

**NORTH CAROLINA  
BUILDING RESILIENT INFRASTRUCTURE AND COMMUNITIES  
CAPABILITY AND CAPACITY BUILDING GRANT AGREEMENT**

**THIS BUILDING RESILIENT INFRASTRUCTURE AND COMMUNITIES (BRIC) PLANNING AGREEMENT** (the Agreement) is entered into by and between the **State of North Carolina, Department of Public Safety** referred to as the “AGENCY/ GRANTEE”), and the **City of Fayetteville, North Carolina** (hereinafter referred to as the "RECIPIENT/ SUBGRANTEE").

WHEREAS, Congress authorized financial assistance to States and communities for pre-disaster mitigation activities; and

WHEREAS, the Federal Emergency Management Agency recognizes a need to provide States and communities with much needed source of pre-disaster mitigation funding for cost-effective hazard mitigation activities that are part of a comprehensive mitigation program, and that reduce injuries, loss of life, and damage and destruction of property; and

WHEREAS, the Department of Homeland Security and the Federal Emergency Management Agency issued the Notice of Funding Opportunity (NOFO) for the FY 2022 Building Resilient Infrastructure and Communities that makes federal funds available to states, US territories, eligible Indian Tribal governments, and local communities for pre-disaster mitigation activities; and

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-19 *et. seq.*, N.C.G.S. §166A-19.41(b)(2)a.3., N.C.G.S. §143B-1000; §203 and §322, 42 U.S.C. 5133 and 5165, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 *et seq.*, *as amended*, and the Disaster Mitigation Act of 2000, 42 U.S.C. 5131 *et. seq.*, the Disaster Recovery Reform Act of 2018 (DRAA), *et. seq.*, and the National Flood Insurance Program, 42 U.S.C. 4011 *et. seq.* authorizes the relationship as described herein; and

WHEREAS, the RECIPIENT/SUBGRANTEE represents that it is fully qualified, possesses the requisite skills, knowledge, qualifications and experience to provide the services identified herein, and does agree to perform as described herein;

NOW, THEREFORE, the AGENCY/GRANTEE and the RECIPIENT/ SUBGRANTEE do mutually agree as follows:

**(1) SCOPE OF WORK**

The RECIPIENT/SUBGRANTEE shall fully perform the approved Fiscal Year 2022 Building Resilient Infrastructure and Communities Project, as described in the approved FEMA application as described in Attachment A, in accordance with the scope of work in the approved FEMA application, the estimate of costs indicated in the approved FEMA application, the applicable BRIC Notice of Funding Opportunity (NOFO), attached and incorporated by reference herein, and the terms and conditions of this Agreement. RECIPIENT/ SUBGRANTEE shall not deviate from the approved scope of work and the terms and conditions of this Agreement. RECIPIENT/SUBGRANTEE shall comply with any and all applicable codes and standards in performing work funded under this Agreement and shall provide any appropriate maintenance and security for the project. The project costs were estimated by the RECIPIENT/SUBGRANTEE in the approved FEMA application. The final project costs will be determined according to the policies and procedures in the applicable Notice of Funding Opportunity (NOFO) for the Building Resilient Infrastructure and Communities program and the North Carolina Division of Emergency Management Standard Operating Procedure. **If final Phase 1 project costs exceed the Total Estimated Phase 1 Project Cost, these additional costs will be the responsibility of the RECIPIENT/ SUBGRANTEE and will only increase the Non-Federal Share.**

**(2) FUNDING AND INSURANCE**

The AGENCY/GRANTEE shall provide Fiscal Year 2022 Building Resilient Infrastructure and Communities Program Funds for costs incurred in performing the Planning Project identified in the approved FEMA application as identified in Attachment A as follows:

**A. Building Resilient Infrastructure and Communities Grant Program**

	<u>Total Costs</u>
Total Estimated Phase 1 Project Cost:	\$3,796,400.00

**B. Funding Sources**

1. Approved Federal Share for EMA-2022-BR-001-0036	\$2,657,480.00
2. Estimated Non-Federal Share for EMA-2022-BR-001-0036	\$1,138,920.00
3. Subrecipient Management Costs (Federal)	\$189,820.00

**TOTAL FOR: EMA-2022-BR-001-0036 Phase 1** **\$3,986,220.00**

**\*\*\* Federal project funds not used in Phase 1 are eligible to be rolled over and used in Phase 2.**

Allowable costs shall be determined in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et seq., *as amended*, and the Disaster Mitigation Act of 2000, 42 U.S.C. 5131 et. seq.; the Disaster Recovery Reform Act of 2018 (DRRA), et. seq; the National Flood Insurance Program, 42 U.S.C. 4011 et. seq.; 2 C.F.R. Part 200; OMB Circular A-87 if applicable, N.C.G.S. §166A-41(b)(2)b., and other applicable Building Resilient Infrastructure and Communities Program (BRIC) guidance.

If funding for the BRIC program project is used for an “infrastructure” project, all iron, steel, manufactured products, and construction materials used in the project must be produced in the United States. The RECIPIENT/SUBGRANTEE must also ensure that all contracts (including purchase orders) subject to the Build America Buy America Act (BABAA) include a required contract clause and self-certification of compliance pursuant to HMA Guidance, 2 C.F.R. 200.322, 2 C.F.R. Part 184, and OMB Memorandum M-24-02, *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*.

If funding for the BRIC program project does not involve actual construction but instead involves only planning, engineering, or design work, the Build America Buy America Act (BABAA) does not apply as the project does not involve construction. However, if the project is part of an awarded phased BRIC project that later involves infrastructure construction or if the planning, engineering, or design work contemplates application for a future BRIC program project, the Build America Buy America Act (BABAA) will apply to any subsequent construction of a phased project or will be a requirement for any future BRIC program construction infrastructure project. All planning, engineering, and design work should account for the subsequent BABAA requirement in any planning, engineering, or design work as it applies to the particular project.

**The RECIPIENT/SUBGRANTEE shall utilize designated submission platform to obtain reimbursement funds under this Agreement.** RECIPIENT/SUBGRANTEE shall not receive funds under this Agreement if it does not submit the appropriate documentation. To receive funds under this Agreement, RECIPIENT/SUBGRANTEE shall complete the Designated Agent Form and forward it to the appropriate Division of Emergency Management BRIC Program Project Manager. As per Paragraph 12(c) of this Agreement, if RECIPIENT/SUBGRANTEE designates different representatives or designated agents, RECIPIENT/SUBGRANTEE shall notify AGENCY/GRANTEE immediately and update the Designated Agent Form to continue receiving reimbursements.

**To receive reimbursement funding under this Agreement, the Designated Agent shall sign and submit the appropriate documentation and forms in designated submission platform.** RECIPIENT/SUBGRANTEE shall complete the appropriate required fields in designated submission platform Request for

Reimbursement and submit supporting documentation and forward it to the appropriate Division of Emergency Management Hazard Mitigation Project Manager or Hazard Mitigation Specialist. AGENCY/ GRANTEE will reimburse RECIPIENT/SUBGRANTEE for eligible costs in increments of Five Hundred Dollars (\$500.00) or greater.

The final payment of funds will be made only after the project created pursuant hereto has been completed by the RECIPIENT/SUBGRANTEE and approved by the AGENCY/GRANTEE, submission of all required documentation and a request for final reimbursement.

**(3) DUPLICATION OF BENEFITS PROHIBITION**

In accordance with the provisions of 42 U.S.C. §5155 (Section 312 of the Stafford Act) duplication of benefits is prohibited. The RECIPIENT/ SUBGRANTEE shall notify the AGENCY/GRANTEE, as soon as practicable, of the existence of any insurance coverage for the costs identified in the application, and of any entitlement to or recovery of funds from any other source for the Project costs, including, as applicable, Federal, State, local, and private funding. Allowable costs shall be reduced by the amount of duplicate sources available. The RECIPIENT/SUBGRANTEE shall be liable to the AGENCY/GRANTEE to the extent that the RECIPIENT/SUBGRANTEE receives duplicate benefits from any other source for the same purposes for which the RECIPIENT/ SUBGRANTEE has received payment from the AGENCY/GRANTEE.

The RECIPIENT/SUBGRANTEE shall immediately remit to the AGENCY/ GRANTEE any duplication of benefits payment received by the RECIPIENT/ SUBGRANTEE. In the event the AGENCY/GRANTEE determines a duplication of benefits has occurred RECIPIENT/SUBGRANTEE hereby authorizes the Controller of the Department of Public Safety to take offset action against any other available funding due the RECIPIENT/SUBGRANTEE. In addition, RECIPIENT/SUBGRANTEE shall ensure, as a condition of funding under this Agreement, that all required Privacy Act releases and Duplication of Benefit paperwork is completed.

**(4) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES**

Both the RECIPIENT/SUBGRANTEE and the AGENCY/GRANTEE shall be governed by applicable State and Federal laws, rules regulations, executive orders, policies, procedures, and directives, including but not limited to, those identified in Attachments B, C, and D.

(5) **PERIOD OF AGREEMENT/PERIOD OF PERFORMANCE**

This Agreement becomes effective upon execution of the signatures of all parties. The date of execution shall be the date of the last signature. This Agreement shall terminate three years after the effective date unless terminated earlier in accordance with the provisions of paragraphs (6), (8), (11), (13) or (17) of this Agreement. The Period of Performance expires on **January 31, 2027**. **All work must be completed by the POP date. Project costs and management costs incurred after the Period of Performance are not eligible for reimbursement.**

If the initial POP is extended, the State will notify the City of such an extension prior to the expiration of the POP and will seek a Modification per Section 6 of this Agreement. If the original POP is not extended, the State will notify the City of the expiration of the POP. In the event the POP is not extended, the City will be required to submit all documents necessary for closeout contemplated under this Agreement within 30 days of the expiration of the POP.

(6) **MODIFICATION OF CONTRACT**

Either party may request modification of the provisions of this Agreement. Changes, which are mutually agreed upon, shall be valid only when reduced in writing, duly signed by each of the parties hereto, and attached in the original of this Agreement.

(7) **RECORD KEEPING, PROCUREMENT AND PROPERTY MANAGEMENT**

(a) If applicable, RECIPIENT/SUBGRANTEE's performance under this Agreement shall be subject to 2 C.F.R. Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", Subpart B "General Provisions."

(b) If applicable, all financial and programmatic records, supporting documents statistical records and other records of RECIPIENT/SUBGRANTEE shall be retained pursuant to 2 C.F.R. Part 200 and 9 NCAC Part 3M. All original records pertinent to this Agreement shall be retained by the RECIPIENT/SUBGRANTEE for five years following the date of termination of this Agreement or of submission of the final closeout report, whichever is later, with the following exception:

- If any litigation, claim, or audit is started before the expiration of the five-year period and extends beyond the five-year period, the records will be maintained until all litigation, claims, or audit findings involving the records have been resolved.

- (c) All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and other applicable laws and regulations.
- (d) The RECIPIENT/SUBGRANTEE, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the AGENCY/GRANTEE, its employees, and agents. "Reasonable" shall be construed according to the circumstances but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the AGENCY/GRANTEE.

(8) **REPORTS**

- (a) The RECIPIENT/SUBGRANTEE shall provide monthly progress reports through designated submission platform to the AGENCY/GRANTEE, using the Progress Report Form. Progress Reports are due by the tenth of the following month. The approved FEMA application as described in Attachment A, incorporated by reference, includes the timeline and tasks for the work schedule.

In order to complete the project before the end of the period of performance established by FEMA in the FEMA award letter, RECIPIENT/SUBGRANTEE shall provide its Project Management Schedule to the AGENCY/GRANTEE that outlines RECIPIENT/SUBGRANTEE's plan for completion and that track and demonstrate completion of each task listed in the approved FEMA application by the timeframe listed in the approved FEMA application.

The Scope of Work and Budget are listed in the FEMA GO application and Attachment A. RECIPIENT/SUBGRANTEE shall provide its Budget and any budget revisions for the project and for managing the project to AGENCY/SUBGRANTEE. **As noted in Section 2(B) above, there will not be an increase in the awarded Approved Federal Share amount. If final project costs exceed the Total Estimated Project Cost, these additional costs will be the responsibility of the RECIPIENT/SUBGRANTEE and will only increase the Estimated Non-Federal Share.**

RECIPIENT/SUBGRANTEE shall provide a business plan to AGENCY/SUBGRANTEE regarding the method of procurement of contractors and subcontractors to implement the project in the approved application in accordance with 2 C.F.R. Part 200 and other applicable federal, state, and local requirements. RECIPIENT/SUBGRANTEE shall submit a copy of its Procurement Letter to AGENCY/GRANTEE that

identifies the method of procurement and procurement policies and procedures for the procurement of its contractors.

RECIPIENT/SUBGRANTEE shall provide AGENCY/GRANTEE copies of RECIPIENT's procurement document (Invitation For Bids, Request For Proposal, etc.), advertisement of the procurement, responses received, selected or awarded bid or contractor, and contracts.

**RECIPIENT/SUBGRANTEE's Project Management Schedule and its Budget are due to AGENCY/GRANTEE forty-five (45) days from the date of execution of the grant agreement.** The Project Management Schedule, Budget, Progress Reports, and other reports shall indicate the status and completion date for each project funded, any problems or circumstances affecting completion dates, or the scope of work, or the project costs, and any other factors reasonably anticipated to result in noncompliance with the terms of the grant award. Interim inspections shall be scheduled by the RECIPIENT/SUBGRANTEE prior to the final inspection and may be requested by the AGENCY/GRANTEE based on information supplied in the progress reports.

The AGENCY/GRANTEE may require additional reports as needed. The RECIPIENT/ SUBGRANTEE shall, as soon as possible, provide any additional reports or documentation requested by the AGENCY/GRANTEE. The AGENCY/ GRANTEE contact will be the Division of Emergency Management Hazard Mitigation Grant Program Project Manager or Hazard Mitigation Specialist for all reports and requests for reimbursement.

- (b) RECIPIENT/SUBGRANTEE shall provide the AGENCY/GRANTEE with a closeout report on forms provided by the AGENCY/GRANTEE. The closeout report, all outstanding reimbursements requests, and all other financial, performance, and other reports as required by the terms and conditions of the Federal award and this Agreement are due no later thirty (30) days after termination of this Agreement or upon completion of the activities contained in this Agreement or upon the expiration of the Period of Performance, whichever is earlier.
- (c) If all required reports or documentation and copies are not sent to the AGENCY/ GRANTEE or are not completed in a manner acceptable to the AGENCY/GRANTEE, the AGENCY/ GRANTEE may withhold further payments until they are completed or may take such other action as set forth in paragraph (11). The AGENCY/GRANTEE may terminate the Agreement with a RECIPIENT/ SUBGRANTEE if reports are not received within thirty (30) days after written notice by the AGENCY/ GRANTEE. "Acceptable to the AGENCY/GRANTEE" means that the work product was completed in accordance with generally accepted principles and is consistent with the Budget and Scope of Work contained

in the FEMA GO Subapplication and Attachment A.

- (d) Upon request by the AGENCY/GRANTEE, the RECIPIENT/SUBGRANTEE shall provide such additional program updates, documentation or information as may be required by the AGENCY/GRANTEE.

**(9) MONITORING**

The RECIPIENT/SUBGRANTEE shall constantly monitor its performance under this Agreement to ensure that time schedules are being met, the Budget and Scope of Work is being accomplished within specified time periods, and other performance goals are being achieved. Such review shall be made for each function, or activity set forth in the FEMA GO Subapplication and Attachment A to this Agreement and incorporated by reference herein.

**(10) LIABILITY**

- (a) Nothing in this Agreement, express or implied, is intended to confer on any other person any rights or remedies in or by reason of this Agreement. This Agreement does not give any person or entity other than the parties hereto any legal or equitable claim, right or remedy. This Agreement is intended for the sole and exclusive benefit of the parties hereto. This Agreement is not made for the benefit of any third person or persons. No third party may enforce any part of this Agreement or shall have any rights hereunder. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.
- (b) Except as otherwise provided in subparagraph (c) below, the RECIPIENT/SUBGRANTEE shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement and shall save the AGENCY/GRANTEE harmless against all claims of whatever nature by third parties arising out of the performance of work under this agreement. For purposes of this agreement, RECIPIENT/SUBGRANTEE agrees that it is not an employee or agent of the AGENCY/GRANTEE, but is an independent contractor.
- (c) RECIPIENT/SUBGRANTEE who is a state agency or subdivision, agrees to be fully responsible for its own negligent acts or omissions or tortious acts. Nothing herein is intended to serve as a waiver of sovereign immunity by any RECIPIENT/ SUBGRANTEE to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of North Carolina to be sued by third parties in any matter arising out of any contract.



**(11) DEFAULT: REMEDIES: TERMINATION**

- a) If any of the following events occur ("Events of Default"), all obligations on the part of the AGENCY/GRANTEE to make any further payment of funds hereunder shall, if the AGENCY/GRANTEE so elects, terminate, and the AGENCY/GRANTEE may at its option exercise any of its remedies set forth herein, but the AGENCY/GRANTEE may make any payments or parts of payments after the happening of any Events of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment:
1. If any warranty or representation made by the RECIPIENT/ SUBGRANTEE in this Agreement or any previous Agreement with the AGENCY/GRANTEE shall at any time be false or misleading in any respect, or if the RECIPIENT/SUBGRANTEE shall fail to keep, observe or perform any of the terms or covenants contained in this Agreement or any previous agreement with the AGENCY/GRANTEE and has not cured such in timely fashion, or is unable or unwilling to meet its obligations thereunder;
  2. If any material adverse change shall occur in the financial condition of the RECIPIENT/SUBGRANTEE at any time during the term of this Agreement from the financial condition revealed in any reports filed or to be filed with the AGENCY/GRANTEE, and the RECIPIENT/SUBGRANTEE fails to cure said material adverse change within thirty (30) days from the time the date written notice is sent by the AGENCY/GRANTEE;
  3. If any reports required by this Agreement have not been submitted to the AGENCY/GRANTEE or have been submitted with incorrect, incomplete or insufficient information;
  4. If the RECIPIENT/SUBGRANTEE has failed to perform and complete in timely fashion any of the services required under the Budget and Scope of Work found in the FEMA GO Subapplication and Attachment A.
  5. If the necessary funds are not available to fund this agreement as a result of action by the United States Congress, the N.C. General Assembly, or the Office of State Budget and Management.
- (b) Upon the happening of an Event of Default, then the AGENCY/ GRANTEE may, at its option, upon written notice to the RECIPIENT/ SUBGRANTEE and upon the RECIPIENT/ SUBGRANTEE's failure to timely cure, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following

remedies shall not preclude the AGENCY/GRANTEE from pursuing any other remedies contained herein or otherwise provided at law or in equity:

1. Terminate this Agreement, provided that the RECIPIENT/SUBGRANTEE is given at least fifteen (15) days prior written notice of such termination. The notice shall be effective when placed in the United States mail, first class mail, postage prepaid, by registered or certified mail return receipt requested, to the address set forth in paragraph (12) herein;
  2. Commence an appropriate legal or equitable action to enforce performance of this Agreement;
  3. Withhold or suspend payment of all or any part of a request for payment;
  4. Exercise any other rights or remedies which may otherwise be available under law.
- (c) The AGENCY/GRANTEE may terminate this Agreement for cause upon such written notice to RECIPIENT/SUBGRANTEE of such termination and specifying the effective date thereof, at least one (1) day before the effective date of termination. Cause shall include, but not be limited to, misrepresentation in the grant application, misuse of funds; fraud; lack of compliance with applicable rules, laws and regulations; failure to perform in a timely manner, and refusal by the RECIPIENT/SUBGRANTEE to permit public access to any document, paper, letter, or other material subject to disclosure under N.C. General Statutes.
- (d) Termination for Convenience: If this contract contemplates deliveries or performance over a period of time, the AGENCY/GRANTEE may terminate this Agreement at any time by providing fifteen (15) days' notice in writing from the AGENCY/GRANTEE to the RECIPIENT/SUBGRANTEE. In that event, any or all finished or unfinished deliverables prepared by the RECIPIENT/SUBGRANTEE or its contractors or subcontractors under this Agreement shall, at the option of the AGENCY/GRANTEE, become its property. If the Agreement is terminated by the AGENCY/GRANTEE as provided in this section, the AGENCY/GRANTEE shall reimburse for those eligible items for which such option is exercised, less any payment or compensation previously made.
- (e) Suspension or termination constitutes final AGENCY/GRANTEE action. Notification of suspension or termination shall include notice of administrative hearing rights and time frames.

- (f) The RECIPIENT/SUBGRANTEE shall return funds to the AGENCY/GRANTEE if found in non-compliance with laws, rules, regulations governing the use of the funds or this Agreement.
- (g) Notwithstanding the above, the RECIPIENT/SUBGRANTEE shall not be relieved of liability to the AGENCY/GRANTEE by virtue of any breach of Agreement by the RECIPIENT/SUBGRANTEE. The AGENCY/GRANTEE may, to the extent authorized by law, withhold any payments to the RECIPIENT/SUBGRANTEE for purpose of set-off until such time as the exact amount of damages due the AGENCY/GRANTEE from the RECIPIENT/ SUBGRANTEE is determined.

**(12) NOTICE AND CONTACT**

- (a) All notices provided under or pursuant to this Agreement shall be in writing, first class, certified mail, return receipt requested, to the representative or designated agent(s) identified below and said notification attached to the original of this Agreement. If the RECIPIENT/SUBGRANTEE designates different representatives or designated agents, RECIPIENT/SUBGRANTEE shall notify AGENCY/GRANTEE immediately and update the Designated Agent Form to continue receiving reimbursements.
- (b) The name and address of the AGENCY/GRANTEE contract manager for this Agreement is:

**NCEM Hazard Mitigation Section  
Department of Public Safety  
Division of Emergency Management  
4238 MSC  
Raleigh, NC 27699-4238**

- (c) The name and address of the Representative of the RECIPIENT/SUBGRANTEE (Designated Agent) responsible for the administration of this Agreement is:

**Mailing Address:  
Douglas Hewett  
City Manager  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301**

**Overnight Address:**  
**Douglas Hewett**  
**City Manager**  
**City of Fayetteville**  
**433 Hay Street**  
**Fayetteville, NC 28301**

If the RECIPIENT/SUBGRANTEE designates different representatives or designated agents, RECIPIENT/SUBGRANTEE shall notify AGENCY/GRANTEE within 30 days and update the Designated Agent Form to continue receiving reimbursements.

**(13) OTHER PROVISIONS**

- (a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the RECIPIENT/SUBGRANTEE, in the Application, in any subsequent submission or response to the AGENCY/ GRANTEE request, or any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the AGENCY/GRANTEE and with thirty (30) days written notice to the RECIPIENT/SUBGRANTEE, cause the termination of this Agreement and the release of the AGENCY/ GRANTEE from all its obligations to the RECIPIENT/ SUBGRANTEE.
- (b) This Agreement shall be construed under the laws of the State of North Carolina and venue for any actions arising out of this Agreement shall be filed in State Court in Wake County, North Carolina. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this Agreement.
- (c) No waiver by the AGENCY/GRANTEE of any right or remedy granted hereunder or failure to insist on strict performance by the RECIPIENT/ SUBGRANTEE shall affect or extend or act as a waiver of any other right or remedy of the AGENCY/GRANTEE hereunder, or affect the subsequent exercise of the same right or remedy by the AGENCY/ GRANTEE for any further or subsequent default by the RECIPIENT/ SUBGRANTEE. Any power of approval or disapproval granted to the AGENCY/ GRANTEE under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

- (d) All National Flood Insurance Program documentation and repetitive loss information will bear the notice:

**“The information contained in this document is legally privileged and confidential. Its use is protected under the Privacy Act of 1974, 5 U.S.C. § 552(a). Use of this information should be restricted to applicable routine use cited in the systems notice published in 56 FR 26415.”**

**(14) AUDIT REQUIREMENTS**

- (a) If applicable, RECIPIENT/SUBGRANTEE shall provide the following completed documentation to the AGENCY/GRANTEE:
- Subrecipient Authorized Representative;
  - State-Applicant Disaster Assistance Agreement;
  - Private Non-Profit Organization Certification (if required);
  - Summary of Documentation Form itemizing actual costs expended for large project payment requests;
  - Monthly Progress Reports;
  - Hard copies of Single Audit Reports within 60 days of close of fiscal year.

If the RECIPIENT/SUBGRANTEE fails to provide any of the documentation discussed or requested in this Agreement, the AGENCY/GRANTEE will be under no obligation to reimburse the RECIPIENT/SUBGRANTEE for eligible expenses.

- (b) The RECIPIENT /SUBGRANTEE agrees to maintain financial procedures and support documents and to establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting principles or as directed by the Governor’s Authorized Representative, to account for the receipt and expenditure of funds under this Agreement. If applicable, RECIPIENT/SUBGRANTEE shall conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et. seq., 44 C.F.R. Part 14, 2 C.F.R. Part 200, and applicable North Carolina laws, rules, and regulations. Further, RECIPIENT/SUBGRANTEE must provide a hard copy of the Single Audit Report within sixty (60) days of the close of its fiscal year. Otherwise, pursuant to 2 C.F.R. §200.339 the AGENCY/ GRANTEE may withhold or suspend payments under any grant award.
- (c) These records shall be available at all reasonable times for inspection, review, or audit by the N.C. State Auditor and other personnel duly authorized by the AGENCY/GRANTEE. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business

hours of 8:00 a.m. to 5:00 p.m., Eastern Standard Time, Monday through Friday.

- (d) The RECIPIENT/SUBGRANTEE shall also provide the AGENCY/GRANTEE with the records, reports, or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.
- (e) The RECIPIENT/SUBGRANTEE shall provide the AGENCY/GRANTEE and the Office of the State Auditor with an annual financial audit report. The annual financial audit report shall include all management letters and the RECIPIENT/SUBGRANTEE's response to all findings, including corrective actions to be taken.
- (f) In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the RECIPIENT/ SUBGRANTEE shall be held liable for reimbursement to the AGENCY/GRANTEE of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the AGENCY/GRANTEE has notified the RECIPIENT/SUBGRANTEE of such non-compliance.
- (g) The RECIPIENT/SUBGRANTEE shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five years after the date of submission of the final expenditures report or as indicated in the applicable FEMA BRIC Notice of Funding Opportunity (NOFO), whichever is longer. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

**(15) SUBCONTRACTS**

- (a) If the RECIPIENT/SUBGRANTEE subcontracts any or all of the work required under this Agreement, the RECIPIENT/ SUBGRANTEE agrees to include in the subcontract that the subcontractor is bound by the terms and conditions of this Agreement with the AGENCY/GRANTEE.
- (b) The RECIPIENT/SUBGRANTEE agrees to include in the subcontract that the subcontractor shall hold the AGENCY/ GRANTEE and RECIPIENT/ SUBGRANTEE harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.
- (c) If the RECIPIENT/SUBGRANTEE subcontracts, a copy of the executed subcontract must be forwarded to the AGENCY/ GRANTEE within ten

(10) days of execution of said subcontract.

- (d) If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 CFR 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (e) Contractual arrangement shall in no way relieve the RECIPIENT/SUBGRANTEE of its responsibilities to ensure that all funds issued pursuant to this grant be administered in accordance with all state and federal requirements.

**(16) TERMS AND CONDITIONS**

This Agreement and any exhibits and amendments annexed hereto, and any documents incorporated specifically by reference represents the entire Agreement between the parties and supersedes all prior oral and written statements or agreements.

**(17) STANDARD CONDITIONS**

The RECIPIENT/SUBGRANTEE agrees to be bound by the following standard conditions:

- (a) The State of North Carolina's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the N.C. General Assembly and is contingent upon U.S. Congress providing Building Resilient Infrastructure and Communities (BRIC) funds for projects.
- (b) If otherwise allowed under this Agreement, extension of an agreement for contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial agreement.
- (c) If RECIPIENT/SUBGRANTEE requires an extension of the current Period of Performance (POP) for this project, then RECIPIENT/SUBGRANTEE must prepare and submit a Request For Extension to the State Hazard Mitigation Officer no later than ninety (90) days prior to the expiration of the POP for this award. The Request for Extension must be on letterhead, provide all the required information outlined in the applicable FEMA Notice of Funding Opportunity (NOFO) and signed by the Designated Agent.
- (d) The AGENCY/GRANTEE reserves the right to unilaterally cancel this Agreement for refusal by the RECIPIENT/SUBGRANTEE to allow public access to all documents, papers, letters, or other material subject to the provisions of the N.C. General Statutes and made or received by the Contractor/RECIPIENT/SUBGRANTEE in conjunction with the Agreement.

**(18) ATTACHMENTS**

- (a) All attachments to this Agreement are incorporated as if set out fully herein.
- (b) In the event of any inconsistency or conflict between the language of this Agreement and the attachments hereto, the language of such attachments shall be controlling, but only to the extent of such conflict or inconsistency.
- (c) This Agreement includes the following attachments or documents incorporated by reference as if fully set out herein:
  - 1. Attachment A Approved Project Budget & Scope of Work
  - 2. Attachment B Program Statutes and Regulations
  - 3. Attachment C Lobbying Prohibition/Self Certification/BABAA Certification
  - 4. Attachment D Statement of Assurances
  - 5. Attachment E Special Conditions

**(19) FUNDING/CONSIDERATION**

All funds shall be requested through the appropriate forms and designated submission platform that are provided by the AGENCY/GRANTEE.

**(20) LOBBYING PROHIBITION**

No funds or other resources received from the State in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the N.C. General Assembly or any state department. The RECIPIENT/SUBGRANTEE shall comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352 (as amended). If applicable, the RECIPIENT/SUBGRANTEE must sign and submit to the State the Certification Regarding Lobbying, attached as **Attachment C**, and incorporated by reference herein.

Refer to Attachment C for additional terms and provisions relating to lobbying.

**(21) LEGAL AUTHORIZATION**

The RECIPIENT/SUBGRANTEE certifies with respect to this Agreement that it possesses the legal authority to receive the funds to be provided under this Agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Agreement with all covenants and assurances contained herein. The RECIPIENT/SUBGRANTEE also certifies that the undersigned possesses the authority to legally execute and



bind RECIPIENT/SUBGRANTEE to the terms of this Agreement. Pursuant to the North Carolina Emergency Management Act, N.C.G.S. §166A-19.41(b)(2)a.3.; §203 and §322, 42 U.S.C. 5133 and 5165, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et seq., *as amended*, the Disaster Mitigation Act of 2000, 42 U.S.C. 5131 et. seq.; The Disaster Recovery Reform Act of 2018, et seq.; the National Flood Insurance Program, 42 U.S.C. 4011 et. seq.; 44 C.F.R. Parts 201 and 206; communities are eligible to apply for Building Resilient Infrastructure and Communities Grant Program (BRIC). Communities on probation or suspended under 44 C.F.R. Part 60 of the NFIP are not eligible.

**(22) ASSURANCES**

The RECIPIENT/SUBGRANTEE shall execute and comply with the Statement of Assurances incorporated as Attachment D and any additional assurances included as part of the FEMA GO Subapplication which is incorporated into this Agreement by reference.

**(23) SPECIAL CONDITIONS**

- (a) The RECIPIENT/SUBGRANTEE shall comply with the special conditions set forth in Attachment E, attached hereto and incorporated by this reference.
- (b) Failure of the RECIPIENT/SUBGRANTEE to comply with the special conditions listed in Attachment E or the program statutes and regulations in Attachments B and D of this Agreement shall be cause for the immediate suspension of payments or the immediate termination of this Agreement.

**(24) HAZARD MITIGATION PLAN**

If RECIPIENT/SUBGRANTEE is a local governmental entity, RECIPIENT/SUBGRANTEE shall complete, adopt, and update an all-hazards mitigation plan in a manner satisfactory to the State Hazard Mitigation Officer and in accordance with FEMA and State requirements including but not be limited to, 44 C.F.R. 201.6, 44 C.F.R. 201.3, and NCGS 166A-19.41. The all-hazards mitigation plan shall be developed in accordance with the minimum criteria for local hazard mitigation plans as determined by the AGENCY/GRANTEE. The minimum criteria are incorporated by reference into this Agreement as if fully set out herein.

(25) **PROCUREMENTS AND CONTRACTS**

RECIPIENT/SUBGRANTEE shall follow all federal, state, and local procurement laws including but not limited to those provisions found in 2 C.F.R. §200.318-327. RECIPIENT/SUBGRANTEE shall include the required contract provisions referenced in 2 C.F.R. §200.327 and found in Appendix II to Part 200 in all procurements and contracts.

(26) **FEMA GO SUBAPPLICATION INCORPORATED BY REFERENCE**

All terms, provisions, and agreements set forth in the FEMA GO Subapplication (except to the extent explicitly modified herein) are incorporated herein by reference with the same force and effect as though fully set forth herein.

**\*\*REST OF PAGE INTENTIONALLY LEFT BLANK\*\***

IN WITNESS WHEREOF, the AGENCY/GRANTEE and the RECIPIENT/SUBGRANTEE have each executed this Agreement, this the \_\_\_\_\_.

CONTRACTING AGENCY  
DIVISION OF EMERGENCY MANAGEMENT  
DEPARTMENT OF PUBLIC SAFETY

WITNESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
WILLIAM C. RAY  
DIRECTOR & DEPUTY HOMELAND SECURITY  
ADVISOR  
DIVISION OF EMERGENCY MANAGEMENT  
DATE \_\_\_\_\_

WITNESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
CASANDRA S. HOEKSTRA  
CHIEF DEPUTY SECRETARY ADMINISTRATION  
DEPARTMENT OF PUBLIC SAFETY  
DATE \_\_\_\_\_

WITNESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
DOUGLAS HEWETT  
CITY MANAGER  
CITY OF FAYETTEVILLE  
FEDERAL EMPLOYER I.D. # 56-6000122  
DATE \_\_\_\_\_

APPROVED AS TO PROCEDURES:

BY: \_\_\_\_\_  
SHARON MARSALIS Ph.D., BUDGET DIRECTOR  
DEPARTMENT OF PUBLIC SAFETY  
DATE \_\_\_\_\_

**APPROVED AS TO FORM SUBJECT TO EXECUTION BY CASANDRA S. HOEKSTRA, CHIEF DEPUTY SECRETARY ADMINISTRATION OF THE DEPARTMENT OF PUBLIC SAFETY.**

DEPARTMENT OF PUBLIC SAFETY

BY: \_\_\_\_\_  
DEPUTY GENERAL COUNSEL

**A-1**  
**ATTACHMENT A**

**BUDGET AND SCOPE OF WORK**

RECIPIENT/SUBGRANTEE shall implement the FY 2022 Building Resilient Infrastructure and Communities Grant Program Plan activity summarized below and as described in the approved Subapplication (EMA-2022-BR-001-0036) in FEMA GO. That Subapplication is incorporated by reference into this Agreement. The AGENCY/GRANTEE shall reimburse eligible costs according to the following expenditures:

**A. Building Resilient Infrastructure and Communities Grant Program**

	<u>Total Costs</u>
Total Estimated Phase 1 Project Cost:	\$3,769,400.00

The Total Estimated Project Cost is an estimate only. The final Phase 1 project costs will be determined according to the policies and procedures in the applicable Notice of Funding Opportunity (NOFO) for the Building Resilient Infrastructure and Communities program and the North Carolina Division of Emergency Management Standard Operating Procedure. The Total Estimated Project Cost reflects the number provided to NCEM by FEMA in the FEMA award letter. Note this Agreement does not include breakdowns of Federal Share, Non-Federal Share, and Subrecipient Management Cost (SRMC) amounts. **If final Phase 1 project costs exceed the Total Estimated Phase 1 Project Cost, these additional costs will be the responsibility of the RECIPIENT/SUBGRANTEE and will only increase the Estimated Non-Federal Share.**

**B. Funding Sources**

1. Approved Federal Share for EMA-2022-BR-001-0036	\$2,657,480.00
2. Estimated Non-Federal Share for EMA-2022-BR-001-0036	\$1,138,920.00
3. <b>Subrecipient Management Costs (Federal)</b>	\$189,820.00
<b>TOTAL FOR: EMA-2022-BR-001-0036 Phase 1</b>	<b>\$3,986,220.00</b>

**\*\*\* Federal project funds not used in Phase 1 are eligible to be rolled over and used in Phase 2.**

**A-2**  
**Scope of Work Summary**

The City of Fayetteville will utilize project funds to complete the design and engineering required to move forward to Phase 2. No construction activities have been approved for this project. This project will be delivered in accordance with the Scope of Work, Budget, and Schedule outlined in the BRIC2022 Subapplication (EMA-2022-BR-0001-0036) titled “Person & Russell St Bridge and Stream Improvement Project” in FEMA GO. This Subapplication is incorporated into this Agreement by reference.

<b>Approved Phase 1 Budget Items</b>	<b>Amount</b>
Item: Functional Design	\$1,265,500.00
Item: Real Estate Easement Acquisition	\$527,300.00
Item: Permitting	\$316,400.00
Item: Detailed Design	\$1,265,400.00
Item: Engineering Management	\$421,800.00
<b>Total</b>	<b>\$3,796,400.00</b>

Note that any budget line items marked as Phase 1, but not listed above, are not approved at this time. If FEMA determines they are eligible after review of Phase 1 deliverables, they will be approved as part of Phase 2, as they involved ground disturbance.

<b>Phase</b>	<b>Federal Share (Project)</b>	<b>SRMC</b>	<b>Total Federal Share (Project + SRMC)</b>	<b>Non-federal Share</b>	<b>Total Project Cost</b>	<b>Status</b>
1	\$2,657,480.00	\$189,820.00	\$2,847,300.00	\$1,138,920.00	\$3,986,220.00	<b>Approved</b>
2	\$11,716,670.00	\$836,905.00	\$12,553,575.00	\$5,021,430.00	\$17,575,005.00	Pending Approval

Phase 2 is pending approval following the submission and review of Phase 1 deliverables and completion of the Environmental and Historic Preservation (EHP), Technical and Program reviews. Construction or ground disturbing activities cannot start until FEMA issues a Phase 2 approval letter.

The following is the approved Scope of Work (SOW) for Phase 1 for the above referenced project:

The City of Fayetteville will utilize Phase 1 funds to complete the design and engineering required to move forward with Phase 2. The approved scope of work is for **Phase 1 only**, which includes surveying, engineering, design, plans preparation, permitting and bidding for the proposed project. No construction activities for this project have been approved.

The sub-applicant must submit the below Phase 1 deliverables for FEMA’s review and approval. Once all Phase 1 deliverables are received, reviewed, and approved by FEMA, we will send written notification that the Phase 2 work can begin. Starting any Phase 2 work, or any other ground disturbing activities or construction, without FEMA’s written approval could jeopardize the project funding.

### **Phase 1 Deliverables:**

In addition to a complete, detailed scope of work, updated budget, and updated milestones, Phase 1 deliverables should include the below:

- Technical information (engineering design plans, feasibility studies, engineering reports, etc.) demonstrating that the project is feasible to the project design standards (level of protection).
  - H&H Study for the project that identifying potential upstream and/or downstream effects from the proposed project.
  - Hydrologic and hydraulic data/modeling
  - Engineering design (typically 30/60/90) and cost estimate
  - Technical body of information needed to support the desired level of effectiveness/protection or amount of risk reduction.
  - Refinement of the BCA based on the engineering analysis completed in Phase 1.
  - Additional documentation required to support compliance with eligibility, technical feasibility, cost-effectiveness, and EHP requirements.
  - Provide an updated, detailed Scope of Work, including ground disturbance information to detail area and max depth of proposed ground disturbance for each new construction item, methods of construction, staging areas, along with any updated maps of proposed ground disturbance as a Phase 1 deliverable.
  - Provide any new or missing documents such as surveys, plans, drawings, specifications, studies, and additional site photos with descriptions associated with the project.
  - Provide the dates of construction for the three bridges.
  - Any applicable USACE 404, State 401, and 402 North Carolina Department of Environmental Quality (NCDEQ) permitting, authorization, or exemptions documented should be included as a Phase I deliverable. Provide any USACE point of contact information so that FEMA EHP can establish lead agency and share compliance review documents.
  - Local floodplain administrator approval will be required and any supporting documentation such any required approvals, studies, permits, certificates (elevation, no-rise, etc.), and/or any amendments from the appropriate agencies.
  - Other items FEMA determines necessary, as a result of the design process identifying any unforeseen requirements.
  - Optional: utilize the public notice template to draft and post for community comment.
  - Documentation of any public meetings and notifications related to this proposed project.
- NOTE: FEMA EHP is available to provide technical assistance throughout the Phase I designing process. Requests for EHP assistance should be sent to your designated point of contact.

## B-1

### ATTACHMENT B

#### PROGRAM STATUTES AND REGULATIONS

The North Carolina Division of Emergency Management as administrators of this Building Resilient Infrastructure and Communities Grant are governed by the following statutes, regulations, procedures, and policies:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et. seq.;
- (2) 44 C.F.R. Parts 7, 9, 18, 25, 60, 201, 206, 44 C.F.R. Part 209, 2 CFR Part 180, 2 C.F.R. Part 200, and any other applicable FEMA policy memoranda and guidance documents;
- (3) Chapter 166A of the N.C. General Statutes, N.C.G.S. § 166A-19 et. seq., “The N.C. Emergency Management Act”;
- (4) State of North Carolina Administrative Plan and policies and procedures of the N.C. Division of Emergency Management;
- (5) The applicable Department of Homeland Security, Federal Emergency Management Agency Notice of Funding Opportunity (NOFO) for BRIC;
- (6) All applicable laws and regulations delineated in Attachments D&E of this Agreement;
- (7) All applicable laws, ordinances, codes, rules, regulations, licensing requirements, and other regulatory matters that are applicable to the work performance under this Agreement, including those of federal, state and local agencies having appropriate jurisdiction.

**C-1**  
**ATTACHMENT C**

**LOBBYING PROHIBITION**

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

- (a) 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 either directly or indirectly an officer or employee of any state or federal agency, a member of the N.C. Legislature, 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.
- (b) 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.
- (c) 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, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUB-RECIPIENT/SUBGRANTEES shall certify and disclose accordingly.

This certification is a material representative 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 31 U.S.C.1352. 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.

The RECIPIENT/SUBGRANTEE certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the RECIPIENT/SUBGRANTEE understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

**RECIPIENT/SUBGRANTEE**

**BY:** \_\_\_\_\_  
Douglas Hewett  
City of Fayetteville



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**Build America, Buy America Act Self-Certification for Contracts and Subcontracts**

For FEMA financial assistance programs subject to Build America, Buy America Act (BABAA), contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non-federal entity) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:

The undersigned certifies, to the best of their knowledge and belief, that:

BABAA requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the \_\_\_\_\_ (Project Name and Location) that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

“The [Contractor or Subcontractor], \_Name/Title\_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the [Contractor or Subcontractor] understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

\_\_\_\_\_  
**Signature of [Contractor’s or Subcontractor’s] Authorized Official**

\_\_\_\_\_  
**Name and Title of [Contractor’s or Subcontractor’s] Authorized Official**

\_\_\_\_\_  
**Date**

**D-1**  
**ATTACHMENT D**

STATEMENT OF ASSURANCES

The RECIPIENT/SUBGRANTEE hereby assures and certifies that:

- (a) It possesses legal authority to enter into this agreement and to execute the proposed program.
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the BRIC application to FEMA, including all understandings and assurances contained therein, and directing and authorizing the RECIPIENT/ SUBGRANTEE's chief executive officer to act in connection with the application and to provide such additional information as may be required.
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same. No member, officer, or employee of the RECIPIENT/SUBGRANTEE, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to program during his tenure or for one year thereafter, shall have any interest direct or indirect, in any contract or program assisted under this agreement. The RECIPIENT/SUBGRANTEE shall incorporate or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes stated above.
- (d) It will comply with and conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et. seq., 2 C.F.R. Part 200, and applicable North Carolina laws, rules, and regulations. Additionally, the RECIPIENT/ SUBGRANTEE shall comply with the requirements related to audits and financial management pursuant to the Single Audit Act of 1984, 31 U.S.C. §7501 et. seq. and shall provide the documentation discussed below and requested under this Agreement. RECIPIENT/ SUBGRANTEE must provide a hard copy of the Single Audit Act Report within sixty (60) days of the close of its fiscal year. Otherwise, 2 C.F.R. 200.339, the AGENCY/SUBGRANTEE may withhold or suspend payments under any grant award. Failure to provide such documentation or to comply with said requirements shall terminate any obligation on behalf of the AGENCY/ GRANTEE to reimburse the RECIPIENT/SUBGRANTEE for eligible expenses.

D-2

(e) *Where applicable, it will comply with:*

(1) **Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 3701 et seq. – In accordance with 29 CFR 5.5(b)(1)-(4):**

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages

and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section; and

- (2) **Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.**, requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (3) **Davis Bacon Act.** The Davis-Bacon and Related Acts (Davis-Bacon Act) require the payment of prevailing wages on certain federally funded or funded construction activities. **The Davis-Bacon Act does not apply to HMA programs, including BRIC, as it is not required by the programs' authorizing statutes.** However, Davis-Bacon Act compliance may be required if HMA funds are used in conjunction with another federal agency's grant, such as Community Development Block Grant Disaster Recovery funding from the Department of Housing and Urban Development or if required by local, tribal, and territorial government laws.
- (4) National Environmental Policy Act of 1969, 42 U.S.C. §4321; et. seq.; EO11991; EO12148; Coastal Zone Management Act of 1972, 16 U.S.C. §1451 et. seq.; Section 176(c) of the Clean Air Act of 1955, 42 U.S.C. §7401 et. seq.; Safe Drinking Water Act of 1974, 42 U.S.C. §300f et. seq.; Endangered Species Act of 1973, 16 U.S.C. §1532 et. seq.; Wild and Scenic Rivers Act of 1968, 16 U.S.C. §1271 et. seq.
- (5) Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 306108 (former 16 U.S.C. §470 et. seq.); EO11593; Archaeological and Historic Preservation Act of 1974, 54 U.S.C. 312501 et. seq. (16 U.S.C. §469a-1 et. seq.).
- (6) **Clean Air Act, 42 U.S.C. 7401 et. Seq.** The RECIPIENT/SUBGRANTEE agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the RECIPIENT/SUBGRANTEE and understands and agrees that the RECIPIENT/SUBGRANTEE will, in turn, report each violation as required

to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**Federal Water Pollution Control Act.** The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the RECIPIENT/SUBGRANTEE and understands and agrees that the RECIPIENT/SUBGRANTEE will, in turn, report each violation as required to assure notification to the AGENCY/GRANTEE, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

- (7) **Suspension and Debarment.** This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by RECIPIENT/SUBGRANTEE. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to RECIPIENT/SUBGRANTEE, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(f) ***During the performance of this contract, the RECIPIENT/SUBGRANTEE agrees it will comply with:***

- (1) The RECIPIENT/SUBGRANTEE will not discriminate against any employee or applicant for employment because of race, color, religion, sex,

sexual orientation, gender identity, or national origin. The RECIPIENT/SUBGRANTEE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The RECIPIENT/SUBGRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The RECIPIENT/SUBGRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The RECIPIENT/SUBGRANTEE will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the RECIPIENT/SUBGRANTEE's legal duty to furnish information.

(4) The RECIPIENT/SUBGRANTEE will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The RECIPIENT/SUBGRANTEE will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The RECIPIENT/SUBGRANTEE will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The RECIPIENT/SUBGRANTEE will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The RECIPIENT/SUBGRANTEE will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The RECIPIENT/SUBGRANTEE further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, that if the RECIPIENT/SUBGRANTEE so participating is a state or local government, the above equal opportunity clause is not applicable to

any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The RECIPIENT/SUBGRANTEE agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The RECIPIENT/SUBGRANTEE further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- (2) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the RECIPIENT/SUBGRANTEE, this assurance shall obligate the RECIPIENT/SUBGRANTEE, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- (3) Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis of race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age); Any prohibition against



discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. 794 (prohibiting discrimination on the basis of handicap); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended;

- (4) Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and election for training and apprenticeship.
- (g) The RECIPIENT/SUBGRANTEE agrees to comply with **Titles I, II, III, IV and V of the Americans With Disabilities Act of 1990** (prohibiting discrimination on the basis of disability).
- (h) **The Copeland “Anti-Kickback” Act.** Contractor. RECIPIENT/SUBGRANTEE shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.

*Subcontracts.* The RECIPIENT/SUBGRANTEE or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

*Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- (i) It will comply with the provision of the Hatch Act, as amended, 5 U.S.C. 1501 et. seq. and 7324 et. seq. which limits the political activity of employees.
- (j) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-156, 87 Section 975, approved December 31, 1973, as amended, 42 U.S.C. 40001 et. seq. Further,

Section 102 and 103 (42 U.S.C. 4012a and 4015) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "uniform Federal Accessibility Standards," (UFAS) 24 C.F.R. Part 40 for residential structures, <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>. The RECIPIENT/SUBGRANTEE will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.
- (l) The RECIPIENT/SUBGRANTEE will comply with applicable N.C. General Statutes when negotiating contracts for services.
- (m) It has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations, and has adopted and is enforcing a policy of enforcing applicable State and federal laws against physically barring entrance or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction in accordance with section 519 of Public Law 101-144 of the 1990 HUD Appropriations Act.
- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C.: 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (o) It will comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 91-616) as amended, 21 U.S.C. 1101 et. seq.) relating to nondiscrimination on the basis of drug abuse;
- (p) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 et. seq.) relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
- (q) It will comply with 523 and 527 of the Public Health Service Act of 1912 "(42 U.S.C. 290 dd-3 and 290 ee-3)", as amended, relating to confidentiality of alcohol and drug abuse patient records;

- (r) It will comply with Chapter 63 of Title 42, Lead-Based Paint Poisoning Act “(42 U.S.C. 4821 et seq.)” which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;
- (s) It will comply with the **Energy Policy and Conservation Act, 42 U.S.C. §6291 et. seq.**
- (t) In the performance of this Agreement, the RECIPIENT/SUBGRANTEE shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule, meeting contract performance requirements, or at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines webpage:  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act. See also 2 C.F.R. 200.323.

(u) **Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial

or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

- (v) **Domestic Preference for Procurements.** As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- (w) The RECIPIENT/SUBGRANTEE shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The RECIPIENT/SUBGRANTEE shall include this provision in any subcontracts.

- (x) RECIPIENT/SUBGRANTEE certifies that it:

- (1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal

court, or voluntarily excluded from participating in Federal or State grants or awards by any Federal or State department or agency; and

- (2) Has not within a three-year period preceding this contract been convicted of or had a civilian 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;
  - (3) Is 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 (2) above; and,
  - (4) Has not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (y) RECIPIENT/SUBGRANTEE further agrees that it will include the above certifications, without modification, in all lower tier contracts and in all solicitations for lower tier contracts.
- (z) **No Governmental Non-Competes.** RECIPIENT/SUBGRANTEE shall not impose or enforce any non-competition agreement upon the employees included in RECIPIENT/SUBGRANTEE's proposal that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Agreement the RECIPIENT/SUBGRANTEE affirms this condition. This affirmation is a material condition for the State's award of any work under this Agreement.
- (aa) **Program Monitoring.** RECIPIENT/SUBGRANTEE agrees to assist and cooperate with the Federal grantor agency and State or their duly designated representatives in the monitoring of the project or projects to which this contract relates, and to provide in form and manner approved by the State such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- (bb) **Funding Contingency.** The awarded Contract may be suspended and/or terminated without liability to the State if any grant is suspended or terminated, and unless and until the State receives funds in an amount that is deemed sufficient to enable it to fund the Contract awarded, the State is under no obligation to make any payments to the RECIPIENT/SUBGRANTEE.

- (cc) **Women and Minority Owned Businesses.** 2 C.F.R. § 200.321 requires that all necessary affirmative steps are taken by the State and RECIPIENT/SUBGRANTEE to assure that minority and women’s businesses are used when possible, and N.C. Gen. Stat. 143-128.2 establishes a ten percent (10%) goal for participation by minority and women owned businesses in total value of work performed for the State.
- (dd) **Personnel.** RECIPIENT/SUBGRANTEE represents that it has, or will secure at its own expense, all personnel required in performing the work under this Contract. Such personnel shall not be employees of or have any contractual relationship with State. All of the work required hereunder will be performed by RECIPIENT/SUBGRANTEE or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and State law to perform such work. No person who is serving a sentence in penal or correctional institution shall be employed to work under this Contract.
- (ee) **Program Fraud and False or Fraudulent Statements or Related Acts.** RECIPIENT/SUBGRANTEE acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- (ff) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

**E-1  
ATTACHMENT E**

**SPECIAL CONDITIONS**

This agreement shall be executed by the RECIPIENT/SUBGRANTEE, and returned to the AGENCY/GRANTEE at the following address:

**NCEM Hazard Mitigation Section  
Department of Public Safety  
Division of Emergency Management  
4238 MSC  
Raleigh, NC 27699-4238**

This agreement will be executed within thirty (30) days after receipt. All time periods in this Agreement refer to calendar days. After receipt by the AGENCY/GRANTEE of the signed Agreement, the AGENCY/GRANTEE will execute this Agreement and return an original to the RECIPIENT/SUBGRANTEE.

**Mailing Address:  
Douglas Hewett  
City Manager  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301**

**Overnight Address:  
Douglas Hewett  
City Manager  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301**



