



VERMONT DEPARTMENT OF PUBLIC SAFETY

**STATE OF VERMONT  
STANDARD SUBRECIPIENT AGREEMENT  
(Federal Fund Source to Non-State Subrecipient)**

**FEDERAL PROGRAM TITLE  
FY 2018 Pre-Disaster Mitigation Grant Program**

**AGREEMENT WITH  
Town of Middlebury  
Agreement # 02140-31234-010**

**Award Amount - \$7,612.50**

*DPS Financial Office Use Only*

SAM checked for DUNS Suspension and Debarment Exclusions  
<https://www.sam.gov/portal/public/SAM/> Date: **1/30/20** Initial: MA

SAM Expiration Date: **10/28/20**

Print Screen Placed in Grant File

DPS Restricted Parties List Checked Date: **7/31/20** Initial: MA

Risk Assessment Completed Date: **7/31/20** Initial: MA

Subrecipient Vs. Contractor Determination Form Completed Date: **7/31/20** Initial: MA

Single Audit Check & Delinquent SAR (VT Bulletin 5\_Eligibility Query)  
Completed Date: **7/31/20** Initial: MA

BGS Office of Purchasing & Contracting Debarment List Checked  
<http://bgs.vermont.gov/purchasing/debarment> Date: **7/31/20** Initial: MA

Certificate of Insurance Date: **8/3/20** Initial: MA

Entered In:  VT Grant Tracking (VISION) Date: \_\_\_\_\_ Initial: \_\_\_\_\_

Entered In:  FFATA (if \$25K or over) Date: \_\_\_\_\_ Initial: \_\_\_\_\_

Federal Fund Standard Format to Non-State Subrecipients Only

**VERMONT DEPARTMENT OF PUBLIC SAFETY**

**STATE OF VERMONT GRANT AGREEMENT** **Part 1-Grant Award Detail**

**SECTION I - GENERAL GRANT INFORMATION**

<sup>1</sup> Grant #: 02140-31234-010		<sup>2</sup> Original <input checked="" type="checkbox"/> Amendment # _____	
<sup>3</sup> Grant Title: FY 2018 Pre-Disaster Mitigation Grant Program			
<sup>4</sup> Amount Previously Awarded: \$ _____		<sup>5</sup> Amount Awarded This Action: \$ 7,612.50	
		<sup>6</sup> Total Award Amount: \$ 7,612.50	
<sup>7</sup> Award Start Date: 10/1/2018		<sup>8</sup> Award End Date: 4/1/2022	
<sup>9</sup> Subrecipient Award: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
<sup>10</sup> Vendor #: 39947		<sup>11</sup> Grantee Name: Town of Middlebury	
<sup>12</sup> Grantee Address: 77 Main St			
<sup>13</sup> City: Middlebury		<sup>14</sup> State: VT	<sup>15</sup> Zip Code: 05753
<sup>16</sup> State Granting Agency: Department of Public Safety			<sup>17</sup> Business Unit: 02140
<sup>18</sup> Performance Measures: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		<sup>19</sup> Match/In-Kind: \$2,537.50 Description: 25.0%	
<sup>20</sup> If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>			

**SECTION II - SUBRECIPIENT AWARD INFORMATION**

<sup>21</sup> Grantee DUNS #: 026135772		<sup>22</sup> Indirect Rate: _____% <small>(Approved rate or de minimis 10%)</small>		<sup>23</sup> FFATA: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
<sup>24</sup> Grantee Fiscal Year End Month (MM format): Jun-06				<sup>25</sup> R&D: <input type="checkbox"/>	
<sup>26</sup> DUNS Registered Name (if different than VISION Vendor Name in Box 11):					

**SECTION III - FUNDING ALLOCATION**

STATE FUNDS							
Fund Type	<sup>27</sup> Awarded Previously	<sup>28</sup> Award This Action	<sup>29</sup> Cumulative Award	<sup>30</sup> Special & Other Fund Descriptions			
General Fund	\$0.00	\$0.00	\$0.00				
Special Fund	\$0.00	\$0.00	\$0.00				
Global Commitment <small>(non-subrecipient funds)</small>	\$0.00	\$0.00	\$0.00				
Other State Funds	\$0.00	\$0.00	\$0.00				
FEDERAL FUNDS <i>(includes subrecipient Global Commitment funds)</i>						Required Federal Award Information	
<sup>31</sup> CFDA#	<sup>32</sup> Program Title	<sup>33</sup> Awarded Previously	<sup>34</sup> Award This Action	<sup>35</sup> Cumulative Award	<sup>36</sup> FAIN	<sup>37</sup> Federal Award Date	<sup>38</sup> Total Federal Award
97.047	FY 2018 Pre-Disaster Mitigation Grant Program	\$0.00	\$7,612.50	\$7,612.50	EMB-2019-PC-0003	10/1/2018	\$497,913.75
<sup>39</sup> Federal Awarding Agency: FEMA		<sup>40</sup> Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00

STATE OF VERMONT GRANT AGREEMENT		Part 1-Grant Award Detail			
Federal Awarding Agency:		Federal Award Project Descr:			
	\$0.00	\$0.00	\$0.00		\$0.00
Federal Awarding Agency:		Federal Award Project Descr:			
Total Awarded - All Funds		\$0.00	\$7,612.50	\$7,612.50	
SECTION IV - CONTACT INFORMATION					
<b>STATE GRANTING AGENCY</b>			<b>GRANTEE</b>		
NAME: Melissa Austin			NAME: Kathleen Ramsay		
TITLE: Financial Administrator			TITLE: Town Manager		
PHONE: (802) 241-5396			PHONE: (802) 388-8100 ext 201		
EMAIL: melissa.austin@vermont.gov			EMAIL: kramsay@townofmiddlebury.org		

**Part 2- Grant Agreement**

**Parties:** This is an Agreement between the State of Vermont, **Department of Public Safety (DPS)** (hereinafter called “State”), and the Town of Middlebury (hereinafter called “Subrecipient”).

The Subrecipient must be in compliance with the Vermont statutory requirements relating to taxation of business entities operating within the State. If Subrecipient does not have a Business Account Number, it is the Subrecipient’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Subrecipient is required to have a Vermont Department of Taxes Business Account Number.

Subrecipient Federal Tax Identification Number: 03-6000564

**Subject Matter:** The subject matter of this Agreement is **as outlined in Attachment A: Scope of work to be performed.**

**Award Details:** Amounts, dates and other award details are as shown in the above Agreement Part 1-Grant Award Detail. Detailed services to be provided by the Subrecipient are described in Attachment A.

**Agreement Term:** **State will not reimburse any expenses incurred prior to the execution date of this agreement unless an Advance Notice to Proceed has been issued (DPS Form ADM-105). The execution date is defined as the date the Department of Public Safety representative(s) signs this agreement. The only exception to this rule is for FEMA Public Assistance awards under the Stafford Act (see Attachment E for execution date details).**

**Amendment:** No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Subrecipient. An amendment is a request to make a programmatic, administrative, or substantial financial change to this Agreement (refer to Attachment B, Payment Provisions). Examples include changes in scope of work, budget modification, and change in Subgrant term (period of performance).

**Cancellation:** This Agreement may be suspended or cancelled by either party by giving written notice at least **30** days in advance.

**Attachments:** This Agreement consists of **26** pages including the following attachments that are incorporated herein:

**Please initial that you have read and understand each Attachment**

- \_\_\_\_ Grant Agreement-Part 1 – Grant Award Detail
- \_\_\_\_ Grant Agreement-Part 2
- \_\_\_\_ Attachment A - Scope of Work to be Performed
- \_\_\_\_ Attachment B - Payment Provisions
- \_\_\_\_ Attachment C - Customary State Agreement Provisions
- \_\_\_\_ Attachment D - Other Provisions
- \_\_\_\_ Attachment E - Funding Source Special Conditions

We, the undersigned parties, agree to be bound by this agreement, its provisions, attachments and conditions contained herein.

**STATE OF VERMONT**  
**Department of Public Safety**

**SUBRECIPIENT**  
**Authorized Representative**

**By:**

**By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_  
Commissioner/Deputy Commissioner

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Your signature on this agreement attests to the acceptance of all provisions, attachments and conditions contained herein.

## **ATTACHMENT A SCOPE OF WORK TO BE PERFORMED**

### **Objective:**

The Town of Middlebury will update its single jurisdictional local hazard mitigation plan.

### **Activity to be performed:**

Each jurisdiction will hold public meetings, inviting residents, business owners and other potential stakeholders to join the conversation while their plan is in development, to encourage resident participation and ownership. Each jurisdiction with a current plan will first be tasked with reviewing the current plan, and then updating/developing the new plan. Pursuant to the FEMA Review Tool for hazard mitigation planning, adjacent towns, stakeholder State agencies/personnel will be asked to review and provide comment on each plan. Each jurisdiction that is updating their plan will reviewing the current plan, research changes in disaster data, changes to any hazard mapping, and changes in town development that have either increased or decreased vulnerability, with a strong focus on town-owned and critical infrastructure. They will also review identified and prioritized natural hazards, revising descriptions, data and re-prioritizing, if applicable. All jurisdictions will evaluate their risks for each hazard addressed in the 2018 State Hazard Mitigation Plan and develop an associated vulnerability assessment, which will aid in determining mitigation strategies. Once jurisdictions have completed their new/updated hazard identification and risk/vulnerability assessment, they will review the mitigation strategies outlined in the current plan (if applicable) and revise/develop new mitigation strategies. The strategies will be comprehensive, including actions that address local plans and regulations, structure and infrastructure projects, natural systems protection, and education and awareness programs. Each jurisdiction, after seeking final public input, will submit its plan to Vermont Emergency Management for review. Should revisions be requested by the State, the plans will be revised as appropriate and resubmitted for a second review. The plans will then be sent to FEMA Region I for review. Again, if revisions are requested, the plans will be revised. Following Approval Pending Adoption (APA) notice, each jurisdiction will formally adopt their plan and resubmit the adoption letter and final plan to FEMA for formal approval. Each jurisdiction will then be responsible for implementing, monitoring, evaluating, and updating the new hazard mitigation plan. The mitigation strategies identified in the plans update will be considered during subsequent updates.

### **Performance Measures:**

The financial assistance provided for this project is contingent/conditioned upon the delivery of mitigation plans for each community identified in the scope of work that FEMA approves before the end of the period of performance. If FEMA does not approve a plan for a community before the end of the period of performance, then FEMA may partially terminate the project, disallow costs associated with the mitigation plan for that community, and recover all payments made to the Recipient for that community.

## ATTACHMENT B PAYMENT PROVISIONS

The State agrees to compensate the Subrecipient for services performed, up to the Federal share amount stated below, provided such services are within the scope of the Agreement and are authorized as provided for under the terms and conditions of this Agreement.

### Budget Detail:

Salaries and Benefits	\$
Contractual	\$ 10,000.00
Supplies	\$ 150.00
Travel & Mileage	\$
Equipment *	\$
Other Costs	\$
Indirect Cost **	\$
Total Federal Share	\$ 7,612.50
Total Non-Federal Share (Match)	\$ 2,537.50

Subrecipient agrees that grant funds awarded will be used to supplement existing funds for program activities, and will not supplant (replace) non-Federal funds Subrecipients must be able to document local funds were not supplanted with funds from this award (for example: personnel expenses must be supported with actual budget allocations which include this funding source).

\* Federal equipment threshold is \$5,000.00<sup>1</sup>. Please reference Federal equipment compliance requirements.<sup>2</sup> Subrecipients must follow their own procurement policy unless the Federal and State requirements are more restrictive.

\*\* Current Rate Approval Letter (under 2 CFR 200.331(a)(4) must be on file with DPS. It is also important to note that indirect rates may be subject to statutory caps of the Federal program which supersede the requirements of the Uniform Guidance. Refer to Bulletin 5 for further guidance.

During the performance of this Agreement, any of the cost categories may be increased or decreased by up to 10% of the total award with prior written approval without the need for an official contact the DPS Financial Office shown on page 3. Approval will be given provided:

1. It is within the Total Award Amount in effect at the time of the adjustment
2. It does not change the Scope of Work in Attachment A

### PROGRAMMATIC REPORTING REQUIREMENTS:

- Under 2 CFR 200.328 (d) *Significant Developments*: Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the subrecipient **must** inform DPS *as soon* as the following types of conditions become known:
  1. Problems, delays, or adverse conditions which will *materially impair* the ability to meet the objective of the award. This disclosure **must** include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  2. Favorable developments which enable meeting time schedules and objectives *sooner or at less cost* than anticipated or producing *more or different beneficial results* than originally planned.

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<sup>1</sup> 2 CFR § 200.313 (d)(1)

<sup>2</sup> 2 CFR § 200.313 (d)(2)

- Under 2 CFR 200.201: The subrecipient **must** certify in writing to DPS at the end of the award that the project or activity was completed, or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.
- Changes in principal personnel or scope of effort **must** receive the prior written approval of DPS.

The subrecipient must submit programmatic reports using either the DPS Subgrant Progress Report Form or another format that includes all information required on the DPS form. The reporting periods are October 1 – December 31 (due January 30), January 1 – March 31 (due April 30), April 1 – June 30 (due July 30), and July 1 – September 30 (due October 30).

**FINANCIAL REPORTING REQUIREMENTS /PAYMENT REQUESTS:**

The State, at its discretion, will reimburse the Subrecipient by one of the following options depending on the needs of the Subrecipient and their standing with the State at the time they request Agreement funds:

- Reimbursement in arrears of expenditures with attached documentation. Subrecipient must submit the DPS Financial Report Form (**DPS Form ADM-116a**) with attached detailed documentation of incurred expenses paid to receive payment.
- Limited cash advance with prior approval. Subrecipient must submit the DPS Financial Report Form with detailed documentation of incurred expenses marked “Goods/Services received, not paid.” DPS will process and make payment to Subrecipient. Next, the Subrecipient **MUST** make payment to the vendor and provide DPS proof of such (i.e. copy of cancelled check) within ten (10) days of receipt of the State of Vermont payment. Subrecipients may receive cash advance however they may be required to deposit funds in an interest-bearing account and possibly return interest earned more than \$500 per year (see 2 CFR §200.305(b)(8)). Any interest earned must be reported to the Department of Health and Human Services, Payment Management System.

**Requests for reimbursement, or payment, must be made using the DPS Financial Report Form (DPS Form ADM-116a), and must be supported by detailed supporting documentation. Examples of detailed supporting documentation may include payroll reports, timesheets, general ledger reports, paid vendor invoices, and cancelled checks.**

**These requests must be submitted to the Vermont Department of Public Safety, Financial Office, no later than the end of the month following the month in which the expenses were incurred. Please send to:**

Name: Melissa Austin  
 Via mail: Vermont Department of Public Safety/Financial Office  
 45 State Drive  
 Waterbury, VT 05671-1300  
 Via fax: 802-241-5553  
 Via email: melissa.austin@vermont.gov

**DPS will not make any payments on this Agreement unless the Subrecipient meets all provisions contained herein.**

**CLOSEOUT:**

When a performance period is nearing its end, the subrecipient should ensure all work is complete and file their reports by the deadline noted in Attachment B of the subrecipient agreement. If they have determined a need for an extension, it must be requested with sufficient time to allow for DPS to review and approve prior to the end of the current award term. If the performance period and date for the final report ends and the subrecipient does not contact DPS for an extension, the Financial Office will close out the award. Upon final payment and verification that all reporting obligations have been met, a closeout letter will be issued to the Subrecipient.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement. Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-

state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury  
*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.



**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the

Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A) Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B) Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C) Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D) Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A) is not under any obligation to pay child support; or
- B) is under such an obligation and is in good standing with respect to that obligation; or
- C) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the

performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

**C. Termination Assistance:** Upon nearing the end of the final term or

termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party’s performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

**A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be

conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

**A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.

**B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

**(End of Standard Provisions)**

# ATTACHMENT D OTHER GRANT AGREEMENT PROVISIONS

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; PROCUREMENT; ORGANIZATIONAL AND FINANCIAL REQUIREMENT; FOLLOWING SUBRECIPIENT PROCEDURES: DISCLOSURE OF INFORMATION AND CONFLICT OF INTEREST;

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this agreement provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," and 10 CFR Part 1036 "Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Public Safety determines to award the covered transaction, grant, or other agreement.

### 1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

**1.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**2.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**3.** The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, Agreements, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification

shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

**1.** The prospective primary participant 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 from covered transactions by any Federal department or agency;
- (b)** Have not within a three-year period preceding this proposal 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 (1)(b) of this certification; and
- (d)** Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

**2.** Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**3.** Applicable CFR's and Federal Executive Orders 12549 and 12689 prohibit non-federal entities from contracting with or making sub-awards under covered transactions to parties that

are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and non-procurement transactions such as grants or cooperative agreements. By signing this Agreement, the Subgrantee agrees it will verify the status of potential vendors prior to any federal funds being obligated to prevent any debarred or suspended agencies or vendors from receiving federal funds. The Subrecipient can confirm the status of potential vendors by conducting a search on the System for Award Management (SAM) website (<https://www.sam.gov/portal/public/SAM/>). At this time, DPS does not require Subrecipients to submit proof of verification with any reimbursement request; however, the Subrecipient must maintain this information, in the form of a screen print, with other grant documentation. This documentation shall be available for review per Attachment C.

### 3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

The Subrecipient will or will continue to provide a drug-free workplace by:<sup>3</sup>

- 1.** Maintaining a Zero Tolerance Drug Policy;
- 2.** Posting in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Subrecipient's workplace and specifying the actions

<sup>3</sup> 2 CFR § 182

that will be taken against employees for violations of such prohibition;

**3.** Stating in all solicitations or advertisements for employees or subcontractors placed by or on behalf of the Subrecipient that the Subrecipient maintains a drug-free workplace;

**4.** Establishing an ongoing drug-free awareness program to inform employees about:

**(a)** The dangers of drug abuse in the workplace;

**(b)** The Subrecipient's policy of maintaining a drug-free workplace;

**(c)** Any available drug counseling, rehabilitation, and employee assistance programs; and

**(d)** The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

**(e)** Including the provisions of the foregoing clauses in all third party contracts, subcontracts, and purchase orders that exceed ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

#### **4. PROCUREMENT:**

The Subrecipient agrees to abide by their respective procurement rules, policies, and/or procedures as outlined in 2 CFR §§ 200.317 to 200.326.

**1.** Subrecipient must comply with proper competitive bidding procedures as required by the applicable federal and state rules.

**2.** The subrecipient entity must maintain written standards of conduct covering conflict of interest and governing the actions of its employees and engaged in selection, award, and administration of contracts.<sup>4</sup>

**3.** The subrecipient must take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms be used when possible. Please see 2 CFR § 200.321 for the affirmative steps that must be taken.

#### **5. ORGANIZATIONAL AND FINANCIAL REQUIREMENTS**

**1.** All Subrecipients are required to establish and maintain accounting systems and financial records to accurately account for funds awarded to them. Determining allowability of costs claimed will be consistent with the requirements of the grant award and its applicable regulations.

**a.** Subrecipients have the responsibility to employ the organizational and management techniques necessary to assure proper administration and cost allocation, including accounting,

budgeting, reporting, auditing and other review controls.

**b.** All Subrecipients will accept responsibility for expending and accounting for funds in a manner consistent with an approved project, plan and or program as evidenced by their acceptance of an Agreement award by the Department of Public Safety; Policies, procedures, reporting requirements or other special conditions established by the appropriate Federal agency, if applicable, and the Department of Public Safety.

**2.** Subrecipients must have an adequate system of internal controls which:

**a.** Presents, classifies and retains all detailed financial records related to the Agreement award. Financial records must be retained by the Subrecipient and be available for review for a period of three (3) years after the expiration of the grant period except that records must be retained until completion or resolution of all issues arising from audit, litigation or claims started before the expiration of the three year period, whichever is later.

**b.** Provides reasonable assurance that Federal awards are managed in compliance with Federal statutes, regulations, and the terms and conditions. These internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**c.** Provides information for planning, control and evaluation of direct and indirect costs;

**d.** Provides cost and property control to ensure optimal use of the grant funds; Controls funds and other resources to ensure that the expenditure of grant funds and use of any property acquired under the grant are in conformance with established guidelines and policies.

**3.** Notification of Organizational Changes Required:

**a.** The recipient shall provide DPS written notification within 30 days should any of the following events occur:

**i.** having new or substantially changed systems

**ii.** having new compliance personnel

**iii.** loss of license or accreditation to operate program

**iv.** organizational restructuring.

#### **6. FOLLOWING SUBRECIPIENT PROCEDURES:**

The undersigned certifies that the Subrecipient organization has in place standard policies and procedures that govern the Subrecipient's payroll, purchasing, contracting and inventory control in accordance with 2 CFR 225, Appendix A, Section C 1.e or 2 CFR 200.302. The undersigned further certifies that the Subrecipient organization will use those policies and procedures for any approved expenditure under this Agreement and for any equipment purchased with Agreement funds. The undersigned also agrees to make the policies and procedures available for examination by any authorized representatives of the State or Federal Government. This does not relieve the Subrecipient from requirements of federal financial management, requirements in: **(a)** 2 CFR 200 § 302 Financial Management

#### **7. DISCLOSURE OF INFORMATION:**

Any confidential or personally identifiable information (PII) acquired by subrecipient during the course of the subgrant shall not be disclosed by subrecipient to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever without the prior written consent of the Department of Public Safety either during the term of the Agreement or in the event of termination of the Agreement for any reason whatsoever. Subrecipient agrees to abide by applicable federal regulations regarding confidential information and research standards, as appropriate, for federally supported projects.

#### **8. CONFLICT OF INTEREST**

Subgrantee/Contractor covenants that, to the best of its knowledge, no person under its employ, including subcontractors, who presently exercises any functions or responsibilities in connection with Board, Department, or projects or programs funded by Board or Department, has any personal financial interest, direct or indirect, in this Subgrant Agreement /Contract.

**1.** Subgrantee/Contractor further covenants that in the performance of Subgrant Agreement/Contract, no person having such conflicting interest shall knowingly be employed by Subgrantee/Contractor.

**2.** Any such interest, on the part of Subgrantee /Contractor or its employees, when known, must be disclosed in writing to Department.

## **ATTACHMENT E FUNDING SOURCE SPECIAL CONDITIONS**

This Agreement is subject to the requirements of all federal laws, policies and bulletins. Most notably:

### **ARTICLE I – SCOPE OF WORK**

The Recipient will conduct the PDM project as briefly described below and as further detailed in the grant application and all subapplications, which are incorporated here by reference.

1. **Project # PDMC-PL-01-VT-2018-003**  
**State of Vermont Local Hazard Mitigation Plan Development**  
Total Project Cost – \$227,300.00 (federal award \$170,475.00, nonfederal match \$56,825.00)  
Subapplicant – Vermont Division of Emergency Management and Homeland Security  
Brief Description – Local hazard mitigation plan development covering the following towns/cities: Middlebury, Vergennes, Dorset, Landgrove, Shaftsbury, Stamford, Marshfield, Marshfield Village, Chittenden, Killington, Pittsford, Shrewsbury, Tinmouth, Wallingford, West Haven, Chester, Windsor, Hartland, Norwich, Randolph, Royalton, Dover, and Weston.
  
2. **Project # PDMC-PJ-01-VT-2018-006**  
**Huntington Landslide Acquisition/Demolition**  
Total Project Cost – \$390,285.00 (federal award \$292,713.75, nonfederal match \$97,571.25)  
Subapplicant – Town of Huntington  
Brief Description – Acquire and demolish two vulnerable structures located on one parcel of land atop an active landslide above a tributary of the Huntington River.
  
3. **Project # PDMC-MC-01-VT-2018-008**  
**Management Costs**  
Total Project Cost – \$46,300.00 (federal award \$34,725.00, nonfederal match \$11,575.00)  
Subapplicant – Vermont Division of Emergency Management and Homeland Security  
Brief Description – Staff of the Vermont Division of Emergency Management and Homeland Security will perform various eligible management cost activities for the administration and management of the grant.

The financial assistance provided for Project 1 above is contingent/conditioned upon the delivery of a mitigation plan that FEMA approves before the end of the period of performance. If FEMA does not approve the plan before the end of the period of performance, then FEMA may terminate the project, disallow all costs, and recover all payments made to the Recipient for that project.

### **ARTICLE II – TOTAL PROJECT COST, FEDERAL AWARD, AND NONFEDERAL MATCHING REQUIREMENT**

1. The federal award is \$497,913.75, which is 75% of the total approved project cost of \$663,885.00. As a condition of the federal award, the Recipient is required to contribute a nonfederal match of \$165,971.25, which is 25% of the total approved project cost.
2. The Recipient will follow all nonfederal matching requirements set forth in applicable law, regulations, and FEMA guidance and in compliance with 2 C.F.R. § 200.306. The nonfederal match must be available at the time FEMA approves the federal award.
3. The approved budget for the total project costs is set forth in the cost review section of the grant application. The Recipient is responsible for the nonfederal share and any actual costs that exceed the total approved project costs.

### **ARTICLE III – PERIOD OF PERFORMANCE**

1. The period of performance for this federal award is October 1, 2018, to April 1, 2022.
2. A non-Federal entity, as explained in 2 C.F.R. § 200.309, may charge to a federal award only allowable costs incurred during the period of performance (except as described in 2 C.F.R. § 200.461) and any costs incurred before FEMA made the federal award or the pass-through entity makes a subaward that were authorized by FEMA or the pass-through entity.

3. The Recipient must submit any request to extend the period of performance at least 60 days before the expiration of the period of performance. The request must be in writing and must contain the justification detailed in the *Hazard Mitigation Assistance Guidance*, Part VI, § D.4.1, which includes a written explanation of the reasons for the delay, an outline of remaining funds available to support the extended period of performance, and a description of performance measures necessary to complete the activity. FEMA will not process an extension request without justification and the decision to approve any extension request is committed entirely to FEMA's discretion. In order for FEMA to consider a request, the Recipient's performance and financial reports must be current.
4. FEMA will not approve extensions to the period of performance for delays caused by the lack of nonfederal match funding.

#### **ARTICLE IV – 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, the Recipient will be notified of the changes in writing. Once notification has been made, any subsequent request or drawdown for funds will indicate recipient acceptance of the changes to the federal award.

#### **ARTICLE V – PRIOR APPROVAL FOR MODIFICATION OF BUDGET OR SCOPE**

1. Before making any change to the DHS/FEMA approved budget for this award, the Recipient must request prior written approval from FEMA where required by 2 C.F.R. § 200.308. For awards with an approved budget greater than the simplified acquisition threshold (currently \$250,000), the Recipient may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. The Recipient must report any deviations from your 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. In addition, the Recipient will inform FEMA, as early as possible, when it estimates that it will not utilize the entire amount of the federal award and have excess funds at the end of the period of performance.
2. The Recipient may request a change in the scope of work after FEMA approves the federal award so long as the new scope does not change the nature or total project cost of the activity, properties identified in any subapplication, the feasibility and effectiveness of the project, or the benefit cost ratio. Any requests for a change in the scope of work must be supported by adequate justification, to include a description of the proposed change, a written explanation of the reason or reasons for the change, an outline of remaining funds available to support the change, and a full description of the work necessary to complete activity.
3. The approval of any changes to scope or budget are entirely committed to FEMA's discretion.

#### **ARTICLE VI – DISPOSITION OF EQUIPMENT AND SUPPLIES UNDER THE FEDERAL AWARD**

The Recipient will comply with the regulations at 2 C.F.R. §§ 200.313 and 314 concerning the use, management, and disposition of equipment and supplies acquired under the federal award. This includes, among other things, the requirement for the Recipient to seek disposition instructions from FEMA concerning original and replacement equipment.

#### **ARTICLE VII – DUPLICATION OF BENEFITS AND PROGRAM**

1. Duplication of Benefits
  - a. PDM funds cannot duplicate funds received by or available to a non-Federal entity from other sources for the same purpose. Examples of other sources include insurance claims, other assistance programs (including previous project or planning grants and subawards from a FEMA hazard mitigation assistance program), legal awards, or other benefits associated with properties or damage that are or could be the subject of litigation.
  - b. Because the availability of other sources of mitigation grant or loan assistance is subject to available information and the means of each individual Applicant, FEMA does not require that property owners seek assistance from other sources (apart from insurance). However, it is the responsibility of the property owner to report other benefits received, any applications for other assistance, the availability of insurance proceeds, or the potential for other compensation, such as from pending legal claims for damage relating to the property.

- c. Where a property owner has an insurance policy covering any loss to the property that relates to a proposed PDM project, the means are available for receiving compensation for a loss or, in the case of increased cost of compliance, assistance toward a mitigation project. FEMA will generally require that the property owner file a claim prior to the receipt of PDM funds.
- d. The *Hazard Mitigation Assistance Guidance*, Part III, § D.5 provides more detailed requirements concerning duplication of benefits.

## 2. Duplication of Programs

- a. FEMA will not provide financial assistance under a PDM federal award for activities for which it determines the more specific or primary authority lies with another federal agency, and FEMA may disallow or recover federal funding used to duplicate those other authorities.
- b. The *Hazard Mitigation Assistance Guidance*, Part III, § D.4 provides more detailed requirements concerning duplication of programs.

## **ARTICLE VIII – PDM NOTICE OF FUNDING OPPORTUNITY**

All the instructions, guidance, limitations, and other conditions set forth in the FY 2018 Pre-disaster Mitigation Notice of Funding Opportunity (“NOFO”) are incorporated by reference in the federal award terms and conditions. All non-Federal entities will use federal funding and the nonfederal share in accordance with the NOFO.

## **ARTICLE IX – HAZARD MITIGATION ASSISTANCE GUIDANCE**

All of the instructions, guidance, limitations, and other conditions set forth in the *Hazard Mitigation Assistance Guidance* (2015) are incorporated by reference into this grant agreement. The Recipient will use federal funding and the nonfederal share in accordance with the *Hazard Mitigation Assistance Guidance*.

## **ARTICLE X – INFLUENCING ENACTMENT OF FEDERAL, STATE, AND LOCAL ACTIONS**

The Recipient understands and agrees that no federally appropriated funding made available under the federal award may be used, directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government, without the express prior approval of FEMA. See 18 U.S.C. § 1913.

## **ARTICLE XI – PAYMENTS**

1. FEMA will make payments to the Recipient via the Payment and Reporting System (“PARS”). These payments and Recipient drawdowns are governed by the Treasury-State Cash Management Improvement Act agreements and/or default procedures codified at 31 C.F.R. Part 205 and TFM 4A-2000, *Overall Disbursing Rules for All Federal Agencies*.
2. The Recipient must follow the payment methods proscribed by 2 C.F.R. § 200.305(b) when making payments to subrecipients, except in cases where those payments directly conflict with state law or regulation. Where such a conflict with state law or regulation exists, the Recipient is required to comply with its own state laws and regulations governing payments to subrecipients as required by 2 C.F.R. § 200.302, as well as all remaining provisions of 2 C.F.R. § 200.305(b) where the Recipient can comply without creating a conflict with state laws and regulations.
3. For non-Federal entities other than states, payment methods must minimize the time elapsing between the transfer of funds from the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means and meet all other requirements of 2 C.F.R. § 200.305(b).
4. The Recipient will not make payment to any non-Federal entity other than those specified in the scope of work.

## **ARTICLE XII – COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND WITH THE RECORD OF ENVIRONMENTAL CONSIDERATION**

1. The Recipient will comply with all applicable federal laws, executive orders, and regulations.
2. The Recipient will comply with all applicable federal, state, and local laws before the start of any construction activity.

3. The Recipient will obtain all necessary federal, state, and local permits and clearances for construction activities. The failure to obtain such permits and clearances may jeopardize federal funding.
4. The Recipient may not pursue any change in the scope of work until FEMA has re-evaluated the revised scope's compliance with the National Environmental Policy Act and all other environmental and historic preservation laws, executive orders, and regulations.
5. The Recipient must adhere to all conditions and instructions in the Record of Environmental Consideration and Environmental Assessment, as applicable, for the federal award.
6. If ground disturbing activities occur during construction, the Recipient will ensure monitoring of ground disturbance and, if any potential archaeological resources are discovered, cease construction activities in that area and notify FEMA.

### **ARTICLE XIII – RECOVERY OF FUNDS**

1. The Recipient will recover federal funds expended in error, misrepresentation, or fraud, disallowed by FEMA, otherwise spent inappropriately, or unused.
2. The Recipient will adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
3. The Recipient will designate on its quarterly progress reports the non-Federal entities from which it has not processed recoveries but from which recoveries are due FEMA.
4. The Recipient will submit recovered funds as soon as they are collected, but no later than 90 days from the end of the period of performance.
5. The Recipient will notify FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
6. The Recipient will report all cases of suspected fraud to the DHS Office of Inspector General and will cooperate with any investigation conducted by the DHS Office of Inspector General.
7. The Recipient will cooperate with FEMA regarding any lawsuit that may result from the Recipient or FEMA's attempt to recover funds or disallow costs.

### **ARTICLE XIV – REFUNDS, REBATES, AND CREDITS**

1. The Recipient will pay FEMA the appropriate share, based on the federal share of the federal award, of any refund, rebate, credit, or other amounts arising from the performance of the scope of work for the federal award.
2. The Recipient will promptly collect all monies due FEMA from a non-Federal entity as a result of a refund, rebate, or credit and cooperate with FEMA in any claim or suit in connection with these amounts.

### **ARTICLE XV – REPORTING**

The Recipient will comply with the following reporting requirements:

1. **Financial Reports.** The Recipient will submit the first Federal Financial Report (“FFR”) using the Standard Form 425 within 30 days of the end of the first federal quarter following the date of FEMA's approval of the federal award. Thereafter, the Recipient will submit quarterly FFRs on January 30, April 30, July 30, and October 30 until the period of performance ends. The final FFR is due within 90 days after the end of the period of performance.
2. **Performance Reports.** The Recipient shall submit the first Program Performance Report (“PPR”) using the Standard Form PPR within 30 days of the end of the first federal quarter following the date of FEMA's approval of the federal award. Thereafter, the Recipient shall submit quarterly PPRs on January 30, April 30, July 30, and October 30 until the period of performance ends. The final PPR is due within 90 days after the end of the period of performance. PPRs shall report the name, completion status, expenditure, and payment-to-date of each approved project under the scope of work.



3. FEMA may prohibit drawdowns for the federal award or not make future federal awards if the Recipient does not comply with the reporting requirements.

#### **ARTICLE XVI – PROCUREMENT OF SERVICES AND PROPERTY**

The Recipient understands that, when procuring services and property under the federal award, all non-Federal entities must comply with the procurement standards set forth at 2 C.F.R. §§ 200.317-326. To ensure compliance, the Recipient will work with all non-Federal entities before making subawards to ensure their awareness of these procurement standards. If the Recipient or a subrecipient fails to comply with these standards, FEMA may take an enforcement action through any of the remedies set forth at 2 C.F.R. § 200.338.

#### **ARTICLE XVII – CLOSEOUT**

The Recipient will submit, no later than 90 calendar days after the end date of the period of performance, the following documentation pursuant to 2 C.F.R. § 200.343: (1) a final Federal Financial Report; (2) a final Program Performance Report; (3) an inventory of equipment acquired with federal funds or received from FEMA; (4) the documentation detailed in the *Hazard Mitigation Assistance Guidance*, Part II, § N and Part VI, § F.2; and (5) other documents specified in regulation. The Recipient will retain all records for the periods specified in 2 C.F.R. § 200.333, which is generally three years from the date the Recipient submits the final Federal Financial Report to FEMA.

#### **ARTICLE XVIII – COPYRIGHT**

A non-Federal entity, as set forth in 2 C.F.R. § 200.315, may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under the federal award. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.

#### **ARTICLE XIX – FLOOD INSURANCE**

The Recipient will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (codified as amended at 42 U.S.C. § 4012a), which requires a non-Federal entity receiving federal financial assistance for acquisition and construction purposes for use in any special flood hazard area to obtain and maintain flood insurance for a structure equal to the lesser of the project cost or the maximum limit of coverage made available to the particular type of property under the National Flood Insurance Program.

### **DEPARTMENT OF HOMELAND SECURITY 2019 STANDARD TERMS AND CONDITIONS**

#### **ARTICLE XX – ASSURANCES, ADMINISTRATIVE REQUIREMENTS, AND COST PRINCIPLES**

1. DHS financial assistance recipients must complete either the Office of Management and Budget (“OMB”) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (“DHS FAO”) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.
2. DHS financial assistance recipients are required to follow the applicable provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. Part 3002.

#### **ARTICLE XXI – DHS SPECIFIC ACKNOWLEDGEMENTS AND ASSURANCE**

1. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.
2. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
3. Recipients 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.
4. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

5. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
6. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. Recipients are required to provide this information once every two (2) years, not every time an award is made. After the initial submission, recipients are only required to submit updates. Recipients should submit the completed tool, including supporting materials to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov). This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.

#### **ARTICLE XXII – ACKNOWLEDGEMENT OF FEDERAL FUNDING FROM DHS**

Recipients 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.

#### **ARTICLE XXIII – ACTIVITIES CONDUCTED ABROAD**

Recipients 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.

#### **ARTICLE XXIV – AGE DISCRIMINATION ACT OF 1975**

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

#### **ARTICLE XXV – AMERICANS WITH DISABILITIES ACT OF 1990**

Recipients 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. §§ 12101– 12213), which prohibits recipients 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.

#### **ARTICLE XXVI – BEST PRACTICES FOR COLLECTION AND USE OF PERSONALLY IDENTIFIABLE INFORMATION (PII)**

Recipients who collect personally identifiable information (“PII”) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of PII they collect. DHS defines 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. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

#### **ARTICLE XXVII – CIVIL RIGHTS ACT OF 1964 – TITLE VI**

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 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.

#### **ARTICLE XXVIII – CIVIL RIGHTS ACT OF 1968**

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 114-4, which prohibits recipients 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. § 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.

#### **ARTICLE XXIX – COPYRIGHT**

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 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.

#### **ARTICLE XXX – DEBARMENT AND SUSPENSION**

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

#### **ARTICLE XXXI – DRUG-FREE WORKPLACE REGULATIONS**

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

#### **ARTICLE XXXII – 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 fund 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 recipients 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.

#### **ARTICLE XXXIII – EDUCATION AMENDMENTS OF 1972 (EQUAL OPPORTUNITY IN EDUCATION ACT) – TITLE IX**

Recipients must 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. § 1681 *et seq.*), which provide 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.

#### **ARTICLE XXXIV – ENERGY POLICY AND CONSERVATION ACT**

Recipients must 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. § 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.

#### **ARTICLE XXXV – FALSE CLAIMS ACT AND PROGRAM FRAUD CIVIL REMEDIES**

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

#### **ARTICLE XXXVI – FEDERAL DEBT STATUS**

All recipients 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.

#### **ARTICLE XXXVII – FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING**

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in Executive Order 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.

#### **ARTICLE XXXVIII – FLY AMERICA ACT OF 1974**

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. § 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. § 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.

#### **ARTICLE XXXIX – 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. § 2225a, recipients 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. § 2225.

#### **ARTICLE XL – LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964, TITLE VI)**

Recipients must comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) prohibition against discrimination on the basis of national origin, which requires that recipients 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 Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

#### **ARTICLE XLI– LOBBYING PROHIBITIONS**

Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an federal financial assistance award may be expended by the recipient 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.

#### **ARTICLE XLII – NATIONAL ENVIRONMENTAL POLICY ACT**

Recipients must comply with the requirements of the National Environmental Policy Act, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (“NEPA”) and the Council on Environmental Quality (“CEQ”) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients 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.

#### **ARTICLE XLIII – NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH ORGANIZATIONS**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients 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.

#### **ARTICLE XLIV – NONSUPPLANTING REQUIREMENT**

Recipients 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.

#### **ARTICLE XLV – NOTICE OF FUNDING OPPORTUNITY**

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (“NOFO”) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

#### **ARTICLE XLVI – PATENTS AND INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 *et seq.* unless otherwise provided by law. Recipients 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. § 401.14.

#### **ARTICLE XLVII – PROCUREMENT OF RECOVERED MATERIALS**

States, political subdivisions of states, and their contractors must 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. § 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.

#### **ARTICLE XLVIII – REHABILITATION ACT OF 1973**

Recipients 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. § 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.

#### **ARTICLE XLIX – REPORTING OF MATTERS RELATED TO RECIPIENT 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 during that period of time must maintain the currency of information reported to the System for Award Management (“SAM”) that is made available in the designated integrity and performance system (currently the Federal

Awardee Performance and Integrity Information System (“FAPIS”) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under Pub. L. No. 110-417, § 872, as amended 41 U.S.C. § 2313. As required by Pub. L. No. 111-212, § 3010, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

#### 1. **Proceedings About Which the Recipient Must Report**

Recipients must submit the required information about each proceeding that is:

- a. In connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;
- b. Reached its final disposition during the most recent five-year period; and
- c. One or more of the following:
  - 1.) A criminal proceeding that resulted in a conviction;
  - 2.) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 3.) An administrative proceeding that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - 4.) Any other criminal, civil, or administrative proceeding if:
    - a.) It could have led to an outcome described in this award term and condition;
    - b.) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - c.) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

#### 2. **Reporting Procedures**

Recipients must enter the information that SAM requires about each proceeding described in paragraph 1 of this award term and condition. Recipients do not need to submit the information a second time under financial assistance awards that the recipient received if the recipient already provided the information through SAM because it was required to do so under federal procurement contracts that the recipient was awarded.

#### 3. **Reporting Frequency**

During any period of time when recipients are subject to the main requirement in paragraph 1 of this award term and condition, recipients must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that recipients have not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### 4. **Definitions**

For the purpose of this award and condition:

- a. Administrative proceeding: means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 1.) Only the federal share of the funding under any federal award with a recipient cost share or match; and
  - 2.) The value of all the expected funding increments under a federal award and options, even if not yet exercised.

### **ARTICLE L – REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

#### **1. Reporting of First-tier Subawards**

- a. *Applicability.*

Unless recipients are exempt as provided in paragraph 4 of this award term, recipients must report each action that obligates \$25,000 or more in federal funds that does not include recovery funds as defined in the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 1512(a)(2) for a subaward to an entity. (See definitions in paragraph 5 of this award term).

b. *Where and when to report.*

- 1) Recipients must report each obligating action described in paragraph 1.a of this award to the Federal Funding Accountability and Transparency Act Subaward Reporting System (“FSRS”).
- 2) For subaward information, recipients report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2016, the obligation must be reported by no later than December 31, 2016).

c. *What to report.*

The recipient must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov>.

## 2. Reporting Total Compensation of Recipient Executives

a. *Applicability and what to report.* Recipients must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if—

- 1) The total federal funding authorized to date under this financial assistance award is \$25,000 or more;
- 2) In the preceding fiscal year, recipient received—
  - a.) 80 percent or more of recipient’s annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
  - b.) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
- 3) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the *Securities Exchange Act of 1934*, 15 U.S.C. 78, (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/excomp.htm>).

b. *Where and when to report.* Recipients must report executive total compensation described in paragraph 2.a of this award term: 1) as part of the registration profile in the System for Award Management (“SAM”) at <https://www.sam.gov>, 2) by the end of the month following the month in which this award is closed out and annually thereafter.

## 3. Reporting of Total Compensation of Subrecipient Executives

a. *Applicability and what to report.* Unless recipients are exempt as provided in paragraph 4 of this award term, for each first-tier subrecipient under this award, recipients shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if—

- 1) In the subrecipient’s preceding fiscal year, the subrecipient received—
  - a.) 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
  - b.) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- 2) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the *Securities Exchange Act of 1934*,

15 U.S.C. 78m(a), 78o(d), or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

- b. *Where and when to report.* Subrecipients must report subrecipient executive total compensation described in paragraph 3.a of this award term: 1) to the recipient, 2) by the end of the month following the month during which recipients make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), subrecipients must report any required compensation information of the subrecipient by November 30 of that year.

#### 4. Exemptions

If, in the previous tax year, recipients had gross income, from all sources, under \$300,000, then recipients are exempt from the requirements to report:

- a. Subawards, and
- b. The total compensation of the five most highly compensated executives of any recipient.

#### 5. Definitions: For purposes of this award term:

- a. *Entity:* means all of the following, as defined in 2 C.F.R. Part 25:
  - 1) A Governmental organization, which is a State, local government, or Indian tribe;
  - 2) A foreign public entity;
  - 3) A domestic or foreign nonprofit organization;
  - 4) A domestic or foreign for-profit organization;
  - 5) A federal agency, but only as a subrecipient under an award or subaward to a non- federal entity.
- b. *Executive:* means officers, managing partners, or any other employees in management positions.
- c. *Subaward:* means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
  - 1) The term does not include recipient's procurement of property and services needed to carry out the project or program.
  - 2) A subaward may be provided through any legal agreement, including an agreement that a recipient or a subrecipient considers a contract.
- d. *Subrecipient:* means an entity that:
  - 1) Receives a subaward from the recipient under this award; and
  - 2) Is accountable to the recipient for the use of the federal funds provided by the subaward.
- a. *Total compensation:* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (See 17 C.F.R. § 229.402(c)(2)):
  - 1) *Salary and bonus.*
  - 2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - 3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
  - 4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
  - 5) *Above-market earnings on deferred compensation which is not tax-qualified.*
  - 6) *Other compensation,* if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **ARTICLE LI – SAFECOM**

Recipients 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.

## **ARTICLE LII – TERRORIST FINANCING**

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

## **ARTICLE LIII – TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

Trafficking in Persons.

### **1. Provisions applicable to a recipient that is a private entity.**

- a. Recipients, the employees, subrecipients under this award, and subrecipients' employees may not—
  - 1) Engage in severe forms of trafficking in persons during the period of time the award is in effect;
  - 2) Procure a commercial sex act during the period of time that the award is in effect; or
  - 3) Use forced labor in the performance of the award or subawards under the award.
- b. DHS may unilaterally terminate this award, without penalty, if a recipient or a subrecipient that is a private entity —
  - 1) Is determined to have violated a prohibition in paragraph 1.a of this award term; or
  - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 1.a of this award term through conduct that is either—
    - a) Associated with performance under this award; or
    - b) Imputed to recipients or subrecipients using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 C.F.R. Part 3000.

### **2. Provision applicable to recipients other than a private entity.**

DHS may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- a. Is determined to have violated an applicable prohibition in paragraph 1.a of this award term; or
- b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 1.a of this award term through conduct that is either—
  - 1) Associated with performance under this award; or
  - 2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 C.F.R. Part 3000.

### **3. Provisions applicable to any recipient.**

- a. Recipients must inform DHS immediately of any information received from any source alleging a violation of a prohibition in paragraph 1.a of this award term.
- b. It is DHS's right to terminate unilaterally that is described in paragraph 1.b or 2 of this section:
  - 1) Implements TVPA, Section 106(g) as amended by 22 U.S.C. 7104(g)), and
  - 2) Is in addition to all other remedies for noncompliance that are available to us under this award.



- c. Recipients must include the requirements of paragraph 1.a of this award term in any subaward made to a private entity.

4. **Definitions.** For the purposes of this award term:

a. *Employee*: means either:

- 1) An individual employed by a recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
- 2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

- b. *Forced labor*: means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- c. *Private entity*: means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25. It includes:

- 1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
- 2) A for-profit organization.

- d. *Severe forms of trafficking in persons, commercial sex act, and coercion* are defined in TVPA, Section 103, as amended (22 U.S.C. § 7102).

## **ARTICLE LIV – UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT**

1. **Requirement for System for Award Management**

Unless the recipient is exempted from this requirement under 2 C.F.R. 25.110, the recipient must maintain the currency of their information in the SAM until the recipient submits the final financial report required under this award or receive the final payment, whichever is later. This requires that the recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in the recipient's information or another award term.

2. **Requirement for unique entity identifier**

If recipients are authorized to make subawards under this award, they:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 3 of this award term) may receive a subaward from the recipient unless the entity has provided its unique entity identifier to the recipient.
- b. May not make a subaward to an entity unless the entity has provided its unique entity identifier to the recipient.
- c.

3. **Definitions**

For purposes of this award term:

- a. *System for Award Management ("SAM")*: means the federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found on SAM.gov.
- b. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.
- c. *Entity*: means all of the following, as defined at 2 C.F.R. Part 25, Subpart C:

- 1) A Governmental organization, which is a State, local government, or Indian Tribe;

- 2) A foreign public entity;
  - 3) A domestic or foreign nonprofit organization;
  - 4) A domestic or foreign for-profit organization; and
  - 5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- d. *Subaward*: means a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received this award and that the recipient awards to an eligible subrecipient.
- 1) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. 200.330).
  - 2) A subaward may be provided through any legal agreement, including an agreement that a recipient considers a contract.
- e. *Subrecipient* means an entity that:
- 1) Receives a subaward from the recipient under this award; and
  - 2) Is accountable to the recipient for the use of the Federal funds provided by the subaward.

#### **ARTICLE LV – USA PATRIOT ACT OF 2001**

Recipients must comply with requirements 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. §§ 175–175c.

#### **ARTICLE LVI – USE OF DHS SEAL, LOGO, AND FLAGS**

Recipients must obtain permission from their DHS FAO before 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.

#### **ARTICLE LVII – WHISTLEBLOWER PROTECTION ACT**

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

Final Guidance must be followed, 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

This Agreement is also subject to the requirements of the State of Vermont grant and audit policies. The most pertinent bulletins and addendums are:

- Bulletin 5, Single Audit Policy for Agreements
- Bulletin 5 - Procedure #1
- Bulletin 5 - Procedure #2