative Expenses and Construction Expenses associated with Final Closeout preparation, final inspections, and any additional mitigation performed as required by final inspection. The **“Final Reimbursement Request”** must be submitted by August 15, 2018.

Financial Consequences: If the recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- a) Temporarily withhold cash payments pending correction of the deficiency by the recipient;
- b) Disallow all or part of the cost of the activity or action not in compliance;
- c) Wholly or partly suspend or terminate the current award for the recipient;
- d) Withhold further awards for the program; or,
- e) Take other remedies that may be legally available.

Key Deliverable Dates: The key deliverable dates are designed to aid the Recipient in fully expending the awarded grant funding. The Division will monitor the Recipient's performance by using the following dates as markers. Should the Recipient fall off this schedule, the Division will reach out to the Recipient and work towards an appropriate correction. The Division retains the right to review all Recipients for performance. Further, should the Recipient need additional time, the Recipient need only to demonstrate a work plan to the Division. These dates assume blue sky conditions throughout the life of the grant. Should the Division or the Recipient be impacted by disaster, event, or incident, the deliverable dates would be altered.

KEY ACTIVITY	DUE DATE	COMMENT
Deliverable 1: Identification and Inspection	No later than 30 days post contract execution.	Additional structures may be considered for mitigation until April 15, 2018.
Deliverable 2: Submission of the PIS	No later than 45 days post contract execution.	
Deliverable 3: Scope of Work Development	No later than 14 business days after vendor selection.	
Deliverable 4: Construction	To be completed by June 1, 2018.	Completion of all mitigation retrofit work.
Deliverable 4: Final Invoice	No later than August 15, 2018.	Cannot be released until the Division receives recommendation to close out the project by the Technical Unit.
Deliverable 5: Final Inspection	No later than June 15, 2018.	

BUDGET: The Budget is designed to account for HLMP Awarded Funds. Each invoice and request for reimbursement should clearly identify the amount of HLMP funds requested and provide supporting documentation.

This is RCMP Project Number HLMP18-023, City of Pompano Beach., The Period of Performance for this project shall start July 1, 2017 and ends June 30, 2018.

	RFP-DEM-16-17-048
EXPENDITURE CATEGORIES	AWARD
Salary & Benefits	
Other Personnel / Contractual Services	
Administrative Expenses	\$29,400
Expenses	\$264,600
Totals	\$294,000