

SUBRECIPIENT AGREEMENT BETWEEN

City of Flagstaff

AND

The Arizona Department of Emergency and Military Affairs
FOR

FY2023 Community Project Funding - LPDM-PJ-09-AZ-2023-001/EMF-2023-PD-0002 (0)

LPDM-Museum Post-Fire Flood Mitigation Property Acq

WHEREAS, A.R.S. 26-306(B)(1) and 26-312 charges the Arizona Department of Emergency and Military Affairs (DEMA) with the responsibility of administering funds.

THEREFORE, it is agreed that DEMA shall provide funding to the City of Flagstaff ("Subrecipient") under Catalogue of Federal Domestic Assistance (CFDA) # 97.047 under the terms of this Subrecipient Agreement (Agreement).

1. **PURPOSE OF AGREEMENT** - The purpose of this Agreement is to specify the rights and responsibilities of DEMA in administering the distribution of Hazard Mitigation Assistance Grant (HMA) funds to Subrecipient, and to specify the rights and responsibilities of Subrecipient as the recipient of these funds.
2. **TERM OF AGREEMENT** - This Agreement shall become effective on September 30, 2023 and shall terminate on September 29, 2026. The rights and responsibilities of DEMA and Subrecipient as described herein will survive termination of this agreement.
3. **DESCRIPTION OF SERVICES, SUPPLIES AND EQUIPMENT** - Subrecipient shall use the funds provided under this Agreement solely for the purposes for which these funds have been provided, as documented by the Subrecipient's grant application as approved by the Federal Emergency Management Agency (FEMA) and DEMA, a copy of which is attached as Exhibit 3.
 - a. The FY2023 PDM program covers eligible costs from September 30, 2023 - September 29, 2026 (the "Agreement Period"). The funds awarded in the grant agreement shall only be used to cover allowable costs that are incurred during the Agreement Period. Allowable costs are defined in the 2023 Hazard Mitigation Assistance Guidance, FY2023 Pre-Disaster Mitigation Notice of Funding Opportunity (a copy of which is attached as Exhibit 3(a), 2 CFR Part 200, and by this Agreement.
 - b. Finance & Administration - Subrecipient shall provide DEMA with complete documentation of all expenditures of funds provided under this Agreement as soon as such documentation becomes available to Subrecipient. Subrecipient shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving funds under this Agreement. DEMA does not manage or take responsibility for the Subrecipient's projects, and monitors projects (with regard to program eligibility and other requirements) only in order to protect the State's interests.
 - i. The FY2023 PDM program has a 33% cost match (cash or in kind) requirement, pursuant to sections 203(h) (42 USC 5133(h)) and 404(a) (42

USC 5170c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. No. 93-288), as amended, (42 U.S.C. 5121 et seq.).

- ii. Federal funds cannot exceed 75% of eligible costs. Unless otherwise authorized by law, federal funds cannot be matched with other federal funds. All funds received by Subrecipient through DEMA under this Agreement are agreed to be federal matching funds; Subrecipient shall be solely responsible for providing the other 25% (cash or in-kind) in order to obtain these federal matching funds.
- iii. The Federal Emergency Management Agency (FEMA) administers cost matching requirements in accordance with 2 CFR. 200.306, and Subrecipient contributions must meet the standards of 2 CFR. 200.306 and all other applicable federal law.

4. **MANNER OF FINANCING** - DEMA shall:

- a. Provide the Subrecipient with 67% of the costs expended for approved services, supplies and equipment, as referenced as in the 2023 Hazard Mitigation Assistance Guidance, FY2023 Pre-Disaster Mitigation Notice of Funding Opportunity, and 2 CFR Part 200. Subrecipient will use the funds provided by DEMA and the matching contribution made by the Subrecipient to acquire the services, supplies and equipment identified in Part 3, DESCRIPTION OF SERVICES, SUPPLIES, AND EQUIPMENT, of this Agreement.
- b. Payment made by DEMA to Subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment or other form of contribution, consisting of applicable, accurate and complete documentation, as determined by DEMA in its sole discretion. A listing of acceptable documentation is attached as Exhibit 4(b).

5. **FISCAL RESPONSIBILITY** - For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by DEMA, the State, or Federal government, Subrecipient shall reimburse said funds to DEMA immediately.

6. **FINANCIAL AUDIT/PROGRAMATIC MONITORING** - Subrecipient shall comply with A.R.S. 35-214 and 35-215.

- a. Pursuant to 2 CFR. 200.501, if Subrecipient expends \$750,000 or more from all federal funding sources during the fiscal year, Subrecipient shall submit an organization-wide financial and compliance audit report per Subpart F of 2 CFR. Part 200. Failure to comply with any requirements imposed as a result of an audit will suspend the release of federal funds by DEMA to Subrecipient until Subrecipient has met all such requirements.
- b. Subrecipient will be monitored periodically by DEMA, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring may involve aspects of the work involved under this Agreement including but not limited to the review and analysis of financial, programmatic, equipment, performance and administrative issues relative to each program, and may identify areas where technical assistance and other support may be needed. Subrecipient shall participate in and cooperate with all such monitoring by DEMA, and shall provide access to all personnel, documents, and other records as may be requested from time to time by DEMA. Subrecipient also shall comply with all requests of DEMA that DEMA deems necessary to assure the parties' compliance with

their obligations under this Agreement, including but not limited to circumstances in which DEMA is required or requested to provide information or records to FEMA or to any state or federal auditor; in such event, Subrecipient shall cooperate with DEMA and shall provide DEMA with all information and records necessary for DEMA to comply with any such request or requirement.

7. **APPLICABLE LAWS AND REGULATIONS** - Subrecipient must comply with all applicable Arizona and Federal law, whether or not specifically cited or referenced in this Agreement, and including but not limited to, as applicable, (1) 2 CFR. 200.0 through 200.345 (general provisions and requirements); (2) 200.400 through 200.475 (cost principles); (3) 200.500 through 200.521 (audit requirements); (4) the Appendices to 2 CFR. Part 200; and (5) 2 CFR. 3002.10. Subrecipient also must comply with all applicable Indian, Tribal, and local laws, implementing regulations, and Executive Orders.
8. **OTHER APPLICABLE REQUIRED STANDARDS** - In addition to complying with all applicable Federal and Arizona statutes and regulations, Subrecipient shall:
 - a. Comply with the NOFO;
 - b. Large equipment purchases must be identified and explained. Federal property management standards for equipment must be complied with. See 2 CFR 200.33; 2 CFR 200.48; 2 CFR 200.89; and 2 CFR 200.313. See https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl;
 - c. Prepare, retain, and be prepared to produce for examination by DEMA and/or FEMA, all records of all activities relating to this Agreement, to the extent necessary to comply with the requirements set forth in 2 CFR Chapter II, Subpart F (2 CFR 200.500 *et seq.*) and OMB Circular A-133, available at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/#numerical>;
 - d. Comply with all applicable Federal, State, and Local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including but not limited to: the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*); the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*, and 305501 *et seq.*); the Endangered Species Act (ESA; 7 U.S.C. 136 *et seq.*; and 16 U.S.C. 1531 *et seq.*), and Executive Orders on Floodplains (11988; see <https://www.fema.gov/executive-order-11988-floodplain-management>), Wetlands (11990; see <https://www.fema.gov/executive-order-11990-protection-wetlands-1977>) and Environmental Justice for Low Income & Minority Populations (12898; see <https://www.fema.gov/executive-order-12898-environmental-justice-low-income-minority-populations-1994>). Subrecipient shall not undertake any project having the potential to impact EHP resources without express prior written approval obtained through DEMA. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any subsequent change to the project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient must immediately cease construction in that area and notify DEMA and the appropriate State Historic Preservation Office. Procurement and construction activities shall not be initiated prior to the full EHP review being completed by FEMA Office of Environmental and Historic Preservation.
 - e. Mitigation activities must adhere to all relevant statutes, regulations, and requirements, including:

- i. Sections 203 (42 USC 5133; Pre-Disaster Hazard Mitigation (“PDM”)) and 404(a) (42 USC 5170c(a); Hazard Mitigation Grant Program (“HMGP”)) of the Stafford Act;
- ii. Section 4104c (Flood Mitigation Assistance) of the National Flood Insurance Act of 1968 (42 USC 4104c);
- iii. Section 322 of the Stafford Act (Mitigation Planning; 42 USC 5165);
- iv. Section 324 of the Stafford Act (Management Costs; 42 USC 5165b);
- v. The National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*;
- vi. The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*;
- vii. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 *et seq.*, implemented through 49 CFR Part 24, 49 CFR 24.1 *et seq.*;
- viii. Floodplain Management and Protection of Wetlands (44 CFR Part 9, 44 CFR 9.1 *et seq.*), implementing and enforcing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands;
- ix. The Coastal Barriers Resources Act, 16 USC 3501 *et seq.*, and 44 CFR Part 206, Subpart J, 44 CFR 206.340 *et seq.*;
- x. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards “Super Circular,” currently located at <https://www.cottoncpa.com/wp-content/uploads/2016/07/OMB-Super-Circular-Doc.pdf>;
- xi. OMB Circular A-110;
- xii. Floodplain Management (44 CFR Part 60, 44 CFR 60.1 *et seq.*);
- xiii. Flood Mitigation Grants (44 CFR Part 79, 44 CFR 79.1 *et seq.*);
- xiv. Property Acquisition and Relocation for Open Space (44 CFR Part 80, 44 CFR 80.1 *et seq.*);
- xv. Hazard Mitigation Planning (44 CFR Part 201, 44 CFR 201.1 *et seq.*);
- xvi. Hazard Mitigation Grant Program (44 CFR Part 206, Subpart N, 44 CFR 206.430 *et seq.*);
- xvii. Management Costs (44 CFR Part 207, 44 CFR 207.1 *et seq.*);
- xviii. OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs;
- xix. Audits of States, Local Governments, and Non-Profit Organizations (2 CFR Part 200, 2 CFR 200.0 *et seq.*); and
- xx. Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations, 48 CFR 31.201 *et seq.*

9. **CONTRACTORS/SUBCONTRACTORS** - Subrecipient may enter into written subcontract(s) for performance of certain of its functions under this Agreement in accordance with terms established under Arizona and Federal law. Subrecipient agrees and understands that no subcontract that Subrecipient enters into with respect to performance under this Agreement shall in any way relieve Subrecipient of any responsibilities for performance of its duties. Subrecipient shall give DEMA immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against Subrecipient by any subcontractor or vendor with respect to any work on any project funded in whole or in part under this Agreement.

10. **PERSONNEL AND TRAVEL COSTS** - All grant funds expended for personnel, travel, lodging, and per diem must be consistent with the Subrecipient’s policies and procedures and

the State of Arizona Accounting Manual (SAAM; see <https://gao.az.gov/publications/saam>); must be applied uniformly to both federally financed and other activities of the Subrecipient; and will be reimbursed at the most restrictive allowability and rates. At no time will Subrecipient's reimbursement(s) exceed the State rate established by the Arizona Department of Administration in the SAAM.

11. **PROCUREMENT** - Subrecipient shall comply with all of its own procurement rules/policies, all Federal procurement rules/policies (including but not limited to those outlined in this section VII of this Agreement), and all Arizona procurement code provisions and rules. The intent is that all procurement contracts be awarded competitively, and the Subrecipient shall not enter into any noncompetitive (sole or single source) procurement unless express prior written approval is granted by DEMA.
12. **NONSUPPLANTING AGREEMENT** - Subrecipient shall not use funds obtained under this Agreement to supplant State or Local funds or other resources that would otherwise have been made available for any program/project funded in whole or in part under this Agreement.
13. **COMPLIANCE WITH STATE AND FEDERAL LAWS REGARDING IMMIGRATION-**
 - a. Subrecipient warrants its compliance with all State and Federal immigration laws and regulations relating to its employees and to employees of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, including but not limited to A.R.S. 23-214 and 41-4401.
 - b. A breach of a warranty by Subrecipient regarding compliance with State or Federal immigration laws or regulations shall be deemed a material breach of this Agreement by Subrecipient and may result in action by DEMA up to and including termination of this Agreement.
 - c. DEMA retains the legal right to inspect the papers of any Subrecipient employee who works on the Agreement, and those of any employee of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, to ensure that Subrecipient is complying with the warranty under paragraph (a) above.
14. **PROPERTY CONTROL** - Effective control and accountability must be maintained by Subrecipient for all equipment and supplies acquired by Subrecipient under this Agreement. Subrecipient must adequately safeguard all such property and must assure that it is used for authorized purposes as described in the **FY2023 Pre-Disaster Mitigation Notice of Funding Opportunity**, the grant application as approved, and the CFR. Subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.
 - a. Equipment acquired by Subrecipient with funds obtained in whole or in part under this Agreement shall be used by Subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by funds obtained in whole or in part under this Agreement. Theft, destruction, or loss of such property shall be reported to DEMA immediately.
 - b. Nonexpendable Property is personal property that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and that has a unit cost of more than \$500. (48 CFR 752.245-70(a)(3)).
 - c. Capital Assets are any tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include: (a) Land, buildings (facilities), equipment, and intellectual property

(including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and (b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (2 CFR 200.12).

- d. A Property Control Form shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. All Nonexpendable Property and Capital Assets must be included on the Property Control Form. Subrecipient shall provide DEMA a copy of the Property Control Form at the end of period of performance or no more than ninety (90) calendar days after the end of the Agreement. The Property Control Form shall be updated, and a copy provided to DEMA no more than forty-five (45) calendar days after equipment disposition. Subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.
- e. A physical inventory of the Nonexpendable Property and Capital Assets must be taken, and the results reconciled with the Property Control Form at least once every two years.

15. **DEBARMENT CERTIFICATION** - Subrecipient is 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 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. The Subrecipient is required to complete and return the provided Contractor Debarment and Suspension Form, attached as Exhibit 15(a), to demonstrate due diligence in following this requirement.

16. **FUNDS MANAGEMENT** - Subrecipient must maintain funds received under this Agreement in a separate account and cannot mix these funds with funds from other sources. Subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits (2 CFR 200.302). Subrecipient must maintain adequate business systems to comply with Federal requirements.

17. **REPORTING REQUIREMENTS** - Regular reports by Subrecipient shall include:

- a. Programmatic Reports- Subrecipient shall provide quarterly programmatic reports to DEMA on the 15th day of the quarter in which the report is due. So that the report contains such information as deemed necessary by DEMA, Subrecipient shall use and fully complete the Mitigation Grant Programs Quarterly Report template, a copy of which is attached as Exhibit 17(a).
 - i. If a project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report must be marked as “final.” Quarterly programmatic reports shall be submitted to DEMA until the entire scope of the Grant is completed.
 - ii. Upon request of DEMA, Subrecipient must provide to DEMA any information necessary to meet any state or federal reporting requirements.
 - iii. Quarterly Programmatic reports are due:

Quarter	Period	Due
1	July 1 – September 30	October 15
2	October 1 – December 31	January 15

3	January 1- March 31	April 15
4	April 1 – June 30	July 15

b. **Financial Reimbursements** - Subrecipient shall provide DEMA with quarterly requests for reimbursement. Requests for reimbursements shall be submitted with the Request for Payment provided by DEMA, a copy of which is attached as Exhibit 17(b).

- i. Subrecipient shall submit to DEMA a final request for reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than thirty (30) calendar days after the completion of all work funded in whole or in part by the Agreement. Requests for reimbursement received by DEMA later than the thirty (30) days will not be paid. The final reimbursement request as submitted shall be marked “final” by Subrecipient.
- ii. DEMA requires that all requests for reimbursement be submitted electronically to the State Hazard Mitigation Officer or via U.S. mail (United States Postal Service), FedEx, UPS, or another established private delivery service.
- iii. DEMA reserves the right to request and/or require any supporting documentation and/or information DEMA believes necessary in order to process requests for reimbursements. Subrecipient shall promptly provide DEMA with all such documents and/or information.
- iv. All reports shall be submitted by Subrecipient to the DEMA contact person as described in Part 44, NOTICES, of this Agreement.

18. **ASSIGNMENT AND DELEGATION** - Subrecipient may not assign any rights hereunder without the express, prior written agreement of both parties.

19. **AMENDMENTS** - Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representatives of Subrecipient and DEMA.

- a. Any such amendment shall specify:
 - i. an effective date;
 - ii. increases or decreases in the amount of Subrecipient’s compensation if applicable;
 - iii. be titled as an “Amendment,”
 - iv. Subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

20. **AGREEMENT RENEWAL** - This Agreement shall not bind nor purport to bind DEMA for any contractual commitment in excess of the original Agreement period, which may not be changed except by a writing signed by all parties hereto in conformity with Part 19, AMENDMENTS.

21. **RIGHT TO ASSURANCE** - If DEMA in good faith has reason to believe that Subrecipient does not intend to or is unable to perform or continue performing under this Agreement, DEMA may demand in writing that Subrecipient give a written assurance of intent and ability

to perform. If Subrecipient fails to provide written assurance within the number of days specified in the demand, DEMA at its option may terminate this Agreement.

22. **CANCELLATION FOR CONFLICT OF INTEREST** - DEMA may, by written notice to Subrecipient, immediately cancel this Agreement without penalty or further obligation pursuant to ARS 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from DEMA, unless the notice specifies a later time. If and only if Subrecipient is an agency of the State or a political subdivision of the State, then this Part 22 shall apply so that either DEMA or Applicant may cancel this Agreement for conflict of interest pursuant to the provisions of this part.
23. **THIRD PARTY ANTITRUST VIOLATIONS** - Subrecipient hereby assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Subrecipient toward fulfillment of this Agreement.
24. **AVAILABILITY OF FUNDS** - Every payment obligation of DEMA under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations under A.R.S. 35-154. If the funds are not allocated and available for the continuance of this Agreement, DEMA may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to DEMA in the event this provision is exercised, and DEMA shall not be obligated or liable for any future payments or for any damages as a result of termination under this Part 24, including purchases and/or contracts entered into by Subrecipient in the execution of this Agreement. If and only if Applicant is an agency of the State or a political subdivision of the State, then this Part 24 shall apply so that either DEMA or Subrecipient may cancel this Agreement for lack of availability of funds pursuant to the provisions of this part.
25. **FORCE MAJEURE** - If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.
26. **PARTIAL INVALIDITY** - Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.
27. **ARBITRATION** - In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) calendar days of the events giving the rise to the dispute. Any claim made by or against the State or any of its political subdivisions (including but not limited to DEMA) relating to this Agreement shall be resolved through the administrative claims process. In the event ARS 12-1518 applies, the parties shall proceed with arbitration as provided in that statute. The parties agree that proper venue for any litigation shall be in Maricopa County, Arizona.

28. **GOVERNING LAW AND CONTRACT INTERPRETATION**
- a. This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
 - b. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.
 - c. Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.
29. **ENTIRE AGREEMENT** - This Agreement and its Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Part 19, AMENDMENTS, of this Agreement. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.
30. **RESTRICTIONS ON LOBBYING** - Subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of a State or Federal government.
31. **LICENSING** - Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.
32. **NON-DISCRIMINATION** - Subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act (42 USC 12101 *et seq.*), ARS Title 41, Chapter 9, Article 4 (ARS 41-1461 *et seq.*), and Arizona Executive Order 2009-09.
33. **SECTARIAN REQUESTS** - Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.
34. **ADVERTISING AND PROMOTION OF AGREEMENT** - Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of DEMA.
35. **CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS** - Any television public service announcement that is produced or funded in whole or in part by Subrecipient shall include closed captioning of the verbal content of such announcement.
36. **INDEMNIFICATION** - To the extent permitted by law, each party (as indemnitor) agrees to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as claims) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission,

negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

37. **TERMINATION** –

- a. All parties reserve the right to terminate the Agreement in whole or in part due to the failure of Subrecipient or DEMA to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The party wishing to terminate this Agreement shall provide the other party with a written thirty (30) day advance notice of the termination and the reasons for it.
- b. If Subrecipient chooses to terminate this Agreement before the grant deliverables have been met, then DEMA reserves the right to collect from Subrecipient all funds distributed by DEMA under this Agreement to Subrecipient.
- c. DEMA may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. Subrecipient shall be liable to DEMA for any excess costs incurred by DEMA in procuring materials or services in substitution for those due from Subrecipient.

38. **CONTINUATION OF PERFORMANCE THROUGH TERMINATION** - Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

39. **COUNTERPARTS** - This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one Agreement.

40. **AUTHORITY TO EXECUTE THIS AGREEMENT** - Each individual executing this Agreement on behalf of Subrecipient represents and warrants that he or she is duly authorized to execute this Agreement.

41. **SPECIAL CONDITIONS** - Subject to 2 CFR 200.315, title to any intangible property (see 2 CFR 200.59) developed, purchased, or otherwise acquired with funds or other resources obtained by Subrecipient in whole or in part under this Agreement vests upon acquisition in the Subrecipient. Subrecipient acknowledges that U.S. Department of Homeland Security - Federal Emergency Management Agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Subrecipient hereby further agrees that DEMA shall have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use the work for its purposes, and to authorize others to do so. Upon acquisition, Subrecipient shall promptly inform DEMA in writing of any rights in any intangible property acquired by Subrecipient under this Agreement.

42. **RECORD RETENTION** - The Subrecipient agrees to comply with the record-keeping requirements and other requirements of A.R.S. 35-214 and 35-215. All records shall be subject to inspection and audit by the State of Arizona at reasonable times.

43. **ADDITIONAL TERMS AND CONDITIONS** - The Subrecipient agrees to comply with the additional Terms and Conditions as described in Exhibit 43 – **2023 DHS Standard Terms and Conditions**.

44. **NOTICES** - Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

Arizona Department of Emergency & Military Affairs
5636 E. McDowell Road
Phoenix, AZ 85008

City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

Subrecipient shall address all programmatic questions and reimbursement notices relative to this Agreement to the appropriate DEMA staff contact:

State Hazard Mitigation Officer
Andrew Traylor
mitigation@azdema.gov
(602) 464-6499

Grant Project Specialist
Sylvia Castillo
mitigation@azdema.gov
(602) 464-6309

IN WITNESS WHEREOF

The parties hereto agree to execute this Agreement.

FOR AND BEHALF OF
City of Flagstaff

FOR AND BEHALF OF
Arizona Dept of Emergency & Military Affairs

Authorized Signature

Name & Title

Date

Date

8628564.2