

**MITIGATION ASSISTANCE AGREEMENT
(State Agency or Political Subdivision)**

This Agreement (“Agreement”) between the Department of Emergency and Military Affairs, Division of Emergency Management, State of Arizona (“Division”), and **City of Flagstaff** (“Applicant”) shall be effective on the date signed by both parties. This Agreement shall apply to all assistance funds provided by the Division to the Applicant as a result of the State Emergency Council’s action, which occurred June 17, 2019, and for the duration of the State’s Fiscal Year, starting July 01, 2019 and ending June 30, 2020.

By signing this Agreement on behalf of Applicant, the person signing represents that he/she is an Authorized representative of the Applicant, and certifies and agrees on behalf of the Applicant that:

1. The person signing below on behalf of Applicant has legal authority to apply for assistance on behalf of the Applicant.
2. Eligible Applicant is defined as any state agency, or political sub-division with taxing authority.
3. Any change to the Applicant’s Authorized representative or the Authorized representative’s contact information must be provided to Division in writing.
4. The Applicant shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving funds from the Division. The Division does not manage or take responsibility for the Applicant’s projects, and monitors projects (with regard to program eligibility and other requirements) only in order to protect the Division’s interests.
5. The Applicant understands this is a reimbursement program and the Applicant generally must expend its own funds for an approved project prior to being reimbursed. The amount of all payments made by the Division to the Applicant under this Agreement will be based upon eligible expenditures to date, the requirements of AAC 312 and all other applicable Arizona law, and the terms of this Agreement. Subject to the foregoing requirements, partial payments may be processed as work is completed and costs expended. Final payment can be made only after all work is completed, the work has been inspected by the Division, and claimed costs have been audited as provided by AAC R8-2-316 and 318 and other applicable Arizona law.
6. The Applicant shall establish and maintain a proper accounting system to record expenditures of funds as directed by the Division. Pursuant to AAC R8-2-310 and R8-2-318, the Applicant shall retain and make available to the Division all financial and program documentation for a minimum of three years. The Division will notify the Applicant, via the Applicant’s Agent, as to when the three-year retention begins.

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7. Pursuant to ARS 35-214 and 215 and AAC R8-2-318, the Applicant shall include in all contracts with all contractors requirements that (a) all of the contractor's books, accounts, reports, and other records relating to the contract shall be retained by the contractor and shall be subject to inspection and audit by the Division for five years after completion of the contractor's contract, and (b) the contractor shall include in all contracts with all subcontractors and materialmen (and shall require all contractor's subcontractors and materialmen to include in their contracts with their subcontractors and materialmen) the requirement that all of the subcontractor/materialman's books, accounts, reports, and other records relating to the subcontract shall be retained by the subcontractor/materialman and shall be subject to inspection and audit by the Division for five years after completion of the contractor's contract.
8. The Applicant shall cooperate with Division personnel in performing interim monitoring and final inspections and audits relating to the project, the project site, and all related documents, per AAC R8-2-301(1); R8-2-310; R8-2-316; and other applicable law.
9. Regardless of whether or not the Applicant is otherwise exempt from complying with such standards, the Applicant shall comply with and shall ensure that all projects undertaken under this Agreement comply with, all applicable federal and Arizona law (including but not limited to the Arizona Procurement Code [ARS §42-2501 *et seq.*] and AAC R8-2-317) and all current codes and standards, including but not limited to local fire, building, construction, and other similar codes.
10. This Agreement shall be construed in accordance with the laws of the State of Arizona. Any party aggrieved by a decision rendered by the Director may appeal as provided in AAC R8-2-320, and any subsequent appeal shall be heard in the Superior Court of Arizona for Maricopa County.
11. The Applicant shall comply with provisions of the Hatch Act (5 USC 7321 *et seq.*) limiting the political activities of state and local public employees.
12. The Applicant shall comply with the flood insurance purchase requirements which may be required by the Arizona Department of Water Resources Floodplain Management Program.
13. The Applicant is not authorized to enter into a "cost-plus-percentage-of-cost contract" in accordance with ARS § 41-2544.
14. The Applicant shall not enter into contracts for which payment is contingent upon approval of project or receipt of funds from the Division, including but not limited to funds obtained under this Agreement.
15. In accordance with AAC R8-2-313(B)(10) (excepting as may comply with applicable State law), the Applicant shall not enter into any contract with any party that is debarred or suspended from participating in State or Federal assistance programs.

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16. The Applicant shall comply with cost sharing requirements; specifically, that assistance from the Division is limited to 75% of total eligible costs for political sub-divisions and 100% of total eligible costs for State agencies.
17. The Applicant shall use the funds provided under this Agreement solely for the purposes for which these funds are provided and as approved by the Division.
18. The Applicant shall return to the Division, within two months of such request by the Division, any funds not supported by audit or other Division review of documentation maintained by the Applicant as provided by Arizona law, including AAC R8-2-319.
19. The Applicant understands and will abide by the following time limits set by the Division:
 - A. The date shown to the right is six months from the date of the start of the fiscal year and is the date by which the Applicant must begin work to be funded in whole or in part through this Agreement. If the Applicant has not begun this work within this time, see section 19.C for information on requesting a time extension. 01/01/2020
 - B. The date shown to the right is six months from the date of the start of the Fiscal Year and is the date by which the Applicant must provide to the Division all information necessary for the Division's accurate development, review, and approval of project work identified. Any such information not provided by the Applicant to the Division by this date will not be considered by the Division in determining eligible costs reimbursable under this agreement. 01/01/2020
 - C. The date shown to the right is the date by which all work must be completed. If the work has not been completed within this time, as a condition of receiving any further funds under this Agreement, the Applicant must submit to the Division (and have granted by the Division in writing) a written request for an extension of time, which request must show good cause for the requested extension, and must include (a) a timeline for project completion, and (b) all information and documentation necessary for the Division to evaluate Applicant's claim of extenuating circumstances and/or unusual requirements supporting the request. A second extension request will be considered only if there are extenuating circumstances outside the Applicant's ability to control and/or the work in question is near completion. The granting of any extension(s) is within the Division's sole discretion. 06/30/2020

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- D. If the work completion deadlines noted above are not followed, and if no time extension is requested as noted in section 19.C., the Division may demand the return of funds provided under this Agreement and/or withdraw funding of any remaining work which exceeds the deadline date.
20. None of the provisions of the Agreement may be waived, changed, or altered, except as expressly stated in a writing signed by authorized representatives of both the Applicant and the Division. Not enforcing a particular provision at a particular time is not a waiver of the right to enforce that provision subsequently.
21. Pursuant to ARS 35-154, every payment obligation of the Division under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the Legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the Division at the end of the period for which funds are available. No liability shall accrue to the Division in the event this provision is exercised, and the Division shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
22. The Applicant and the Division shall direct all communications to each other to the persons designated below; any change in the contact information provided below must be made in a writing provided to the other party and shall not go into effect until such written notice has been provided to the other party:

For the Applicant, the Applicant's Agent/other Authorized representative:

Greg Clifton , City Manager
Flagstaff City Hall, 211 West Aspen Avenue
Flagstaff, AZ 86001
greg.clifton@flagstaff.gov
928-213-2053

For the Division:

Thomas "Duke" Jones
Program Manager
Emergency Management/Recovery Branch
Arizona Department of Emergency and Military Affairs (DEMA-EM)
5636 E. McDowell Rd. Bldg# M5101
Phoenix, AZ 85008
(desk) 602-464-6232
duke.jones@azdema.gov

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23. The requirements of ARS § 38-511 apply to this Agreement. Either party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that party is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of the other party with respect to the subject matter of this Agreement.
24. Applicant shall comply with Arizona Executive Order 2009-9.
25. Pursuant to ARS 35-393.0.1, a public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel. However, the parties recognize that the U.S. District Court for the District of Arizona has entered an injunction barring enforcement of this statute in *Mikkel Jordahl, et al., v. Mark Brnovich, et al.*, No. CV-17-08263-PCT-DJH, and unless and until the District Court's injunction is stayed or lifted, A.R.S. 35-393.01 is unenforceable and neither party can take any action to enforce it.
26. The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by ARS § 12-1518, except as may be required by other applicable statutes.
27. Each party agrees to indemnify, defend, and hold harmless the other party from any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, but only to the extent that such claims result in vicarious/derivative liability to the indemnitee, and are caused by the act, violation of applicable law, rule, regulation or order, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, invitees, or volunteers.
28. The Applicant shall submit quarterly financial status and performance reports to the Division until the grant ends. Reports are due on October 15 (for the quarter ending the prior September 30); January 15 (for the quarter ending the prior December 31); April 15 (for the quarter ending the prior March 31); and July 15 (for the quarter ending the prior June 30). This initial report may be waived with the express written consent of the Division's Program Manager. Applicant shall further provide the Division with copies of all quarterly, closeout, and all other information as may be required by the Division.
29. Applicant shall submit a final financial status report, any required performance reports, a request to close the program (and any other forms and certifications requested by the Division) to the Division within 90 days of completion of grant activities.
30. Applicant shall ensure in its contracts with any contractors it may hire using any funds provided under this Agreement that such contractors (and any subcontractors or materialmen hired directly or indirectly by or through such contractors) shall be obligated

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by contract to comply with all applicable State and federal laws and regulations, including but not limited to Arizona Executive Order 2009-9 and ARS §§ 12-1518; 35-154; 35-214 and 215; 38-511; and 41-4401.

31. Applicant shall (i) initiate cash draw-downs only when actually needed for its disbursement; (ii) make timely financial reporting per Division requirements, using the SF269 or equivalent report; and (iii) impose the same standards of timing and amount upon any secondary recipient, and/or Applicant's contractors and their subcontractors.
32. Applicant assigns to the Division any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Applicant toward fulfillment of this Agreement.
33. Any and all cost overruns must be presented to the Division in writing and must be approved by the Division in writing as a condition of reimbursement.
34. This Agreement shall not be construed for or against either party regardless of which party drafted this Agreement or any portion thereof.
35. This Agreement supersedes and replaces all prior agreements, if any, entered into between Applicant and the Division relating to **SEC Mitigation FY19**.
36. The file number for this action by the SEC is Activity Code **73054**.

Applicant:

Applicant's Agent/Other Authorized
representative

Title

Signature

Date

Division:

Name of Division Representative

Title

Signature

Date