

**STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES**

**AMENDMENT NO. 1**

**TO**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

**AND**

**COUNTY OF VENTURA**

**FOR**

**MATILIJIA DAM PROJECT 1 SCOPE: STRUCTURAL ANALYSIS/DESIGN OF  
PROPOSED ORIFICES**

**PART OF THE NOTICE OF FUNDING OPPORTUNITY: DHS-20-MT-041-00-01**

**CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AGREE AS RECIPIENT OF U.S. DEPARTMENT OF HOMELAND SECURITY  
FISCAL YEAR 2020 REHABILITATION OF HIGH HAZARD POTENTIAL  
DAMS GRANT PROGRAM**

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Agreement No. 4600014893  
Amendment No. 1

On December 14, 2022, the State of California, Department of Water Resources (hereinafter called "DWR"), and the County of Ventura (hereinafter called the "Grantee"), entered into a funding agreement (Agreement No. 4600014893) for the purpose of completing the Matilija Dam Project 1 Scope: Structural Analysis/Design of Proposed Orifices (Project).

On behalf of the Subrecipient, DWR requested a period of performance extension from the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) on May 30, 2023. FEMA reviewed the request and determined that an extension is justified.

The Funding Agreement remains binding with the following modifications:

ARTICLE 3 – TERM OF THE AGREEMENT

Replace the second and third sentence with:

"However, all work shall be completed by March 31, 2024. No funds may be requested after June 30, 2024."

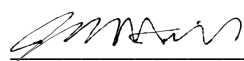
All other terms and conditions shall remain in force and effect.

Agreement No. 4600014893  
Amendment No. 1

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.1 to the Funding Agreement.

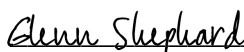
STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

CITY OF SAN DIEGO



Jeremy Arrich, P.E.  
Division Manager  
Division of Flood Management

Date 11/27/2023



Glen Shepard, Director  
Ventura County Watershed Protection  
District

Date 11/27/2023

Approved as to Legal Form and Sufficiency  
for DWR

Approved as to Legal Form and Sufficiency  
for COUNTY OF VENTURA



Robin Brewer  
Assistant General Counsel  
Office of the General Counsel

Date 11/27/2023



Alberto Boada  
Principal Assistant County Counsel

Date 11/20/2023

DWR Agreement  
No. 4600014893

Matilija Dam

## **FUNDING AGREEMENT**

**Between the**

**CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AS RECIPIENT OF U.S. DEPARTMENT OF HOMELAND SECURITY FISCAL YEAR 2020  
REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT PROGRAM  
NOTICE OF FUNDING OPPORTUNITY: DHS-20-MT-041-00-01, hereinafter called "DWR"  
or "Department"**

**AND**

**County of Ventura, hereinafter called "Subrecipient"**

**Matilija Dam Project 1 Scope: Structural Analysis/Design of Proposed Orifices,  
hereinafter called "Project"**

**DWR AGREEMENT NO. 4600014893- FY 2020 Rehabilitation of High Hazard  
Potential Dams**

DWR and Subrecipient hereby agree as follows:

1. **PURPOSE.** The federal Rehabilitation of High Hazard Potential Dams (HHPD) Grant Program is authorized by 33 U.S.C. section 467f-2 and makes federal funds available to eligible states for pass through to qualifying dams that fail to meet minimum dam safety standards. The purpose of this Agreement is to provide this federal funding in accordance with the Department of Homeland Security Fiscal Year 2020-2021 Rehabilitation of High Hazard Potential Dams Grant Program Notice of Funding Opportunity (sometimes referred to as "2020 NOFO") to Subrecipient for the purpose of completing the Matilija Dam Project 1 Scope: Structural Analysis/Design of Proposed Orifices "Project," as more particularly described in Exhibit A.
2. **FUNDING AND GRANT AMOUNT.** Funds for this Project were made available by a federal grant in accordance with the 2020 NOFO and the maximum amount payable under this Agreement shall not exceed \$88,494.00.
3. **TERM OF AGREEMENT.** The term of the Agreement shall begin on September 1, 2020- and shall continue through final payment plus seven (7) years unless otherwise terminated or amended as provided in the Agreement. **HOWEVER, ALL WORK SHALL BE COMPLETED BY August 31, 2023. NO FUNDS MAY BE REQUESTED AFTER September 30, 2023.**

4. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Agreement will be:

<b>DWR</b>		<b>Subrecipient: Ventura County Watershed Protection District</b>	
Name:	Levi Warr Grant Manager	Name:	Kirk Norman Engineer Manager II Design and Construction Division
Address:	3464 El Camino Ave., Ste. 200	Address:	800 S. Victoria Avenue
City, Zip:	Sacramento, California 95821	City, Zip:	Ventura, CA 93009
Phone:	(916) 574-1434	Phone:	(805) 648-9284
e-mail:	Levi.Warr@water.ca.gov	e-mail:	Kirk.Norman@ventura.org

Direct all inquiries to:

<b>DWR</b>		<b>Subrecipient: Ventura County Watershed Protection District</b>	
Section:	Floodplain Management Branch	Section:	Strategic Resiliency
Attention:	Levi Warr Grant Manager	Name:	Gerard Kapuscik, Strategic Resiliency Group Manager
Address:	3464 El Camino Ave., Ste. 200	Address:	800 S. Victoria Avenue
City, Zip:	Sacramento, California 95821	City, Zip:	Ventura, CA 93009
Phone:	(916) 574-1434	Phone:	(805) 648-9284
e-mail:	Levi.Warr@water.ca.gov	e-mail:	Gerard.Kapuscik@ventura.org

Either party may change its Project Representative upon written notice to the other party.

5. STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A      SCOPE OF WORK - WORK TO BE PERFORMED BY THE SUBRECIPIENT
- Exhibit B      INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C      GENERAL TERMS & CONDITIONS
- Exhibit D      SPECIAL CONDITIONS

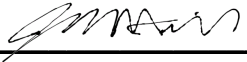
6. SUBRECIPIENT REPRESENTATIONS. The Subrecipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including the 2020 NOFO. The Subrecipient further accepts and agrees to fulfill all assurances, declarations, representations, and commitments made by the Subrecipient

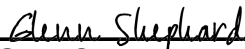
in its application, accompanying documents, and communications filed in support of its request for grant funding or in furtherance of this Agreement. The Subrecipient shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

State of California  
Department of Water Resources

Ventura County Watershed Protection District


By   
Jeremy Arrich, Manager  
Division of Flood Management


By   
Glen Shepard, Director  
Ventura County Watershed Protection District

Date: 12/14/2022

Date: 12/5/2022

Approved as to Legal  
Form And Sufficiency:

By   
Robin E. Brewer  
Assistant General Counsel

By   
Alberto Boada,  
Principal Assistant County Counsel

Date: 12/5/2022

Date: 11/30/2022

## EXHIBIT A

### SCOPE OF WORK – WORK TO BE PERFORMED BY THE SUBRECIPIENT

#### Structural Analysis/Design of Proposed Orifices

The dam removal planning study currently underway is advancing the preferred alternative of boring two large-diameter orifices through the dam to initiate reservoir drawdown and the evacuation of fine sediment, prior to beginning the full dam removal. Further structural analysis is required to design measures to mitigate tensile stresses within the two proposed orifices identified through structural stability modeling.

#### How the Project Increases Risk Understanding or Reduces Risk

The risk reduction strategy being pursued for Matilija Dam is its complete future removal. Further analyzing and designing the tensile stress mitigation measures associated with the proposed temporary orifices/tunnels will facilitate completion of the dam modification design, which is a key feature in the dam removal sequence.

Subtask	Description
1	Review of previous structural evaluations, including select aspects of the “Structural Evaluation of Dam With and Without Orifices” subtask completed during Phase 1 of the Dam Removal Feasibility Study.
2	Structural analysis of tensile stress concentrations at the orifice walls identified during the earlier Structural Evaluation of Dam With and Without Orifices” subtask. Development of one or more options to mitigate the tensile stress concentrations
3	Analysis of structural effects of controlled blasting to remove orifice plugs
4	Structural analysis of regulating gate installation (upstream and downstream options)
5	Structural analysis of hydraulic characteristics during flushing and reservoir drawdown
6	Develop drawings of tensile stress mitigation measures to the 30 percent level
7	Prepare Draft Technical Memorandum describing the approach, methods, and results of Subtasks 2-6
8	Prepare Final Technical Memorandum describing the approach, methods, and results of Subtasks 2-6, incorporating comments from the draft review
9	Coordinate activities, findings, and methods with DSOD representatives
10	Project Management associated with all Subtasks

#### **Schedule:**

Start Date: January 1, 2022

Anticipated End Date: August 31, 2023

#### **Deliverables:**

- Analysis and recommendations of measures to mitigate tensile stress concentrations around the orifices
- Analysis of structural effects of blasting plan implementation
- Structural analysis of control gate installation (upstream and downstream options)
- Structural effects analysis of orifice drawdown hydraulics

- Develop preliminary drawings (to approximately the 30 percent level) of the tensile stress mitigation measures
- Preparation of Draft and Final Technical Memoranda for above tasks

#### A. GENERAL COMPLIANCE REQUIREMENTS

Subrecipient shall maintain compliance with applicable provisions of the 2020 NOFO, including the following:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non- federal share of project costs) to ensure proper planning, management and completion of the project described in the sub-application.
2. Will participate in, and comply with, the National Flood Insurance Program.
3. Shall comply with all applicable provisions of Water Code, Division 3 (Wat. Code, § 6000 et seq.) and California Code of Regulations, Title 23, Chapter 1 (Cal. Code Regs., tit. 23, § 301 et seq.).
4. Will provide documentation of an approved emergency action plan.
5. Assures that the dam is not a licensed hydroelectric dam, or a dam built under the authority of the Secretary of Agriculture, and that the project will meet non- federal cost-share requirement described in the HHPD NOFO.
6. Will provide operation and maintenance of the project for the 50-year period following completion of rehabilitation, as defined in the HHPD NOFO. Operation and maintenance requirements are described in the Rehabilitation of High Hazard Potential Dams Grant Program Guidance issued by FEMA and dated June 2020. If the scope is pre-construction design or planning, the subrecipient understands that if the dam is later rehabilitated, this operations and maintenance agreement will be required for construction.
7. None of the funds provided in the form of a grant or otherwise made available under Section 5.5- 33 USC § 467f–2 (h)(2) shall be used to perform routine operation or maintenance of a dam.
8. Has or will have in place at the time of obligation of subgrant funds a local FEMA-approved hazard mitigation plan that includes all dam risks and complies with the Disaster Mitigation Act of 2000, or receives an extension of time in accordance with the HHPD NOFO, page 28, and carries out activities relating to the public in the area around the dam in accordance with the hazard mitigation plan.
9. Will develop (unless one is already in place) an HHPD floodplain management plan no later than one (1) year after execution of an HHPD project agreement, and implement the HHPD floodplain management plan no later than one (1) year after the date of completion of construction of the project.



10. Will comply with the requirements of 42 U.S.C. § 5196(j)(9) as in effect on December 16, 2016, with respect to projects receiving assistance under this section in the same manner as recipients are required to comply in order to receive financial contributions from the Administrator for emergency preparedness purposes.
11. Will comply with chapter 11 of title 40 of the United States Code: Selection of Architects and Engineers.
12. Will disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with 2 CFR § 200.112.
13. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996. (Subrecipients expending \$750,000 or more in federal grant funds annually are required to secure an audit pursuant to OMB Uniform Guidance 2 CFR Part 200, Subpart F.)
14. Will disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award 2 CFR §200.113. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment.
15. Will participate in the FEMA Environmental Planning and Historic Preservation Compliance review process pursuant to *FEMA's Instructions on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program requirements, FEMA Instruction 108-1-1*.
16. Will comply with all applicable requirements contained in the HPPD NOFO, and federal statutes and regulations.

## **EXHIBIT B**

### **INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS**

#### **A. INVOICING**

1. Given the scope of work for this Project, the Subrecipient shall submit a single invoice for the Project, and the invoice shall be submitted with the Subrecipient's submission of the Final Technical Memoranda for the tasks described in the Scope of Work. The invoice shall be submitted using the invoice template provided by DWR. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to DWR's Grant Manager Levi Warr consistent with the reporting schedule in Section G.1 of this exhibit. The address for submittal is:

Levi Warr, Grant Manager  
Division of Flood Management  
Department of Water Resources  
3464 El Camino Ave, Suite 200  
Sacramento, CA 95821

2. An invoice submitted in any other format than the one provided by DWR will cause an invoice to be disputed. In the event of an invoice dispute, DWR's Grant Manager will notify the Subrecipient by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Subrecipient. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The DWR Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with the invoice to request reimbursement for grant funds as well as to support Match Funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Subrecipient shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Subrecipient. Although it is agreed that actual payment of such cost by the Subrecipient is not required as a condition of the grant disbursement, all grant disbursements received by the Subrecipient shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Subrecipient fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Subrecipient shall immediately return such funds to DWR. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to DWR. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations.

5. Notwithstanding any other provision of this Agreement, DWR may withhold all or any portion of the funds provided for by this Agreement in the event that:
  - a. Subrecipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - b. Subrecipient fails to maintain reasonable progress toward completion of the Project.
  - c. Subrecipient has failed to submit deliverables as required under this Agreement.
6. Notwithstanding any other provision of this Agreement, the Subrecipient agrees that DWR may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project, submission of the Final Project Report, and submission of documents or completion of actions necessary to close out the subaward, to the reasonable satisfaction of DWR. Any retained amounts due to the Subrecipient will be promptly disbursed to the Subrecipient, without interest, upon completion of the Project.
7. The invoice shall contain the following information:
  - a. The date of the invoice;
  - b. The time period covered by the invoice, i.e., the term “from” and “to”;
  - c. The total amount due; and
  - d. Signature and date of Subrecipient or its authorized representative.
  - e. Final invoice shall be clearly marked “FINAL INVOICE” and submitted NO LATER THAN September 30, 2023.

## B. COSTS

1. Funds provided through this Agreement may only be used for the purposes set forth in the 2020 NOFO and must be consistent with the statutory authority for the award made under the 2020 NOFO. Costs must be consistent with the Cost Principles for Federal Awards. (See 2 CFR, Part 200, Subpart E.) Costs incurred before September 1, 2020, (before the federal award) are not eligible for reimbursement under this Agreement. The following direct costs are eligible for funding, subject to compliance with Cost Principles referenced above:
  - a. Planning, personnel, equipment, and domestic travel.
  - b. Indirect costs authorized under 2 CFR 200.414, with a maximum indirect cost rate of ten percent (10%).
2. Funds may not be used for costs that are prohibited or restricted in 2 CFR Part 200, or the 2020 NOFO including the following costs:

- a. Performing routine operation or maintenance of a dam, modifying a dam to produce hydroelectric power, increasing water supply storage capacity, or making other modifications to a dam that do not also improve the safety of the dam.
  - b. International travel, unless approved in advance by FEMA.
  - c. Construction and renovation costs.
3. Subrecipient may only seek reimbursement of costs incurred as described in A.4 above. Prepayment of costs is not authorized.

#### C. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement shall not exceed eighty-eight thousand, four hundred ninety-four dollars (\$88,494.00) and shall only be applied from September 1, 2020 through August 31, 2023.

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of DWR to make any payments under this Agreement. In this event, DWR shall have no liability to pay any funds whatsoever to Subrecipient or to furnish any other considerations under this Agreement and Subrecipient shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Subrecipient with a right of priority for payment over any other Subrecipient.

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, DWR shall have the option to either cancel this Agreement with no liability occurring to DWR or offer an Agreement amendment to the Subrecipient to reflect the reduced amount.

#### D. PROJECT BUDGET

Budget Category	Federal Amount	Non-Federal Amount
A. Personnel	\$ 0.00	\$ 0.00
B. Fringe Benefits	\$ 0.00	\$ 0.00
C. Travel	\$ 0.00	\$ 0.00
D. Equipment	\$ 0.00	\$ 0.00
E. Supplies	\$ 0.00	\$ 0.00
F. Consultants / Contracts	\$ 88,494.00	47,651.00
G. Other	\$ 0.00	\$ 0.00
H. Indirect Costs	\$ 0.00	\$ 0.00

Total Requested Federal Amount:	<u>\$88,494.00</u>
Total Requested Non-Federal Amount:	<u>\$47,651.00</u>
Combined Total Project Costs:	<u>\$136,145.00</u>

<b>Project</b>	<b>Project Task</b>	<b>Total Cost:</b>	<b>Dam Owner Cost Share/Fund Match:</b>	<b>Grant Funds:</b>
Ventura County Watershed Protection District - Matilija Dam Project 1				
Structural Analysis/Design of Orifices	Task 1	\$136,145.00	\$47,651.00	\$88,494.00

The Subrecipient plans to hire a consultant to complete this work and estimates a total cost of \$136,145.00, of which \$88,494.00(65%) is requested as federal funding. Of the federal amount, a maximum allowable five percent administrative cost will be claimed at \$4,424.70, and the remaining \$84,069.30 will fund the efforts to advance the orifice design and associated structural analysis. The cost-sharing fraction to be provided by the Ventura County Watershed Protection District is \$47,651.00 (35%).

#### E. BUDGET ADJUSTMENTS

1. Procedure to Request an Adjustment. Revisions to the budget must be approved by DWR and FEMA. The Subrecipient may submit a request for an adjustment in writing to DWR, and DWR will coordinate with FEMA before approving or disapproving any change to the budget under this Agreement. Such adjustment may not increase or decrease the total grant amount. The Subrecipient shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. DWR may also propose adjustments to the budget.
2. Remaining Balance. In the event the Subrecipient does not submit invoices requesting all of the funds encumbered under this Agreement, any remaining funds revert to DWR. DWR will mail a Notice of Project Completion letter to the Subrecipient stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

#### F. MATCH FUNDS

1. The Subrecipient agrees to provide non-federal cost share in the amount of thirty-eight thousand two hundred thirty (\$38,230.00) (Match Funds) for this Project. If in-kind contributions are used, the requirements of 2 CFR 200.306 must be satisfied. This Match Funds amount is based on Line Item Budget categories, funding sources, and amounts submitted by the Subrecipient in its application and during the negotiation of this Agreement. Any Match Funds line item changes or adjustments in Match Funds classifications or sources requested by the Subrecipient must be approved, in advance and in writing, by the Grant Manager.
2. If, upon completion of the Project, the Subrecipient has provided match funds in an amount that is less than the Match Funds amount set forth in paragraph F.1 above, then

DWR may proportionately reduce the grant amount and/or Subrecipient's Match Funds amount, provided the reduced amount(s) satisfy eligibility requirements.

## G. REPORTS

1. **PROGRESS REPORTS.** Subrecipient shall submit progress reports, regardless of the level of activity during the period, to DWR's Grant Manager by the fifteenth (15<sup>th</sup>) of the month following the end of the reporting period, as follows:

<u>Reporting Period</u>	<u>Report Due Date</u>
August 1 – September 30	October 15
October 1 – December 31	January 15
January 1 – March 31	April 15
April 1 – June 30	July 15
July 1 – September 30	October 15

The progress reports shall summarize the work completed during the reporting period, and progress toward completion compared to the project schedule, and provide a comparison of costs to date compared to the approved scope of work and project budget. Additionally, if the Subrecipient is aware of any anticipated problems, obstacles, or issues that could affect the project budget, schedule, or scope of work, those must be identified and explained in the progress reports. In cases where there has been little or no activity for the reporting period, the Subrecipient must continue to submit progress reports, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. The Subrecipient shall document all contractor activities and expenditures in progress reports.

2. **DRAFT FINAL PROJECT REPORT.** Prepare and submit to the DWR Grant Manager a Draft Final Project Report for review and comment that includes and addresses the following narrative sections and items.
  - a. Describe Project performance, etc.
  - b. Identify lessons learned in carrying out the Project. Describe what worked and what did not work, and how similar efforts could be utilized with similar projects and dams as applicable.
  - c. Describe the Project's funding. Include the projected cost and actual cost of the Project, how much of the grant funds were spent, and how much funding was put into the Project from other sources. Identify funding sources that have been leveraged by the Project and plans for funding future activities.
  - d. Include appropriate photos and graphics.
  - e. Any additional information that is deemed appropriate by the Project Director or Grant Manager.
3. **FINAL PROJECT REPORT.** Prepare a Final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the Draft Final Project Report. Submit one (1) reproducible master and an electronic copy of the final.

4. The Subrecipient agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by DWR.

#### H. PAYMENT OF PROJECT COSTS

The Subrecipient agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Subrecipient on a timely basis.

#### I. AUDIT DISALLOWANCES

The Subrecipient agrees it shall return any audit disallowances to DWR.

#### J. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Subrecipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Subrecipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, DWR may request an audit pursuant to Exhibit C, paragraph 4 and refer the matter to the Inspector General's Office, the appropriate U.S. Attorney's Office, or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

## **EXHIBIT C**

### **GENERAL TERMS & CONDITIONS**

1. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **APPROVAL:** The Subrecipient will not proceed with any work on the Project until authorized in writing by DWR.
3. **ASSIGNMENT:** This grant is not assignable by the Subrecipient, either in whole or in part, without the written consent of DWR.
4. **AUDIT:** The Subrecipient agrees that the State of California, including DWR and the Bureau of State Audits, the Department of Homeland Security, FEMA, the Office of Inspector General, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement and Project. DWR, at its option, may call for an audit of financial information relative to the Project, where DWR determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Subrecipient and at the cost of the Subrecipient. The audit shall be in the form required by DWR. The Subrecipient agrees to maintain such records for a possible audit for a minimum of seven (7) years after final payment, unless a longer period of records retention is stipulated. The Subrecipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Subrecipient agrees to include a similar right of DWR to audit records and interview staff in any contract related to performance of this Agreement. (Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.; 40 C.F.R. § 31.26). The Subrecipient shall comply with applicable audit requirements contained in 2 CFR, Part 200.
4. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Subrecipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements.
5. **COMPUTER SOFTWARE:** The Subrecipient certifies that it has appropriate systems and controls in place to ensure that funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
6. **CONFLICT OF INTEREST:** The Subrecipient certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
7. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Subrecipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of DWR's Deputy Director. Such approval may be conditioned as determined to be



appropriate by the Deputy Director, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.

8. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate DWR-wide data systems.
9. **DISPUTES:** The Subrecipient shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by a Deputy Director of DWR or his or her authorized representative, and in consultation with FEMA or the Department of Homeland Security as appropriate. The decision shall be reduced to writing and a copy thereof furnished to the Subrecipient and to DWR's Director. The decision of the Deputy Director shall be final and conclusive unless, within thirty (30) calendar days after mailing of the decision to the Subrecipient, the Subrecipient mails or otherwise furnishes a written appeal of the decision to DWR's Director. The decision of DWR's Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Subrecipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Subrecipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of DWR, or any official or representative thereof, on any question of law.
10. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Subrecipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Subrecipient further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
11. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
12. **SUBRECIPIENT'S RESPONSIBILITY FOR WORK:** The Subrecipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Subrecipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. DWR will not mediate disputes between the Subrecipient and any other entity concerning responsibility for performance of work.
13. **INCOME RESTRICTIONS:** The Subrecipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subrecipient under this Agreement shall be paid by the Subrecipient to DWR, to the extent that they are properly allocable to costs for which the Subrecipient has been reimbursed by DWR under this Agreement.

14. **INDEPENDENT ACTOR:** The Subrecipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of DWR.
15. **INSPECTION:** DWR, the Bureau of State Audits, the Department of Homeland Security, the Office of Inspector General, or any authorized representative of the foregoing, shall have suitable access to the Project site or Project records at all reasonable times during Project implementation and thereafter for the useful life of the Project to ascertain compliance with this Agreement and its goals. The Subrecipient acknowledges that the Project records and location are public records, unless otherwise exempt under the California Public Records Act or similar federal disclosure laws.
16. **NONDISCRIMINATION CLAUSE:**
  - a. During the performance of this Agreement, the Subrecipient and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40 years), marital status, and denial of family care leave.
  - b. The Subrecipient, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. The Subrecipient, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
  - d. The Subrecipient, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
  - e. The Subrecipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Subrecipient to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
19. **NO THIRD-PARTY RIGHTS:** The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.
20. **NOTICE:**
  - a. The Subrecipient shall notify DWR prior to conducting construction, monitoring, or other implementation activities such that DWR may observe and document such activities.

- b. The Subrecipient shall promptly notify DWR of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Subrecipient agrees that no change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to DWR, and DWR, and FEMA as appropriate, has given written approval for such change.
- c. Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during implementation of the Project, the Subrecipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource. The Subrecipient agrees to implement appropriate actions, consistent with applicable laws, after consultation with DWR.
- d. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Subrecipient agrees to promptly notify DWR. This notification is in addition to the Subrecipient's obligations under all other applicable laws, including the federal Endangered Species Act.
- e. The Subrecipient shall notify DWR at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by DWR and FEMA representatives.
- f. The Subrecipient shall promptly notify DWR in writing of completion of work on the Project.
- g. The Subrecipient shall promptly notify DWR in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

21. **PERMITS, CONTRACTING, AND DEBARMENT:** The Subrecipient shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Subrecipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, if any, or as are specifically authorized by DWR's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of DWR's Grant Manager. The Subrecipient shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under debarment and suspension regulations, which are at 2 CFR Part 180, as adopted by DHS at 2 CFR Part 3000. In accordance with 2 CFR Part 180.335, the Subrecipient certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department, the California Department of Industrial Relations (DIR), or Subrecipient;
  - b. Have not within a three (3)-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and,
  - d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
22. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Subrecipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <https://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
23. **PROFESSIONALS:** The Subrecipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
24. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Subrecipient agrees to:
  - a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
  - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;

- d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
  - e. Establish such accounts and maintain such records as may be necessary for DWR to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,
  - f. If a Force Account is used by the Subrecipient for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
25. RELATED LITIGATION: Subrecipient may not use funds from any disbursement under this Agreement to pay costs associated with any litigation related to the Project.
26. RIGHTS IN DATA: The Subrecipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain, unless it is demonstrated that the documents reveal security-sensitive information that is exempt from public disclosure under the California Public Records Act and similar information disclosure laws.
27. REVIEWS AND INDEMNIFICATION: The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by DWR is for administrative purposes only and does not relieve the Subrecipient of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Subrecipient agrees to indemnify, defend and hold harmless DWR and the State of California against any loss or liability arising out of any claim or action brought against DWR and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; or (3) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to DWR a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Subrecipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Subrecipient agrees to pay and discharge any judgment or award entered or made against DWR and/or state with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.
28. DWR ACTION, COSTS, AND ATTORNEY FEES: The Subrecipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to DWR as a result of breach of this Agreement by the Subrecipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by DWR shall not preclude DWR from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

29. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of DWR, upon violation by the Subrecipient of any material provision after such violation has been called to the attention of the Subrecipient and after failure of the Subrecipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by DWR. In the event of termination, the Subrecipient agrees, upon demand, to immediately repay to DWR an amount equal to the amount of grant funds disbursed to the Subrecipient prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Subrecipient to the date of full repayment by the Subrecipient. This Agreement may also be terminated in accordance with termination provisions contained in 2 CFR, Part 200.
30. **TIMELINESS:** Time is of the essence in this Agreement. The Subrecipient shall proceed with and complete the Project in an expeditious manner.
31. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at state travel and per diem amounts that are current as of the date costs are incurred by the Subrecipient. No travel outside the state of California shall be reimbursed.
32. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.
33. **VENUE:** DWR and the Subrecipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.
34. **WAIVER AND RIGHTS OF DWR:** Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of DWR provided for in this Agreement are in addition to any other rights and remedies provided by law.
35. **WITHHOLDING OF GRANT DISBURSEMENTS:** DWR may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Subrecipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Subrecipient fails to maintain reasonable progress toward completion of the Project.

**EXHIBIT D**  
**SPECIAL CONDITIONS**  
**FEDERAL REQUIREMENTS**

**A. Funding Conditions**

1. Subrecipient shall ensure that contracts and subcontracts for Project activities are awarded in the same manner as a contract for architectural and engineering services is awarded under 40 U.S. Code Chapter 11. Subrecipient acknowledges that it is subject to pre-procurement review by FEMA and DWR.
2. The Subrecipient agrees that it will not require a disbursement unless that cost is allowable, reasonable, and allocable. In addition to requirements imposed by DWR, when determining allowable and allocable costs, the Subrecipient shall comply with federal cost principles in subpart E to 2 CFR part 200.
3. The Subrecipient shall comply with property management and disposition requirements in 2 CFR sections 200.310 through 200.316 for any property, equipment, or supplies acquired with funds provided under this Agreement.
4. Subrecipient shall promptly complete all actions necessary to ensure closeout of this subaward, including:
  - a. Subrecipient shall submit no later than 90 calendar days after the end date of the period of performance, all financial performance, and other reports as required by DWR to complete closeout of the subaward. The Department may approve extensions when requested by the Subrecipient but is not obligated to do so.
  - b. Unless DWR authorizes an extension, the Subrecipient must liquidate all obligations incurred under this subaward not later than 90 calendar days after the end date of the period of performance.
  - c. The Subrecipient must promptly refund any balances of unobligated cash that DWR paid that is not authorized to be retained by the Subrecipient for use in other projects. See 2 CFR section 200.345 for requirements regarding unreturned amounts that become delinquent debts.
  - d. The Subrecipient must account for any real and personal property acquired with funds provided under this Agreement or received from the Federal Government in accordance with 2 CFR sections 200.310 through 200.316 and section 200.329.
  - e. Closeout does not affect or otherwise alter:
    - i. The right of DWR or FEMA to disallow costs and recover funds on the basis of a later audit or other review.
    - ii. The obligation of the Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

- iii. The right of DWR to require an audit or FEMA to require an audit under subpart F of 2 CFR part 200.
- iv. Any property management and disposition requirements set forth in 2 CFR sections 200.310 through 200.316 and section 200.329.
- v. Records retention as required by this Agreement.

## **B. Federal Requirements – Conditions of Award**

### **1. Energy Policy and Conservation Act**

Subrecipient shall comply with the requirements of the *Energy Policy and Conservation Act*, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 *et seq.*), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

### **2. Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome funding deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude Subrecipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions. Subrecipient must receive written authorization from DWR and FEMA before shifting costs.

### **3. Procurement of Recovered Materials**

Subrecipient and its contractors shall comply with Section 6002 of the *Solid Waste Disposal Act*, Pub. L. No. 89-272 (1965) (codified as amended by the *Resource Conservation and Recovery Act*, 42 U.S.C. section 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

### **4. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

If Subrecipient collects PII, Subrecipient shall have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources, respectively.

### **5. Disposition of Equipment Acquired Under the Federal Award**

When original or replacement equipment acquired by the Subrecipient is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, Subrecipient shall request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.



## **6. Limited English Proficiency (Civil Rights Act of 1964, Title VI)**

Subrecipient shall comply with the *Title VI of the Civil Rights Act of 1964* (42 U.S.C. section 2000d *et seq.*) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Subrecipient Guidance:

<https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources at <http://www.lep.gov>.

## **7. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX**

Subrecipient shall comply with the requirements of Title IX of the *Education Amendments of 1972*, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 *et seq.*), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

## **8. Prior Approval for Modification of Approved Budget**

Before making any change to the DHS/FEMA approved budget for the Project, Subrecipient must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. Pursuant to its discretion under 2 CFR 200.308(e), DHS/FEMA has imposed the following restrictions on the transfer of funds among direct cost categories, programs, functions, and activities. Subrecipient may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. Subrecipient must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

## **9. Rehabilitation Act of 1973**

Subrecipients must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, Pub. L. No. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

## **10. Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, Subrecipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate Subrecipient acceptance of the changes to the award.

## **11. Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

Subrecipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

## **12. Americans with Disabilities Act of 1990**

Subrecipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits Subrecipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

## **13. Use of DHS Seal, Logo and Flags**

Subrecipients must obtain permission from their DHS Financial Assistance Office prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

## **14. Federal Leadership on Reducing Text Messaging while Driving**

Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

## **15. Patents and Intellectual Property Rights**

Unless otherwise provided by law, Subrecipients are subject to the *Bayh-Dole Act*, 35 U.S.C. section 200 *et seq.*, Subrecipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

## **16. Civil Rights Act of 1964 - Title VI**

Subrecipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (codified as amended at 42 U.S.C. section 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

## **17. Federal Debt Status**

All Subrecipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

## **18. Age Discrimination Act of 1975**

Subrecipients must comply with the requirements of the *Age Discrimination Act of 1975*, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

## **19. Fly America Act of 1974**

Subrecipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974*, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

## **20. Reporting of Matters Related to Subrecipient Integrity and Performance**

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the Recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Subrecipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

## **21. False Claims Act and Program Fraud Civil Remedies**

Subrecipients shall comply with the requirements of the *False Claims Act*, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

## **22. Civil Rights Act of 1968**

Subrecipients shall comply with Title VIII of the *Civil Rights Act of 1968*, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits Subrecipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 *et seq.*), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units- i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)- be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

### **23. Notice of Funding Opportunity Requirements**

All of the instructions, guidance, limitations, and other conditions set forth in the 2020 NOFO are incorporated here by reference in the award terms and conditions. All Subrecipients must comply with any such requirements set forth in the 2020 NOFO.

### **24. SAFECOM**

Subrecipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### **25. Drug-Free Workplace Regulations**

Subrecipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the Subrecipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of sec. 5152-5158 of the *Drug-Free Workplace Act of 1988* (41 U.S.C. sections 8101-8106).

### **26. National Environmental Policy Act**

Subrecipients must comply with the requirements of the *National Environmental Policy Act of 1969*, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 *et seq.*) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires Subrecipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

### **27. Reporting Subawards and Executive Compensation**

Subrecipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

### **28. Trafficking Victims Protection Act of 2000**

Subrecipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the *Trafficking Victims Protection Act of 2000* (TVPA), codified as amended at 22 U.S.C. Section 7104. The award term is located at 2 C.F.R. Section 175.15, the full text of which is incorporated here by reference.

### **29. USA Patriot Act of 2001**

Subrecipients must comply with requirements of Section 817 of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

### **30. DHS Specific Acknowledgements and Assurances**

Subrecipient, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Subrecipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Subrecipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Subrecipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Subrecipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

### **31. Acknowledgement of Federal Funding from DHS**

Subrecipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

### **32. Lobbying Prohibitions**

Subrecipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the Subrecipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

### **33. Non-Supplanting Requirement**

Subrecipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

### **34. Activities Conducted Abroad**

Subrecipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

### **35. Terrorist Financing**

Subrecipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Subrecipients are legally responsible to ensure compliance with the Order and laws.

### **36. Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. section 2225a, Subrecipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, codified as amended at 15 U.S.C. section 2225.

### **37. Whistleblower Protection Act**

Subrecipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

### **38. Copyright**

Subrecipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.