

ORDINANCE NO. _____

BILL NO. 125 (2023)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE
COUNTY OF MAUI TO ENTER INTO INTERGOVERNMENTAL
AGREEMENTS WITH THE STATE OF HAWAII, HAWAII EMERGENCY
MANAGEMENT AGENCY FOR PUBLIC ASSISTANCE GRANTS
RELATING TO THE AUGUST, 2023 WILDFIRES DISASTER

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The State of Hawaii, Hawaii Emergency Management Agency (the “Agency”), through the Presidential Disaster Declaration FEMA-4724-DR-HI: Wildfires and the FEMA-State Agreement (the “Award Agreement”), is the recipient of federal funds and the designated pass-through entity to award said funds to the County of Maui. The Award Agreement is attached hereto and incorporated herein by reference as Exhibit “1”. The Agency will subaward the funds to County departments for eligible scopes of work and associated funding to aid in the recovery of the August, 2023 wildfires disaster, with individual departments receiving a separate subaward from the Agency (the “Subaward Agreements”). The Subaward Agreements shall be substantially in the same form as the Public Assistance Grant Program – Subrecipient Award Memorandum of Agreement attached hereto and incorporated herein by reference as Exhibit “2”.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor or his designees, to execute the Subaward Agreements, all other necessary documents relating to the Subaward Agreements, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Mimi DesJardins
MIMI DESJARDINS
First Deputy Corporation Counsel
County of Maui

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2023-11-09 Ord Auth HI-EMA IGAs.docx

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.



FEMA

FEMA-State Agreement FEMA-4724-DR-HI

I. PURPOSE AND BACKGROUND

The President declared on August 10, 2023, that a major disaster exists in the State of Hawaii. This declaration was based on wildfires (incident) beginning on August 8, 2023, and continuing (incident period). This is the FEMA-State Agreement (Agreement) for this major disaster, designated FEMA-4724-DR (Declaration), under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5121-5207) (Stafford Act), in accordance with 44 C.F.R. § 206.44. This Agreement between the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) and the State of Hawaii (State or Recipient) governs all federal assistance that FEMA provides the State for this Declaration.

II. GENERAL PROVISIONS

- A. **GRANT AWARD PACKAGE.** Any federal grant (which includes a cooperative agreement for purposes of this Agreement) award package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances – Non-Construction Programs* (SF-424B) and *Assurances – Construction Programs* (SF-424D), when applicable, submitted by the State for each grant provided under the Declaration and this Agreement.
- B. **FEMA RESPONSIBILITIES.** FEMA may provide federal assistance to the State or residents of the State, if applicable, in the form of federal grant assistance, payments to individuals, and/or direct federal services to support the activities and programs authorized under the Stafford Act and the Declaration in accordance with this Agreement.
- C. **STATE RESPONSIBILITIES**
 1. The State agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement, individual projects, records of environmental consideration, State Mitigation Plan ("SMP") (if applicable) and the State Administrative Plans in place for each grant award.
 2. The State agrees to lead, manage, and drive the overall recovery process and coordinate recovery activities and technical support by setting appropriate state policies. The State will coordinate with local, tribal and Federal governments and agencies, private businesses, and nonprofit organizations

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to lead and coordinate state recovery planning and assistance to impacted communities.

3. The State agrees to be the “Recipient” for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of financial assistance for Temporary Housing and financial assistance for Housing Repair and Replacement under the Individuals and Household Program (IHP) that is always administered by FEMA or for Direct Temporary Housing, Permanent Housing, and/or Other Needs Assistance (ONA) under the IHP when administered by FEMA rather than by the State (*i.e.*, the “FEMA option”), if applicable.
 - a. Recipient has the same meaning as “Grantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a “non-Federal entity” for grants administration purposes.
4. The State will serve as the “pass-through entity” with respect to the State’s role in providing subawards and administering grant assistance provided to subrecipients. As the pass-through entity, the State agrees to comply with and will require all subrecipients to comply with the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (C.F.R.) (*Emergency Management and Assistance*), 2 C.F.R. Part 3002 (implementing 2 C.F.R. Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
 - a. The term “subrecipient” has the same meaning as “subgrantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a “non-Federal entity” for grants administration purposes.
 - c. A subrecipient may also serve as a pass-through entity under certain circumstances in the Hazard Mitigation Grant Program (HMGP).
5. The State is required to maintain a FEMA-approved SMP in accordance with 44 C.F.R. Part 201 (*Mitigation Planning*) as a condition of receiving non-emergency Stafford Act assistance.
 - a. The State must update its SMP every five years.
 - b. The State must have a FEMA-approved mitigation plan to receive the following assistance:
 - i. Public Assistance (PA) – Permanent Work Categories C-G

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ii. HMGP.

- c.** FEMA will not obligate funds for PA Permanent Work or HMGP projects unless that State has a FEMA-approved SMP.
- d.** If the State does not have a FEMA-approved SMP as of the date of the Declaration, the State must submit its approvable SMP within 30 days of the date of the Declaration for FEMA review and approval. If the State fails to do so, FEMA will deny the State's application for PA Permanent Work and HMGP assistance under the Declaration.
- e.** If the State's FEMA-approved SMP lapses after the Declaration, the State must submit its approvable SMP within 30 days of the lapse for FEMA review and approval. FEMA will cease obligating funds for PA Permanent Work or HMGP projects during any lapse period between expiration of the current SMP and approval of an updated SMP.

D. CERTIFICATION AND WAIVERS

- 1.** **Attachment 1** to this Agreement lists the State officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of and to legally bind the State.
- 2.** **Attachment 2** to this Agreement is the State's Certification Regarding Lobbying. This certification complies with the lobbying prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations at 44 C.F.R. Part 18 (*New Restrictions on Lobbying*).
- 3.** The State waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 C.F.R. Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*) for grants, cooperative agreements, loans, or other financial assistance under the Stafford Act for the Declaration.

E. FEDERAL ASSISTANCE

- 1.** The State has requested federal assistance and submitted a FEMA Form 010-0-13 (*Request for Presidential Disaster Declaration – Major Disaster or Emergency*), the terms, representations, and assurances of which are incorporated by reference into this Agreement.
- 2.** Federal assistance, except for assistance under the HMGP, is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding the incident may be eligible.

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3. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA in the Federal Register Notices for this Declaration, which are listed in **Attachment 3** to this Agreement and are incorporated by reference into this Agreement.
4. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy, and guidance in accordance with this Agreement.
5. Pursuant to Executive Order 13858 “*Strengthening Buy-American Preferences for Infrastructure Projects*,” FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance and HMGP eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 C.F.R. Part 200.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:

1. The Stafford Act, its implementing regulations contained in Title 44 of the C.F.R., and FEMA policy and guidance.
2. *The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* set forth at 2 C.F.R. Parts 200 and 3002.
3. The DHS Standard Terms and Conditions in effect on the date of the Declaration, available at [DHS Standard Terms and Conditions | Homeland Security](#) which are incorporated by reference into this Agreement.

III. TYPES OF FEDERAL ASSISTANCE

The President may authorize any of the following federal assistance programs and **Attachment 3** to this Agreement sets forth the specific federal assistance programs authorized for this Declaration.

A. PUBLIC ASSISTANCE (PA). The following terms apply when the PA Program is authorized and FEMA makes a PA grant award to the State:

1. Cost Share. FEMA funding for PA project costs (which do not include management costs) will be limited to 75 percent of total eligible costs after appropriate reductions (such as for insurance), except as may be provided for in **any subsequent** cost share amendments to the Declaration, which

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will be incorporated into this agreement by amendment. The State agrees to make available the non-federal share of PA project costs.

2. Management Costs. FEMA funding for PA management costs will be 100 percent of the total eligible management costs, which will be limited to not more than 12 percent of the total award amount. Of this amount, the State may use up to 7 percent and a subrecipient may use up to 5 percent of the subrecipient's total award amount. The "total award amount" means the actual eligible PA project costs, including both the federal and non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. There is no non-federal share of PA management costs.
3. Direct Federal Assistance. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The State will:
 - i. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - ii. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - iii. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and
 - iv. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the State for the non-federal share of Direct Federal Assistance provided and the State agrees to pay the non-federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.
3. Debris Removal. When debris removal is authorized, the State agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for the Declaration. The State agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.
4. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the PA Program, including PA grant performance goals, may be included in an attached **Public Assistance Programmatic Addendum**.

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- B. INDIVIDUAL ASSISTANCE (IA).** When the Declaration authorizes IA overall or specific IA programs and FEMA makes an IA grant award to the State, the following terms apply:
1. General. FEMA may award grant funds to the State for the IA programs authorized under the Declaration and requested by the State and, for Direct Temporary Housing and Permanent Housing Construction, may provide direct assistance.
 2. Other Needs Assistance. When the Declaration authorizes the IHP and FEMA provides ONA to individuals and households, the State agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (codified as amended at 42 U.S.C. § 5174(e)).
 - a. FEMA Option. When FEMA administers ONA under the FEMA Option, FEMA will bill the State monthly for the cost share. The State agrees to pay the amount billed within 30 days of receipt.
 - b. Joint Option. If the State administers ONA under the Joint Option, a cooperative agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the State 75 percent of the total ONA payments to individuals and households and actual administrative costs in accordance with Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the ONA grant.
 - c. State Option. If the State administers ONA under the State Option, a grant agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the State 75 percent of the total ONA payments to individuals and households and administrative costs allowed under Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the actual eligible ONA payments made to individual and households, including both the federal and non-federal share.
 3. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the IHP and other applicable IA Programs including IA grant performance goals and administrative plans may be included in an attached **IA Programmatic Addendum**.
- C. HAZARD MITIGATION GRANT PROGRAM (HMGP).** When the Declaration authorizes the HMGP and FEMA makes a HMGP award to the State, the following provisions apply:

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1. Total Funding. Total federal contributions are based on the estimated aggregate amount of grants to be made under the Stafford Act for this major disaster (less any associated administrative costs), and will be 15 percent for the first \$2,000,000,000 or less of such amounts; 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.
2. Cost Share. FEMA funding for total HMGP costs, excluding management costs, will be limited to no more than 75 percent of total eligible costs after appropriate deductions. The State agrees to make available the 25 percent non-federal share of HMGP and, at its request, may provide a greater non-federal share of an activity cost.
3. Management Costs
 - a. FEMA funding for HMGP management costs will be 100 percent of the total eligible management costs, which will be limited to 15 percent of the total award amount. The State may use up to 10 percent of the total award amount and subrecipients may use up to 5 percent of the subrecipient's total award amount. There is no non-federal share of HMGP management costs
 - b. The "total award amount" means the actual eligible HMGP activity costs, including both the federal and the non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. For the State, this is the total of the federal contribution and the required nonfederal contribution under the HMGP grant award. For a subrecipient, this is the federal contribution and nonfederal contribution that the State has identified as contributing to meet the nonfederal share of the HMGP grant award. In the case where the non-federal share for the entire HMGP grant award exceeds the required 25 percent, those excess non-federal contributions are not included in the total award amount and are not included in the calculation of management costs.
4. Program Administration by States. If the State requests and FEMA approves the State's request for inclusion in the Program Administration by States (PAS) Pilot Program, FEMA and the State will execute an Operating Agreement that will be included in the attached **HMGP Programmatic Addendum**.
5. Additional Terms and Conditions. Additional terms and conditions regarding implementation of HMGP, including performance goals, may be included in the attached **HMGP Programmatic Addendum**.

IV. FUNDING

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A. PAYMENT PROCESS

1. Payment System. FEMA will pay the State using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.
3. IA Overpayments. When FEMA identifies an overpayment under an IA grant award, subject to the exhaustion of appeals, FEMA will deobligate the funds from the State's HHS/Smartlink account. If there are insufficient funds in the account, the State will have 30 days to reimburse the HHS/Smartlink account. At that time, if there are still insufficient funds in the subaccount, FEMA will refer the amount to the FEMA Finance Center (FFC) for collection.
4. PA and HMGP Overpayments. FEMA will use a "single obligation" system to process payments through a subaccount for each subaward under PA and HMGP. When FEMA identifies an overpayment as a potential debt, the State will have 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the State will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The State may resolve the amount owed by paying FEMA directly. It may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the State may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.
5. No Property Interest. The State and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the State in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

B. AVAILABILITY OF FUNDING. FEMA and the State agree to take measures to deliver assistance to individuals, households, governments, and private nonprofits as expeditiously as possible consistent with federal laws and regulations.

1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal

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Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.

2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will provide other financial assistance when, and if, funds become available and will generally provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS

1. Initial and Quarterly Financial Reports
 - a. The State must submit complete and accurate Federal Financial Reports (SF-425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program (PA, HMGP, and the various IA programs). The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the State. Subsequent reporting requirements will not be waived. The State must submit quarterly financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.
 - b. The State must indicate in the remarks section on the quarterly financial report each time it has submitted a final expenditure report for a project or subaward as detailed in paragraph V.B below. The information must include the name of the subrecipient, the project number, and the date on which the State submitted the project closeout report. If it is the last project for a subrecipient, then the State must also note that the quarterly report reflects the last expenditures of that subrecipient.
2. Final Federal Financial Report. The State must submit a complete and accurate final Federal Financial Report (SF-425), no later than 120 days after each program's federal grant award performance period expiration date.

B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION

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1. PA Large Project Final Expenditure Report
 - a. The State must submit a payment of claim to FEMA for each PA large project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The State must submit the final payment of claim for a PA large project within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
2. PA Small Project Final Expenditure Report
 - a. The State must provide a small project certification for itself and each subrecipient as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The State must submit the certification within 180 days from the earlier of the date that the non-Federal entity completes its last small project or the latest project completion deadline of a small project.
3. PA Management Cost Project Final Expenditure Report
 - a. The State must submit a payment of claim to FEMA for each subrecipient's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost PA project for the Declaration; or
 - iii. Eight years from the date of the Declaration.
 - b. The State must submit a payment of claim to FEMA for the State's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a non-management cost PA project for the Declaration; or
 - iii. Eight years from the date of the Declaration.
4. HMGP Project Final Expenditure Report

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- a. The State must submit a payment of claim to FEMA for each HMGP project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.438(d).
 - b. The State must submit the final payment of claim within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 5. HMGP Management Cost Project Final Expenditure Report
 - a. The State must submit a payment of claim to FEMA for each subrecipient's HMGP management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost HMGP project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost HMGP project for the Declaration; or
 - iii. Eight years from the date of the Declaration
 - b. The State must submit a payment of claim to FEMA for the State's HMGP management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the last non-management cost HMGP project for the Declaration;
 - ii. 180 days after the latest performance period of a non-management cost HMGP project for the Declaration; or
 - iii. Eight years from the date of the Declaration
- 6. IA Final Expenditure Report. If the State issues a subaward under the Disaster Case Management Program, Crisis Counseling Program, ONA, Direct Temporary Housing, or Permanent Housing Construction grant award, then it must submit a payment of claim to FEMA for that subaward within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 7. Governmental Subrecipients
 - a. FEMA will confirm the reports described in paragraphs V.B. 1, 2, 3, 4, 5, 6 as the final expenditure report only if the State has submitted all outstanding information and certifications required by applicable

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regulations and FEMA policy and guidance and the report is complete and accurate.

- b. The confirmed, complete, and accurate project closeout report is the “final expenditure report for project completion as certified by the grantee” for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

C. PERFORMANCE REPORTS

1. Initial and Quarterly Reports. The State must submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantee. Subsequent reporting requirements will not be waived. The State must submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.
2. Report Content. The State must include in its quarterly performance/progress reports (OMB Form 1660-0017 PA and OMB Form 1660-0076 HMGP for PA and HMGP, respectively) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement, including for properties purchased for open space under the HMGP.
3. Project Cost Overruns. The State must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval are not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs. In compliance with 44 C.F.R. § 206.438, the State must submit project cost overruns requiring additional HMGP obligations to FEMA for review and approval before incurring costs.
4. Final Performance Report. The State must submit a final performance/progress report 120 days from each program’s grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

- D. ENFORCEMENT.** FEMA may suspend drawdowns, impose other special conditions, or take other authorized action pursuant to 2 C.F.R. § 200.339 (*Remedies for Noncompliance*) if the State does not submit accurate and timely reports. This may include, among things, the administrative closeout of a grant and/or any projects under a grant when the State is not responsive to reasonable

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efforts FEMA makes to collect required reports needed to complete closeout. Administrative closeout is a unilateral mechanism by FEMA to move forward with project or grant closeout using available grant information in lieu of final reports. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed to FEMA.

E. RECORDS RETENTION

1. State Requirement. The State must retain records for 3 years, except in certain rare circumstances described in 2 C.F.R. § 200.334 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF- 425) to FEMA in compliance with 2 C.F.R. § 200.334, notwithstanding the time period prescribed for subrecipients in subsection V.E.2, Subrecipient Requirement, below. If FEMA administratively closes the grant where no final SF-425 was submitted, FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period.
2. Subrecipient Requirement. The State must require subrecipients to retain project or subaward records for at least 3 years from the date that the State submits to FEMA the final expenditure report for a project or subaward as described above in paragraph V.B. If, however, there is any litigation, claim, negotiation, audit, request for information, or other action involving the project or subaward that starts before that date, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

VI. RECOVERY OF FUNDS

- A. GENERAL. FEMA may disallow costs and recover funds based on the results of audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document. FEMA is required to recover funds when the Recipient or subrecipient has ineligible underruns (for example, actual costs for a PA large project are less than the amount FEMA awarded based on initial estimates); knowingly or negligently withholds or misrepresents material information; fails to complete work and comply with the terms of this Agreement or the approved award; expends federal funds in error; or incurs costs that are unreasonable or otherwise disallowed. If after exhaustion of appeal rights, FEMA determines a debt is owed, the State has 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center for collection. The State may do so by directly paying FEMA. The State may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the State may request to substitute unallowable costs for other costs that are allowable

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(e.g., necessary, allocable, and reasonable under the same award and have not yet been reimbursed by FEMA).

B. DUPLICATION OF BENEFITS

1. General. The State must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance or to account for benefits available for the same purpose from another source, irrespective of whether they are actually received.
2. Insurance. Within his/her authorities, the Governor must ensure, through the state agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The State must also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims and are informed of any state procedures instituted for assisting insured disaster survivors.

C. COOPERATION. The State agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated benefits available to the Recipient/subrecipient in accordance with Section 312 of the Stafford Act (codified as amended at 42 U.S.C. § 5155).

D. STATE RESPONSIBILITIES. The State is responsible for recovering federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

1. The State must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF-425.
2. The State must designate on its quarterly progress reports the applicants/subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.
3. The State must notify FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.

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4. The State must report all cases of suspected fraud to the DHS Office of Inspector General. The State must cooperate with any investigation conducted by the DHS Office of Inspector General.
5. The State must cooperate with FEMA regarding any and all lawsuits that may result from the State or FEMA's attempt to recover funds or disallow costs.

E. STATUTE OF LIMITATIONS

1. General. The 3-year statute of limitations limiting FEMA's ability to initiate an administrative action to recover funds paid as provided for in Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)) begins with:
 - a. PA and HMGP. The State's submission of final expenditure report described in paragraph V.B.1, 2, 3, 4, and 5.
 - b. IA Subawards. The State's submission of the final expenditure report described in paragraph V.B.6.
 - c. IA Grant Awards. The State's submission of the Final Federal Financial Report described in paragraph V.A for any portion of work under an IA grant completed by the State directly and not through a subaward.
2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recover payment includes FEMA's written notice to the State or a subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such cost or payment) and written notice to the State or a subrecipient of a FEMA or 3rd party review or audit.

- F. REFUNDS, REBATES AND CREDITS**. The State must transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The State must take necessary action to promptly collect all monies due or which may become due and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VII. CONSTRUCTION REQUIREMENTS

The State must ensure that all applicable federal, state, and local permits and approvals are obtained and all permit conditions are addressed before the start of any construction activity, including FEMA and Recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes, and program guidance.

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VIII. PERFORMANCE PERIODS

- A. **PROGRAM/GRANT AWARD.** The State will complete all grant award activities, including all projects and/or activities approved under each grant award, within the time period prescribed in FEMA regulations, program guidance, and the award documents.
- B. **EXTENSIONS.** The State will include with any written request for an extension information and documentation to support the amendment and a schedule for completion as detailed in federal regulations and FEMA guidance and policies. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the State submits all financial and performance reports to the Regional Office. FEMA will only approve extensions to the federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

IX. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the State or subrecipient fails to comply with applicable Federal statutes, regulations, or the terms of this Agreement pursuant to 2 C.F.R. § 200.339 (*Remedies for Noncompliance*).

X. ATTACHMENTS, PROGRAMMATIC ADDENDUMS AND AMENDMENTS

- A. **ATTACHMENTS.** Attached and made part of this Agreement are the following Attachments which contain terms and conditions applicable to all assistance provided under this Agreement:
- Attachment 1:** List of State Certification Officers
- Attachment 2:** Certification Regarding Lobbying
- Attachment 3:** List of Designated Programs and Areas
- B. **PROGRAMMATIC ADDENDUMS.** Attached and also made part of this Agreement are the following Programmatic Addendums, which unless indicated otherwise in **Attachment 1** may be signed or agreed to on behalf of the State by the Governor's Authorized Representative (GAR) listed in **Attachment 1**, and are included on a case by case basis depending on the assistance designated and whether additional terms and conditions for implementation of specific assistance programs are needed:
- Public Assistance Programmatic Addendum:
- Subpart A: PA Performance Measures
 - Subpart B: Alternative Procedures

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Individual Assistance Programmatic Addendum:

- Subpart A: IA Grant Performance Measures

Hazard Mitigation Grant Program Programmatic Addendum

- Subpart A: HMGP Performance Measures

XI. AMENDMENTS. This Agreement may be amended at any time by written approval of both parties. Executed amendments will be numbered and appended to this agreement in the order that they are executed. Electronic copies of executed amendments will be transmitted to the FEMA Declarations Section.

XII. SIGNATURES AND EFFECTIVE DATE

A. COUNTERPART SIGNATURES. This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature will create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.

B. EFFECTIVE DATE. This FEMA-State Agreement becomes effective on the date of signature by the last party.


AGREED:



Josh Green, M.D.
Governor
State of Hawaii

AUG 11 2023

Date



Robert J. Fenton
Regional Administrator
Region 9

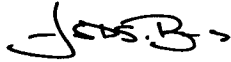
August 11, 2023

Date

**FEMA-STATE AGREEMENT
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**ATTACHMENT 1
LIST OF STATE CERTIFICATION OFFICERS**

1. The Governor hereby certifies that James DS. Barros is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the State all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. Donald S. Aweau, David A. Lopez, Lorinda G. Wong-Lau, and Matthew W. Wall are the Alternate GARs and are similarly empowered. Their specimen signatures follow:



James DS. Barros, GAR

Donald S. Aweau

Donald S. Aweau, AGAR

David Lopez

David, A. Lopez, AGAR



Lorinda G. Wong-Lau, AGAR

Matthew W. Wall

Matthew W. Wall, AGAR

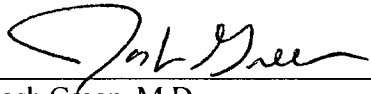
2. The GAR, named above, is responsible for State performance of hazard mitigation activities under this Agreement and, further, Kelsey A. Yamanaka is designated the State Hazard Mitigation Officer for the purposes of such hazard mitigation activities.
3. The Governor hereby certifies that James DS. Barros and Donald S. Aweau are the State Coordinating Officer (SCO) and Alternate SCO, respectively, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
4. The Governor hereby certifies that John A. Vierra is the representative of the State authorized to receive donations or loans of surplus property on behalf of the State and to execute certification, agreements, and other necessary documents with regard thereto.
5. The Governor hereby certifies that Donald S. Aweau is the State official authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 CFR Part 7, *Nondiscrimination in Federally-Assisted Programs* and 44 C.F.R. § 206.11, *Nondiscrimination in disaster assistance*).
6. The Governor hereby certifies that Donald S. Aweau is the State official who will execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

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7. The GAR or Alternate GAR will submit a signed memo to the FEMA Regional Office stating any change in State officials.

Restrictions on approval authority of the above-named officials: None

Agreed:



Josh Green, M.D.
Governor
State of Hawaii

AUG 11 2023

Date

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ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

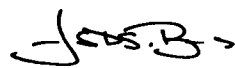
This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 C.F.R. Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

James DS. Barros, Governor's Authorized Representative

Name and Title of Authorized Representative



Signature

Aug 11, 2023

Date

ATTACHMENT 3

LIST OF DESIGNATED AREAS AND PROGRAMS

Individuals in Maui County are eligible to apply for Individual Assistance.

Eligible applicants within Maui County are eligible to apply for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

Eligible applicants within Hawaii County are eligible to apply for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

Eligible applicants within the State of Hawaii are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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PUBLIC ASSISTANCE PROGRAMMATIC ADDENDUM

**SUBPART A: PA GRANT PERFORMANCE GOALS
(TBD per new requirements in 2 CFR § 200.211)**

SUBPART B: ALTERNATIVE PROCEDURES

1. Prevailing Terms and Conditions.

FEMA has adopted several alternative procedures for the provision of Public Assistance (PA) as a pilot program pursuant to Section 428 of the Stafford Act (codified as amended at 42 U.S.C. § 5189f). These alternative procedures are provided for in the *Public Assistance Program and Policy Guide*, version 4 (applicable to Stafford Act emergencies and major disasters declared on or after June 1, 2020), the terms and conditions of which are incorporated by reference into this Agreement. Participation in the alternative procedures is at the election of the PA applicant.

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INDIVIDUAL ASSISTANCE PROGRAMMATIC ADDENDUM

SUBPART A: IA GRANT PERFORMANCE GOALS
(TBD per new requirements in 2 C.F.R. § 200.211)

**FEMA-STATE AGREEMENT
FEMA-4724-DR-HI**

HAZARD MITIGATION PROGRAMMATIC ADDENDUM

SUBPART A: HMGP PERFORMANCE GOALS

The key purpose of HMGP is to the opportunity to take critical mitigation measures to reduce the risk of loss of life and property from future disasters. To achieve this, States must use their HMGP funding to support the development and update of state and local hazard mitigation plans and the completion of hazard mitigation projects based on the State, Tribal and local Hazard Mitigation plan.

The milestone described below will allow FEMA to assess the performance of the State in taking advantage of opportunities after a disaster, making the entire state more resilient.

State HMGP Award Performance Metric

1. All progress reports must be complete and submitted on time. Information in reports must accurately describe award and subaward activities, including data related to the completion of individual property acquisitions. Incomplete progress reports which do not provide information on all open awards and subawards or include all information required by the program guidance are not considered on-time.
2. All Federal Financial Reports (FFR), Standard Form (SF) SF-425 are submitted on time.

Exhibit "2"

State of Hawai'i Department of Defense Hawai'i Emergency Management Agency		
Public Assistance Grant Program – Subrecipient Award Memorandum of Agreement (MOA)		
1. Subrecipient Name and Address: XXX		2. Subrecipient UEI No.: XXX
3. Federal Disaster Declaration No.: FEMA-4724-DR	4. Assistance Listing Number and Title: CFDA 97.036 Disaster Grants – Public Assistance (Presidentially Declared Disasters)	5. Name of Federal Awarding Agency: Federal Emergency Management Agency
6. Pass-Through Entity: Hawai'i Department of Defense (HI-DOD) Hawai'i Emergency Management Agency (HI-EMA)		7. Research & Development? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
8. Brief Description: To provide funds to the SUBRECIPIENT for Presidential Disaster Declaration FEMA-4724-DR-HI, as approved by FEMA for eligible scopes of work and associated funding. HI-EMA is the Recipient and Pass-Through Entity of FEMA-4724-DR-HI: Wildfires and the FEMA-State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to HI-EMA for use of Federal award funds provided under this Agreement and the associated matching funds.		
IN WITNESS WHEREOF, HI-EMA and SUBRECIPIENT acknowledge and accept the terms of this MOA, references, and attachments hereto and have executed this MOA as of the date and year written below. This MOA, Department of Homeland Security (DHS) General Terms and Conditions, FEMA-State Agreement, FEMA Public Assistance and Program Policy Guidance V4, and all other documents, exhibits, and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.		
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: <ol style="list-style-type: none"> 1. DHS Standard Terms and Conditions 2. FEMA-State Agreement 3. HI-EMA General Terms and Conditions 4. FFATA Certification Form 5. Audit Certification Form 		
The parties hereto have executed this Agreement on the day and year last specified below.		
FOR THE HAWAI'I DEPARTMENT OF DEFENSE: <div style="border-top: 1px solid black; display: flex; justify-content: space-between; margin-top: 20px;"> Signature Date </div> James Barros Governor's Authorized Representative APPROVED AS TO FORM AND LEGALITY (if applicable): <div style="border-top: 1px solid black; display: flex; justify-content: space-between; margin-top: 20px;"> Signature Date </div> Administering Authority's Legal Review Craig Iha Attorney General		FOR THE SUBRECIPIENT: <div style="border-top: 1px solid black; display: flex; justify-content: space-between; margin-top: 20px;"> Signature Date </div> SUBRECIPIENT TITLE APPROVED AS TO FORM AND LEGALITY (if applicable): <div style="border-top: 1px solid black; display: flex; justify-content: space-between; margin-top: 20px;"> Signature Date </div> Name Title

ARTICLE I – KEY PERSONNEL

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

Subrecipient		Hawai'i Department of Defense, Hawai'i Emergency Management Agency	
Name		Name	James Barros
Title		Title	Administrator of Emergency Management
E-Mail		E-Mail	james.barros@hawaii.gov
Phone		Phone	808-733-4300
Name		Name	Lorinda Wong-Lau
Title		Title	Resilience Branch Chief
E-Mail		E-Mail	lorinda.g.wonglau@hawaii.gov
Phone		Phone	808-620-5410
Name		Name	Brian Fisher
Title		Title	Disaster Assistance Project Manager
E-Mail		E-Mail	brian.j.fisher@hawaii.gov
Phone		Phone	808-518-7985

ARTICLE II – ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this MOA and the informational documents published by FEMA applicable to the Presidential Declaration including, but not limited to, all criteria, restrictions, and requirements of the "FEMA-State Agreement," and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The Presidential Declaration and the FEMA-State Agreement are incorporated in this Agreement by reference.

The SUBRECIPIENT shall comply with the FEMA Public Assistance Program and Policy Guide V4, effective June 1, 2020, incorporated herein by reference. The DHS General Terms and Conditions are incorporated by reference in this Agreement in Attachment 1.

The SUBRECIPIENT acknowledges that since this MOA involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold HI-EMA, the State of Hawai'i, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

Federal funding is provided by FEMA and is administered by HI-EMA. HI-EMA shall reimburse the SUBRECIPIENT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning August 8, 2023 and continuing.

Eligible costs and activities will be identified in Project Worksheets, herein referred to as the Subgrant Application, approved by FEMA.

ARTICLE III - STATE AND FEDERAL REQUIREMENTS

1. Funding

- a. HI-EMA shall administer the Public Assistance Grant Program and reimburse approved eligible Public Assistance costs to the SUBRECIPIENT as required by this MOA and applicable federal and state laws.
- b. It is understood that no final dollar figure is committed to at the time this MOA is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.
- c. Pursuant to H.R. 2471, the Consolidated Appropriations Act, 2022, FEMA will contribute **90 percent** of the eligible costs for any eligible project. The SUBRECIPIENT shall commit to providing the remaining **10 percent** non-federal match to any eligible project, subject to the following exceptions:
 - i. Department Match - The Hawai'i State Legislature may authorize HI-EMA to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by HI-EMA, if authorized by the Hawai'i State Legislature, shall not require amendment of this Agreement. Should the matched funds be committed to the non-federal share by HI-EMA pursuant to legislative authorization, HI-EMA shall formally notify the SUBRECIPIENT of the match in writing and will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.
 - ii. Donated Resources - FEMA will credit the SUBRECIPIENT for the value of certain volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work; Categories A (debris removal) and B (emergency protective measures) are referred to collectively as Donated Resources. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets. For non-state agency SUBRECIPIENTS, the Donated Resources value will first be applied to the SUBRECIPIENT's non-federal share, and, if a HI-EMA match is authorized, any remaining Donated Resources value will be applied to HI-EMA's share. The value of the Donated Resources is calculated as described in the FEMA Disaster Assistance Policy 9525.2, and is capped at the non-federal share of approved, eligible emergency work costs. The federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs approved in Project Worksheets. Any excess credit can be credited only to other eligible emergency work costs for the same SUBRECIPIENT in the same disaster. The value of excess Donated Resources cannot be credited toward or transferred to another eligible SUBRECIPIENT or toward other state obligations. HI-EMA does not match FEMA-Donated Resources credits.

2. Grant Agreement Period

- a. Activities payable under this Agreement to be performed by the SUBRECIPIENT shall be those activities which occurred during or subsequent to the incident period defined in the FEMA-State Agreement and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of closeout and audit. This period shall be referred to as the "Period of Performance."
- b. The Period of Performance shall only be extended by 1) written notification of FEMA approval of the Grant Agreement Period followed up with a mutually agreed written amendment, or 2) written notification issued by HI-EMA to the SUBRECIPIENT to address extensions of its underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).

3. Time Extensions

- a. A time extension request is required to be forwarded to HI-EMA by the SUBRECIPIENT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to HI-EMA within fifteen (15) days of receipt of the funding package.
- b. In accordance with 44 CFR 206.204, HI-EMA reserves the right, in its sole discretion, to consider and approve a time extension request after expiration of the approved completion date and within HI-EMA's statutory extension authority. Requests for time extensions beyond HI-EMA's authority will be considered and approved by FEMA at its sole discretion.
- c. All determinations made regarding time extension requests will be based on a case-by-case evaluation of specific factual circumstances. A time extension request must be in writing and identify the Project Worksheet number, the reason the project has not been completed within thirty (30) days prior to the approved completion period, the reason the time extension request was not submitted prior to the approval time period (if applicable), a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner may result in denial of the time extension request and loss of funding for the related project.

4. Procurement

- a. The SUBRECIPIENT shall comply with all procurement standards of 2 CFR 200.317 through 200.327, applicable state laws/policies, and as specified in the DHS General Terms and Conditions (Attachment 1). Should a conflict occur between these regulations, the SUBRECIPIENT shall adhere to the most restrictive.

5. Payments

- a. To comply with the Hawai'i State Act 116, all State agency project funding (reimbursements) must first pass-through HI-EMA then be disbursed to the SUBRECIPIENT to reimburse the original source of funding.
- b. Using funds granted for the purposes of this MOA, HI-EMA shall issue payments to the SUBRECIPIENT in compliance with procedures in the FEMA Public Assistance Program and Policy Guide V4, effective June 1, 2020, including, but not limited to:
 - i. Small Project Payments: Payments are made for all small projects, as defined under the FEMA Public Assistance Grant Program, to the SUBRECIPIENT upon submission of the signed P.4 Report and supporting documents to HI-EMA, after FEMA has approved funding through its approval of Project Worksheets.
 - ii. Progress Payments: Progress payment of funds for costs already incurred on large projects, as defined by the FEMA Public Assistance Grant Program, minus ten (10) percent retainage may be made to the SUBRECIPIENT upon submission of a letter of request, a spreadsheet identifying the claimed costs supporting the payment request, and HI-EMA's approval.
 - iii. Final Payment: Final payment on a large project will be made following submission by the SUBRECIPIENT of a certification of completion on the FEMA P4 Form upon completion of the project(s), completion of all final inspections by HI-EMA, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payment may also be conditional upon financial review, if determined necessary by HI-EMA or FEMA. Adjustments to the final payment may be made following any audits conducted by the Hawai'i State Auditor, the United States Inspector General, or other federal or state agency.
 - iv. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration FEMA-4724-DR-HI.
 - v. For Executive Branch state agencies, HI-EMA will transfer payment to the SUBRECIPIENT through interagency reimbursement procedures. Payment will be transferred by journal voucher to the respective agency's appropriation number.
 - vi. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 200.475, their internal policies, state rates, or federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive.
 - vii. Receipts and/or backup documentation for any approved items that are authorized under this MOA shall be maintained by the SUBRECIPIENT consistently with the record retention requirements of this Agreement and be made available upon request by HI-EMA and local, state, or federal auditors.
 - viii. No costs for purchases of equipment and supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its subrecipient or contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward and are invoiced by the vendor.
 - ix. The SUBRECIPIENT shall only use federal award funds under this Agreement to supplement existing funds and shall not use the award funds to replace non-federal funds that have been budgeted for the same purpose. The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

6. Closeout

- a. To initiate closeout of all projects, the SUBRECIPIENT is required to certify in writing by Project Worksheet number, date completed, and total amount expended on the project by submitting the completed P.4 Report for each project.
- b. The SUBRECIPIENT has to submit all documentation for the project within ninety (90) days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later. If a time extension request is needed, The SUBRECIPIENT must request a time extension within forty-five (45) days prior to the approved closeout period.
- c. HI-EMA will then complete a review of documentation to support the claimed costs.
- d. After all of the projects have been certified as complete and approved for closure by FEMA, HI-EMA will forward a SF-270 Form, Request for Advance or Reimbursement to the SUBRECIPIENT for release of the remaining funds due to the SUBRECIPIENT for eligible costs, including any retainage previously withheld, and the allowance for federal indirect costs.

7. Termination for Convenience

- a. Notwithstanding any provisions of this MOA, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to HI-EMA's key personnel identified in the MOA, specifying the effective date thereof, at least thirty (30) days prior to such date.
- b. Except as otherwise provided in this MOA, HI-EMA, in its sole discretion and in the best interest of the State of Hawai'i, may terminate this Agreement in whole or in part by providing ten (10) calendar days of written notice, beginning on the second day after mailing to the SUBRECIPIENT.
- c. Upon notice of termination for convenience, HI-EMA reserves the right to suspend all or part of the MOA, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of HI-EMA provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

8. Termination or Suspension for Cause

- a. In the event that HI-EMA, in its sole discretion, determines that the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this MOA, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the MOA, or has violated any of the covenants, agreements, or stipulations of this MOA, HI-EMA has the right to immediately suspend or terminate this MOA in whole or in part.
- b. HI-EMA may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. HI-EMA is not required to allow the SUBRECIPIENT an opportunity to cure if it is not feasible as determined solely within HI-EMA's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to HI-EMA. If HI-EMA allows the SUBRECIPIENT an opportunity to cure, HI-EMA shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by HI-EMA, or if such corrective action is deemed by HI-EMA to be insufficient, the Agreement may be terminated in whole or in part.
- c. HI-EMA reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of an alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by HI-EMA to terminate the MOA in whole or in part. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law including, but not limited to, any cost difference between the original MOA and the replacement or cover MOA, and all administrative costs directly related to the replacement Agreement (e.g., cost of administering the competitive solicitation process, mailing, advertising, and other associated staff time). Furthermore, any advance payments received by the SUBRECIPIENT, or payments rendered with federal grant funds by the SUBRECIPIENT to purchase equipment or tangible assets, must be repaid in full. The rights and remedies of HI-EMA provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law. If it is determined that (1) the SUBRECIPIENT was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault, or negligence, the termination shall be deemed a "Termination for Convenience."

ARTICLE IV - DOCUMENTATION/REPORTING REQUIREMENTS

1. Records Retention

- a. The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for three (3) years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.
- b. The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related U.S. Office of Management and Budget guidance consistent with Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete the HI-EMA FFATA Certification Form (Attachment 4) with the execution of the MOA. The FFATA form is incorporated by reference and made a part of this MOA.

2. Quarterly Reports

- a. The SUBRECIPIENT is required to submit to HI-EMA a quarterly report indicating the status of all projects not submitted to FEMA for closeout. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost underruns or overruns are expected. In

addition, the SUBRECIPIENT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within fourteen (14) days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by HI-EMA. HI-EMA reserves the right, in its sole discretion, to terminate this MOA for any SUBRECIPIENT that fails to submit a complete quarterly report as required by this MOA. The quarterly report will serve as the basis for any FEMA Office of Chief Financial Officer (OCFO) funds reduction.

3. Request for Information

- a. The SUBRECIPIENT is required to respond to HI-EMA's request for information including, but not limited to, additional documentation required to complete the project review process, mandatory reports, and signatory documentation within fifteen (15) calendar days of the request. If the SUBRECIPIENT is unable to provide the requested documentation within fifteen (15) calendar days, then it is the responsibility of the SUBRECIPIENT to notify HI-EMA in writing when the requested documentation will be received. HI-EMA reserves the right, in its sole discretion, to terminate this MOA for any SUBRECIPIENT that fails to submit the requested documentation or provide the required notices of when documents will be received.

4. Subrecipient Monitoring

- a. HI-EMA shall monitor the activities of the SUBRECIPIENT from award to closeout. The goal of HI-EMA's monitoring activities is to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Title 2, Subtitle A, Chapter II, Part 200 Subpart F.
- b. To document compliance with 2 CFR Title 2, Subtitle A, Chapter II, Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to HI-EMA the 2 CFR Part 200 Subpart F Audit Certification Form (Attachment 5), which is incorporated by reference and made a part of this Agreement. Each fiscal year thereafter until the Agreement is closed, the SUBRECIPIENT must complete and return to HI-EMA the 2 CFR Part 200 Subpart F Audit Certification Form.
- c. Monitoring activities may include, but are not limited to:
 - i. reviewing financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documenting phone calls, meetings, e-mails, and correspondence;
 - iv. reviewing reimbursement requests and supporting documentation to ensure eligibility and consistency with Agreement work plan, budget, and federal requirements;
 - v. observing and documenting Agreement-related activities; and
 - vi. conducting on-site visits to review equipment records and inventories to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Title 2, Subtitle A, Chapter II, Part 200 Subpart F, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan. If the SUBRECIPIENT fails to comply with federal or state statutes or regulations, or the terms and conditions of this MOA, HI-EMA may impose additional subaward conditions as described in 2 CFR 200.208. If HI-EMA determines that noncompliance cannot be remedied by imposing additional conditions, it may take one (1) or more of the following actions:
 - i. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT.
 - ii. Wholly or partially suspend or terminate the subaward to the SUBRECIPIENT.
 - iii. Initiate suspension or debarment proceedings under 2 CFR 180 or recommend such a proceeding be initiated by the federal awarding agency.
 - iv. Withhold further federal awards for the project or program.
 - v. Take any other remedies that may be legally available.
- f. HI-EMA agrees to:
 - i. Provide technical assistance during all monitoring or evaluation activities. HI-EMA will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities;
 - ii. Develop the SUBRECIPIENT's Project Worksheet and supporting attachments with FEMA and the SUBRECIPIENT's assistance based upon the costs determined to be eligible;
 - iii. Submit the SUBRECIPIENT's funding package to FEMA;
 - iv. Notify the SUBRECIPIENT when funding approval is received, issue payment in accordance with the process described above (see Article III, 5 - Payments), and provide the SUBRECIPIENT with a copy of the approved Project Worksheet;
 - v. Work with the SUBRECIPIENT to resolve any issues identified during the monitoring process; and
 - vi. Review and respond appropriately to the SUBRECIPIENT's requests for time extensions and changes.

ARTICLE V - LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Exec. Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. The DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768 (April 18, 2011), provides helpful information such as how a recipient can determine the extent of its obligation to provide language services and the elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the [DHS website](#) or [LEP.gov](#).

ARTICLE VI - FEMA-STATE AGREEMENT TERMS AND CONDITIONS

As a subrecipient of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS/FEMA terms and conditions of the Presidential Declaration and the FEMA-State Agreement, which are incorporated in and made a part of this Agreement in Appendix F of the FEMA Public Assistance Program and Policy Guide V4, effective June 1, 2020.

ATTACHMENTS

1. DHS Standard Terms and Conditions
2. FEMA-State Agreement
3. HI-EMA General Terms and Conditions
4. FFATA Certification Form
5. Audit Certification Form

*Sample forms attached to this document are provided for reference only. Fillable, non-watermarked versions of the required forms will be provided to the SUBRECIPIENT to complete as needed.